



Law Society
of Ontario

Barreau
de l'Ontario

10 Highlights for Your New Practice: 2022-2023

WEBCAST

Law Society of Ontario

February 20, 2024





Law Society
of Ontario

Barreau
de l'Ontario

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Law Society of Ontario

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10 Highlights for Your New Practice: 2022-2023



February 20, 2024

9:00 a.m. to 12:30 p.m.

Total CPD Hours = 30 m Substantive + 3 h Professionalism **P**

Webcast

Law Society of Ontario

SKU CLE24-0020100-D-WEB

Agenda

9:00 a.m. – 9:30 a.m.

**Rebooting Your Client Intake Process
(30 m **P**)**

Source Program: 17th Solo and Small Firm Conference -
Secrets for Success

Lisa Feldstein, *Lisa Feldstein Law Office Professional
Corporation*

Jennifer Reynolds, *Fresh Legal*

9:30 a.m. – 9:52 a.m.

**Law Firm Infrastructure: The Building Blocks You Need
(Staffing, Tech and Office Space)
(22 m )**

Source Program: Reflecting on Your Practice: Tools to
Reset (or Build) Your Practice

Moderator: Juda Strawczynski, Director, practicePRO, *Lawyers' Professional Indemnity Company (LawPRO®)*

Panelists: Kirsti Mathers McHenry, *Mathers McHenry LLP*

Andrew Paterson, *Durant Barristers*

Tannis Waugh, C.S., *Waugh & Co. Barristers and Solicitors*

9:52 a.m. – 10:14 a.m.

**The Modern Lawyer's Marketing Blueprint
(22 m )**

Source Program: 17th Solo and Small Firm Conference -
Secrets for Success

Romesh Hettiarachchi, *Signal Lawyers / Lawtrepreneur*
(not featured in this clip)

Andrew Leroy Rudder, *Rudder Law Group*

10:14 a.m. – 10:31 a.m.

**Best Practices for Retainer Agreements and Confirming
the Essential Details with your Client**

Source Program: The Retainer Agreement Explained

Amri Murray, *AJ Murray Legal Services, P.C.*

10:31 a.m. – 10:52 a.m.

**Managing the Litigation Process and the Client
Relationship**

Source Program: Family Law Refresher 2023

Annie Kenet, *Goldhart Kenet LLP*

10:52 a.m. – 11:07 a.m.

Break

11:07 a.m. – 11:28 a.m.

**Law Society Spot Audits: Five Most Common Issues
(21 m P)**

Source Program: 20th Real Estate Law Summit

Andrew Assikopoulos, CPA, CA, CMA, Auditor, Spot Audit,
Law Society of Ontario

Mandy Chan, BBA (Accounting), DIFA, CA, CPA, Auditor,
Spot Audit, *Law Society of Ontario*

11:28 a.m. – 11:46 a.m.

**Business Strategies for a Shift to Part-Time or Alternative
Practice
(18 m P)**

Source Program: A Guide for Law Practice Transitions to
Part-Time and Alternative Practice Arrangements

Erin C. Cowling, Founder & CEO, *Flex Legal Network Inc.*

11:46 a.m. – 11:56 a.m.

**How not to be the Next Fraud Dupe or Victim!
(10 m P)**

Source Program: 20th Real Estate Law Summit

Raymond Leclair, Vice-President, Public Affairs, *Lawyers'
Professional Indemnity Company (LawPRO®)*

11:56 a.m. – 12:06 p.m.

**Finances Rapid-fire Roundtable: Setting Your Fees,
Setting a Budget and Staying on Track
(10 m P)**

Source Program: Reflecting on Your Practice: Tools to
Reset (or Build) Your Practice

Juda Strawczynski, Director, practicePRO, *Lawyers' Professional Indemnity Company (LawPRO®)*

Peter Carayiannis, *EY Law LLP*

Amy Grubb, *Grubb Legal Consulting*

12:06 p.m. – 12:30 p.m.

**Remote Work: New Risks, New Challenges
(24 m P)**

Source Program: Technology and the Law

Moderator: Amy Salyzyn, Associate Professor, Faculty of Law,
University of Ottawa

Panelists: Kevin Lo, Managing Director, *Froese Forensic Partners Ltd.*

Florian Martin-Bariteau, Associate Professor, Faculty of
Law, *University of Ottawa*

Dr. Teresa Scassa, Canada Research Chair in Information
Law and Policy, Faculty of Common Law, *University of
Ottawa* (not featured in this clip)

12:30 p.m.

Program Ends



This program qualifies for the 2025 LAWPRO Risk Management Credit

What is the LAWPRO Risk Management credit program?

The LAWPRO Risk Management Credit program pays you to participate in certain CPD programs. For every LAWPRO-approved program you take between September 16, 2023 and September 15, 2024, you will be entitled to a \$50 premium reduction on your **2025 insurance premium** (to a maximum of \$100 per lawyer). Completing any Homewood Health Member Assistance Plan e-learning course available at homeweb.ca/map also qualifies you for a \$50 credit.

Why has LAWPRO created the Risk Management Credit?

LAWPRO believes it is critical for lawyers to incorporate risk management strategies into their practices, and that the use of risk management tools and strategies will help reduce claims. Programs that include a risk management component and have been approved by LAWPRO are eligible for the credit.

How do I qualify for the LAWPRO Risk Management Credit?

Attendance at a qualifying CPD program will NOT automatically generate the LAWPRO Risk Management Credit. To receive the credit on your 2025 invoice, you must log in to [My LAWPRO](#) and completing the online Declaration Form in the Risk Management Credit section.

STEP 1:	STEP 2:
<ul style="list-style-type: none">Attend an approved program in person or online; and/orView a past approved programCompleting a Homewood Health e-course*	Complete the online declaration form in the Risk Management Credit section of my.lawpro.ca by September 15, 2024. The credit will automatically appear on your 2025 invoice.

You are eligible for the Risk Management Credit if you chair or speak at a qualifying program provided you attend the entire program.

Where can I access a list of qualifying programs?

See a list of current approved programs at lawpro.ca/RMcreditlist. Past approved programs are usually indicated as such in the program materials or download page. Free CPD programs offered by LAWPRO can be found at www.practicepro.ca/cpd

Whom do I contact for more information?

Contact practicePRO by e-mail: practicepro@lawpro.ca or call 416-598-5899 or 1-800-410-1013.

*One Homewood Health e-learning course is eligible for the credit on a yearly basis.



10 Highlights for Your New Practice: 2022-2023

February 20, 2024

SKU CLE24-0020100-D-WEB

Table of Contents

TAB 1	Rebooting Your Client Intake Process (PowerPoint).....1 - 1 to 1 - 7
	Identifying and Rebooting Your Intake Process (PowerPoint).....1 - 8 to 1 - 27
	<i>Lisa Feldstein, Lisa Feldstein Law Office Professional Corporation</i>
	<i>Jennifer Reynolds, Fresh Legal</i>
TAB 2	Tools to Reset or Build Your Practice.....2 - 1 to 2 - 11
	<i>Kirsti Mathers McHenry, Mathers McHenry LLP</i>
TAB 3	The Modern Lawyer’s Marketing Blueprint (PowerPoint).....3 - 1 to 3 - 13
	Modern Lawyer’s Marketing Blueprint.....3 - 14 to 3 - 32
	<i>Andrew Leroy Rudder, Rudder Law Group</i>
TAB 4	Retainer Agreements: Best Practices Confirming the Essential Details (PowerPoint).....4 - 1 to 4 - 14
	<i>Amri Murray, AJ Murray Legal Services Professional Corporation</i>

TAB 5 **Managing the Litigation Process and the Client Relationship
(a.k.a how to prepare for the entirely unpredictable)
(PowerPoint).....5 - 1 to 5 - 17**

Annie Kenet, *Goldhart Kenet LLP*

TAB 6 **Law Society Spot Audits
Five most common issues (PowerPoint)6 - 1 to 6 - 16**

Mandy Chan, CPA, CA, DIFA, Spot Auditor,
Law Society of Ontario

Andrew Assikopoulos, CPA, CA, CMA, Spot Auditor,
Law Society of Ontario

TAB 7 **Business Strategies Checklist for Transitioning to a Part-Time
or Alternative Practice.....7 - 1 to 7 - 10**

**7 Business Strategies for Transitioning to a Part-Time
or Alternative Practice (PowerPoint).....7 - 11 to 7 - 14**

Erin C. Cowling, Founder & CEO, *Flex Legal Network Inc.*

TAB 8 **How to NOT be the Next Fraud Dupe or Victim
(PowerPoint).....8 - 1 to 8 - 12**

Raymond Leclair, Vice-President, Public Affairs, *Lawyer's Professional
Indemnity Company (LawPRO®)*

Note: “**Finances Rapid-fire Roundtable, Setting Your Fees, Setting a
Budget and Staying on Track**” does not have any associated materials

TAB 9 **Legal Ethics in a Digital Context
(Originally prepared for The Canadian Bar Association
Ethics and Professional Responsibility).....9 - 1 to 9 - 48**

Prepared by:

Amy Salyzyn, Associate Professor, Faculty of Law, *University of Ottawa*

Florian Martin-Bariteau, Associate Professor, Faculty of Law, *University of Ottawa*

10 Highlights for Your New Practice: 2022-2023 – Links to Original Programs and Additional Resources

1. [17th Solo and Small Firm Conference - Secrets for Success](#)
2. [Reflecting on Your Practice: Tools to Reset \(or Build\) Your Practice](#)
 - a. [Technology – practicePRO](#)
3. [17th Solo and Small Firm Conference - Secrets for Success](#)
4. [The Retainer Agreement Explained](#)
 - a. [Checklist for Retainer Agreements and Engagement Letter](#)
5. [Family Law Refresher 2023](#)
6. [20th Real Estate Law Summit](#)
7. [A Guide for Law Practice Transitions to Part-Time and Alternative Practice Arrangements](#)
 - a. [Guide to Opening Your Law Practice](#)
8. [20th Real Estate Law Summit](#)
 - a. [Wiring funds checklist – practicePRO](#)
9. [Reflecting on Your Practice: Tools to Reset \(or Build\) Your Practice](#)
 - a. [Contingency Fees](#)
10. [Technology and the Law](#)





Law Society
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TAB 1

10 Highlights for Your New Practice: 2022-2023

Rebooting Your Client Intake Process (PowerPoint)

Identifying and Rebooting Your
Intake Process (PowerPoint)

Lisa Feldstein

Lisa Feldstein Law Office Professional Corporation

Jennifer Reynolds

Fresh Legal

June 8, 2023



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REBOOTING YOUR INTAKE PROCESS

17th Solo and Small Firm Conference
 Thursday, June 8, 2023
 Law Society of Ontario

Lisa Feldstein, BA, JD
 Jennifer Reynolds, BAsC, LLB

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1

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Presenters



Lisa Feldstein
BA, JD
 Lisa Feldstein Law Office PC
 @lisafeldstein



Jennifer Reynolds
BAsC, LLB
 Fresh Legal
 @FreshStartOtt

2

Agenda

- Why is an intake process important?
- What makes a good intake process?
- How can a good intake process help you meet LSO client identification requirements?
- Why should you qualify clients early in your process (and how do we do it)?
- What tools/software can be used to improve your intake processes?

#17SoloSmall

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3

Why is an intake process important?



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4

What makes a good intake process?



Filtering/
qualifying



Standards for
responding



Easy tools &
automation



Track and
follow up
with leads



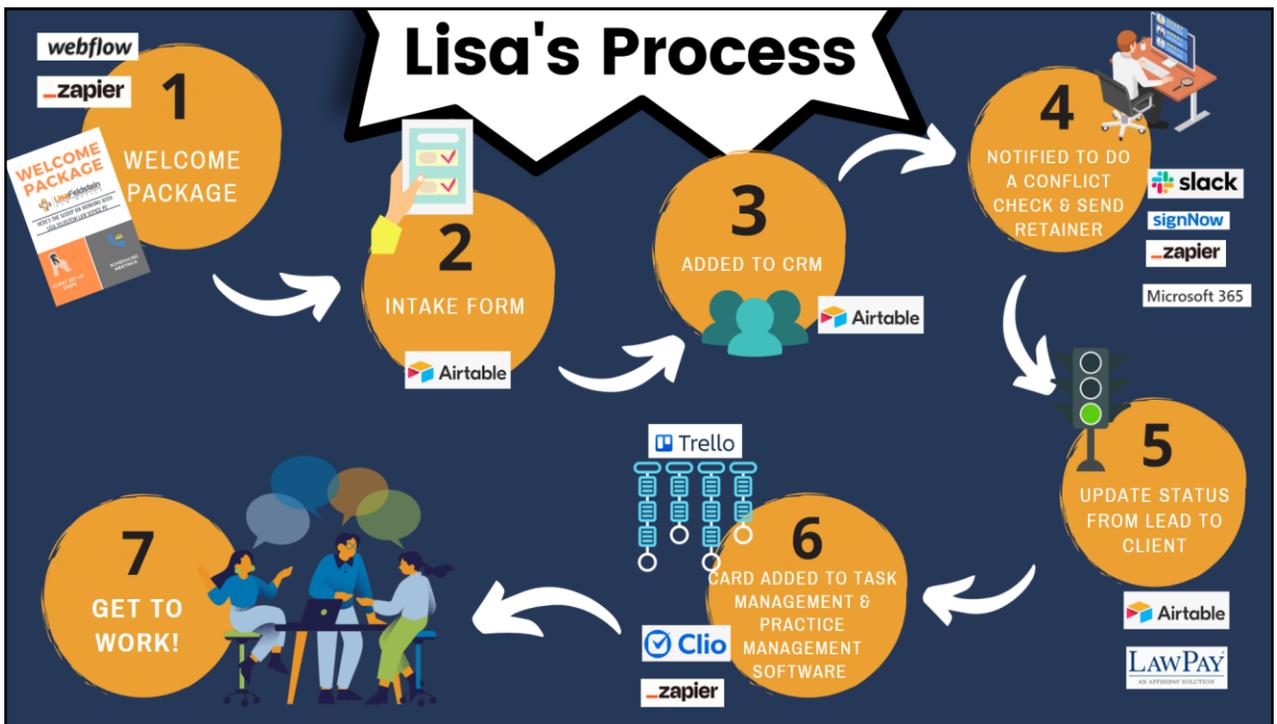
Build trust
and provide
value

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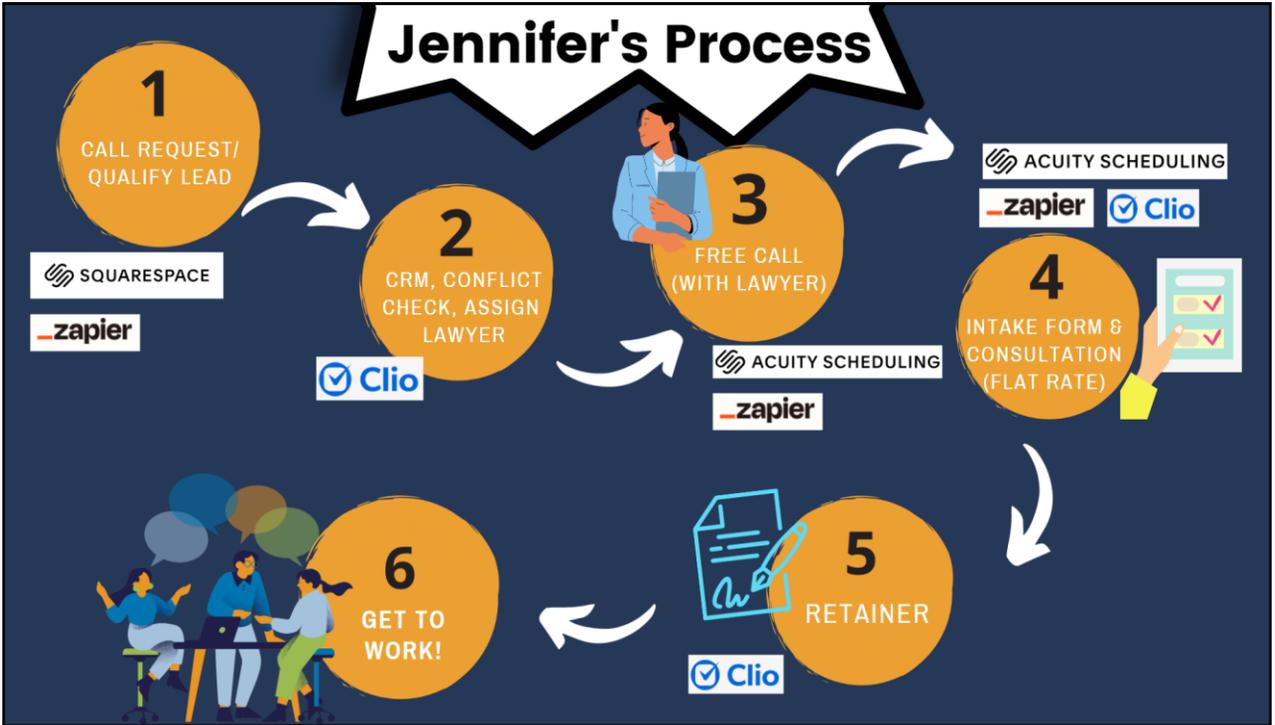
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LSO client identification requirements and conflict checks




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Filtering/qualifying clients



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What tools/software can be used?



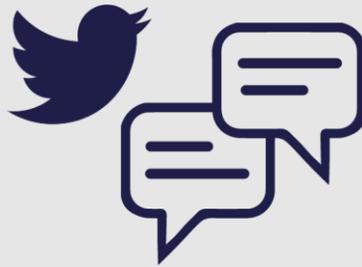
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**What is YOUR next action item?
Share it with the person beside you or
on Twitter using #17SoloSmall!**



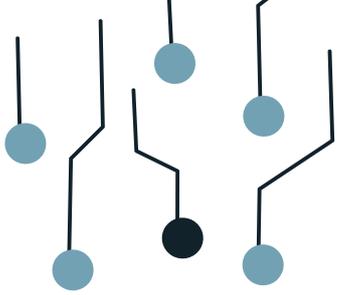
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Identifying and Rebooting Your Intake Process

Initial Client Contact



How is the potential client reaching out to your firm?

- Chatbot
- Text message
- Email
- Phone call
- Social media (ie. Instagram, TikTok, LinkedIn)
- Other:

Who is accountable for receiving the inquiry?

- My assistant
- Another lawyer at the firm
- I do it myself
- Other:

Is there a standard for how and when to respond?

- Yes
- No

If no, what standards would you like to see in place?



Filtering Clients

Do you filter out leads that are not a good fit **before they speak with a lawyer?**

- Yes
- No

If yes, how do you do it?

- Outline areas of practice on website
- Standard questions on a form
- Standard questions in call with assistant
- Other:

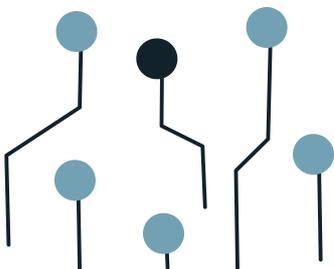
If no, how might you start to filter your leads?



Do you ever take on clients and realize they are not a good fit **after they sign the retainer?**

- Yes
- No

If yes, what factors indicate they are not a good fit?



What questions could you ask to identify these factors before you speak with the client?

What kind of questions do you ask yourself about every single client before you agree to represent them?

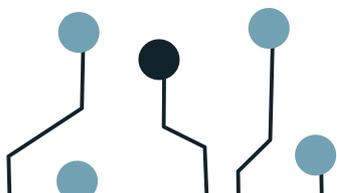
Could you standardize or automate these questions?



Creating Value During the Intake Process

What questions do you answer over and over?

Can you provide that information to your clients up front and systematically? *Consider auto-replies, handouts/PDFs, links to useful resources, FAQ*



Client Identification

Are you collecting the required intake information set by the Law Society of Ontario for every client?

- Yes
- No
- I don't know



If you aren't sure, refer to By-Law 7.1 at the back of this workbook.

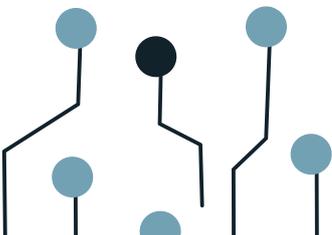
If yes, how and when do you collect it?

Is it the same person or process/tool every time?

- Yes
- No (If so, could it be?)

If no, what information do you still need to collect?

When in your process will you collect it?



Conflict Checks

Do you do a conflict check before a potential client speaks to a lawyer?

- Yes
- No

If no, when do you do your conflict check?

Who is responsible for the conflict check?

Is it the same person every time?

- Yes
- No

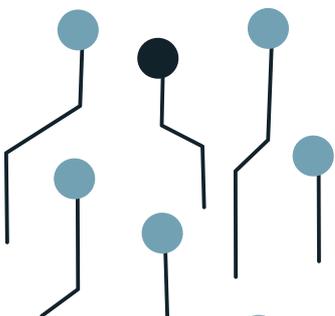
If no, could it be?

How do you do your conflict check?

- CRM software
- Practice management software
- Other:

Where is the information recorded?

- CRM software
- Practice management software
- Other:



Appointment Booking

Are you making promises (e.g. about how quickly leads will get an appointment with a lawyer)?

- Yes
- No

If yes, are you tracking and monitoring to ensure you are keeping your promises?

- Yes
- No



If no, what action steps will you take to monitor it?

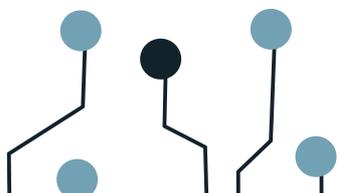
How do clients schedule **initial appointments**?

- Send them our calendar booking link
- Directly book from our website
- Manually book the appointment ourselves
- Other:

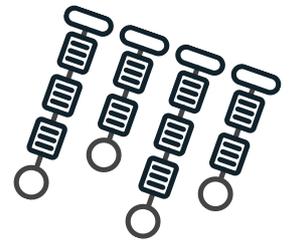
If they are manually booked, is it the same person booking it every time?

- Yes
- No

If no, could it be?



Tracking and Converting Leads



Do you track each lead that contacts your firm? If yes, how?

- CRM
- Excel spreadsheet
- Other:

If yes, what information do you gather?

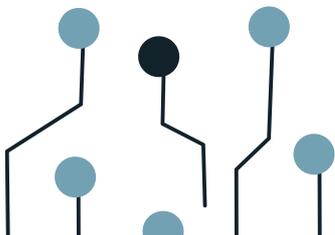
- Name
- Phone number
- Email address
- Conflict information
- Other:

If no, how could you track leads and what information will you track about them?

Do you follow up with potential leads?

- After initial contact (once)
- After initial contact (more than once)
- After consultation before retainer (once)
- After consultation (more than once)
- Not at all
- Other:

If not at all, where could follow ups be added to your system? What tools could you use to follow up?



Retainers and Non-Engagement Letters



Does **every client** sign a retainer agreement?

- Yes
- No

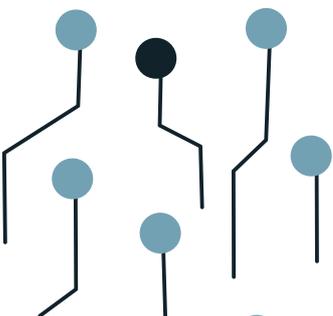
If yes, is the retainer agreement and the process of sending it to the client standardized? Does the same person do it every time?

If no, where will you add this to your process? How will you ensure it is done? Who be responsible for it?

Do you send **non-engagement** letters?

- Yes
- No
- Sometimes

If no or sometimes, where could you add this to your process?



Automation

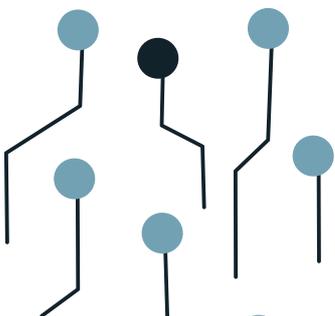


What tasks, if any, in your intake process do you dislike when you do them because they are repetitive or feel like a waste of your time?

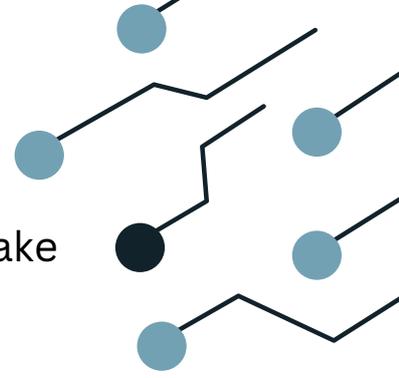
What tools have you heard of that you could use to automate these tasks?

- Clio (Manage/Grow)
- Zapier
- Acuity
- Airtable
- SignNow
- Trello
- Other:

How could you learn more about these tools?



YOUR REBOOT PLAN



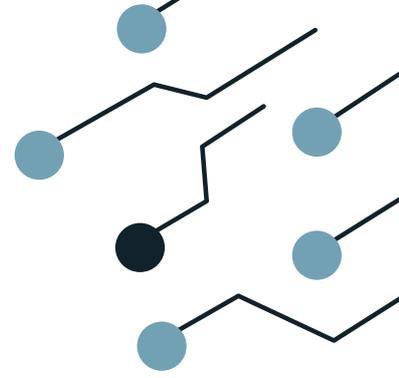
Commit now to doing three things to improve your intake process. What will you do? When will you do it? Tell someone in the workshop or online.

1

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QUALIFYING QUESTIONS



Name / Email address / Phone Number

May we leave you a message at the phone number provided?

Where do you live? (Website note tells them we only serve clients in the Province of Ontario.)

What is your spouse/former spouse's name? *Conflict check (Website note explains how this information is used.)

Are you looking for a lawyer or a mediator?

Were you referred to a particular member of our team?

Are you applying for legal aid funding?

Please tell us a bit about your situation.

EMAIL TEMPLATES



After Initial Call (same day):

Hello [name]:

I am writing to follow up on our telephone call. It was a pleasure to speak with you and I hope you found the information you received during our conversation helpful.

Do you have any follow-up questions, or things you forgot to ask?

We find that often people think of things they want to or meant to ask us after the telephone call is over. If you think of anything, please do not hesitate to contact us. We would be happy to help.

What happens next? Book your consultation or intake meeting now.

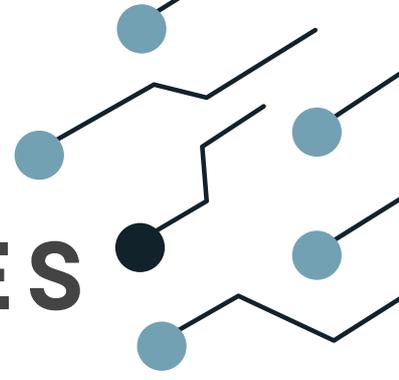
If you have not done so already and are ready for the next step, please book a consultation or intake meeting with me at a time that works for you [using this link](#).

Important: Until you have a signed retainer with us and have paid the required deposit, we will not take any action on your file. If you have any questions about this, please do not hesitate to contact me.

Take care,

[lawyer name]

EMAIL TEMPLATES



After Initial Call (seven days later if consultation not booked)

Hello [name]:

We are writing to follow up on your telephone conversation with [lawyer] on [date]. If you would like to book an initial meeting with [lawyer], please [use this link](#) to schedule a time that works for you.

Important: Until you have a signed retainer with us and have paid the required deposit, we will not take any action on your file. If you have any questions about this, please do not hesitate to contact our office.

Take care,

[Firm Name]

One Week After Consult (if not retained):

Hi [First Name],

We are writing to follow up on your consultation with [lawyer] on [date]. If you wish to retain [lawyer] to assist with your matter, please contact them directly or reply to this email.

Please note, as a reminder, until you have a signed retainer with us and have paid the required deposit, we will not take any action on your file.

If you have any questions about how we can assist in your matter, please do not hesitate to contact our office.

Thank you,

[Firm Name]

EMAIL TEMPLATES



After Initial Call (seven days later if consultation not booked)

Hello [name]:

We are writing to follow up on your telephone conversation with [lawyer] on [date]. If you would like to book an initial meeting with [lawyer], please [use this link](#) to schedule a time that works for you.

Important: Until you have a signed retainer with us and have paid the required deposit, we will not take any action on your file. If you have any questions about this, please do not hesitate to contact our office.

Take care,

[Firm Name]

One Week After Consult (if not retained):

Hi [First Name],

We are writing to follow up on your consultation with [lawyer] on [date]. If you wish to retain [lawyer] to assist with your matter, please contact them directly or reply to this email.

Please note, as a reminder, until you have a signed retainer with us and have paid the required deposit, we will not take any action on your file.

If you have any questions about how we can assist in your matter, please do not hesitate to contact our office.

Thank you,

[Firm Name]

EMAIL TEMPLATES



Sending Retainer Agreement

Hello [First Name],

Thank you for choosing [Firm Name]!

There are three simple steps to complete so we can begin working with you:

Step 1: Review our [office policies](#). If you have any questions or concerns regarding these policies, please let us know.

Step 2: Please review and sign the retainer agreement. Click the link below to complete this step. You can do this from your phone or computer. **This link is valid for one week.**

Step 3: You will receive an emailed invoice for the deposit. You can pay this deposit via email transfer, credit card, cash or cheque. If you are paying by credit card, there is a link in the emailed invoice. To pay by email transfer, please send the payment to office@freshlegal.ca and set the password as the first name of your lawyer. To pay by cash or cheque, please contact our office.

Please do not hesitate to call or email if you have any questions or concerns. We look forward to assisting you with this matter.

Take care,

[Firm Name]

EMAIL TEMPLATES



Four Weeks After Consultation (if not retained)

Hi [First Name],

We are writing to follow up on your meeting with [lawyer] on [date].

As to today's date, you have not retained [lawyer] and they do not represent you in your matter. As such, they will not take any action with respect to your matter.

Please note that limitation periods may exist with respect to your matter. A limitation period is a deadline by which you need to make a claim. You should seek legal advice if you are concerned about these time limits, and ensure you take action prior to the expiry of the limitation period.

If your circumstances change and you wish to retain our firm with respect to this matter, or if we can be of any assistance to you in the future, please do not hesitate to contact us.

Thank you,

[Firm Name]

Law Society of Ontario

By-Law 7.1

Client identification

23. (1) When a licensee is retained to provide her or his professional services to a client, the licensee shall obtain the following information about the client:

1. The client's full name.
2. The client's business address and business telephone number, if applicable.
3. If the client is an individual, the client's home address and home telephone number.
4. If the client is an organization, other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable.
5. If the client is an individual, the client's occupation or occupations.
6. If the client is an organization, other than a financial institution, public body or reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, if applicable.
7. If the client is an organization, the name, position and contact information for each individual who is authorized to give instructions with respect to the matter for which the licensee is retained.
8. If the client is acting for or representing a third party, information about the third party as set out in paragraphs 1 to 7, as applicable.

Additional client identification: activities mentioned in clause 22 (1) (b)

(2) When a licensee is engaged in the activities described in clause 22 (1) (b), in addition to complying with the client identification requirements set out in subsection (1), the licensee shall obtain from the client information about the source of the funds being received, paid or transferred.

Additional client identification when organization involved: activities mentioned in clause 22 (1) (b)

(2.1) When a licensee is engaged in the activities described in clause 22 (1) (b) and the client or third party that the client is acting for or representing is an organization, in addition to complying with the client identification requirements set out in subsections (1) and (2), the licensee shall,

(a) obtain the name of each director of the organization, other than an organization that is a securities dealer; and

(b) make reasonable efforts to obtain,

(i) the names and addresses of the persons who own, directly or indirectly, twenty-five percent or more of the organization or of the shares of the organization, if applicable,

(ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, if applicable, and

(iii) information establishing the ownership, control and structure of the organization.

Alternate requirement when unable to meet identification and other requirements re organization
(2.2) If a licensee is unable to obtain the information mentioned in subsection (2.1) or to confirm the accuracy of the information as required by subsection (12.2), the licensee shall,

- (a) take reasonable measures to identify the most senior managing officer of the organization;
- (b) determine whether the client's information in respect of their activities and the source of the funds and the client's instructions in respect of the transaction are consistent with the purpose of the retainer and the information obtained about the client as required under subsection (2.1) and record the results of the determination and the date on which it was made; and
- (c) assess whether there is a risk that the licensee may be assisting in or encouraging fraud or other illegal conduct and record the results of the assessment and the date on which it was made.

Client identification: identification by others in licensee's firm

(2.3) A licensee complies with the identification requirements set out in subsections (1) to (2.2) if an employee of the licensee's firm or another licensee who practises law or provides legal services through the licensee's firm, acting on behalf of the licensee, complies with the requirements.

Timing of verification, individuals

(5) A licensee shall verify the identity of an individual mentioned in subsection (1), including an individual mentioned in paragraph (1) 7, immediately after first engaging in the activities described in clause 22 (1) (b).

Timing of verification: organizations

(6) A licensee shall verify the identity of an organization mentioned in subsection (1) immediately and, in all cases, by not later than 30 days after first engaging in the activities described in clause 22 (1) (b).

Documents, data and information for verification

(7) Subject to subsection (8), the following are the documents, data and information for the purposes of subsection (4):

1. If the client or third party is an individual,
 - i. a government issued photo identification document, excluding a document that is issued by a municipal government,
 - ii. information in the individual's credit file that is located in Canada and has been in existence for at least three years,
 - iii. any two of the following pieces of information, each from a different source that is not the individual, the licensee or an individual acting on behalf of the licensee pursuant to subsection (11),
 - A. information from a reliable source that contains the individual's name and address,
 - B. information from a reliable source that contains the individual's name and date of birth,
 - C. information that contains the individual's name and confirms that they have a deposit account, credit card or other loan amount with a financial institution.

2. If the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, which includes the names of the organization's directors, if applicable such as,

- i. a certificate of corporate status issued by a public body,
- ii. a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
- iii. a copy of a similar record obtained from a public body that confirms the organization's existence.

3. If the client or third party is an organization other than a corporation or society that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association or any other similar record that confirms its existence as an organization.

Requirements re documents, data and information used for verification

(8) For the purposes of subsection (4), documents and records used must be authentic, valid and current and other information used must be valid and current.

Client verification: individual younger than 12 years

(9) If a licensee is required to verify the identity of an individual who is under twelve years of age, the licensee shall verify the identity of a parent or guardian.

Client verification: individual 12 years or older but younger than 15 years

(10) If a licensee is required to verify the identity of an individual who is at least twelve years of age but not more than 15 years of age, the licensee may do so by obtaining information from a reliable source that contains the name and address of a parent or guardian and confirming that the address of the parent or guardian matches the individual's address.

Client verification: use of agent, etc.

(11) A licensee complies with the verification requirements set out in subsection (4) if,

(a) an employee of the licensee's firm or another licensee who practises law or provides legal services through the licensee's firm, acting on behalf of the licensee, complies with the requirements; or

(b) an individual who is not an individual mentioned in clause (a), acting on behalf of the licensee, complies with the requirements, provided that,

(i) the licensee and the individual, prior to the individual acting on behalf of the licensee, enter into a written agreement for this purpose, and

(ii) the licensee obtains from the individual the information obtained by them under the agreement, satisfies themselves that the information is valid and current and satisfies themselves that the individual complied with subsections (4) to (10).

Client verification: previous verification

(12) A licensee complies with the verification requirements set out in subsection (4),

(a) if the licensee has previously complied with the verification requirements set out in subsection (4) and has no reason to believe the information or the accuracy of the information has changed; or

(b) an individual acting on behalf of the licensee under subsection (11) previously complied with the verification requirements set out in subsection (4) either acting in their own capacity at the time, whether or not they were required to comply with the verification requirements set out in subsection (4), or acting on behalf of another licensee at the time pursuant to an agreement under subsection (11).

Recording information

(12.1) The licensee shall record all information obtained for the purposes of subsections (1) to (2.2) and the date on which it was obtained.



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TAB 2

10 Highlights for Your New Practice: 2022-2023

Tools to Reset or Build Your Practice

Kirsti Mathers McHenry
Mathers McHenry LLP

March 7, 2022



Tools to reset or build your practice

Kirsti Mathers McHenry

There is never a bad time to assess your infrastructure. Whether you are just starting to plan to open your own firm or are celebrating your 10-year anniversary, you can always pause and assess the distance between where you are and where you want or need to be. In every area, you should regularly consider the following questions:

- What do I have?
- What do I need?
- What do I want?
- How much am I able and willing to pay?
- What is the best way to get what I want?

This paper will briefly address each of the key areas of firm infrastructure: staffing, technology, and office space. For each of these areas, I will offer some advice for those seeking to start up a new firm and for those who have an established firm and want to reassess some of the component parts.

GENERAL ADVICE

Staffing, technology, and office space will be your largest expenses and the ones that are hardest to reduce. Be careful and strategic, but don't burn yourself out doing everything. Make sure that every decision you make is consistent with your values and your vision for your business, and you will be on a path to success – however you define it.

Know yourself and your business

Questions about infrastructure go to the core of who you are as a business owner and how you want to run your firm. You may feel like it is a distraction from the practical questions that have to be answered but spending a day figuring out the “why” of your business and the values you want to live by is time very well spent. Knowing what you want to do and how, as well as honestly evaluating your own ability to contribute to your vision, helps you get on a shorter road to success.

You need to understand why you decided to run your own firm instead of joining an established firm. Jim Collins and Jerry Porras, who have authored several important business books, suggest the “five whys” approach to help you identify the vision or purpose of your firm:

“One powerful method for getting at purpose is the five whys. Start with the descriptive statement We make X products or We deliver X services, and then ask, Why is that important? five times. After a few whys, you’ll find that you’re getting down to the fundamental purpose of the organization.”¹

After you have clarified why you want to run a business, ask yourself how you want to run it. Identifying values is helpful, both to guide your decision making as you start out or make changes, and to help you manage staff and service providers. Giving people a list of values empowers them to make decisions and act without constantly checking in with you (and thereby eliminating a lot of the benefit of hiring people to do some of the work). Collins and Porras have done great work in this area and have practical articles to support work on this (suggestions below).

Lastly, get honest about your own strengths and weaknesses. Here are some questions to answer about yourself:

- What are your favourite things to do?
- What are your least favourite things to do?
- What kinds of things do you learn easily?
- What kinds of things do you struggle to learn?
- What do you most fear or dread about running your own business?
- What excites you the most about running a business?

Once you have answered these questions, you should be starting to get a picture of the pieces of the business that you want to manage directly and the pieces you may want to outsource to others. You may also want to look at each area of the business through a risk management lens by asking these questions:

¹ Jim Collins and Jerry Porras, “Building your company’s vision”, Harvard Business review (1996), online: <https://hbr.org/1996/09/building-your-companys-vision> (accessed January 28, 2022).

- What is required to run this area of the business well? (If the answer is “I don’t know” that’s a good sign that you at least need to consult with an expert.)
- What are the consequences if a mistake is made or something is missed?
- Historically, have I prioritized this kind of work or avoided it?

If you are starting a firm, going through these exercises will help you understand what you need and will provide good insights into what kinds of help you should be seeking. Knowing the values that guide your business makes it easier to find people – staff and contractors – who will make a valuable contribution to your firm. For more established firms, this exercise will help you identify where (and how) things have gotten off track, help you assess whether you have the right staff and service providers, and facilitate the creation of a roadmap for improvements.

Taking the time to identify our values and our purpose helped us choose quality service providers and hire a great team. Knowing what we are trying to do has also freed us to take some creative risks and provided a framework for saying no to certain opportunities. Starting a law firm isn’t easy, but knowing what you are trying to do and why helps keep you focused and heading in the right direction.

Flexibility is key when you are starting out

As a general matter, until you understand your revenues and how your business will develop, flexibility is critical. Many IT providers require multi-year contracts with penalties if you back out before the end of the term. Staff require notice and payouts before you can eliminate their positions. Office space can lock you in for years, typically with fixed amounts of space. Look for short-term solutions if you are unsure of revenues. You may pay a higher price for a short-term solution but, if it lets you evolve your business while avoiding significant and unnecessary costs and stress, the trade-off is worthwhile.

If you are established, make a plan to manage change

Making significant changes to your firm infrastructure – whether it’s space, staffing, or technology – requires a plan. Spend time defining and understanding what is working and what isn’t, identify options, and proceed with caution. Be strategic about engaging your team. Staffing changes are sensitive and gathering information about what is and isn’t working can be difficult. Changes to

your office configuration or layout can cause stress for staff who may worry about changes to their commute or working environment. Technology is not as hard, but making a bad choice in this area can make life for staff and clients difficult.

Before deciding how to engage your team in decision making and how to manage a change, you need to understand who will be impacted and how. It's helpful to identify which of the three below categories best describe your staff, clients, and others:

- People who will be substantially and directly impacted by the change. Ideally, you should engage these people from the beginning and ask them to contribute to the assessment of the current situation and selection of a new approach. Their knowledge and experience will be invaluable, and the risk of irritating them or making them feel like you don't care about their input is substantial. Staff who are not included may disengage, sabotage the change, or leave your firm.
- People who will be impacted, but only a little. You should advise these folks that a change is coming and consider whether they could provide helpful input into the assessment and selection process. It may be worthwhile to ask for volunteers to participate in a working group to look at the change or to solicit feedback and advice through a survey. For more sensitive matters, like staffing changes, you can usually avoid engaging people directly until decisions have been made, but you should take care to communicate what is happening as early as you reasonably can and position yourself as the source of information to avoid staff playing broken telephone or sharing incorrect information.
- People who will not be impacted. You can still advise people about the change, but don't feel the need to solicit feedback. Keep in mind that you may be surprised by who at the firm has insights. Also, this type of project can be attractive to any staff member looking to develop new skills.

Recognize that any change requires resources and time. If the staff involved in the change are busy, you will need to move something off their plate or defer some of their work to accommodate the change. Under-resourcing a major change to your infrastructure will only lead to delays and frustration.

Resources to help

- Collins and Porras have several helpful books including Good to Great and Built to Last
- Verne Harnish, Scaling Up
- Harvard Business Review, On Entrepreneurship and startups
- Mike Michalowicz has some good books, including Clockwork and Fix this next
- Emergent Strategy by adrienne maree brown suits those who prefer a less linear approach to organizational development
- Practice Pro also has some great resources to guide your thinking:
 -
 - <https://www.practicepro.ca/2018/01/ideas-for-rethinking-your-law-practice/>

STAFFING

Hiring staff or contractors makes sense in a number of circumstances:

- You don't have the expertise to perform a necessary task
- Having someone else do the work will free up your time to do more profitable or satisfying work
- The volume of work requires additional support, beyond what you can dedicate to it

You can hire permanent full-time staff, contract employees, independent contractors, or look for student interns or placement opportunities. There are pros and cons to each type of support. Full-time staff provide consistency, but come with a range of obligations. Students can require significant training and typically stay for a short period of time, but tend to be eager to learn and bring up-to-date insights from their educational program. Engaging expert contractors frees you up to focus on your areas of expertise, but can be expensive.

Finding, interviewing, and hiring staff or contractors can take a significant amount of time, but

skimping on these steps is risky. Remember, the worst case scenario is being locked into a contract with someone who is not delivering results and to whom you still owe money. I am a fan of behavioral interview questions, which ask people to provide real life examples of their behaviour and skills in action. Checking references – for contractors and staff – is also an important opportunity to learn about a person’s strengths and weaknesses.

Regardless of what kind of relationship you enter into to find support for your business, resist the tendency to hire or work with people who are your carbon copy. It’s important that you share values and are able to communicate effectively, but once you have established those areas of overlap seek out people who approach problems differently, have different kinds of expertise, and are passionate about areas of the business that you find boring or difficult.

Our first two administrative hires both approach problems and think about issues differently than I do, and those differences in approach have been essential to our progress. Our first administrative hire had no legal experience but had worked in a number of different environments and was happy to tackle whatever we threw at her. Her enthusiasm and openness to trying new things was invaluable. Our second administrative hire was a legal expert with years of experience as a law clerk and legal assistant. Together, these two formed the backbone of our operations and helped us grow quickly when the opportunity arose. Our early administrative hires were dynamic, motivated, problem solvers who were eager to get exposure to different aspects of the firm and its management.

In our second and third year, we expanded to include additional lawyers and legal assistants with significant expertise. We also engaged a few people on contract to help us finish setting up the firm. As we grew, we needed less flexibility and preferred to recruit staff with significant expertise in a narrower area. We were and will continue to be attracted to staff who have worked in different top-tier firms. We benefit from their insights and past experience, and are able to take the best from what they have learned in past positions. Having the right mix of expertise and flexibility has been critical to our success and growth.

Resources to help

- Harvard Business Review provides excellent insights into management, hiring, and talent

development. The “must read” series and the “20 minute manager” series are both great starting points to learn more.

- First, break all the rules provides some great insights into managing and building strong teams
- The Five Dysfunctions of a Team by Patrick Lencioni

TECHNOLOGY

The nature of your practice will dictate how much and what kind of technology is required. Technology is expensive and finding high quality support can be challenging. In seeking expert assistance, I would focus on companies (not individuals) who have worked with law firms previously and think critically about how different technology works together. Hiring an individual has its advantages – you get direct access to the expert and can frequently build a strong and productive relationship with that person. However, if that person takes a vacation, becomes ill, or wins the lottery, you may find yourself without support. This is less of a risk if you have avoided customization or using proprietary solutions created by the individual tech expert. If you have built your firm on a platform that only one person knows how to run and update, you may be in trouble at some point.

There are a range of practice management solutions available. My best advice is to talk to a few people who have a practice like the one you are seeking to build and see what they use. Talk to them about the pros and cons of the solution and get to know what they love and hate about it. No software is perfect, but if you go in with a good sense of what the pros and cons are, you can identify complementary solutions and make choices that deliver on your priority items.

Before selecting any software, you should take time to identify your “business requirements”. Think through and write down exactly what you want the software to do for you and when you book a demonstration or meeting with a product representative, ask them to show you the specific functionality you require. Ask questions about the support that is available.

My advice is to look for integrated solutions as much as possible. When programs have to “talk” to each other and they weren’t built to do that, a lot can go wrong quickly. Microsoft, for example, provides many kinds of software and Microsoft itself works to integrate and make those programs

work together. It's not perfect, but better a large corporation is working on integrating programs than you and your IT provider. If you choose to work with smaller programs and try and make them work together yourself, you *may* get better results. If you are tech savvy and have a great provider, this can be a great approach, but if technology is not your thing, this will probably result in more headaches than solutions. The risk of working with smaller programs – especially the great ones – is that they might get bought up and integrated into another company, leaving you with a program that is not being updated or maintained.

If you have an established firm and your technology is not working optimally, there is no better time to switch than now. Change can be hard, but it's worthwhile if you choose the right product. In this case, you should consider engaging your IT provider in discussions about any change and bringing them to product demonstrations or letting them speak directly with representatives of the programs you are considering. IT experts will have many necessary questions about how to get information from your existing systems into the new systems and how to link up new technology with your other programs and software. It's important to consider the challenges associated with changing technology and to engage expert support to make sure you identify and understand the issues you'll face.

Resources to help

- TLOMA has been a great resource. There are groups you can join to learn more about finance, facilities, and human resources, and the listserv is always available to answer questions about technology and other issues. The members are uniquely generous with their time and many are willing to hop on a call to discuss anything from software to where to buy chairs. Local bar associations and your own personal networks of friends and colleagues can also provide valuable assistance and insights.
- https://www.practicepro.ca/wp-content/uploads/2021/12/SR-Update2022_Technology-Products-for-Lawyers-and-Law-Firms-FINAL.pdf
- https://www.americanbar.org/groups/departments_offices/legal_technology_resources/
The ABA does a good job of sharing blogs and information to help law offices engage in technology. I like these resources because they consider the unique situation of lawyers and their professional obligations.

OFFICE SPACE

COVID has sparked many discussions about office space. Ultimately, there are three choices:

- Traditional office set up with dedicated space for each employee
- Work from home with no office space available
- Hybrid – basically anything in between the above two extremes

It is becoming increasingly difficult to justify and insist on full-time, in-person work arrangements for all staff. For that reason, those who seek to impose this arrangement are running into more and more challenges hiring and retaining staff. Many people simply won't accept a job that requires them to be in the office five days a week. If your staff aren't in the office five days a week, it can be hard to justify paying for space that sits empty for a portion of the week.

A fully work from home arrangement poses different challenges. Many potential employees find this approach equally unappealing and want to know that in-person work is possible (just not required five days a week).

In either circumstance, if you are committed to either in-person or work-from-home, you will need to take steps to make that work and ensure, as part of your recruitment efforts, that you are finding people who share your commitment to that particular work style.

For the rest of us, the question is more about how you determine what form of hybrid work will support the success of your firm and your team. There is no right answer, but it can be helpful to ask yourself the following questions:

- What does my team want? What will they accept?
- What do my clients want and what kind of office space do I require to ensure great service?
- What workflows / tasks are better done in person? Who needs to be in the office how often to do those tasks? Can those tasks be changed so they can be done remotely?
- How will I mentor and manage in a virtual environment?
- What needs to change about my practice to make this successful?
- How do I convey culture and values in a remote environment?
- How do I maximize the benefits of in-person work?

We started out as a traditional law firm with the expectation that everyone worked in the office five days a week. Once COVID hit, we transitioned to fully remote and went on to onboard seven staff with almost no one setting foot in the office for over a year. We managed to almost triple in size while maintaining the same amount of office space we had in our first year.

Currently, we run a hybrid shop. We moved in July. Each member of our staff is now fully set up with a home office, and we have dedicated office space available for each member of the team. We increase our time in the office as COVID allows and move to a more home-based approach when the COVID numbers go up. Before making any change, we engage our staff to understand how their personal situations have evolved and what concerns they may have about a change to where we work. Our aim is to continue to provide excellent service while protecting the physical and mental health of our team. Most of us have yet to go back to the office more than two days a week.

What have we learned?

- Without time in the office, you have to be deliberate about conveying culture, building relationships, and bringing people together.
- Even a day or two in the office each week, makes it easier to build relationships and do collaborative work.
- People are in different circumstances and there is no one size fits all. Some of us are desperate for the social connections that in-office time brings. Others are really stressed out about caregiving obligations and how those fit with any kind of return to the office. There is no replacement for talking honestly with staff about where they are at and what they need for good mental, as well as physical, health.
- Good people do good work wherever they are. We have a great team. Everyone wants to do their best work and they know whether and when that requires them to go into the office. Trust your people to work with you to ensure the work gets done well.

The best thing about the current moment is that you can launch without office space and preserve flexibility (and cash) until you are better established and have a better sense of what you need and want. Instead of renting space right away, consider working without an office or using a flexible service that lets you receive mail and possibly use meeting rooms as needed. Again, much depends on your individual circumstances. If you are launching with a full team and a roster of clients who

are coming with you, you may want to invest in space, but consider whether you should start with some meeting space and just a few offices that can be shared and or whether you want dedicated offices for each member of your team.

For more established firms, the questions can be more challenging. Reducing office space or introducing concepts like hoteling or shared space can be difficult. Staff may want to be able to work from home more without giving up dedicated office space. Engaging your staff in discussions about the trade-offs and benefits of different arrangements can be fruitful. If you put your staff and clients at the center of your decision making, engage them early, and communicate clearly, you will be best positioned to make changes to your space. This is an example of where it is important to have staff that share your values or at least understand the values of the firm. A decision that is consistent with what the staff know to be the values of the business will be better received than a decision that seems disconnected from what they know about the place they work.

Resources to help

- Tsedal Neeley's [Remote work revolution](#)
- Margaret Luciano, "4 ways managers can increase flexibility without losing productivity" (HBR, online)

CONCLUSION

Whether it's part of your annual planning cycle or the focus of an offsite strategy session, critically examining your infrastructure needs is time well spent. Space, staff, and technology are usually the largest costs a law firm incurs, and aligning those expenses with your values and vision will help you strengthen your business whether you are just starting out or established and looking to improve.



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TAB 3

10 Highlights for Your New Practice: 2022-2023

The Modern Lawyer's Marketing Blueprint
(PowerPoint)

Modern Lawyer's Marketing Blueprint

Andrew Leroy Rudder
Rudder Law Group

June 8, 2023



The Modern Lawyer's Marketing Blueprint

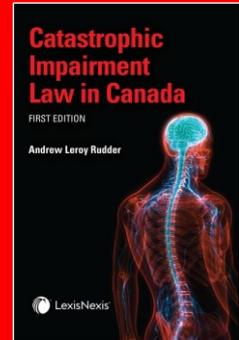
17th Solo and Small Firm Conference: Secrets for Success



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1



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Agenda: How & Who, Where and What?

Step Number 1: HOW & WHO?

- **HOW** do you identify **WHO** your target clients are for the purpose of more effective target marketing?

Step Number 2: WHERE?

- **WHERE** are your prospective target clients congregating?
- **WHERE** do your target clients get their information?

Step Number 3: WHAT?

- **WHAT** medium do you use to market your specific legal services to your target clients?

2

Step Number 1: HOW & WHO?

HOW do you identify **WHO** your target clients are for the purpose of more effective target marketing?

- Prior to any marketing campaign, you must first take a deep dive into really knowing your prospective clients, in order to tailor your marketing message directly to them.
- If you want to create marketing campaigns that stand out from your competitors and win over your prospective clients, you need to know them on a deeper level, as opposed to a surface level.
 - You need to know their deepest and most primal desires.
 - You need to know their fears, hopes, wishes, and dreams.
 - You need to know what they're thinking about, but not telling anyone.
 - You need to know how your clients think, feel and act.
- You can learn more about your prospective clients by answering 8 important questions!

3

Question Number 1

Who are your focused set of targeted clients within a niche market?

- As a solo practitioner or small law firm, you have limited resources, so it's difficult to address every legal problem within your area of expertise, without the possibility of spreading yourself too thin.
- If you want to compete with bigger law firms, you have to zero in on a niche market, which is comprised of a focused set of prospective clients who have their own unique needs, preferences and/or identity that's different from other prospective clients in the larger market.
- A niche market is a subset or segment of a larger market on which your specific legal service is focused.
- Focusing on a niche market brings clarity to your marketing message.
- Niche marketing is important because it can:
 - (1) help you corner a part of the market where few other lawyers are present; and
 - (2) it can also help you to position yourself as a specialist/expert and stand-out from other lawyers.

4

Question Number 2

What are your target clients' biggest frustrations and challenges?

- Know your target clients' biggest frustrations and challenges, in order to determine the right emotions to speak to them in your marketing campaigns.
- Know the emotions behind your target clients' challenges and frustrations they are experiencing, which can range from anger, sadness, and fear to remorse, hope and desire for something better.

Impact on Your Marketing Campaigns

- If you're able to speak to exactly what your target clients are feeling, then you'll be able to connect with them emotionally, and not just on a rational level.
- If you're able to communicate to your prospective clients via your marketing campaigns that your legal services are able to solve their biggest frustrations and challenges, then they are more likely to want to retain you as their lawyer.

5

Question Number 3

What are your target clients' hopes, dreams, and desires?

- Know your target clients' hopes, dreams and desires, in order to learn how to paint a vivid picture of what life could be like after they use your legal services.

The Impact on Your Marketing Campaigns

- If you know how your legal services can help your prospective clients attain their hopes, dreams and desires, it becomes much easier to write copy for your law firm's website, landing pages, advertisements, and marketing campaigns that capture the attention of your target audience.

6

Question Number 4

What are your target clients' biggest fears?

- Know the primary things that keep your target clients up at night, tossing and turning, and unable to sleep.
- Know the things that your target clients worry about in their minds, but never tell anyone.

The Impact on Your Marketing Campaigns

- Knowing your target clients' deepest and most primal fears is important because people are motivated more by their pain than they are by pleasure, and are more motivated by the fear of loss than they are by the desire to gain something.
- Therefore, communicating in your marketing campaigns how your legal services can help your target clients address their most primal fears, can get them to act and motivate them to move towards your creative legal solutions, and away from what they fear the most.

7

Question Number 5

What are your target clients' preferred form of communication?

- Know where your target clients want you to communicate with them, which includes, but not limited to:
 - In-person communication;
 - Video conference;
 - Teleconference;
 - Email;
 - WhatsApp; and
 - Messenger.
- Communicate with your target clients where they already are.

The Impact on Your Marketing Campaigns

- Articulating in your marketing campaigns how you'll adapt to accommodate them by communicating with them where they already are, will help to eliminate **friction points** or inconveniences that sometimes stop a prospective client from completing the action of reaching out to you for a free consultation.

8

Question Number 6

What phrases, exact language, and vernacular do your target clients use?

“Enter the conversation already taking place in the customer’s mind” – Robert Collier

- Know the language and niche-specific terms being used in your clients’ mind for their hopes, dreams, pain, fears, and desires.
- Listen to the language, phrases, and niche-specific terms they’re already using, and write them down.
- What industry terminology are your target clients using?
- What specific vernacular and niche-specific terms are your target clients using?
- People are more attracted to people and businesses who speak their language, because skepticism is rampant.

The Impact on Your Marketing Campaigns

- If you’re able to create marketing campaigns that’s imbued with the language, phrases and niche-specific terms being used by your target clients’ minds, you’ll resonate with them better.
- Your target clients should be saying to themselves, *“Whoa, it’s like this lawyer is talking directly to me”*.

9

Question Number 7

What does a day in your target client’s life look like?

- Know what your target clients’ daily life looks like, in order to add an incredible personal element to your marketing campaigns.

The Impact on Your Marketing Campaigns

- It helps you make more practical decisions and answer useful questions, such as, but not limited to:
 - When is the best time to email your prospective targeted clients?
 - When in the day are they most likely to respond?
 - When are they most attentive to correspondence?
- Your prospective clients are completely different people at 9am on a Monday morning than they are at 7pm. on a Friday evening.
 - You must be aware of all of these subtle differences and use it effectively in your marketing strategy.

10

Question Number 8

What makes your target clients happy?

- Your **clients' journey** from being retained by your law firm, to when your law firm closes their files, is more than the mere exchange of money for legal services.
- Remember that your clients are emotional human beings, who want to interact with **personable** people within law firms, and **personal brands** that make them feel good about themselves.
- Know where the **touch points** are in your clients' journey
 - Ask yourself: Where can you insert surprises?
 - Be prepared to do the unexpected.
 - Think of how you can bring a smile to your clients' faces.
 - i.e. Updating them at every major milestone, a personalized email sent on their birthday, a handwritten thank-you note after retaining your law firm, a free box full of company swag, etc.
- Happy clients are also more inclined to leave positive reviews (i.e. Google Reviews) and make referrals.

11

Step Number 2: WHERE?

WHERE are your prospective target clients congregating?

WHERE do your target clients get their information?

How are your target clients going to find your law firm?

1. They're going to interact with things that interest them, where you'll interrupt them.
1. They're going to search for you using the most popular search engines, where you'll increase the likelihood that they find you by using popular keyword phrases.

Russell Brunson, co-founder and CEO of ClickFunnels Inc., identified two types of congregations.

1. **Interested-Based Congregations.**
1. **Search-Based Congregations.**

12

Interest-Based Congregations

- The first type of congregation is based on interests.

Action Plan

- Start by creating worksheets that list all of the places that your clients congregate.
- Social Network Worksheet: Create a column for each of the main social networks.
 - Write down between 20 to 100 names (pages, groups, influencers, people, et cetera) for each social network.
- Do the same thing for websites, forums and message boards, Facebook groups, podcasts, email newsletters, blogs, vlogs, YouTube channels, and any other important type of congregation.
- These lists are not static, but rather organic in that they'll continue to evolve.
- So, you have re-create the lists periodically throughout the year by pulling off names that aren't bringing in the right clients and adding new names as you find them.

13

Interest-Based Congregations Continued

- Which websites do your target clients frequently visit?
 - Brainstorm the top websites that come to your mind that they frequently visit and write them down.
- Which forums or message boards do your target clients participate in?
 - Brainstorm and then write down the top forums or message boards they participate in.
- Which Facebook groups do your target clients participate in?
 - Write down the top Facebook groups they participate in and how many members are in each group.
- Which podcasts do your target clients listen to?
 - Brainstorm and then write down the top podcasts they listen to.
- Which email newsletters do your target clients subscribe to?
 - Brainstorm and write down the top email newsletters they subscribe to.
- Which blogs, vlogs and YouTube channels do your target clients read and watch, respectively?
 - Write down the top blogs, vlogs and YouTube channels they read and watch, respectively.

14

Search-Based Congregations

- The second type of congregation is based on the keyword phrases used on a search platform like Google.
- When someone goes to Google or any other search platform, they type in a keyword phrase looking for something, such as, for example:
 - “Best personal injury lawyers near-me” – transactional keyword phrase; or
 - “What to do after a motor vehicle accident?” – informational keyword phrase.
- As soon as they type a keyword phrase, they enter an existing congregation of people searching for the same thing.

15

Search-Based Congregations Continued

3-Types of Keywords

Transactional Keywords

- Keywords searched by people who are ready to make a decision to retain a lawyer.
- Keywords that attract website visitors who will convert at a higher rate than other types of keywords.
 - i.e. “personal injury lawyer near me”

Information Keywords

- Keywords searched by people who have questions around your areas of practice/expertise, but are not necessarily looking for a lawyer/attorney.
 - i.e. “do I need a lawyer for my car accident?” or “what is the statute of limitations for a personal injury?”

Navigational Keywords

- Keywords used by people to navigate to a specific website.
 - i.e. When someone searches for your law firm’s specific name, this is a navigational search.

16

Search-Based Congregations Continued: Search Engine Optimization

How do you find Transactional Keywords?

- You can find popular **keyword phrases** that your prospective clients will use in search engines like Google, which will increase the likelihood that they find your law firm, by using free keyword research tools such as **Ubersuggest**.
- You can also find these keyword phrases by using paid keyword research tools such as **Moz** and **Ahrefs**.

Keyword	Number of Clicks on SEO Results	Search Volume	Cost Per Click	Paid Difficulty	SEO Difficulty	Mobile vs Desktop
Personal Injury Lawyer	27,375	110,000	\$126.00	34	55	M:120,000 D: 56,000

- You want to include the top **transactional and informational keywords** on your website and marketing content.

17

Step Number 3: WHAT?

WHAT medium do you use to market your specific legal services to your target clients?

1. Paid-Traffic Marketing

- Invest of your money.

2. Owned-Traffic Marketing

- Invest of your time.

3. Earned-Traffic Marketing

- Invest of your time or your money, or both.

18

Paid-Traffic Marketing

- **Paid-traffic marketing** refers to ad spots that you pay for, such as on search engine results pages (SERP) and social network websites, similar to how you would pay to purchase ad space in a print publication.
- Some law firms prefer paid media because it allows them to target the exact type of audience they're looking to engage with. (i.e. FaceBook tracks over 50,000 data points on each user as they are using their platform).
- Examples of methods that generate paid traffic include, but are not limited to:
 - Pay Per Click Google Ads;
 - Paid social network ads on sites like LinkedIn, Facebook, Instagram, et cetera;
 - Web banners displayed on affiliate websites;
 - Pay Per Click ads placed on sites your target clients frequent; and
 - Influencer marketing.
- It's important to set a budget for your paid advertising.
- What do you do if you are a solo practitioner or small law firm, and you can't afford paid-traffic marketing?

19

Owned-Traffic Marketing

- **Owned-traffic marketing** doesn't require a significant investment of your money, but rather an investment of your time.
- It comes from the creation of your owned assets, such as, but not limited to, the following:
 - Your law firm's **social network websites** (LinkedIn, Facebook, Instagram, TikTok, Pinterest, Twitter, Snapchat, et cetera) that link back to your **law firm's website**;
 - Your law firm's **blog** that's located on your **law firm's website**;
 - Your law firm's **vlog** that's located on your **law firm's website**;
 - Your law firm's **YouTube channel** that links back to your **law firm's website**;
 - Your law firm's **podcast** that links back to your **law firm's website**;
 - Your law firm's **email newsletters** that links back to your **law firm's website**;
 - Your law firm's **webinars** that's either located on, or links back to, your **law firm's website**; and
 - Any other content you created that's housed on your **law firm's website**.

20

Owned-Traffic Marketing and Building Your Personal Brand

- You grow your owned-traffic organically through strategic and creative practices, which doesn't require a huge budget, but rather the development of your **personal brand** and the use of effective **storytelling**.
 - A strong **personal brand** helps you and your message cut through the noise online.
- The common trait between successful people on social network websites is their use of the power of building a **personal brand**. Consider the following 3 LinkedIn examples:
 - Gary Vee: 5 million followers (personal brand) vs. Vayner Media: 195,000 followers (corporate brand)
 - Bill Gates: 35 million followers (personal brand) vs. Microsoft: 20 million followers (corporate brand)
- As a solo practitioner or small law firm, one of the advantages you have over larger law firms is your ability to build a strong **personal brand** that effectively tells your unique and authentic **story**, which resonates with people on a deeper, human level.
 - Your prospective clients will connect with your **personal brand** quicker than they will connect with your **corporate brand**.

21

Earned-Traffic Marketing

- **Earned-Traffic Marketing** comes from web content produced by third party sources.
- It can be stimulated by your owned media because someone might see your organic content and then share your information about your law firm via **digital word of mouth** to their respective audiences.
- Examples of earned traffic stimulated by your owned media include, but not limited to:
 - Actively doing **speaking engagements** for popular **organizations** with huge followings, that mention your law firm and link back to your **law firm's website**.
 - Writing **books, legal journal articles, blogs** and **writing** for other **online publications** that include links back to your **law firm's website**.
 - **Interviews** or **mentions** in major **newspapers, legal magazines, podcasts, blogs, vlogs**, et cetera that include links to your **law firm's website**.
 - **Press mentions**, like **listicles** or **reviews** written by **legal industry influencers** that rate or suggest your law firm.
 - **Awards** to your law firm for legal excellence in reputable **legal magazines** that link back to your **law firm's website**.

22

Earn-Traffic Marketing equals Earned Respect

- **Social Proof**
 - When you engage in **earn-traffic marketing** and reputable organizations (i.e. newspapers, magazines, governing bodies/agencies, journals, book publishers, industry influencers, et cetera) are mentioning you, writing about you, interviewing you, reviewing you, recommending you, and linking back to your website, they're not just redirecting traffic to your website, but they are also vouching for you and making it easier for prospective clients to choose you.
 - If you tell a client how great you are, it comes off as bragging, but if a respected and trusted third party says you're great, it comes off as authentic validation in the eyes of your prospective clients.
- **Authority**
 - When a trustworthy third party publicly states that you're an authority in your area of expertise, it influences the way your prospective clients view you, and ultimately, their decision to retain you as their lawyer.

23

Give Value and Know your Law Firm's WHY

Give Value

- The focus of the strategic marketing content that you create for your law firm to attract prospective clients should be on **giving value** to them.
 - Freely give information to your prospective clients that answers their legal questions and educates them, and they will **reciprocate** in some shape or form.
- **The Rule of Reciprocation:** *"The rule requires that one person try to repay, in form, what another person has provided"* – Dr. Robert B. Cialdini, Influence: The Psychology of Persuasion

Know Your Law Firm's WHY

- If you want to engage in effective **storytelling**, then you must know the **WHY** behind your law firm's purpose, not only for your mission statement, but for your entire **law firm's story**.
 - Providing the **WHY** of your **law firm's story** gives your prospective clients a way to connect with you on a personal level and view your law firm as a living, breathing entity.

24



*Thank
you*



The Modern Lawyer's Marketing Blueprint

17th Solo and Small Firm Conference: Secrets for Success

Andrew Leroy Rudder

RudderLawGroup.ca

Step Number 1: WHO?

Identifying who your target clients are that want to utilize your legal services.

Who are your target clients that want to utilize your legal services?

Just like how a speaker wants to know who his or her audience is before taking the stage, in order to know how to finetune the delivered message so it resonates with them better, you must also know who your target clients are in order to finetune your marketing campaigns to them better.

Prior to any successful marketing campaign, you must first take a deep dive into really knowing your prospective clients, in order to tailor your marketing message directly to them.

If you want to create marketing campaigns that stand out from your competitors and win over your prospective clients, you can't just know who your target clients are on a surface level, such as, for example, people injured in motor vehicle accidents. You need to know them on a much deeper, substantive level.

You need to know their deepest and most primal desires.

You need to know their fears, hopes, wishes, and dreams.

You need to know what they're thinking about, but not telling anyone.

You need to know how your prospective clients think, feel and act.

Here are eight questions to ask yourself, in order to know your target clients on a much deeper level.

Questions Number 1

Who are your focused set of targeted clients within a niche market?

As a solo practitioner or small law firm, you have limited resources, so it's difficult to address every legal problem within your area of expertise, without the possibility of spreading yourself too thin.

If you want to compete with bigger law firms that have much more resources and a larger marketing budget, then you have to zero in on a niche market, which is comprised of a focused set of prospective clients who have their own unique needs, preferences and/or identity that's different from other prospective clients in the larger market.

A niche market is a subset or segment of a larger market on which your specific legal service is focused.

For example, I'm a solo practitioner and personal injury lawyer, who chose to focus primarily on clients with catastrophic impairments, which is a subset or segment of the larger personal injury market.

I cannot afford to address everyone's personal injury law problem, especially in today's market conditions where the media we use to reach our clients is so highly fragmented. If Rudder Law Group is going to compete with the bigger personal injury law firms, I have to zero in on my niche client, AKA, catastrophically impaired clients. Specificity is key and of the utmost importance.

And while defining my target client might seem, prima facie, like I'm excluding other prospective clients who might retain me as their lawyer, keep in mind that targeting a specific client doesn't mean I have to exclude anyone who doesn't fit the criteria of a catastrophically impaired insured as a result of a motor vehicle accident. However, focusing on a niche market brings clarity to your marketing message.

Niche marketing is important because it can:

1. Help you corner a part of the market where few other lawyers are present; and
2. It can also help you to position yourself as a specialist/expert and stand-out from other lawyers.

Question Number 2

What are your target clients' biggest frustrations and challenges?

Knowing your target clients' biggest frustrations and challenges is important, in order to determine the right emotions to speak to them in your marketing campaigns.

You have to know the emotions behind your target clients' challenges and frustrations they are experiencing, which can range from anger, sadness, and fear to hope, remorse, and a burning desire for something better.

Impact on Your Marketing Campaigns

If you're able to speak to exactly what your target clients are feeling, then you'll be able to connect with them emotionally, and not just on a rational level.

If you're able to communicate to your prospective clients via your marketing campaigns that your legal services are able to solve their biggest frustrations and challenges, then they are more likely to want to retain you as their lawyer.

It will also reflect the types of stories you tell in your marketing campaigns.

Furthermore, when your prospective clients see a testimonial from one of your former clients, whose biggest frustrations and challenges were solved by your legal services, then they will be able to see the positive transformation that took place in someone else in a similar situation, and they'll be more likely to want to retain you as their lawyer.

Question Number 3

What are your target clients' hopes, dreams, and desires?

Knowing your target clients' hopes, dreams and desires is important, in order to learn how to paint a vivid picture of what life could be like after they use your legal services.

The Impact on Your Marketing Campaigns

If you know how your legal services can help your prospective clients attain their hopes, dreams and desires, it becomes much easier to write copy for your law firm's websites, landing pages, advertisements, and marketing campaigns that capture the attention of your target audience.

Question Number 4

What are your target clients' biggest fears?

You have to know the primary things that keep your target clients up at night, and unable to sleep. You have to know the things that your target clients worry about in their minds, but never speak out loud and never tell anyone.

The Impact on Your Marketing Campaigns

Knowing your target clients' deepest and most primal fears is important because people are motivated more by their pain than they are by pleasure, and are more motivated by the fear of loss than they are by the desire to gain something.

Therefore, communicating in your marketing campaigns how your legal services can help your target clients address their most primal fears, can get them to act and motivate them to move towards your creative legal solutions, and away from what they fear the most.

Question Number 5

What are your target clients' preferred form of communication?

You have to know where your target clients want you to communicate with them, which includes, but not limited to, the following:

- In-person communication;
- Video conference;
- Teleconference;
- Email;
- WhatsApp; and
- Messenger.

Learn how to communicate with your target clients where they already are, because if you don't, then they will move on to another law firm that is more convenient for them.

The Impact on Your Marketing Campaigns

Articulating in your marketing campaigns how you'll adapt to accommodate them by communicating with them where they already are, will help to eliminate friction points or inconveniences that sometimes stop a prospective client from completing the action of reaching out to you for a free consultation.

Question Number 6

What phrases, exact language, and vernacular do your target clients use?

"Enter the conversation already taking place in the customer's mind" – Robert Collier

You have to know the language and niche-specific terms being used in your clients' mind for their hopes, dreams, pain, fears, and desires. Learn to listen carefully to the language, phrases, and niche-specific terms that your target clients are already using, and write them down. Don't be afraid to take specific

comments from such places as, but not limited to, Reddit, FaceBook Groups, or YouTube, and document your target clients' word-for-word responses for strategic use in the content of your future marketing campaigns.

Ask yourself these two questions:

- What industry terminology are your target clients using?; and
- What specific vernacular and niche-specific terms are your target clients using?

People are more attracted to people and businesses who speak their language.

The Impact on Your Marketing Campaigns

If you're able to create marketing campaigns that's imbued with the language, phrases and niche-specific terms being used by your target clients' minds, you'll resonate with them better. Your target clients should be saying to themselves, ***"Whoa, it's like this lawyer is talking directly to me"***.

Question Number 7

What does a day in your target client's life look like?

Knowing what your target clients' daily life looks like is important, in order to add an incredible personal element to your marketing campaigns.

The Impact on Your Marketing Campaigns

It helps you make more practical decisions and answer useful questions, such as, but not limited to, the following:

- When is the best time to email your prospective targeted clients?;
- When in the day are they most likely to respond?; and

- When are they most attentive to correspondence?

Remember that your prospective clients are completely different people at 9am on a Monday morning just after the weekend than they are at 7pm. on a Friday evening just before the weekend. You must be aware of all of these subtle differences and use it effectively in your marketing strategy.

Question Number 8

What makes your target clients happy?

Your clients' journey from being retained by your law firm, to when your law firm closes their files, is more than the mere exchange of money for legal services. Remember that your clients are emotional human beings, who want to interact with personable people within law firms, and personal brands that make them feel good about themselves.

You have to know where the touch points are in your clients' journey.

Ask yourself the following: Where can I insert surprises? Be prepared to do the unexpected. Think of how you can bring a smile to your clients' faces, such as, but not limited to, the following:

- Updating them at every major milestone;
- Sending a personalized email to them on their birthdays;
- Sending a handwritten thank-you note to them after they retain your law firm; and/or
- Providing a free box full of company swag.

Happy clients are also more inclined to leave positive reviews (i.e. Google Reviews) and make referrals.

Step Number 2: WHERE?

Ask yourself these two important questions:

- **WHERE** are your prospective target clients congregating?
- **WHERE** do your target clients get their information?

Knowing exactly where your target clients are hanging out influences a lot of things, which range from where you should advertise and what you should advertise, to the specific tone of your copy and the particular vernacular you use in your marketing campaigns.

How are your target clients going to find your law firm?

They're going to either:

1. Interact with things that interest them, where you'll interrupt them; or
2. They're going to search for you using the most popular search engines, such as Google and YouTube, where you'll appear in their searches by using the right keyword phrases.

Russell Brunson, co-founder and CEO of ClickFunnels Inc., identified two types of congregations, as follows:

- **Interested-Based Congregations;** and
- **Search-Based Congregations.**

Interest-Based Congregations

The first type of congregation is based on interests.

Action Plan

Start by creating worksheets that list all of the places that your clients congregate.

Create a social network worksheet, and include a column for each of the main social networks. Write down between 20 to 100 names (pages, groups, influencers, people, et cetera) for each social network.

Do the same thing for websites, forums and message boards, FaceBook groups, podcasts, email newsletters, blogs, vlogs, YouTube channels, and any other important type of congregation. These lists are not static, but rather organic in that they'll continue to evolve. So, you have to re-create the lists two to three times per year by pulling off names that aren't bringing in the right clients and adding new names as you find them.

Which websites do your target clients frequently visit?

- Brainstorm the top websites that come to your mind that they frequently visit and write them down.

Which forums or message boards do your target clients participate in?

- Brainstorm and then write down the top forums or message boards they participate in.

Which FaceBook groups do your target clients participate in?

- Brainstorm and write down the top FaceBook groups they participate in and how many members are in each group.

Which podcasts do your target clients listen to?

- Brainstorm and then write down the top podcasts they listen to.

Which email newsletters do your target clients subscribe to?

- Brainstorm and write down the top email newsletters they subscribe to.

Which blogs, vlogs and YouTube channels do your target clients read and watch, respectively?

- Write down the top blogs, vlogs and YouTube channels they read and watch, respectively.

Search-Based Congregations

The second type of congregation is based on the keyword phrases used on a search platform like Google.

When someone goes to Google or any other search platform, they type in a keyword phrase looking for something, such as, but not limited to, the following:

- *“Best personal injury lawyers near-me”* – transactional keyword phrase; or
- *“What to do after a motor vehicle accident?”* – informational keyword phrase.

As soon as they type a keyword phrase, they enter an existing congregation of people searching for the same thing.

These searches can occur on (1) Google, Yahoo, and YouTube.com, where people search for videos, (2) Pinterest, where people search for images, (3) Quora.com, where people can ask questions on any topic, or (4) any other search platform.

Three Types of Keywords

Transactional Keywords

These are keywords searched by people who are ready to decide to retain a lawyer. They attract website visitors who will convert at a higher rate than other types of keywords. An example of a transactional keyword phrase is: *“personal injury lawyer near me”*.

Information Keywords

These are keywords searched by people who have questions around your areas of practice and/or expertise, but are not necessarily looking for a lawyer. Examples of information keywords are: *“do I need a lawyer for my car accident?”* or *“what is the statute of limitations for a personal injury?”*

Navigational Keywords

These are keywords used by people to navigate to a specific website. An example of a navigational keyword is when someone searches for your law firm’s specific name.

How do you find the most popular transactional keyword phrases?

You can find popular keyword phrases that your prospective clients will use in search engines like Google, which will increase the likelihood that they find your law firm, by using free keyword research tools such as Ubersuggest. You can also find these keyword phrases by using paid research tools such as Moz and Ahrefs.

When you use the aforementioned keyword research tools, you’ll obtain a wide range of data from search volume, cost per click and SEO difficulty, to paid difficulty, number of clicks on SEO results, and a breakdown of the searches from both mobile and desktop devices.

Here is an example of data I organized using Ubersuggest to search for personal injury related keyword phrases:

Keyword Research — Organizing the Data						
Subject	Keyword	Search Volume	Cost Per Click	SEO Difficulty	Paid Difficulty	Number of Clicks on SEO Results
Car Accident	Car Accident Lawyer	110,000	\$127.33	46	27	34,492
Catastrophic Impairment Accident	Catastrophic Injury Lawyer	1,600	\$0.00	31	2	
Wrongful Death Accident	Wrongful Death Lawyer	14,800	\$95.07	49	5	7,400
Slip and Fall Accident	Slip and Fall Lawyer	18,100	\$99.94	18	26	
Pedestrian Accident	Pedestrian Accident Lawyer	6,600	\$2.60	15	1	
Cyclist Accident	Cyclist Accident Lawyer	390	\$0.00	19	18	
Assault	Assault Lawyer	1,600	\$68.75	42	38	
Personal Injury Law	Personal Injury Lawyer	110,000	\$126.00	55	34	27,375
Car Accident	Car Accident Lawyer near me	18,900	\$123.53	51	58	2,413
Catastrophic Impairment Accident	Catastrophic Impairment Settlement Ontario	50	\$10.75	41	1	
Wrongful Death Accident	Wrongful Death Lawyer near me	720	\$76.33	52	53	
Slip and Fall Accident	Slip and Fall Accident Lawyer	4,400	\$193.84	9	8	
Pedestrian Accident	Pedestrian Accident	201	\$4.97	43	10	

	Lawyer near me					
Cyclist Accident	Bicycle Accident Lawyer	5,400	\$8.14	15	1	
Assault	Assault Lawyer near me	590	\$58.56	52	73	
Personal Injury Law	Personal Injury Lawyer near me	22,000	\$68.66	53	64	325
Truck Accident	Truck Accident Lawyer	33,100	\$203.79	24	4	
Car Accident	Vehicle Accident Lawyer	720	\$400.00	57	56	
Car Accident	Motor Vehicle Accident Lawyer	880	\$68.63	49	25	
Personal Injury Law	Personal Injury Attorney	74,000	\$66.68	68	24	11,684
Personal Injury Law	Car Accident Attorney	60,500	\$114.25	49	33	15,921
Wrongful Death Accident	Wrongful Death Attorney	8,100	\$119.71	45	35	2,700
Slip and Fall Accident	Slip and Fall Attorney	9,900	\$146.39	15	24	4,950
Pedestrian Accident	Pedestrian Accident Attorney	6,660	\$101.96	16	3	

Step Number 3: WHAT?

WHAT medium do you use to market your specific legal services to your target clients?

1. Paid-Traffic Marketing;
2. Own-Traffic Marketing; and
3. Earned-Traffic Marketing.

Paid-Traffic Marketing

Paid-traffic marketing refers to ad spots that you pay for, such as on search engine results pages (SERP) and social network websites, similar to how you would pay to purchase ad space in a print publication.

Some law firms prefer paid media because it allows them to target the exact type of audience they're looking to engage with.

- For example, FaceBook automatically tracks over 50,000 data points on each user as they are using their platform, which enables you to target very specific demographics with your marketing campaigns.

Examples of methods that generate paid traffic include, but are not limited to, the following:

- Pay Per Click Google Ads;
- Paid social network ads on sites like LinkedIn, FaceBook, Instagram, et cetera;
- Web banners displayed on affiliate websites;
- Pay Per Click ads placed on sites your target clients frequent; and
- Influencer marketing.

It's important to set a budget for your paid advertising.

What do you do if you are a solo practitioner or small law firm, and you can't afford paid-traffic marketing?

ANSWER: Owned-Traffic Marketing and Earned-Traffic Marketing

Owned-Traffic Marketing

Owned-traffic marketing doesn't require an investment of your money, but rather an investment of your time.

It comes from the creation of your owned assets, such as, but not limited to, the following:

- Your law firm's social network websites (LinkedIn, Facebook, Instagram, TikTok, Pinterest, Twitter, Snapchat, et cetera) that link back to your law firm's website;
- Your law firm's blog that's located on your law firm's website;
- Your law firm's vlog that's located on your law firm's website;
- Your law firm's YouTube channel that links back to your law firm's website;
- Your law firm's podcast that links back to your law firm's website;
- Your law firm's email newsletters that links back to your law firm's website;
- Your law firm's webinars that's either located on, or links back to, your law firm's website; and
- Any other content you created that's housed on your law firm's website.

Owned-Traffic Marketing and Building Your Personal Brand

You grow your owned-traffic organically through strategic and creative practices, which doesn't require a budget, but rather the development of your personal brand and the use of effective storytelling. It helps you and your message cut through the noise online.

The common trait between successful people on social network websites is their use of the power of building a personal brand. Here are examples of the power of personal branding over corporate branding:

- Gary Vaynerchuk: 5 million LinkedIn followers (personal brand) **versus** Vayner Media: 195,000 LinkedIn followers (corporate brand); and
- Bill Gates: 35 million LinkedIn followers (personal brand) **versus** Microsoft: 20 million LinkedIn followers (corporate brand).

As a solo practitioner or small law firm, one of the advantages you have over larger law firms is your ability to build a strong personal brand that effectively tells your unique and authentic story, which resonates with people on a deeper, human level. Your prospective clients will connect with your personal brand quicker than they will connect with your corporate brand.

Earned-Traffic Marketing

Earned-traffic marketing comes from web content produced by third party sources. It can be stimulated by your owned media because someone might see your organic content and then share your information about your law firm via digital word of mouth to their respective audiences.

Examples of earned traffic stimulated by your owned media include, but not limited to, the following:

- Actively doing speaking engagements for popular organizations with huge followings, that mention your law firm and link back to your law firm's website;
- Writing books, legal journal articles, blogs and writing for other online publications that include links back to your law firm's website;
- Interviews or mentions in major newspapers, legal magazines, podcasts, blogs, vlogs, et cetera that include links to your law firm's website;
- Press mentions, like listicles or reviews written by legal industry influencers that rate or suggest your law firm; and

- Awards to your law firm for legal excellence in reputable legal magazines that link back to your law firm's website.

Earned-Traffic Marketing equals Earned Respect

Social Proof

When you engage in earn-traffic marketing and reputable organizations (i.e. newspapers, magazines, governing bodies/agencies, journals, book publishers, industry influencers, et cetera) are mentioning you, writing about you, interviewing you, reviewing you, recommending you, and linking back to your website, they're not just redirecting traffic to your website, but they are also vouching for you and making it easier for prospective clients to choose you.

If you tell a client how great you are, it comes off as bragging, but if a respected and trusted third party says you're great, it comes off as authentic validation in the eyes of your prospective clients.

Authority

When a trustworthy third party publicly states that you're an authority in your area of expertise, it influences the way your prospective clients view you, and ultimately, their decision to retain you as their lawyer.

Give Value and Know your Law Firm's WHY

Give Value

The focus of the content that you create for your law firm to attract prospective clients should be on giving value to them.

Freely give information to your prospective clients that answers their legal questions and educates them, and they will reciprocate in some shape or form.

The Rule of Reciprocation: *"The rule requires that one person try to repay, in form, what another person has provided"* – Dr. Robert B. Cialdini, *Influence: The Psychology of Persuasion*

You also elevate your status as an authority figure when you educate people, because you are placed in the role of the teacher and your audience is placed in the role of students.

Know Your Law Firm's WHY

If you want to engage in effective storytelling, then you must know the WHY behind your law firm's purpose, not only for your mission statement, but for your entire law firm's story.

Here are some questions that you can answer to help you discover your law firm's WHY:

- What inspired your idea to start your law firm?;
- What is unique and intriguing about your law firm?;
- What is interesting and intriguing about the founding story of your law firm?;
- What unique legal problems is your law firm trying to creatively solve?;
- What is the purpose of your law firm?;
- How has your law firm evolved from its humble beginnings to the present day?; and
- Is there a specific social justice issue or noble cause that your law firm fights for and supports?

Providing the WHY of your law firm's story gives your prospective clients a way to connect with you on a personal level and view your law firm as a living, breathing entity.

Contact Me for Further Information

I hope you found this information and gained some value from it.

If you want to learn more, or if you have any further questions, then please don't hesitate to contact me at andrew@rudderlawgroup.ca, or visit my website at www.RudderLawGroup.ca to book a free consultation.

Thank you!



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de l'Ontario

TAB 4

10 Highlights for Your New Practice: 2022-2023

Retainer Agreements: Best Practices
Confirming the Essential Details (PowerPoint)

Amri Murray

AJ Murray Legal Services Professional Corporation

June 19, 2023



RETAINER AGREEMENTS: BEST PRACTICES

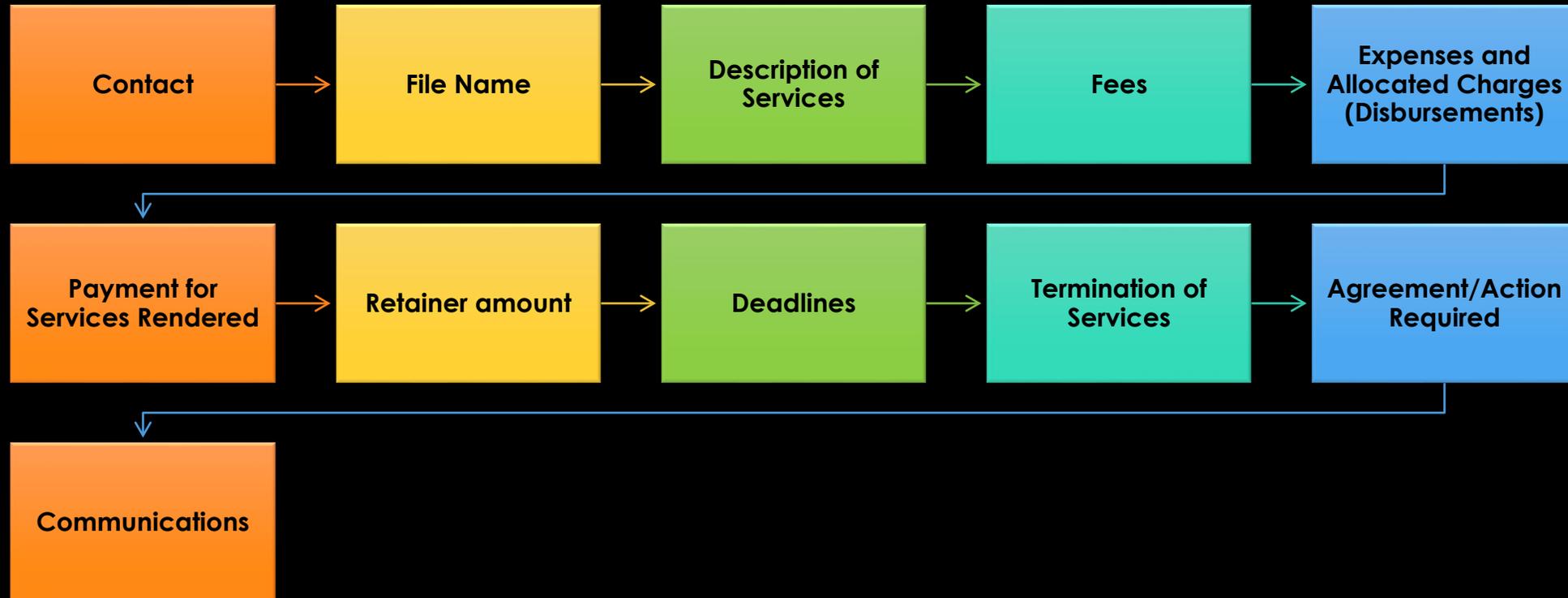
Confirming the Essential Details

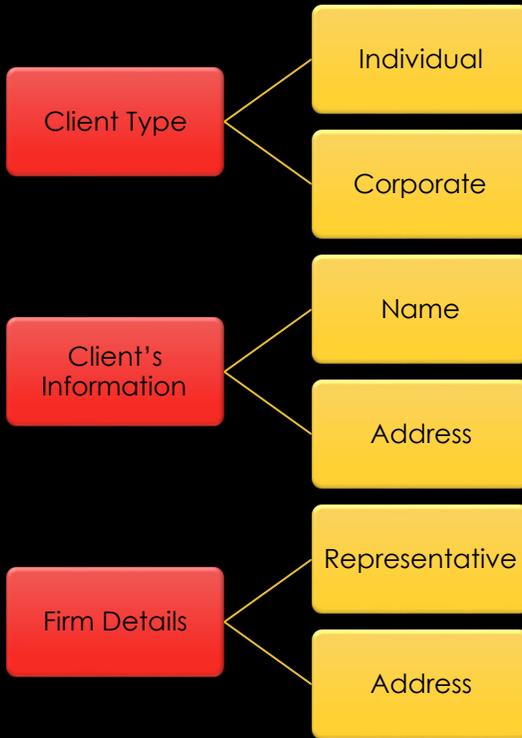


AJ MURRAY

LEGAL SERVICES
PROFESSIONAL CORPORATION

ESSENTIAL ELEMENTS





FILE NAME AND NUMBER



It is ideal that both you and the client have a way to specifically identify the matter with your firm/practise.



Placing this within the retainer agreement helps to clarify that the contents of the retainer covers that particular matter.



DESCRIPTION OF SERVICES

This is where you will seek to make it as clear as possible exactly what services will be provided. The following are some of the details that can be included here:

The subject matter for which you are retained

Full representation or Limited Scope

Who is covered under the retainer. For example, is this a Joint retainer. If a corporate entity, do you also represent the director in his personal capacity.

What you understand as your level of authority. For example, If this is a Provincial Offences/Criminal matter, do you have the authority to negotiate with the prosecutor as you see fit as within their best interest or only subject to the client's specific instructions in writing.

Whether the client can expect other persons within your practice/firm to be involved with their matter.



FEES



Contingency



Hourly Billing



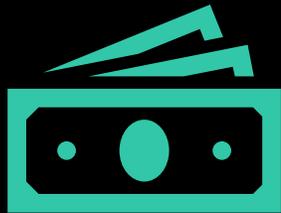
Flat Fees



Your right to charge more than referenced



EXPENSES AND ALLOCATED CHARGES (DISBURSEMENTS)



What types of disbursements can the client expect



Will the client reimburse you for expenses or will the client be expected to pay certain expenses directly to a third party.



Can the client expect taxes to be charged on these expenses.



PAYMENT FOR SERVICES RENDERED



WILL PAYMENT BE DUE IMMEDIATELY UPON BEING INVOICED



WILL INTEREST BE CHARGED ON PAST DUE ACCOUNTS



WHAT WILL BE THE INTEREST RATE



OVER WHAT DURATION IS AN ACCOUNT CONSIDERED PAST DUE



RETAINER AMOUNT

What is the retainer amount if any

What are the applicable taxes if any to this amount

Will you require the retainer amount to be replenished

Will the retainer be used as a source of payment for all or part of accounts when rendered.



DEADLINES

Will the client need to keep track of these



4-10

TERMINATION OF LEGAL SERVICES

Written Notice from client



Circumstances under which you reserve the right to terminate. These may include:

if the client fails to cooperate with you in any reasonable request

if your continuing to act would be unethical or impractical;

if your retainer has not been paid; or

if the client fails to pay your accounts when rendered.

INSTRUCTIONS FOR MOVING FORWARD



Is the client required to pay a retainer amount prior to you commencing work



Must the client first sign the retainer and return all client intake documents



Must the client advise you promptly if they decide not to move forward with your services



COMMUNICATION

- Does your firm/practice use cloud-based programs
- How does your practice normally communicate with clients.



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TAB 5

10 Highlights for Your New Practice: 2022-2023

Managing the Litigation Process and the Client Relationship
(a.k.a. how to prepare for the entirely unpredictable)
(PowerPoint)

Annie Kenet
Goldhart Kenet LLP

March 3, 2023



MANAGING THE LITIGATION PROCESS AND THE CLIENT RELATIONSHIP

(a.k.a. how to prepare for the entirely unpredictable)



Inform your Client = Manage Client Expectation = Make your Life Better

1. Explain the court process (and covid related issues)
2. Prepare the client for the costs involved
 - Give a detailed breakdown of the costs on your end
 - Prepare the client for the costs on the other end
 - Serve offers to protect costs (Rule 18 and Rule 24)
4. Manage expectation by always preparing your client for the worst

Quick Tips on Documents

Rules You Should Know

1. The basics
2. The golden rules: Rule 1 (7), Rule 1 (8) and Rule 2 (2)
3. Disclosure: Rule 13

Client Management: Explain the Court Process

Step 1: Commencement of Proceeding

The Applicant issues an Application and Financial Statement in Court.

Step 2: Responding to Application

The Respondent has 30 days from the day the Application and Financial Statement were served on them to file and serve an Answer and Financial Statement.

Step 3: Replying to Answer (optional)

The Applicant has 10 days from the day the Answer was served on them to file and serve a Reply. The Reply is optional.

Step 4: Case Conference

A Case Conference is an informal meeting before a judge, in which only procedural issues can be dealt with (timing, disclosure etc.)

Step 5: Motions (optional)

After the hearing of a case conference, either party may bring a motion for a determination of an issue (procedural or substantive) on a temporary basis.

Step 6: Questioning (optional)

Questioning is an opportunity to examine a party under oath with a court reporter present and to request certain undertakings as may be required.

Step 7: Settlement Conference

A Settlement Conference is like a Case Conference except that it's geared towards narrowing the issues between the parties as much as possible before they head to trial.

Step 8: Trial Management Conference

A Trial Management Conference is a formal meeting before the judge at which each party sets out their expectations for trial (number of days, number of witnesses etc.). A trial is then scheduled.

Step 9: Exit Pre Trial

An exit pre-trial is held about 2 weeks before trial. This is the last attempt to resolve the issues before trial.

Step 9: Trial

A Trial is held

NOTE: Steps may sometimes occur in a different order. You can have a motion before a case conference if its urgent. You can also have motion after questioning and after a settlement conference. You might also have to attend more than one case conference or more than one settlement conference.

NOTE: Settlement discussions can occur at ANY time during the court process. This includes attending mediation.

Client Management: Explain the Court Process (covid related issues – prepare your client for the realities)

Covid-19 Impact on Courts:

- Courts are open and serving the public
- There may be limitations on certain steps involved in the court process. As an example, there may be times when a Court is only hearing motions on specific, urgent issues.
- There may be delays in getting into Court. As an example, it may take longer to schedule a case conference or a motion.
- Materials may need to be sworn via zoom, exchanged with opposing counsel electronically and uploaded to the Court. There may be issues with the online program being used.
- **There are strict page limits on certain materials.**
- **There are strict limitations on exhibits.**
- There may also be strict time periods for certain appearances.
- Courts are releasing this information to the public as it becomes available.

Kenet Family Law is staying informed of all Court procedures during the pandemic to continue to provide you with the highest level of service. We will be in touch with you if and as these procedures impact your case.

Note: If you know you are going to need additional pages or exhibits – don't forget to ask for leave at the case conference!!!

Client Management: Explain the Court Process (covid related issues – how to zoom appropriately)

What do I have to Wear?

- Business casual clothing is appropriate.

When Should I Sign In?

- At least 10 minutes in advance to address any technical issues.
- You will receive log in information from my office 24 hours before the appearance.

Where Should I log in From?

- Choose a location in your home that is private and quiet. You should NOT be in bed or in the bathroom.
- Choose a quiet background wall that is not distracting or put a plain sheet up behind you.
- You may be placed in a virtual waiting room before the appearance starts.

What if I have Technical Problems?

- Test your video conference at least 24 hours ahead. We can arrange a test with you.
- Try restarting your computer and signing into the conference again. If all fails, join the appearance by phone.

Should I Smile for the Camera?

- Appear professional and neutral throughout. **Do not make faces.**
- **Do not nod your head if you agree or shake your head if you don't.**
- **Try to sit still so that you're not distracting.** Don't move your laptop or camera around.
- Have any materials you want printed out in advance. Make sure they are not visible on camera.

What if I need to tell you something?

- I will have my email open and you can email me. **I may not respond or say what you sent me.**
- Do NOT use the video-conferencing's chat feature if one is available

Is there anything else I need to know?

- **Under no circumstances should you record the appearance.**
- Don't check your phone or eat during the appearance.
- Make sure that your screen name is your first and last name.
- Your children should not be able to access you during the appearance. If this is difficult, try to arrange for childcare.
- Mute yourself when you are not speaking.

Client Management: Prepare the Client for the Costs Involved (on your end!)

Expected Costs – your client's costs with you:

1. Exchange of pleadings will cost between **\$1,000 and \$3,000**
2. A **conference** will cost between **\$3,000 and \$7,000**
 - a. preparation of case conference brief
 - b. review of case conference brief from other side
 - c. attendance in court for conference
 - d. phone calls/email exchanges as required
3. A **motion** will cost between **\$5,000 and \$20,000**
 - a. preparation of notice of motion and affidavit
 - b. review of notice of motion and affidavits from other side
 - c. preparation of reply materials and affidavit
 - d. research and preparation of factum
 - f. review of factum from other side (additional research may be required)
 - g. attendance in court to argue motion
 - h. cost submissions
 - i. preparation of offers to settle and review of offers to settle
 - j. phone calls/email exchanges/ meetings as required
4. **Questioning** will cost between \$10,000 and \$20,000
 - a. preparation for questioning (review of all documents)
 - b. preparation with client
 - c. attendance at questioning
 - d. exchange of undertakings
5. **Trial** will cost between **\$50,000 and \$200,000**

Client Management: Prepare the Client for the Costs Involved (on your end!)

Expected Costs - don't forget the disbursements:

1. Court fees
2. Process server fees
3. Photocopying
4. Reporter

Client Management: Prepare the Client for the Costs Involved (on the other end!)

Explain Rule 18 (Offers to Settle) and Rule 24 (Costs) and CYA! Sample email below...

What Are Costs?

After a motion is decided, the judge will decide if one party should pay the other party's cost of the motion. Costs of a motion are the legal costs that party incurred in preparing materials for the motion, and attending the motion.

How Does a Judge Decide Costs?

The following factors will be taken into account:

- a. whether the parties acted reasonably
- b. were the offers to settle served by the parties worse than, the same as, or better than the order made at the motion?
- c. when were the offers to settle was served, and when were the fees incurred in relation to when the offer was served?
- d. who was successful on the motion?

A judge does not get to see ANY of the offers exchanged until AFTER they have decided the motion to make sure they are not tainted by the offers and are deciding the motion strictly on the evidence before them. In fact, a judge who is informed of the offers will likely have to recuse themselves from hearing the motion.

Can you Explain "worse than, the same as or better than the offer to settle"?

Assume a motion on the amount of child support payable per month. The party paying child support makes an offer to pay \$100 per month. The party receiving child support makes an offer to receive \$90 per month. At the motion, the judge orders child support of \$150 per month. The party paying made an offer that was "worse than" the order and the party receiving child support made an offer that was "better than" the offer. The party receiving child support is presumptively entitled to costs of the motion. Sometimes, nobody's offer was "better than" or "worse than" than the order. The judge will then assess whether either party is entitled to costs based on the facts set out above.

Am I Guaranteed Costs if I Win?

Absolutely not. Costs are entirely discretionary which means the judge has a LOT of flexibility in terms of what they can order. This means that **you might be completely successful on the motion and not receive any costs. You might not be successful on the motion, and have to pay the other party 100% of their cost.** Their might be divided success (each party is a little successful on parts of the motion, and not on others) and the judge doesn't award either party any cost, or the judge could order you to pay costs despite divided success. There are no guarantees on costs and you shouldn't rely on getting any. The best we can do is protect your costs to the extent possible, both in terms of maximizing what you could receive and in terms of minimizing what you might have to pay.

How Do we Protect My Costs?

- a. We should serve an offer to settle the motion at least **two weeks** in advance of the motion and in all circumstances, before I start drafting any materials for the motion so that all costs incurred for the motion are incurred after the offer to settle was served;
- b. There should be a time period in the offer that permits the other side to accept it with no costs payable; and
- c. The offer to settle should reflect the "worst case scenario" that you are willing to live with. Remember, the other side might accept your offer so its important that you be willing to live with the terms set out in your offer

Client Management: Prepare the Client for the Costs Involved (on the other end!)

Confidentiality of offer

18 (8) The terms of an offer,

(a) shall not be mentioned in any document filed in the continuing record; and

(b) shall not be mentioned to the judge hearing the claim dealt with in the offer, until the judge has dealt with all the issues in dispute except costs

COSTS CONSEQUENCES OF FAILURE TO ACCEPT OFFER

18 (14) A party who makes an offer is, unless the court orders otherwise, entitled to costs to the date the offer was served and full recovery of costs from that date, if the following conditions are met:

1. If the offer relates to a motion, it is made at least one day before the motion date.
2. If the offer relates to a trial or the hearing of a step other than a motion, it is made at least 7 days before the trial or hearing date.
3. The offer does not expire and is not withdrawn before the hearing starts.
4. The offer is not accepted.
5. The party who made the offer obtains an order that is as favourable as or more favourable than the offer.

COSTS CONSEQUENCES — BURDEN OF PROOF

18 (15) The burden of proving that the order is as favourable as or more favourable than the offer to settle is on the party who claims the benefit of subrule (14).

COSTS — DISCRETION OF COURT

18(16) When the court exercises its discretion over costs, it may take into account any written offer to settle, the date it was made and its terms, even if subrule (14) does not apply.

Decision on reasonableness

24(5) In deciding whether a party has behaved reasonably or unreasonably, the court shall examine,

- (a) the party's behaviour in relation to the issues from the time they arose, including whether the party made an offer to settle;
- (b) the reasonableness of any offer the party made; and
- (c) any offer the party withdrew or failed to accept.

SETTING COSTS AMOUNTS

24 (12) In setting the amount of costs, the court shall consider,

- (a) the reasonableness and proportionality of each of the following factors as it relates to the importance and complexity of the issues:
 - (iii) any written offers to settle, including offers that do not meet the requirements of rule 18,
- (b) Any other relevant matter

**Client Management: Manage Client Expectation
The Super Most Important Thing**

MAKE ABSOLUTELY NO PROMISES OR GUARANTEES!!!

EVER!!!

ABOUT ANYTHING!!!

(NO LITERALLY – NEVER GUARANTEE ANYTHING)

IN FACT – UNDERSELL!!!

Tips on Preparing Documents: YOUR TIME TO SHINE

1. Make sure both you and the client understand the purpose of the document
2. Prepare early to give your client time to review.
3. Edit, edit again and then edit a third time. When you're done that – edit again.
4. Don't be afraid to edit the template of the document.
5. Use notes and footnotes as might be required.
6. Make your documents optically pleasing.
7. Charts are your friend.
8. **Know the Rules of when your documents are due and assume several upload failures!**
9. **Know the practice directions of the court you're in.**
10. Know the rules of EVIDENCE.

AFFIDAVIT BASED ON PERSONAL KNOWLEDGE

Rules 14(18) An affidavit for use on a motion shall, as much as possible, contain only information within the personal knowledge of the person signing the affidavit.

Rules You Should Know: The Basics

Rule	Topic
3	Time
5	Where a case starts and is to be heard
6	Service of Documents
11	Amending an Application, Answer or Reply

Rules You Should Know: The Golden Rules

PRIMARY OBJECTIVE

2(2) The primary objective of these rules is to enable the court to deal with cases justly.

DEALING WITH CASES JUSTLY

2(3) Dealing with a case justly includes,

(a) ensuring that the procedure is fair to all parties;

(b) **saving expense and time;**

(c) dealing with the case in ways that are appropriate to its importance and complexity; and

(d) **giving appropriate court resources to the case while taking account of the need to give resources to other cases.**

DUTY TO PROMOTE PRIMARY OBJECTIVE

2(4) The court is **required to apply these rules** to promote the primary objective, and **parties and their lawyers are required to help the court to promote the primary objective.**

DUTY TO MANAGE CASES

2(5) The court **shall** promote the primary objective by active management of cases, which includes,

(a) at an early stage, identifying the issues, and separating and disposing of those that do not need full investigation and trial;

(b) encouraging and facilitating use of alternatives to the court process;

(c) helping the parties to settle all or part of the case;

(d) setting timetables or otherwise controlling the progress of the case;

(e) considering whether the likely benefits of taking a step justify the cost;

(f) dealing with as many aspects of the case as possible on the same occasion; and

(g) if appropriate, dealing with the case without parties and their lawyers needing to come to court, on the basis of written documents or by holding a telephone or video conference.

PROCEDURAL ORDERS

- 1 (7.2) For the purposes of promoting the primary objective of these rules as required under subrules 2 (4) and, particularly, (5), the court may make orders giving such directions or imposing such conditions respecting procedural matters as are just, including an order,
- (a) that a party give to another party an affidavit listing documents that are relevant to the issues in a case and that are in the party's control or available to the party on request, or that a party make any other disclosure, within a specified time;
 - (b) **limiting the number of affidavits that a party may file, or limiting the length of affidavits that a party may file (excluding any exhibits);**
 - (c) that any motions be brought within a specified time;
 - (d) that a statement setting out what material facts are not in dispute be filed within a specified time (in which case the facts are deemed to be established unless a judge orders otherwise);
 - (e) that questioning be conducted in accordance with a plan established by the court, be subject to a time limit or be limited with respect to scope;
 - (f) limiting the number of witnesses;
 - (g) that all or part of an affidavit or any other evidence filed at any stage in a case, and any cross-examinations on it, may be used at a hearing;
 - (h) that a party serve and file, within a specified time, a written summary of the anticipated evidence of a witness;
 - (i) **that a witness give all or part of his or her evidence by affidavit or another method not requiring the witness to attend in person;**
 - (j) that oral evidence be presented, or that any oral evidence be subject to a time limit;
 - (k) that any expert witnesses for the parties meet to discuss the issues, and prepare a joint statement setting out the issues on which they agree and the issues that are in dispute;
 - (l) **that a party serve and file a summary of argument;**
 - (m) **that a party provide to the court a draft order (Form 25, 25A, 25B, 25C or 25D) setting out the relief that he or she is seeking;**
 - (n) **identifying the issues to be decided at a particular hearing;**
 - (o) that the parties appear before the court by a specified date;
 - (p) that a case be scheduled for trial or that a trial management conference be conducted; and
 - (q) that a trial be limited to a specified number of days and apportioning those days between the parties.

Rules You Should Know: The Golden Rules

FAILURE TO OBEY ORDER

1 (8) If a person fails to obey an order in a case or a related case, the court may deal with the failure by making any order that it considers necessary for a just determination of the matter, including,

- (a) an order for costs;
- (b) an order dismissing a claim;
- (c) an order striking out any application, answer, notice of motion, motion to change, response to motion to change, financial statement, affidavit, or any other document filed by a party;
- (d) an order that all or part of a document that was required to be provided but was not, may not be used in the case;
- (e) if the failure to obey was by a party, an order that the party is not entitled to any further order from the court unless the court orders otherwise;**
- (f) an order postponing the trial or any other step in the case; and
- (g) on motion, a contempt order.

FAILURE TO FOLLOW RULES

(8.1) If a person fails to follow these rules, the court may deal with the failure by making any order described in subrule (8), other than a contempt order under clause (8) (g).

Rules You should Know: Disclosure

- **INFORM YOUR CLIENT OF THE DISCLOSURE REQUIREMENTS**

- Direct your clients to Rule 13! (or just cut and paste it for them).
- Make sure to highlight rule 13 (3.3) which outlines the disclosure a party has to provide.
- Also make sure to highlight Rule 13 (12) because clients HATE financial statements!!!:

Updating financial information

(12) Before a case conference, settlement conference, motion or trial, a party shall update their financial information by serving and filing the document specified in subrule (12.1) no later than the time specified in subrule (12.2), if the information in the last financial statement provided by the party would be,

- (a) for a case conference or settlement conference, more than 60 days old by the time the conference is held;
- (b) for a motion, more than 30 days old by the time the motion is heard; or
- (c) for a trial, more than 40 days old by the earlier of the start of the trial and of the trial sitting, as applicable

- Use this rule more often:

Insufficient financial information

13 (11) If a party believes that the financial disclosure provided by another party under this rule, whether in a financial statement or otherwise, does not provide enough information for a full understanding of the other party's financial circumstances,

- (a) the party shall make a request in writing to the other party for the necessary additional information; and
- (b) if any requested information is not given within seven days of the request, the court may, on motion or at a case conference or settlement conference, order the other party to give the information or to serve and file a new financial statement.

WHAT YOU NEED TO KNOW ABOUT LITIGATION:

- 1. MAKE YOUR LIFE AND BUSINESS BETTER BY KEEPING YOUR CLIENT INFORMED - AND WHEN POSSIBLE – OVERINFORMED ABOUT THE PROCESS AND THE COST**
- 2. NEVER PROVIDE ANY GUARANTEES. INSTEAD, CONSISTENTLY INFORM THE CLIENT OF THEIR VERY SERIOUS RISK.**
- 3. PREPARE PRETTY, RULE COMPLYING DOCUMENTS. MAKE SURE YOU KNOW THE PRACTICE DIRECTIONS AND HOW TO USE THEM TO YOUR ADVANTAGE**
- 4. KNOW THE RULES, LOVE THE RULES, USE THE RULES**
- 5. WINS AND LOSSES DO NOT DEFINE YOU. YOUR CLIENTS' SATISFACTION LEVEL WITH YOU DOES!**

Subject to any questions, those are my submissions.....

TAB 6

10 Highlights for Your New Practice: 2022-2023

Law Society Spot Audits
Five most common issues (PowerPoint)

Mandy Chan, CPA, CA, DIFA, Spot Auditor
Law Society of Ontario

Andrew Assikopoulos, CPA, CA, CMA, Spot Auditor
Law Society of Ontario

April 19, 2023



Law Society Spot Audits

Five most common issues

Mandy Chan, CPA, CA, DIFA

Andrew Assikopoulos, CPA, CA, CMA

Spot Auditors

Law Society of Ontario

Spot Audit Process

Authority:

- *Section 49.2 of the Law Society Act* authorizes the spot audit process.

Selection criteria for Spot Audit:

- Random, Newly Formed, Referral, Annual Filing Report indicator, Re-audit.

Audit Process:

- Audit authorized by LSO, firm notified, audit date scheduled, pre-audit letter sent to the firm.
- Auditor attends the firm's office to complete the audit. Audit Report presented to the firm.

What happens after the audit?

File closed, Monitoring, Re-audit, Undertaking, Investigations.

Five most common issues

1. **Electronic Trust Disbursements** – *Section 18(11) of By-Law 9*
2. **Duplicate Cash Receipt Book** – *Section 19(1) of By-Law 9*
3. **Pre Taking of Legal Fees** – *Subsection 9(1)3 of By-Law 9*
4. **Monthly Trust Bank Reconciliations and Comparison** – *Section 18(8) of By-Law 9*
5. **Client Identification & Verification** – *Part III of By-Law 7.1*

Five Common Audit Issues

1. **Electronic Trust Disbursements** – *Section 18(11) of By-Law 9*

- Form 9A – signed electronic trust transfer requisitions not prepared or not fully completed.
- Signed printed bank confirmations (from bank's website) of electronic transfers of trust funds are not maintained or not fully completed.
 - The client name and file number should be added to the confirmation
 - The bank confirmation should be: signed/dated by the lawyer
- All Form 9As and confirmations should be kept centrally in one file folder.

Reminder: Electronic trust disbursements to the general account or special trust account, for land transfer tax and registration fees, require a Form 9A

Resources:

For Form 9A: www.iso.ca > *Lawyers* > *Practice Supports and Resources* > *Topics* > *Managing Money* > *Recordkeeping requirements* > *Form 9A*

R/E Accounting: www.iso.ca > *Lawyers* > *Practice Supports and Resources* > *Topics* > *Managing Money* > *Bookkeeping Guide* >
For Lawyers: Real Estate Accounting

Form 9A
Electronic Trust Transfer Requisition
Requisition (*number*)

Amount of funds to be transferred: (*Specify amount.*)
Re: (*Specify name of client.*) (*Specify file reference number.*)
Reason for payment: (*Give reason for payment.*)

Trust account to be debited:
Name of financial institution: (*Specify name.*)
Account number: (*Specify number.*)
Name of recipient: (*Specify name.*)

Account to be credited:
Name of financial institution: (*Specify name.*)
Branch name and address: (*Specify name and address.*)
Account number: (*Specify number.*)

Person requisitioning electronic trust transfer: (*Print the person's name.*)

(*Date*) (*Signature of lawyer*)

Form 9A must be signed by a
lawyer with signing authority
on the trust account

Additional transaction particulars:
(*This section should be completed by the person entering the details of the transfer, after he or she has entered the details of the transfer, and by the person authorizing the transfer at the computer terminal, after he or she has authorized the transfer.*)

Person entering details of transfer:
Name: (*Print person's name.*)

(*Signature of person entering details of transfer.*)

Person authorizing transfer at computer terminal:
Name: (*Print person's name.*)

(*Signature of person authorizing transfer at computer terminal.*)

Five Common Audit Issues

2. Duplicate Cash Receipt Book – *Section 19(1) of By-Law 9*

- Cash receipts do not contain all of the details required by the *By-Law*, specifically:
 - The signature of the lawyer (or the person authorized by the lawyer to receive cash)
 - The signature of the person from whom cash is received
(If the person refuses to sign, document your efforts to obtain the signature)
 - The date on which cash is received; name of the person from whom cash is received; the amount of cash received; the client for whom cash is received; any file number in respect of which cash is received.
- Cash receipts not kept together in date order and therefore do not constitute a duplicate cash receipt book.

Five Common Audit Issues

3. Pre Taking of Legal Fees – *Subsection 9(1)3 of By-Law 9*

Legal fees can only be transferred from trust account to general account for fees earned after all of the following are complete:

- Detailed fee billings are prepared;
- Billings are rendered to the clients via mail, email, courier, hand deliver or client's pick up;
- Billings posted to the financial records (accounting journals etc.)

Five Common Audit Issues

4. Monthly Trust Bank Reconciliations and Comparison – *S18(8) of By-Law 9*

Proper procedure is to compare:

- A. Firm's reconciled trust bank balance at the previous month end to
- B. Firm's Client Trust Listing (CTL) balance at previous month end – the CTL identifies each client for whom monies are held in trust and shows the trust ledger account balance for each client at month end

Any difference between A and B must be explained and corrected. Any trust shortages should be corrected immediately.

Trust Bank Reconciliation
For Month Ended: February 28, 2023

Prepared: March 30, 2023 <Issue 1>

Ending Balance per Bank statement	\$ 3,044.00
Reconciling Items	
Less: Outstanding Cheques (per attached)	(\$ 2,000.00)
Plus: Outstanding Deposits (per attached)	\$ 500.00
Plus or Minus: Bank Errors (per attached)	<u>(\$ 19.00)</u>
Reconciled Trust Bank Balance	<u>\$ 1,525.00</u> A

Client Trust Listing
For Month Ended: February 28, 2023

<u>File Name</u>	<u>Last Activity Date</u>	<u>Amount</u>
Peter Piper	Dec 5/21	\$ 400.00 <Issue 5>
Jane Doe	Feb 28/23	\$ 1,650.00
Mary Lamb	Jan 12/23	<u>(\$ 525.00) <Issue 4></u>
Total Trust Liabilities		<u>1,525.00</u> B

Trust Comparison:

Total Reconciled Trust Bank Balance (see Trust Reconciliation above)	A \$1,525.00
Total of unexpended balances per Client Trust Listing (above)	B <u>\$1,525.00</u>
Difference (should be zero)	<u>\$ -</u>

Trust Bank Reconciliation
For Month Ended: February 28, 2023

Outstanding Cheques:

<u>Cheque#</u>	<u>Date</u>	<u>Payee</u>	<u>Amount</u>	
084	May 14/22	Terry Taylor	\$ 25.00	<Issue 3>
178	Feb 27/23	Treasurer of Anytown	\$ 1,200.00	
179	Feb 28/23	Niko Georgie	\$ 775.00	
Total Outstanding Cheques			<u>\$ 2,000.00</u>	

Outstanding Deposits

<u>Date</u>	<u>Received From</u>	<u>Amount</u>	<u>Date Bank Processed</u>
Feb 28/23	Jane Doe (Cash)	\$ 525.00	Mar 1/23
Total Outstanding Deposits		<u>\$ 525.00</u>	

Bank Errors

<u>Date</u>	<u>Explanation for Error</u>	<u>Amount</u>	<u>Date Corrected</u>
Dec 23/22	Chq#67 cleared as \$687 s/b \$678	\$ 9.00	<Issue 2>
Jan 31/23	Bank service charge	\$ 5.00	
Feb 28/23	Bank service charge	\$ 5.00	
Total Bank Errors		<u>\$ 19.00</u>	

Five Common Audit Issues

4. Monthly Trust Bank Reconciliation and Comparison (cont'd) – S18(8) of By-Law 9

Audit Issues:

1. Reconciliation and Comparison not completed by the 25th day of the next month.
2. Bank and/or posting errors from the previous month(s) remain uncorrected.
3. Stale-date cheques [i.e. issued more than 6 months prior] not dealt with.
4. Overdrawn client trust ledgers remain uncorrected for more than one month.
5. Inactive trust ledger accounts. Firms should review the list of inactive accounts monthly to see whether accounts can be closed.
 - If unable to locate the person(s) entitled to the trust funds, consider applying the trust funds to the Law Society's Unclaimed Trust Fund (see Resource below).

Five Common Audit Issues

- 5. Client Identification and Verification** - Effective January 1, 2022, Part III of By-Law 7.1 was amended. The client identification and verification requirements now include six main elements:

1. Identification	Obtaining basic identification information about the client and any third party that the client is acting for or representing.
2. Verification	Verifying the identity of the client or third party where the lawyer or paralegal is engaged in or giving instructions in respect of the receipt, payment, or transfer of funds (a “financial transaction”). Additional steps are required when verifying the identity of minors and organizational clients.
3. Source of Funds	Obtaining source of funds information from the client where there is a financial transaction.
4. Monitoring	Periodically monitoring the professional business relationship with the client when retained in respect of a financial transaction that is ongoing.
5. Record Keeping	Recording and retaining all information acquired during the identification and verification process.
6. Withdrawal	If at any point while retained, including while obtaining identification and verification information, withdrawing from representation if the lawyer or paralegal knows or ought to know that they would be assisting in fraud or other illegal conduct.

Above list taken from LSO website: <https://www.lso.ca/lawyers/practice-supports-and-resources/topics/the-lawyer-client-relationship/identification-and-verification>

Five Common Audit Issues

5. Client Identification and Verification - *Part III of By-Law 7.1*

Audit Issues:

Client Identification - *subsection 23(1) of By-Law 7.1*

- Where the client is an individual, firms not obtaining/recording the client's work address and/or work telephone number, and occupation.

Source of Funds Inquiry – *subsection 23(2) of By-Law 7.1*

- New requirement, effective January 1, 2022
- Firms not obtaining and *recording* information from clients about the Source of Funds for their transaction, including the economic activity that generated the funds (e.g. salary from employment)

Broad Overview re Source of Funds Inquiry

- Required when firm is retained to engage in, or give instructions in respect of the receipt, payment or transfer of funds
- If client's answer is reasonable (nothing suspicious, unusual), the inquiry is complete
- If explanation is unusual or inconsistent, further inquiry needed (see LSO FAQs)
- See Resources list below

Five Common Audit Issues

5. Client Identification and Verification (cont'd) - *Part III of By-Law 7.1*

Tips:

- Use an intake sheet (or update the firm's existing one) to ensure that all of the required client contact information is obtained and recorded; add the Source of Funds Inquiry.
- Consider using the LSO's templates (see Resources below).
- The intake sheets produced by some accounting software are incomplete.

Note: The elements of the Client Identification and Verification requirements are not covered in detail in this presentation.

Resources:

www.iso.ca: Lawyers>Practice Supports and Resources>Topics>The Lawyer Client Relationship> Identification and Verification

- Overview of Requirements (see Flowchart)
- FAQs (excellent)
- File Forms (templates) – Client ID Form; Client Verification Forms
- Red Flags Worksheet
- CPD Program
- And more!

Accounting Software for lawyers

Tips to select software suitable to your practice:

1. area of practice;
2. volume of accounting transactions;
3. knowledge of the software;
4. extent of help from support staff;
5. how well you understand bookkeeping;
6. cost considerations.

Resource: Financial Management Software

www.iso.ca: Lawyers > Technology Resource Centre > Financial Management Software

The Law Society does not endorse, approve, or recommend any products, software, applications, service providers or other such tools for use by lawyers or paralegals in their professional business.

Helpful Resources:

- *The Bookkeeping Guide for lawyers – for common bookkeeping issues*
www.iso.ca: Lawyers > Practice Supports and Resources > Topics > Managing Money > Bookkeeping Guide
- *Practice Management Helpline*
416-947-3315 or 1-800-668-7380

Questions?

TAB 7

10 Highlights for Your New Practice: 2022-2023

Business Strategies Checklist For Transitioning to a Part-Time or Alternative Practice

7 Business Strategies for Transitioning to a Part-Time or Alternative Practice (PowerPoint)

Erin C. Cowling, Founder & CEO
Flex Legal Network Inc.

November 14, 2023



Business Strategies Checklist
For Transitioning to a Part-Time or Alternative Practice

By Erin C. Cowling,
Flex Legal Network Inc.

INTRODUCTION

You've made the decision: you need a change in your legal career. You want to transition to a new way to practice or provide legal services. This could mean transitioning from a full-time employment role or full-time sole practitioner role to:

- a part-time practice;
- a limited scope retainer or unbundled legal services practice;
- a freelance lawyer or freelance paralegal practice;¹
- working part-time in law and part-time in another profession or business;
- another form of alternative practice; or
- a combination of the above.

You've thought about the financial implications, but what are some business strategies to help you succeed in your new role? This paper will examine some strategies, considerations, tips, and steps to take, as well as some specific *Rules of Professional Conduct* or *Paralegal Rules of Conduct*, to keep in mind, when transitioning your practice.

1. LEAVE YOUR OLD POSITION ON GOOD TERMS

One important business strategy is to leave your old position on good terms (if possible) and in an ethical manner. Start by providing as much notice as possible about your departure and assist with drafting clear transfers memos or closing out files.

¹ A freelance lawyer (or paralegal) works as an independent contractor for other licensees on an as needed or project basis. They are not retained by non-lawyer clients (or sometimes referred to as "end-clients" in this paper) but only work for and under the supervision of other lawyers on a freelance basis to assist with overflow legal work.

When starting a new business, or practice, money may be tight and a great way to advertise is through word of mouth. If you are leaving an employment role at a firm, your former employer or colleagues could be great referral sources for your new practice. This is especially true if you will be setting up a freelance practice (where you work as an independent contractor – rather than an employee - to other lawyers and firms) and your former firm may need your freelance assistance in the future. Many freelance lawyers and paralegals find that their first clients are former employers.

If you are leaving a firm to start your own part-time practice and you have current clients who wish to transition with you, keep in mind your professional obligations.² When notifying a client about your departure and new practice, they must be aware of their three options: leaving with you, remaining with the firm, or retaining a new lawyer or paralegal.³ The client’s interests are paramount and they must be able to decide which licensee to retain without undue influence or pressure by either the departing lawyer/paralegal or the firm and with adequate information to make an informed decision. If you are leaving a full-time practice at one firm for a part-time practice at another and transition your files, also keep in mind the conflicts and screening rules when transferring files between firms.⁴

No matter what type of new practice you are transitioning to, remaining on good terms with your former employer, colleagues and clients will always help.

2. SET YOUR GOALS & OBJECTIVES FOR YOUR NEW PRACTICE: WHAT IS YOUR “WHY”?

There must be a reason you are transitioning to a new type of practice. Why are you looking for a new way to practice law? What are your career goals and objectives with this new practice?

Maybe you want to practice part-time because you have other obligations in your life that need more of your time and attention. Or maybe you want to practice as a freelance lawyer or

² See *Rules of Professional Conduct*, Rule 4.1-2, and Commentary [2] and [3] to Rule 3.7-7A(1) or *Paralegal Rules of Conduct*, Rule 8.02 (2)(d) and Guideline 11, ss. 19-20.

³ In addition to the relevant rules see the case [Robert Findlay Law Office Professional Corporation v Werner, 2015 ONSC 2955 \(CanLII\)](#), which provides a helpful overview of obligations when leaving a law firm.

⁴ *Rules of Professional Conduct*, Rules 3.4-17 to 3.4-22 and *Paralegal Rules of Conduct*, Rule 3.05.

paralegal because you don't want to provide services to end-clients anymore and only want to work with other licensees. Or perhaps you love working as a family law lawyer but not necessarily all aspects of a family law file and you want to offer unbundled legal services working on discrete parts of the file (like legal research or drafting) for the client instead. Or maybe you just feel stuck and need a change.

Whatever your reason, or reasons, for transitioning your practice, write them down and keep them somewhere safe so you can review them regularly. Some questions to ask yourself:

- What did you *not* like about your previous practice?
- What did you like about your previous practice and want to incorporate into your new practice?
- What are your long-term goals? Is this new practice only temporary or are you in it for the foreseeable future?
- What will your typical day look like? What do you *want* your typical day to look like?
- How many hours a week do you want to work?
- How much money do you want to make? (...and how much will you have to charge, and how many hours will you need to work, to make that money?)

These questions that will help you figure out your “why”, which should be kept in mind with every decision made about your new practice, otherwise you may find yourself back in a practice that no longer brings you fulfillment or joy. Your “why” will also help with the rest of the business strategies discussed below.

3. DECIDE ON YOUR BUSINESS STRUCTURE

With your “why” and your business goals in mind, decide on the best business structure for your new practice: sole proprietorship? professional corporation? multidiscipline partnership?

This may not be relevant if you are already a sole practitioner or practice under a professional corporation and are simply adjusting your practice to part-time, your business structure can remain the same. However, if you are leaving an *employment* position and wish to start your

own part-time practice or alternative practice, you will have to decide how to structure your new practice / business.

Many licensees will start with a sole proprietorship as it is the easiest to establish. Others may choose to practice under a professional corporation. The Ontario *Business Corporations Act* and the *Law Society Act* permit lawyers and licensed paralegals to practise law or provide legal services through a professional corporation. These *Acts*, together with Part II of the Law Society of Ontario's By-Law 7, outline the requirements for professional corporations. Licensees need to complete an application process for a certification of authorization and pay annual administrative fees. The main reason for incorporating a professional corporation would be for tax advantages, so speak with your accountant, as this is outside the scope of these materials.

Another potential option is to enter a multidiscipline practice or partnership. A multidiscipline *practice* is where lawyers or licensed paralegals practice with others who work in a profession, trade or occupation that supports or supplements the lawyer or paralegal's practice of law or provision of legal services. For example, a lawyer or paralegal may practice with an accountant, tax consultant, trademark and patent agents, etc. A multidiscipline *partnership* is where a licensee and another professional enter into a formal partnership agreement. The Law Society of Ontario permits multidiscipline partnerships but only licensees can have control over trust accounts and licensees are still ultimately responsible if there are non-licensee partners.⁵

4. DEFINE THE BOUNDARIES OF YOUR PRACTICE AND CLIENT BASE

Now you know your "why", you have your goals, you've decided on your business structure, it is time to define your practice and what you will offer as services and to whom. Use your "why" to define the boundaries of your practice and the type of clients you wish to serve. If you don't keep your "why" in mind every time you are presented with a new file or opportunity, you may say yes to work that does not align with your goals for your new practice and you risk being

⁵ If you are choosing a multidisciplinary partnership, be sure to review *Rules of Professional Conduct*, Rules 3.4-16.1, 3.6-8, 7.8.1-1 and Commentary [11] to Rule 3.1-2 or *Paralegal Rules of Conduct*, Rules 3.04(13), 5.01(13), 8.01(5) and the *Paralegal Professional Conduct Guidelines*, Guideline 7, s. 17; Part III of By Law 7. Also see the Law Society of Ontario's resource [Multi-Discipline Practice and Multi-Discipline Partnership](#).

pulled back into working full-time or taking on work you dislike, or worse that you are not competent to do.

Take proactive steps to set your practice boundaries. For example, if you are transitioning to part-time because you need more balance in your life or more time away from the office, evaluate what type of work you want to take on with this in mind:

- What practice area is compatible with a part-time practice?
- Can you set a limit on the volume of your files or define the type of files you will and will not engage with? Perhaps you will have a hard “no” on any injunction files or any family law files that appear litigious, etc.
- Will it be possible with your practice to only work set days of the week? If so, set those days and stick with them. If not, perhaps a reduced workday will be more successful.

Or if you are a licensed paralegal and transitioning to a different business model working with other licensees or perhaps with immigration consultants, etc. you will need to set clear boundaries on your practice so that you only provide services within your scope of practice. Ensure that you do not supervise, direct, edit etc. work that only a lawyer is licensed to do (unless your work is being supervised by a lawyer in a direct, proactive, and continuous manner).⁶

Or you may be leaving a traditional practice of law and starting a freelance practice because, while you like the law and being a lawyer or paralegal, you no longer like working with end-clients. Be sure to set boundaries on your freelance practice that you only work with other licensees and define your client base in that manner. Keeping your “why” in mind will help when you are approached with a file that would require you to work with an end-client. You may be tempted to take it on, especially if it could be worth a lot of money, but saying yes to something outside the boundaries of your practice and your client base could be a slippery slope back to your old way of practicing law.

⁶ *Paralegal Rules of Conduct*, Rules 3.02(3), 8.02(3); By Law 4, s. 6. See also the [Notice to the Profession: Important information regarding paralegals providing legal services under the Immigration and Refugee Protection Act; Practice Management Helpline Frequently Asked Questions – Paralegal Scope Of Practice.](#)

Keeping your ideal practice and ideal client in mind for your new role will help you naturally set boundaries around your new practice.

5. PROTECT YOURSELF WITH PROPER CONTRACTS / RETAINER AGREEMENTS

Like lawyers or paralegals with a traditional or full-time practice, you still need to be protected through proper contracts / retainer agreements.

Part-Time Practice Retainers

For a part-time practice where you represent end-clients on a reduced working hours basis, best practices dictate that a written engagement letter or solicitor and client retainer agreement should be in place. To maintain good client communication and management of client expectations consider adding your hours of availability and response time in your retainer agreement. For example, if you are not in the office on Tuesdays or Thursdays, highlight that in your retainer agreement and bring it to your clients' attention when they are signing. Be clear that you will not respond to email or phone calls on those days or set out your usual response time for the days you are not in the office. While you should be mindful of your obligation to provide timely and effective communication,⁷ you do not need to be available 24/7.

Unbundled Legal Services / Limited Scope Retainers

Lawyers and paralegals must confirm the legal services they will be providing under a limited scope retainer in writing. Having a written retainer or engagement letter setting out the discussions and agreement with your end-client will assist with understanding the limitations of the service to be provided and any risks of the retainer.⁸

Non-Law Businesses & Contracts

⁷ See *Rules of Professional Conduct*, Rule 3.1-1(d) and the *Paralegal Rules of Conduct*, Rule 3.01(4)(e).

⁸ See *Rules of Professional Conduct*, Rule 3.2-1A.1 and Commentary [1] to [1.1] and Rule 3.2-1A.2 and *Paralegal Rules of Conduct*, Rule 3.02(16).

If you are working in law part-time but also engaging in another business, keep the two separate. For example, perhaps you have a side business coaching other lawyers or paralegals, or you are providing business or entrepreneurial courses to non-licensees, or selling items you've sewn on Etsy, or you own a real estate business, etc. Be clear in your contracts and communication that your non-law business is separate from your legal practice, you are not providing legal advice, you are not in a solicitor and client relationship with this person, etc. Also, on the other hand, a licensee who engages in another profession, business, or occupation concurrently with the practice of law or provision of legal services, must not allow such interest to jeopardize their professional integrity, independence or competence and must be mindful of potential conflicts of interest with their law practice.⁹

Freelance Lawyer / Paralegal Agreement

If you are transitioning to a freelance practice assisting other licensees and firms with their overflow legal work on an as-needed basis, ensure you have a freelance lawyer or paralegal agreement (i.e., an independent contractor agreement) in place. This agreement should include provisions stating that: you are working as an *independent contractor* for the firm not as an employee; the hiring lawyer maintains full control over their files, at all times; the hiring lawyer will exercise their independent professional judgment and make all final decisions regarding their cases and end-clients; your hourly rate; scope of work; etc.¹⁰

To not be offside any division of fees rules,¹¹ do *not* agree to any payment structure where your pay would be contingent upon the hiring lawyer being paid by the end-client and be sure that any fee paid by the end-client is paid *only* to the hiring lawyer. Your payment by the firm should always be made within an independent contractor / hiring firm context, just like an associate is paid under an associate / hiring firm context. In other words, if the agreement between the hiring firm and the freelance lawyer requires the former to pay the latter regardless of when, whether, or how much the end-client pays the hiring lawyer, the payment does not constitute

⁹ See *Rules of Professional Conduct*, Rules 7.3-1 & 7.3-2 and *Commentary or Paralegal Rules of Conduct*, Rules 2.01(4) and 2.01(5).

¹⁰ This is just a broad overview and not an exhaustive list, which is outside the scope of this paper.

¹¹ See *Rules of Professional Conduct*, Rule 3.6-5.

fee splitting (any more than a lawyer's payment of an associate's salary constitutes fee splitting). If the agreement provides that the freelance lawyer will be paid by the end-client or there is a single billing where the client pays the hiring lawyer *and* the freelance lawyer this will trigger obligations under Rule 3.6-5, Division of Fees. In this situation a division of fees between licensees at different firms is permitted, however, you will need the end-client's consent and the fees must be divided in proportion to the work done and the responsibilities assumed.

No matter what type of new practice you are embarking upon, ensure to protect yourself with the proper contracts, retainers, or agreements.

6. FIND YOUR CLIENTS & MARKET YOUR SERVICES

Knowing the boundaries of your new practice and defining your ideal clients will make marketing easier for you. Some potential marketing strategies:

- **Reach out to your current network.** The first and easiest step for transitioning your practice is to let your current network know how your practice is changing. You can easily do this by sending out an email or making an announcement on LinkedIn (or other social media platform) or even mailing out an old-school letter to grab people's attention. Let them know that you are no longer doing "X" type of work, but you are more than happy to do "Y". People who have worked with you in the past will know that you are a reliable professional who produces great work, and they will want to continue working with you or refer work to you if they can. Word-of-mouth is the easiest and most cost-effective way to market your services.
- **Build a New (or Revise Your Current) Website.** Make sure your website is up to date and accurately describes the types of services you are now providing and the type of clients that would be the best fit for those services.
- **Network / Meet New People:** Networking shouldn't be a scary word, it just means getting out and meeting new people, whether that is in person or on social media or through writing a blog or speaking at a conference. Join relevant law associations or online groups with licensees practicing in a similar manner. Get out and make yourself known and meet people who are your target or ideal clients. Set small and achievable

goals with your networking activities, such as one coffee a week or one networking event every two weeks or once a month, etc.

- **Enter Referral Relationships:** Maybe networking and business development isn't your thing, but you know another licensee who is great at it and wants to start a referral relationship with you where they will refer end-clients to you for a referral fee. This could be a great way to get business to your part-time practice and you can pick and choose which files to take on. However, remember there are strict regulatory requirements in place if you are paying or receiving referral fees for end-client files.¹² Be mindful of your fiduciary duties to the referred end-clients. The referral must be in the end-client's best interest, and they have the ultimate decision about who to retain.
- **Join a Platform:** There are several companies or platforms in the alternative practice space.¹³ While they all work slightly differently (some match licensees with end-clients while others match licensees with other licensee clients) they are a useful resource for finding work. Conduct due diligence on the type of platform you are using to ensure that there are no fee splitting or referral fee issues. For example, if the platform is for lawyers to find a freelance lawyer or to find freelance work only, there is no referral fee or division of fees issue as the freelance lawyer company is being compensated for facilitating independent contractor projects with other licensees and not referring end-clients to licensees.¹⁴

No matter how you market your services or conduct your business development activities, keep in mind your ideal client and your ideal practice. Market to the person who needs your services (be that end-clients or other licensees).

¹² See *Rules of Professional Conduct*, Rules 3.6-5 to 3.6-8; *Paralegal Rules of Conduct*, Rules 5.01(11) to 5.01(21); By Law 9, s. 19.1; [Referral Fees](#)

¹³ For example, for freelance lawyer companies see Taran Virtual Associates Inc. or Flex Legal Network Inc., for companies that match lawyers with end-clients see Goodlawyer, Axiom, MTAlign, BLG Beyond, LawyersinHouse, etc.

¹⁴ The hiring lawyer/freelance lawyer (not the end-client) is paying the freelance lawyer company a service fee for its services and not a legal fee (a fee paid by an end-client to a lawyer in a solicitor and client relationship). This service fee is for access to its platform, online information, customer service team, payment processing, etc. See the American Bar Association Formal Ethical Opinion 88-356 based on the *Model Code of Conduct*, which has similar wording to the Law Society of Ontario's *Rules of Professional Conduct*.

Also, be mindful of the relevant *Rules* regarding marketing and advertising your services. If this is your first-time marketing or advertising your services as a licensee to the public, review the applicable *Rules* before you place your first Google Ad or publish your website or post on LinkedIn. For example, licensees must avoid being misleading, avoid superlatives or comparing yourself to other licensees (“I’m better than all the rest”), avoid using the word ‘expert’, etc.¹⁵

7. KEEP YOUR INSURANCE AND LICENSE UP TO DATE

Call LawPro or your paralegal insurance provider to update your status regarding your new practice as well as the Law Society of Ontario, as licensees must keep their status and contact information always updated.¹⁶ Note that LawPro offers a discounted rate of 50% of your premiums for part-time practices.¹⁷

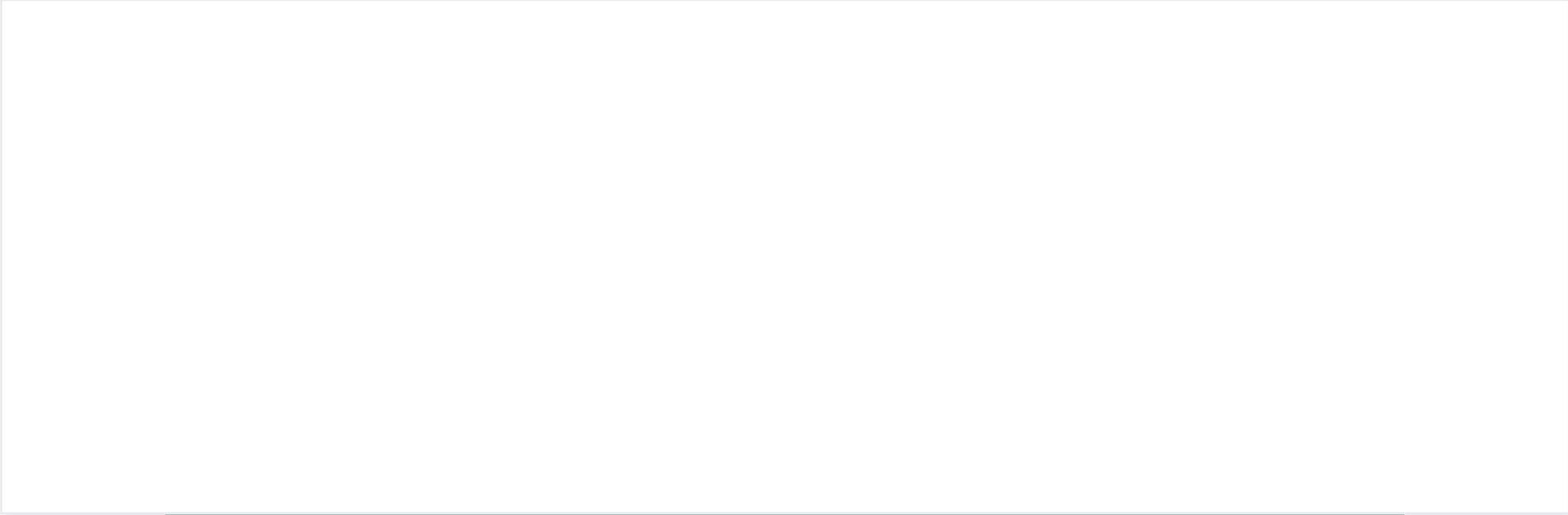
CONCLUSION

Congratulations on taking this next step in your legal career. Once you’ve put into place some of the strategies listed above and you have your new practice up and running, remember to regularly check in with your goals and objectives. There will be setbacks, not everything runs smoothly during a career transition, but look at those setbacks as learning opportunities, not failures. Best of luck and enjoy your new career.

¹⁵ Review Rules 4.2-0 to 4.3-1 of the *Rules of Professional Conduct or Paralegal Rules of Conduct*, Rules 8.02 and 8.03, Guideline 19 of the *Paralegal Professional Conduct Guidelines* and Section 6 of By-Law 4. See also the helpful “[Practice Management Helpline Frequently Asked Questions – Advertising](#)” on the LSO Website.

¹⁶ See By-Law 8, ss. 3-4.

¹⁷ This option, which is a 50% discount on your insurance premium, is available to practitioners who in both their current and prior fiscal year restrict their law practice to 20 hours per week on average for each week and worked up to 750 hours per year (including time for undocketed work) and have gross billings of \$90,000 per year or less. See <https://www.lawpro.ca/your-policy/coverage-options/part-time-practice/>.



Founder & CEO

flexlegal

Seven Business Strategies

- 1. Leave on good terms**
- 2. Know your “why”**
- 3. Choose your business structure**
- 4. Define your boundaries & ideal clients**



Seven Business Strategies

5. **Protect yourself through contracts / retainers**
6. **Find your ideal clients**
7. **Keep LawPro & LSO informed**





Questions?



Erin C. Cowling, B.A.H., LL.B.



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www.flexlegalnetwork.com

TAB 8

10 Highlights for Your New Practice: 2022-2023

How to NOT be the Next Fraud Dupe or Victim
(PowerPoint)

Raymond Leclair, Vice-President, Public Affairs
Lawyers' Professional Indemnity Company (LAWPRO®)

April 19, 2023





Raymond G. Leclair
Vice President, Public Affairs



LAWPRO
Lawyers' Professional Indemnity Company

HOW TO NOT BE THE NEXT FRAUD DUPE OR VICTIM

REAL ESTATE SUMMIT 2023



Law Society
of Ontario



Barreau
de l'Ontario

1

KEY STATISTICS

-  **Frauds affecting Canadians**
 - In 2020, Canadian reported several types of fraud:
 - **Identity fraud** ranking second (16,970 reports),
 - **personal information fraud** ranking third (6,649 reports) and
 - **phishing fraud** ranking fourth (3,672 reports) among the top 10 types of fraud.
-  **Mortgage fraud**
 - Equifax Canada October report warned that financial pressures in the country could lead to increase in mortgage and credit fraud. As of 2022, the number of reported **mortgage fraud causes** has increased by **29.5%** compared to pre-pandemic levels.
-  **LAWPRO**
 - **Real estate No. 1** reason for claims against lawyers.
-  **Fraud**
 - Fraud impacts the individual (client or lawyer) substantially in losses, costs, time, etc.

Source: LawPRO Annual Report, Canadian Anti-Fraud Centre Report and Equifax Canada Report.

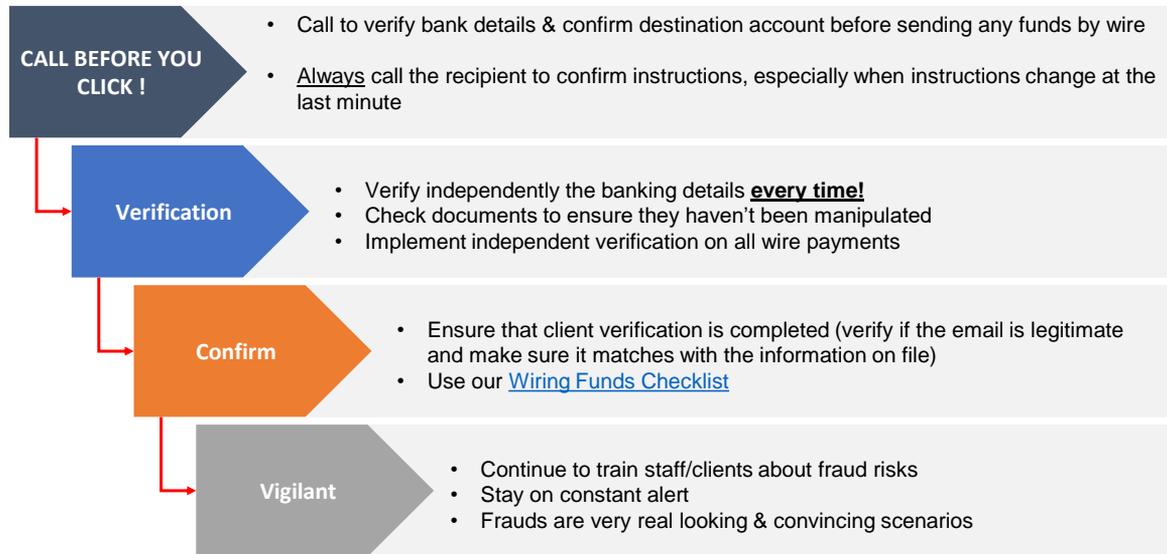
2

1. Wire Diversion Fraud

• Wire Diversion Fraud:

- Fraudster deceives lawyer and/or clients
 - into transferring funds to a fraudulent account
 - through direction, redirection, or fake payment documents
- Wire transactions - inherent risk
 - given speed & sums that are typically disbursed

3



4

8-2

2. Identity (ID) Fraud

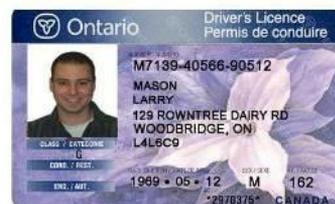
• Identity Fraud:

- Fraudster use another person's identifying information to commit fraud
- Title fraud usually starts with identity theft.
 - Using fake documents to
 - transfer ownership of a property
 - register a mortgage
 - discharge a mortgage
- Verifying ID is NOT a copy & file exercise

5

Tips When Verifying ID Documentation IN-PERSON:

- Do NOT simply copy & file!
- Does the picture match the client sitting in front of you?
- Pictures on various ID documents the same?
- Is the person in the picture smiling?
- Apparent age in picture vs date of ID document
- Ontario driver's license number
 - starts with 1st letter of last name
 - Ends with person's date of birth
- Signature in ID document match your client's signature?
- Laminated ID no longer valid



Search validity of Ontario driver's license for free: www.dlc.rus.mto.gov.on.ca

6

8-3

3. Corporate Fraud

• Corporate Fraud (Form 1)

- Fraudsters change or steal the identity of corporate property owners
- Most commonly accomplished with filing of **Form 1 Notice of Change** naming new directors and officers
- Fraudsters may retain a lawyer to prepare and file the **Form 1**; in other cases, they prepare and file it themselves
- [Recognizing the red flags of real estate scams involving corporate theft](#)

7

The Red Flags...



8

8-4

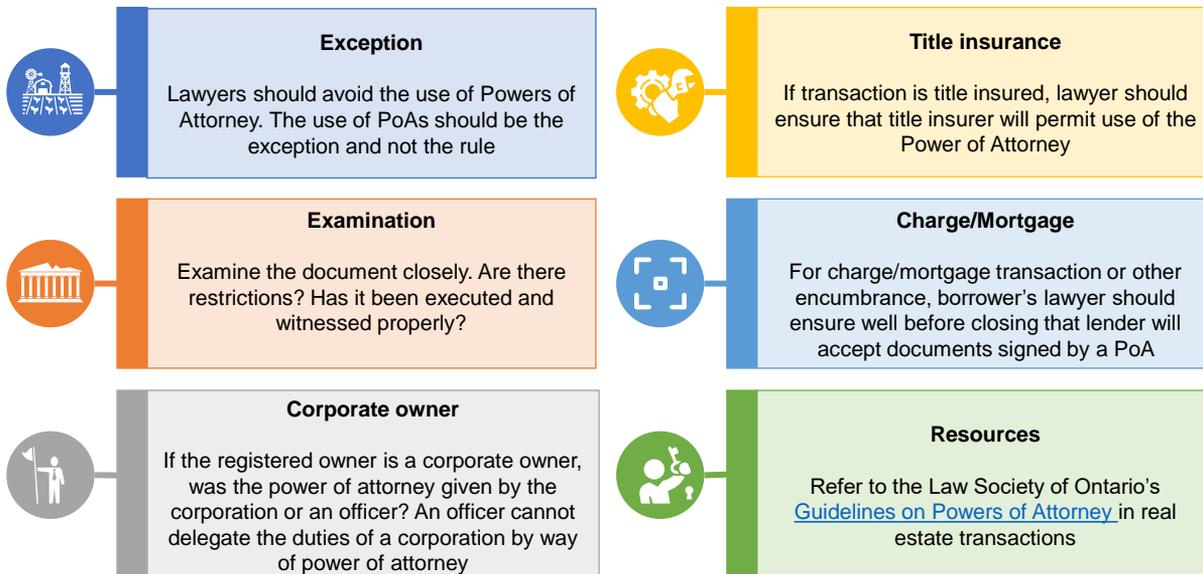
5. Power of Attorney Fraud

• Power of Attorney Fraud

- Forged powers of attorney have emerged as a common tool for committing real estate fraud
- Improperly used legitimate powers of attorney are just as problematic
- Power of attorney used to fraudulently mortgage properties or transfer title

11

Factors to consider....



12

6. Cyber Fraud

- **Cyber fraud:**

- Use of email (**phishing**), text message (**smishing**) or phone call (**vishing**) that appears to come from a trusted source or institution, vendor or company, but is from an imposter
- Personal information and identity theft and/or payment scams are motives behind most phishing scams
- Seek information or get you to do something

13

Link is different from company's usual website URL
place your mouse over link and look at the task bar

Sender's email address is not the same as company's usual email address

Spelling, grammar or phrasing mistakes

Promise of receiving money, big prize or much more work

Anyone asking for money even if you know them

**Possible
signs
of fraud**

14

8-7

To: dan.pinnington@lawpro.ca
From: Appleapp@apple.ca
(michel@host.fullenglish.net)
Subject: Update your account details on iTunes.

Actions for current recipient :

Our security check detected multiple unwanted login attempts on your account.

You need to update your iTunes account details for better security.

Click the link below to update your account details:

Click Here to Update



To: Undisclosed recipients
From: BMO <xxc2e@bmo.com>
Subject: New Security Measures

To protect your account, Bank of Montreal has implemented security questions and answers for you to create and use whenever you log in from a different location.

Please create security questions and answers for your BMO online account by [clicking here](#)

We strongly advise you to enroll now. The new login method will be effective within the next 24 hours.

Thank you for using BMO.

Regards,
BMO Support Dept.

Hover mouse over words – DO NOT CLICK!



- New technique to avoid fraud

15

Best practices of password hygiene

- Regularly change passwords on key accounts
- Change compromised passwords immediately
- Use different passwords for different accounts
- Use a two-step authentication (2FA)
- Use a password manager

2022 most common passwords

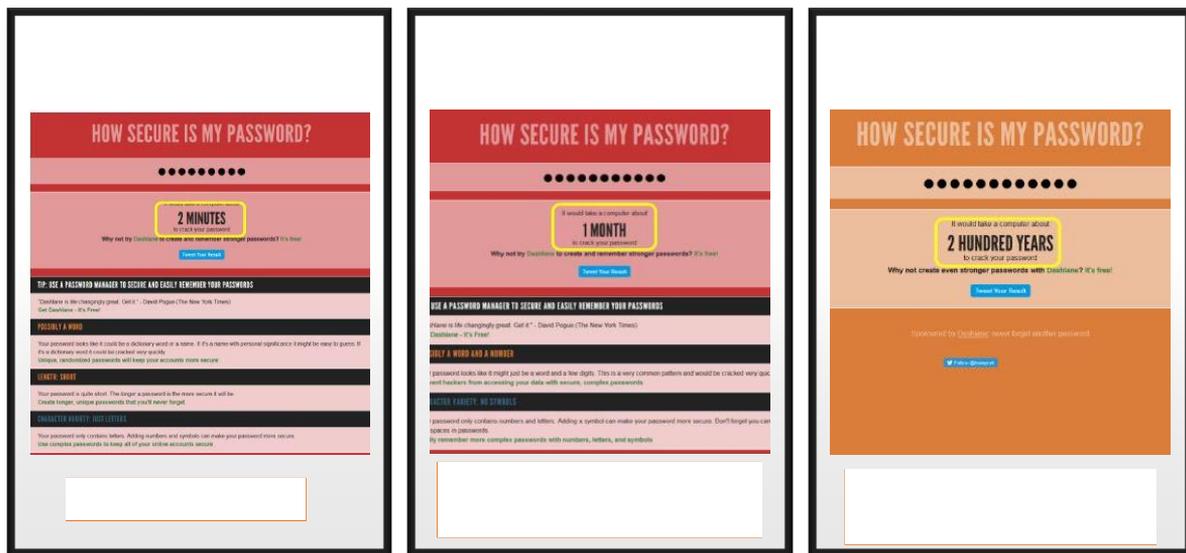
- | | |
|--------------------|----------------------|
| 1. password (114) | 13. 1234567890 (114) |
| 2. 123456 (114) | 14. 000000 (114) |
| 3. 123456789 (114) | 15. 555555 (114) |
| 4. guest (114) | 16. 666666 (114) |
| 5. qwerty (114) | 17. 123321 (114) |
| 6. 12345678 (114) | 18. 654321 (114) |
| 7. 111111 (114) | 19. 777777 (114) |
| 8. 12345 (114) | 20. 123 (114) |
| 9. col123456 (114) | 21. D1lakiss (24) |
| 10. 123123 (114) | 22. 777777 (114) |
| 11. 1234567 (114) | 23. 110110jp (24) |
| 12. 1234 (114) | 24. 1111 (114) |
| | 25. 987654321 (114) |



*[xx] is time to crack the above passwords. Majority of top 200 only take 1 second to crack

Where are they kept? – Sticky on the monitor? Under the keyboard?
Consider using a password manager

16



17



18

How to Identify Good Irrevocable Funds

The PCRN

(LVTS+9digits)
Payment Confirmation Reference
Number

8-9

Upon settlement of a Lynx Payment Obligation, Lynx will generate a unique (PCRN)



Lynx Payment Obligation that Settles & has a PCRN assigned is final & irrevocable

Recipients should ask sender to provide them with their sending receipt showing the PCRN.



Lawyers receiving a wire should insist that their FI provide them with the PCRN they received

A receiving FI participant must provide payee with the PCRN if the receiving participant has the number, and it is requested by the payee



Matching the PCRN will confirm that the funds were transferred via Lynx, a secure channel which delivers irrevocable funds

Lawyers should ask their FI to add the PCRN to the transaction so that it is visible from an online view of their trust account



A major source of fraud is seen all across the world by way of email fund redirection scams. Fraudsters gain access to email accounts & redirect payments to their own accounts

19

Avoid being a victim of email diversion scams

Fighting fraud is a team effort!



20

Consequences of being involved in a fraudulent transaction

Public trust

Reputational damage

- Can have damaging effects on your firm's reputation and an impact on the client's experience

Professional liability

- Cases of fraud are not covered by LAWPRO

Time to deal with an LSO complaint or LAWPRO claim

Statistics of mortgage fraud investigation by the Law Society

Since 2001, there were 123 mortgage fraud prosecutions

- 45 lawyers' licenses were revoked
- 20 permitted to surrender licence
- 56 licenses suspended + 2 with lesser penalties

21

LAWPRO's GOLDEN RULE : DOCUMENT, DOCUMENT, DOCUMENT!

Document client ID process & source of funds

Document review of client's activity to ensure not participation or facilitating illegal activity

Document instructions, discussions, information received, when & by who

LAWPRO can only assist in defense with notes to permit you to recall the matter (credibility issue between lawyer & client)

If you have doubts about a particular transaction or there are several red flag associated with a transaction investigate!

22

8-11

Contact Information & Resources

Raymond G Leclair, LL.B.

Vice President, Public Affairs, LAWPRO

(416)-598-5890 or 1-800-410-1013

ray.leclair@lawpro.ca



Resources:

PracticePro: <https://www.practicepro.ca/>

Working group on Lawyers and Real Estate: <https://www.lawyersworkinggroup.com/> |

Avoid a claim: <https://avoidclaim.com/>

CBA Mortgage Instructions Toolkit: <https://www.cba.org/Publications-Resources/Practice-Tools/Mortgage-Instructions-Toolkit>

What to do if money is diverted to a fraudster's account? - <https://avoidclaim.com/2021/what-to-do-if-money-is-diverted-to-a-fraudsters-account/>

Update about funds transfers - <https://avoidclaim.com/2022/update-about-fund-transfers/>



Law Society
of Ontario

Barreau
de l'Ontario

TAB 9

10 Highlights for Your New Practice: 2022-2023

Legal Ethics in a Digital Context
(Originally prepared for The Canadian Bar Association
Ethics and Professional Responsibility)

Prepared by:

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University of Ottawa

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University of Ottawa

April 26, 2022

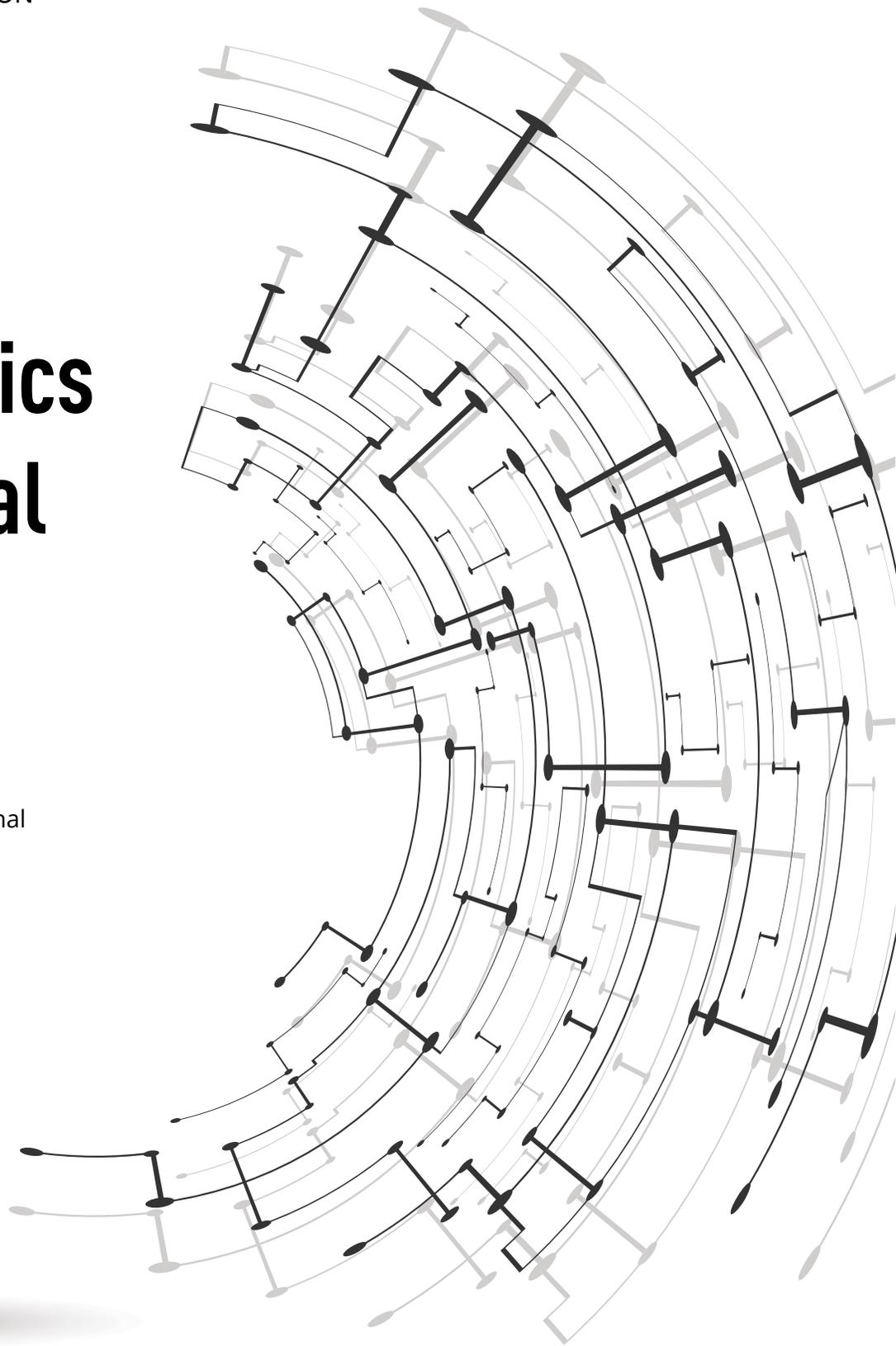




THE CANADIAN
BAR ASSOCIATION

Legal Ethics in a Digital Context

Prepared by Amy Salyzyn
and Florian Martin-Bariteau
for the Ethics and Professional
Responsibility



These guidelines build on the 2008 Guidelines for Practising Ethically with New Information Technologies, the 2009 Guidelines for Ethical Marketing Practices using New Information Technologies, the 2014 Practising Ethically with Technology guidelines, and the 2015 Legal Ethics in a Digital World.

The new version, from content to format, builds on comments and suggestions received by various stakeholders (lawyers, law societies, insurers) in fall 2020. We would also like to acknowledge very helpful feedback received on early drafts in winter 2021, and notably Juda Strawczynski, practicePRO; Naomi Horrox and Will Morrison, Law Society of Ontario; Glenn Tait, Law Society of the Northwest Territories; Barbara Buchanan QC, Law Society of British Columbia; Darcia Senft, Law Society of Manitoba, Elaine Cumming and Code of Professional Conduct Committee, Nova Scotia Barristers' Society; Michael Joyce and Fyscillia Ream, SERENE-RISC; Yuan Stevens, Ryerson Leadership Lab/Cybersecure Policy Exchange; Monica Goyal, Caravel Law; the Canadian Bar Association, Access to Justice Subcommittee; and as well as staff lawyers from the Law Society of Alberta; the Law Society of Newfoundland and Labrador; and the Direction du droit des technologies de l'information et de la propriété intellectuelle, ministère de la Justice du Québec.

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Table of Contents

- INTRODUCTION 5**
 - Understanding Ethical Duties in a Digital Context 6

- 1. USING TECHNOLOGY TO PROVIDE EFFICIENT, EFFECTIVE AND ETHICAL LEGAL SERVICES TO CLIENTS 8**
 - Using Appropriate Legal Technology 9
 - Choosing Legal Technology and Due Diligence 12
 - Access to Justice Considerations 13
 - Accessibility Standards 14

- 2. APPROPRIATELY SAFEGUARDING AND MANAGING DIGITAL DATA AND ELECTRONIC RECORDS.....15**
 - Data Security 18
 - Encryption Essentials* 18
 - Password Hygiene*..... 19
 - Data Integrity and Accessibility..... 20
 - Safeguard of Data Over Time (Backups)*.....21
 - Data Deletion..... 22
 - Cloud-based Storage and Tools 23
 - Email..... 24
 - Confidentiality* 24
 - Electronic Impersonation and Phishing* 25
 - Malicious Attachment, Hacking, Spyware and Ransomware*..... 26
 - Disclosure of Metadata 27
 - Travel with Electronic Devices 28
 - External Data Protection Services 29
 - Preparedness, Incident Response, and Digital Risk Insurance 30

3. WORKING REMOTELY WITH CLIENTS, COLLABORATORS AND COURTS31

- Virtual Office 34
- Virtual Commissioning and Witnessing 35
- Virtual Client Identification and Verification 37
- Virtual Meetings, Hearings and Interviews 39
- Electronic Signatures 40

4. LAWYERS’ ONLINE PRESENCE.....41

- Web Content Accessibility 44
- Law Society Marketing Rules 44
- Avoiding Inadvertent Lawyer-Client Relationships 45
- Ethical Issues Arising from Social Media Use 45
- Unsolicited Email Messages and Anti-Spam Laws 47

Introduction

Technology has long been a part of legal practice. Many years ago, for example, lawyers began to capitalize on the availability of tools like typewriters and dictation machines to offer better and more efficient legal services. Later, the advent of faxing gave lawyers a quick and relatively secure way to communicate with clients and courts. The introduction of computers into legal workplace brought even more changes.

But much has changed in a relatively short period of time. Lawyers now find themselves practicing in a context that is necessarily digital. *Legal Ethics in a Digital Context* aims to address the new opportunities and risks that lawyers face in our current digital context, when vast amounts of data can be stored and shared electronically, and new tools are continually emerging to empower lawyers and their clients in unprecedented ways.

The purpose of this document is to help lawyers productively and responsibly interact with technology in their legal practices. Areas of potential benefits and risks are identified, as well as best practices and further resources.

Embracing the use of relevant technological tools is no longer optional for Canadian lawyers. As discussed in the following section, professional conduct rules both implicitly, and, in some cases, now explicitly, require lawyers to use technology competently.

Apart from the rules, harnessing relevant technological tools can bring significant benefits to both lawyers and clients. For example, there are gains to be had in relation to efficiency and effectiveness. Likewise, being able to protect one's practice and clients from technology-based risks is now a key part of prudent and responsible lawyering.

On a systemic level, the appropriate and equitable use of technological tools by lawyers can help facilitate increased access to justice and improve the administration of justice. That said, it must also be recognized that technological tools are not equally accessible and available to all lawyers and clients. In some cases, using or mandating technology can generate new barriers. The topic of technology, access to justice and the delivery of legal services requires a contextual and nuanced discussion.

In general, the references to rules throughout this document are to the Federation of Law Societies of Canada's [Model Code of Professional Conduct](#). When reviewing this document and suggested resources, lawyers should remember that their ethical and legal obligations are governed by the code of professional conduct, law society rules and regulations and applicable laws in their jurisdiction (references to *Model Code's* rules are hyperlinked to its interactive version that includes reference to equivalent rules for the different law societies).

Additionally, the content in this document should be evaluated for its currency—changes in technology and associated law society rules and guidance can occur rapidly. Lawyers are encouraged to reach out to their law society if they are uncertain about the regulatory applicability of a particular practice or resource.

Understanding Ethical Duties in a Digital Context

Before proceeding to discuss specific practical issues, this section pauses to explain, with more precision, how technology can intersect with lawyers' obligations under professional codes of conduct.

First, to the extent that a lawyer's understanding and use of technology can lead to the more **efficient** delivery of legal services, a lawyer's duty to provide efficient legal services under [Rule 3.2-1](#) and [Rule 4.1-1](#) is engaged. Additionally, [Rule 3.6-1](#) "Reasonable Fees and Disbursements" also indirectly implicates efficient work practices in mandating that "a lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion." A lawyer's fee might not be considered "fair and reasonable" if the lawyer charges a higher fee as a result of not using a relevant technology that could have generated efficiencies, or fails to pass on cost savings from technology use to clients.

Second, if a technology is needed to produce appropriate outputs for clients, the use of this technology implicates a lawyer's obligation to provide **competent** legal services under [Rule 3.1-2](#). Acting as a "competent lawyer," as defined in professional conduct rules, also includes "managing one's practice effectively" and "otherwise adapting to changing professional requirements, standards, techniques and practices" (Rule 3.1-1 [i], and [k]). Notably, in October 2019, the Federation of Law Societies of Canada added the following commentary on technological competence to the *Model Code*:

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend on whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including

- a) The lawyer's or law firm's practice areas;
- b) The geographic locations of the lawyer's or firm's practice, and
- c) The requirements of clients.

Several provincial and territorial law societies have already adopted this commentary into their professional codes of conduct with more likely to follow. Further discussion on this commentary can be found in the "Learn more" section below.

A duty of competence in relation to technology not only involves *using* technology that is appropriate to one's practice and a particular client matter, but also *understanding* the technology being used, including being aware of any limitations or risks.

Third, and as suggested in the above commentary, a lawyer's understanding and use of technology can intersect with their duty to **protect confidential client information** under [Rule 3.3-1](#). If a lawyer does not take appropriate steps to protect their digital files from cybersecurity risks, confidential client information and documents in their possession may be inappropriately accessed by malicious third parties. Incorrect or careless use of technology can also lead to the inadvertent disclosure of confidential materials.

Fourth, and related to the above points, there are some cases in which the appropriate use of relevant technology can assist lawyers in **competently meeting their other professional obligations**, such as

- using technological tools to assist in screening for potential conflicts of interest ([Rule 3.4-1](#));
- putting appropriate technical safeguards in place in order to appropriately preserve and protect client property and funds ([Rule 3.5](#) and relevant law society by-laws and regulations);
- using technological tools to assist in complying with time-keeping, record-keeping and accounting obligations ([Rule 3.5](#), [Rule 3.6](#) and relevant law society by-laws and regulations)
- using electronic communications tools such as virtual meetings platforms, digital messaging tools and client portals to meet obligations to communicate with clients in a timely and effective manner ([Rule 3.1-1](#) [d] and [Rule 3.1-2](#))
- adopting appropriate digital marketing and social media practices ([Rule 4.2](#) and [Rule 7.2-1](#)).

Fifth, and finally, a lawyer's obligation **to encourage public respect for and try to**

improve the administration of justice under [Rule 5.6-1](#) also suggests a responsibility on lawyers to be attentive to the potential systemic benefits (and risks) of using technology in the justice system as part of their obligation as champions and caretakers of the equal and fair administration of justice in Canada.

Learn more:

- Federation of Law Societies of Canada, "[Interactive Model Code of Professional Conduct](#)" (November 2020).
- Amy Salyzyn, "[A Taxonomy for Lawyer Technological Competence](#)", *Slaw* (December 18, 2020).
- Amy Salyzyn, "[Its Finally \(Sort of!\) Here!: A Duty of Technological Competence for Canadian Lawyers](#)", *Slaw* (November 26, 2019).
- Jason Morris, "[Duty of Technical Competence: Missing the Point](#)", *Slaw* (December 10, 2020).
- Law Society of Alberta, "[Code of Conduct Changes](#)" (February 27, 2020).

1. Using Technology to Provide Efficient, Effective and Ethical Legal Services to Clients

Using relevant and appropriate technological tools can result in less expensive, more accessible, and improved legal services. Technology can also be a key tool in meeting other professional obligations, such as avoiding acting in a conflict of interest and complying with record-keeping and accounting requirements. However, when considering the use of a technology, a lawyer should also be attentive to the possibility that its use may create barriers for certain members of the public and take steps to either alleviate such barriers or provide an alternative process or mode of delivery.

Lawyers should also take care to perform their own due diligence before adopting any particular technological solution in order to ensure that the technology is reliable and appropriate for their practice.

Objective: Technology is optimally used to provide efficient, effective, and ethical legal services

Below are a number of questions to ask in assessing compliance and the potential systems and practices to fulfill said compliance.

Q: Have technological tools been adopted where appropriate?

Consider whether using the following types of technology would be helpful and appropriate:

- ✓ Practice management tools (e.g. time and billing software, file management, conflicts checking systems);
- ✓ Document management and storage tools;
- ✓ Client relationship management tools (e.g. client communication portals, online payment options);
- ✓ Security software;
- ✓ Remote access tools;
- ✓ Automated forms and documents;
- ✓ Sanctions and watch lists screening software.

Q: Before adopting a technology, has there been appropriate due diligence?

Where possible, conduct the following research before adopting a technology:

- ✓ Review the vendor’s track record (e.g. how long the vendor has been in business, their business model and other customers);
- ✓ Consider security features;
- ✓ Consider level and nature of ongoing support;
- ✓ Review the applicable terms of service and consider any risks arising therefrom (including, for example, whether the lawyer will be able to retain custody and control of confidential records);
- ✓ Review law society’s practice advice material or contact law society practice advisors for general advice;
- ✓ Look for recommendations and information in continuing education events and bar association publications.

Q: Are technological processes adopted sufficiently inclusive?

- ✓ If a technology is used, ensure adequate alternatives are in place where there are barriers to access for clients.
- ✓ Adopt applicable accessibility standards in relation to electronic documents and processes.

Using Appropriate Legal Technology

Lawyers need to consider whether they have adopted appropriate technological solutions for their legal practice.

The term “legal technology” is broad and encompasses many different types of physical and digital tools. As a foundation, having appropriate hardware, such as properly functioning computers and computer systems, is obviously key to providing competent and efficient legal services. The nature of the hardware that will be appropriate will vary considerably between legal practices.

There is no list of “mandatory” legal technologies that lawyers must adopt. Additionally, as noted by the Law Society of Alberta, the new *Model Code* commentary on technological competence “does not require lawyers to purchase the latest and most expensive technological solutions.” Indeed, the cost of a technological tool in relation to the potential benefits it may provide—such as improved quality or cost-savings—is an important factor to consider when deciding whether or not to adopt a particular tool.

In some contexts, however, the use of a particular technology may be required because of existing regulations or court rules. Some courts, for example, now mandate electronic filing. In real estate practices, it may be necessary to electronically register property.

In litigation contexts, courts may issue directions on a case-by-case basis as to how technology should be used by lawyers. Lawyers will be expected to have a comfort and basic skill set in relation to commonly used technological tools.¹ While they need to comply with any directions from the court, lawyers may also want to proactively suggest particular technologies at case management or pre-trial stages—as simple as electronic submissions of authorities and other documents to the courts—when this can be more efficient, and reduce costs for their clients, as well as other actors involved in the case.

In criminal matters, courts have ruled that the Crown has discretion to disclose material electronically so long as it is reasonably accessible.² Although courts will consider the circumstances and sophistication of the accused and their lawyer when determining if electronic evidence is “reasonably accessible”, courts will also hold counsel to a minimum level of technological competence.³

¹ See, e.g., *Arconti v. Smith*, 2020 ONSC 2782 at para. 33 (stating “in 2020, use of readily available technology is part of the basic skillset required of civil litigators and courts. This is not new and, unlike the pandemic, did not arise on the sudden. However, the need for the court to operate during the pandemic has brought to the fore the availability of alternative processes and the imperative of technological competency. Efforts can and should be made to help people who remain uncomfortable to obtain any necessary training and education. Parties and counsel may require some delay to let one or both sides prepare to deal with unfamiliar surroundings.”).

² See, eg., *R. v. Therrien*, 2005 BCSC 592, at paras 27-28, *R. v. Sawchuk*, 2019 ABQB 252 at para. 30, *R. v. Cuffie*, 2020 ONSC 4488 at paras. 27-33.

³ For authority relating to courts adopting a contextual analysis, see, e.g., *R. v. Sawchuk*, 2019 ABQB 252 at para. 30 and *R. v. Cuffie*, 2020 ONSC 4488 at para. 32; *R. v. Piaskowski et al*, 2007 MBQB 68 at para. 43. For judicial comments on minimal technological competence, see, e.g., *R. v. Oszenaris*, 2008 NLCA 53 at para. 20 (stating, “In today’s world, it is not unreasonable to expect that counsel will be in a position to utilize a computer for the management of large volumes of material.”) and *R. v. Beckett*, 2014 BCSC 731 at para. 8 (stating “[t]he current absence of computer skills of an accused or counsel is not a bar to electronic disclosure, if those skills can be acquired relatively easily.”)

A requirement to use a particular technology can also be inferred from general practices, in some cases. For example, in litigation, it is accepted that lawyers need to conduct legal research using electronic databases and can potentially expose themselves to negligence claims or law society complaints if the quality of legal services they provide is inadequate as a result of only relying on print reporters.⁴ More recently, courts have also suggested that AI-empowered legal research tools can be one way for a lawyer to reduce costs when acting on a litigation file.⁵

Additionally, the use of appropriate technological tools can be inferred, at times, from the rules in professional codes of conduct. For example, while virtually all lawyers are already available to their clients through the telephone and emails, lawyers should consider whether using additional digital communications tools—such as private messaging services or client communication portals—would assist in timely and appropriate communications to clients ([Rule 3.1-1 \[d\]](#) and [Rule 3.1-2](#)). When using additional digital communications tools, however, lawyers need to take care to ensure that all communications, regardless of platform, are properly included in the client file and that proper security measures are taken (*issues of data security are discussed in Section 2, Appropriately Safeguarding and Managing Digital Data and Electronic Records*).

Lawyers may want to consider using automation as a means to facilitate more efficient and improved legal services to clients ([Rule 3.1-1](#), [Rule 3.2-1](#) and [Rule 3.6-1](#)). Adopting automated processes benefits both lawyers and their clients. By automating administrative tasks, lawyers can free up their time to focus on more substantive legal work which is likely to be both more financially and mentally rewarding. In some cases, automated processes can also reduce opportunities for human error—for example, if a practice management software automatically populates a client’s personal information in multiple parts of a law firm’s information management system, this can avoid mistakes such as a client’s name or telephone number being inaccurately entered. Key areas to consider automation include practice management (for example, client intake and billing) and document creation. At the same time, lawyers should be mindful that tools processing data on the cloud (from copy-editing assistance to analytics) may present concerns for the confidentiality of client information.

Finally, lawyers should consider how technology may help them comply with their duty to

⁴ See, e.g., *Aram Systems Ltd. v. NovAtel Inc.*, 2010 ABQB 152 at para. 23 (stating “[T]he view of computerized legal research as a mere alternative is no longer consonant with the reality of current legal practice. Such research is now expected of counsel, both by their clients, who look to counsel to put forth the best possible case, and by the courts, who rely upon counsel to present the most relevant authorities. Indeed, it might be argued that a lawyer who chooses to forgo computerized legal research is negligent in doing so...The practice of law has evolved to the point where computerized legal research is no longer a matter of choice.”)

⁵ See, e.g., *Cass v. 1410088 Ontario Inc.*, 2018 ONSC 6959 at para. 34 (stating, “[t]here was no need for outsider or third party research. If artificial intelligence sources were employed, no doubt counsel’s preparation time would have been significantly reduced.”)

avoid acting where there is a conflict of interest and to meet other compliance obligations. For example, moving to a computerized database conflict checking system is generally an improvement over a paper-based system as it can allow for quick input and retrieval of data and can also better manage and analyze large amounts of information. Likewise, it is generally recommended that lawyers use electronic financial systems to assist in complying with record-keeping and accounting requirements. In some cases, lawyers may want to use technological tools to assist in screening clients against sanctions regulations and watch lists that prohibit or restrict dealing with specific persons or entities.

Learn more:

- Michelle Wong, "[A Beginner's Guide to Law Office Automation](#)", Clio (last updated 2021).
- Heidi Alexander, "[The Advantages of Automation: Experienced Practitioners Discuss their Successful Solutions for Automating Their Practice](#)", ABA (January 1, 2020).
- Law Society of Ontario, "[Practice Management Guidelines: Technology](#)" (last updated 2020).
- Canadian Bar Association, [Conflicts of Interest Toolkit](#) (2020).
- Sharon D. Nelson, John Simek and Michael Maschke, [The 2020 Solo and Small Firm Legal Technology Guide](#) (ABA Book Publishing: 2019).

Choosing Legal Technology and Due Diligence

Not all legal technologies will be suitable for every legal practice. Moreover, while many, if not most, commercially available legal technologies come from reputable vendors, not all tools are necessarily of the same quality or provide the same protections for lawyer and client data. There are no authoritative lists of "approved" legal technologies to which Canadian lawyers can refer. As such, lawyers need to ensure that they conduct appropriate due diligence, including understanding the vendor's track record as well as the security features and support provided. Before adopting a technology, lawyers should also review the applicable terms of service and consider any risks arising therefrom.

When deciding on a technological tool to use, lawyers may want to review their law society's practice advice material or contact their law society's practice advisors to obtain advice about technology use. However, Canadian law societies do not generally approve or otherwise endorse lawyers' use of any particular technological tool.⁶ Increasingly,

⁶ One exception is BC *Law Society Rules*, r. 10(3)(5), under which the Law Society of British Columbia may declare that lawyers are not permitted to use a specific "storage provider" (including a cloud storage provider).

continuing education events and bar association publications contain helpful information about specific technological tools and can be good resources of reference for lawyers. Compatibility of the technological tools with other lawyers and law firms practicing in the same area is also an important factor to consider, where compatibility of tools is a relevant factor (e.g. video-conferencing platforms).

Learn more:

- Nicole Black, "[Vetting Legal Technology and Software: 3 Tips from the Experts](#)", *My Case* (last updated 2021).
- Derek Bolen, "[What Technology Does Your Law Firm Actually Need?](#)", *Clio* (last updated 2021).
- LawPRO, "[Technology Products for Lawyers and Law Firms](#)" *PracticePRO* (updated November 2020).
- Sharon D. Nelson, John Simek and Michael Maschke, [The 2020 Solo and Small Firm Legal Technology Guide](#) (ABA Book Publishing, 2019).

Access to Justice Considerations

There has been a significant increase in the use of technology in legal practice and in the courts. In some cases, using technology in the delivery of legal services can enhance meaningful access to justice. For example, if automation is used to reduce the cost of handling client matters, these savings can be translated into lower fees for clients. Another example is that some clients may find using a communication portal is easier and provides more meaningful information about the status of their matter as compared to calling their lawyer or sending an email.

At the same time, lawyers should be cautious—in particular, in relation to using client-facing technologies—not to unintentionally introduce new barriers to access. Not every client or potential client will have reliable access to the Internet. There are well-documented issues of inadequate access to Internet connectivity in Canada's Northern, rural and otherwise remote communities. Additionally, financial constraints can impact an individual's ability to afford adequate access to the Internet in their home or the necessary hardware (e.g. computers, tablets, and smartphones) to use client-facing technologies. Some clients may not be sufficiently "technologically literate" or be comfortable with all technological tools that a lawyer might use. For those clients, having alternative processes in place can be important.

While lawyers' duties rest primarily with their clients, lawyers also have obligations in relation to improving the administration of justice generally, and should consider the

implications of their choices toward other actors of the justice system ([Rule 5.6-1](#)). Rather than increasing access to justice, use of technology can create barriers for opposing parties—especially for self-represented litigants and marginalized communities. While lawyers may want to recommend technologies to the court to be more efficient, lawyers should also reject, minimize, or modify any use of technology that might impede on the fair and affordable justice system for Canadians.

Learn more:

- Jena McGill, Amy Salyzyn, Suzanne Bouclin and Karin Galldin, [“Emerging Technological Solutions to Access to Justice Problems: Opportunities and Risks of Mobile and Web-Based Apps”](#) (October 13, 2016).

Accessibility Standards

Lawyers should also make sure that documents and communications are accessible to persons with disabilities, whether colleagues, clients or potential recruits. For example, some clients may request or require a specific manner of communication as a result of a disability.⁷ Law society rules acknowledge that lawyers have a “special responsibility” to respect human rights laws ([Rule 6.3-1](#), Commentary [1]). Accessibility standards—specifically as they pertain to electronic documents—differ from one province to the next. You should be aware of the applicable standards and assess your compliance (*issues of web accessibility are discussed below in Section 4, “Lawyers’ Online Presence.”*). Where possible and relevant, lawyers should also consider adopting inclusive or “universal” design approaches, which emphasize designing processes or materials for inclusiveness from the outset, rather than reactively removing barriers or making individual accommodations.

Learn more:

- Access Forward, [Information and Communications Standard Module](#) (last accessed January 29, 2021).
- Government of Canada, [Digital Accessibility Toolkit](#) (last updated September 12, 2020).
- ARCH Disability Law Centre, [Tips for Lawyers and Paralegals on Providing Accessible Legal Services to Persons with Disabilities in Ontario](#) (January 2019)

⁷ ARCH Disability Law Centre, [Fact Sheet – Tips for Lawyers and Paralegals in Ontario: Accommodating clients by communicating via email](#) (October 1, 2019)

- Ontario Human Rights Commission, "[Policy on ableism and discrimination based on disability](#)" (2016)

2. Appropriately Safeguarding and Managing Digital Data and Electronic Records

Lawyers have ethical duties to protect clients' confidential information and to safeguard client property in their possession, including client funds. Lawyers are also required to comply with privacy legislation in managing their practices. Technologically based risks—from both malicious and benign sources—can frustrate lawyers' efforts to fulfill these obligations and, in some cases, lead to ethical or regulatory breaches. Such breaches can result in negative monetary and reputational consequences for lawyers. By being aware of, and taking steps to protect against, technologically based risks, lawyers can guard against such negative consequences and give current (and prospective) clients confidence that their information and property will be properly secured and maintained.

As legal practice increasingly moves toward digitalization, it is important for lawyers to understand key security and privacy risks and adopt good cybersecurity hygiene. For lawyers less familiar with technology, there are many resources that can be consulted to better understand those concepts. Notably, leading Canadian cybersecurity scholars have developed free online training modules, with videos, lexicon, as well as cheat sheets and handouts—these are available at www.cybersec101.ca. These resources might also be useful for law firms to provide essential cybersecurity training to all individuals in their organization.

Objective: Digital Data and Electronic Records are Appropriately Safeguarded and Managed.

Below are a number of questions to ask in assessing compliance and the potential systems and practices to fulfill said compliance.

Q: Are appropriate security measures adopted?

Consider equipping all digital devices with:

- ✓ Password protection;
- ✓ Full-disk encryption;
- ✓ Firewalls;
- ✓ Anti-virus/anti-malware software, and intrusion detection software;
- ✓ Encryption solutions to send sensitive information;
- ✓ Device location tracking software, with remote wipe capabilities.

Ensure to continuously update:

- ✓ Operating systems of all devices, from servers to routers to smartphones (if possible, automate security updates);
- ✓ All third-party software, from anti-virus and firewalls to office management to word processor.

Ensure that all individuals practice good password hygiene:

- ✓ Passwords are not shared or disclosed;
- ✓ Use of strong and unique passwords;
- ✓ Use of password managers where appropriate;
- ✓ Two-step or multi-factor authentication.

Q: Are appropriate measures adopted to monitor the integrity of the data collected or held?

Consider using the following tools to ensure the integrity of data:

- ✓ Digital signatures;
- ✓ Archival policies;
- ✓ Metadata comparison;
- ✓ Ensuring that documents are backed up so that a corrupted file can be replaced by an untouched copy.

Q: Is data adequately accessible over time?

Ensure that appropriate backup practices are followed:

- ✓ Have a backup and disaster recovery plan for all data;
- ✓ Maintain several backups;
- ✓ Consider using an automated backup process;
- ✓ Stagger and separate backups from the rest of the network.

Q: Are appropriate practices adopted for data deletion?

Ensure that any data is deleted in a manner that is consistent with professional obligations:

- ✓ Before deleting data, ensure that the proposed deletion is consistent with records retention obligations;
- ✓ When deleting data, ensure compliance with client confidentiality obligations (this requires an understanding of how to adequately delete data from a digital device).

Q: Has the use of cloud-based storage and tools been considered?

Consider the potential benefits of cloud-based solutions:

- ✓ Access to new software services and applications;
- ✓ Off-loading hardware and software maintenance;
- ✓ Easy virtual access to data;
- ✓ Automated backup of data.

If considering a cloud-based solution, conduct appropriate due diligence:

- ✓ Review the Law Society of British Columbia's [Cloud Computing Checklist](#) (noting any necessary modifications given the jurisdiction in which you practice).

Q: Is there sufficient awareness of data security risks, and preparedness in case of exposure to an attack or a natural event?

Develop an information security management framework, including:

Information security policy;

- ✓ Privacy policy;
- ✓ Incidence response plan;
- ✓ Data security literacy plan so all individuals working in the organization receive ongoing education in relation to cyber-dangers, including management of sensitive information, phishing, ransomware, and password hygiene;
- ✓ Cybercrime/digital risk insurance.

Q: Is there a sufficient understanding of metadata and how to guard against its inappropriate disclosure?

- ✓ Steps should be taken to minimize the creation of metadata or to wipe it from sent files or materials uploaded to a web platform (except where there is a legal requirement to retain and disclose metadata, e.g. discovery obligations);
- ✓ Understand when metadata embedded in an email or social media post might contain location information and take necessary steps to avoid disclosing locational data where this is sensitive information.

Q: Are best practices adopted when travelling with electronic devices across borders?

- ✓ Review the guidance documents prepared by the [CBA](#) and [FLSC](#) on the issue of travelling with electronic devices across borders.

Data Security

Lawyers are required to “hold in strict confidence all information concerning the business

and affairs of a client acquired in the course of the professional relationship and must not divulge any such information.” ([Rule 3.3-1](#)) Lawyers must also abide by privacy and information security regulations for private sector actors on how to properly manage information, and comply with their reporting obligations in case of data breaches. This implies an underlying obligation to adopt security measures to protect that data (e.g. device tracking, firewalls and intrusion detection software, also called Endpoint Detection and Response software). Law firms should also adopt organizational measures, including providing relevant information and training to individuals in their organization.

Security measures should be put in place to guard against third-party access to confidential data during its lifecycle. This implies that information should be protected from its creation to its destruction, and through every intermediary phase.

Just as it is essential that lawyers take measures to control and restrict access to physical files (such as taking security measures in relation to offices and file cabinets), measures must also be taken to control and restrict access to digital information. As such, lawyers should enable password protection on all their devices, and equip all their electronic devices with appropriate security software, including firewalls, and anti-virus/anti-malware software, and make sure to update them on a regular basis. All electronic devices should be controlled through device location tracking systems (e.g. “Find My Device” app) that allow for emergency information on locked screens, and remote wiping should the device be lost or stolen.

To protect client’s information, access to any electronic devices and to any data on hard drives or share drives should be restricted by control access (e.g. passwords), and on a “need-to-know” basis. Similarly, any electronic device should be encrypted—preferably through full disk encryption, as well as any data on hard drives, shared drives or external drives (e.g. USB key).

When browsing on the Internet, make sure you consult or input sensitive information (e.g. online payments) only on secured websites delivered through an HTTPS connection,⁸ so no third party can eavesdrop on your Internet traffic.

Encryption Essentials

Data breaches have become a common occurrence. Malicious actors can not only obtain confidential details about past and ongoing client matters but may also steal your client’s sensitive personal information (e.g. date of birth, banking information, contact information). To limit the impact of a data breach or data interception, all lawyers should

⁸ Most browsers display a lock next to the web page address in the address bar to signal that the web page is delivered through a secure connection. You can also look at the address and note that it starts by “https://” rather than “http://”.

have at least a general understanding of encryption. They should have encryption solutions available for use when appropriate and make informed decisions about when it should be used and when it may be avoided. As a rule, all data should be stored in an encrypted manner, and electronic correspondence containing confidential or sensitive information should be sent encrypted.

When reviewing solutions and their practices, lawyers should make sure that data containing sensitive information are encrypted both *at-rest* and *in-transit*. The data should be encrypted at-rest—i.e. stored fully encrypted on your hard drives or cloud services—so a third party that is able to access the storage system would not be able to read it. The data should also be encrypted end-to-end while in transit—i.e. while it “travels” between your device and another, either to a cloud service or to another mailbox—so a third party that might attempt to intercept Internet traffic cannot read it.

Password Hygiene

Even the strongest encryption and secured system might be moot if there is not good password hygiene by authorized users. To ensure data security, it is critical for lawyers to maintain good password hygiene. Indeed, poor password habits (e.g. sharing or reusing passwords, use of personal information, using simple passwords such as “1234” or “password,” or keeping the default passwords) are often one of the weakest links in data security practices.

Credentials should never be shared and disclosed, even internally, to ensure that users can be segregated in case of a cyber-attack and to allow access to be swiftly revoked when an individual leaves an organization. Passwords should not be written down in plain sight, either on paper (e.g. note on your monitor or nearby) or even saved in your computer.

While it does not eliminate all password-related risks, lawyers should consider relying on password managers that generate unique randomly created passwords and store them in a single, secure place. Most managers also provide alerts in case of password reuse, or if some platforms have known security risks. You need to remember only one password to access the application. This means, of course, that one needs to be extremely careful in choosing and protecting this master password.

Lawyers should use two-step authentication (also called multi-factor authentication) where available. Beyond your password, you will need a second token to be authenticated (e.g. a code generated by an app on your phone, or a code generated by a physical token, or a fingerprint). It is recommended to avoid utilizing codes sent by mobile text message for sensitive systems, as SIM card hacking and swapping are increasingly common.

If a lawyer suspects that they've been hacked, they should change their password immediately, and inspect the recent activity on their system or account. The lawyer should also ensure that they comply with any reporting obligations (*see below section titled "Preparedness, Incident Response, and Digital Risk Insurance"*).

Learn more:

- Canadian Centre for Cybersecurity, [Baseline Cyber Security Controls for Small and Medium Organizations](#) (February 2020).
- LawPRO, "[Cybersecurity and Fraud Prevention Tips](#)" *PracticePRO* (2021)
- Derek Bolen, "[What Lawyers Need to Know about Encryption](#)", *Clio* (last updated 2021).
- Lawyers Insurance Association of Nova Scotia, "[Data Security](#)" (last updated 2021).
- Law Society of Ontario, "[Technology](#)" (last updated 2020).
- Matt Burges, "[How to Know If You've Been Hacked, and What to Do About it](#)", *Wired* (July 19, 2020)
- Serene Risc, "[Cybersecurity Tips](#)" (last updated 2019).
- LawPRO, "[Fraud Fact Sheet: Cybercrime and Bad Cheque Scams](#)" *PracticePRO* (2018).
- LawPRO, "[Encryption Made Simple for Lawyers](#)", *PracticePRO* (December 15, 2017).
- Barreau du Québec, [Guide des TI](#) (2016).
- Office of the Privacy Commissioner of Canada, "[PIPEDA and your legal practice](#)" (last modified 2015).

Data Integrity and Accessibility

Lawyers must guarantee the integrity and accessibility of documents and data in their files.

In order to ensure data integrity, lawyers need to take steps to guard against their data being modified, altered or destroyed—intentionally or otherwise. This can be done using digital signatures, archival policies, metadata comparison, and ensuring that documents are backed up so that a corrupted file can be replaced by an untouched copy.

Lawyers also need to ensure their data is accessible over time, and at any time. Meaningful access to data requires that the information and files be intelligible for the individual who

requires access. This entails the individual having access to the software necessary to read a given file (e.g. a file created with an older or different version of word processing software such as WordPerfect). When possible and compatible with rules regarding data integrity, long-term accessibility may require lawyers to consider a backup in a format that is open (i.e. not subject to license, or use of proprietary software) and multiplatform.

Not only is ensuring data integrity and accessibility necessary under several regulatory and statutory frameworks, it goes to the heart of a lawyer's duties in relation to competence and quality of service, which includes managing one's practice effectively and giving a client complete and accurate relevant information about a matter ([Rule 3.1-1 \[d\]](#) and [\[i\]](#) and [Rule 3.2-1](#), Commentary [5]). Inaccessible, incomplete or corrupted data can result in a lawyer giving inaccurate information or advice to a client or other third parties to whom they may be required to give information. For example, altered data can interfere with a lawyer's obligation to reply promptly and completely to requests for information and documents from their law society. ([Rule 7.1-1](#))

Safeguard of Data Over Time (Backups)

Lawyers must be aware of risks relating to potential data loss and guard against such risks. For example, a physical hard drive can become inaccessible and data may be lost. This can happen for many reasons, including cyber-attacks, but even more likely from non-malicious sources ranging from lack of server maintenance, power failures, water damage or aged hard drives that limit access to computerized files.

Backing up files is a necessary and essential component of competent data and file management. Lawyers should have backup and disaster recovery plans for all data that they manage and need to retain, either from a practice management perspective or as required by law. It is recommended that lawyers have several backups, and that the backup process is automated, if possible, in real time. It is good practice to stagger your backups, and keep several different versions of the backup, each saved at different points in time—and to routinely check that backup data can be restored.

The full backups should be kept separated from the rest of the network. If your backups are connected to your system, they are subject to the same risks of data loss as the other computers on your network. While an automated backup might be on the same network, a full backup should regularly be moved off the network ("air gapped"), if possible, to a secure off-site location (notably to reduce risks in case of physical intrusion or damage to your primary work location). In any case, your backup should also be fully encrypted.

Learn more:

- Law Society of Ontario, "[Technology](#)" (last updated 2020).
- LawPath, "[Data Integrity: Why Does It Matter for Businesses?](#)" (November 3, 2020).
- Canadian Centre for Cybersecurity, "[Baseline Cyber Security Controls for Small and Medium Organizations](#)" (February 2020)
- Barreau du Québec, "[Guide des TI](#)" (2016).

Data Deletion

Once data is no longer needed and is no longer required to be kept in accordance with a lawyer's professional or other statutory obligations, it should be properly deleted. One benefit of deleting unneeded data is that it can minimize the potential impact of any security breach in relation to the lawyer's files.

Before deleting any data, lawyers should familiarize themselves with the relevant professional conduct rules (see, for example, [Rule 3.5](#)) and law society rules and regulations in their jurisdiction that relate to record retention.

When deleting data, lawyers must also ensure that they comply with their client confidentiality obligations. For example, using the standard "delete" function available on a computer, tablet or smartphone is insufficient to prevent third parties from subsequently recovering a file. Although the most secure option is to physically destroy the medium that stores the confidential data, "wiping," "scrubbing" or "shredding" are also relatively secure forms of deletion. Several file wiping tools exist for this purpose. When deleting data, lawyers should not overlook hard drives in copiers and printers that store images of documents.

Learn more:

- Lawyers Insurance Association of Nova Scotia, "[File/Record Retention](#)" (last updated 2021).
- Law Society of Ontario, "[File Management](#)" (last updated 2020).
- Law Society of British Columbia, "[Closed Files—Retention and Disposition](#)" (August 2017).
- Barreau du Québec, "[Guide TI](#)" (2016).
- Law Society of Ontario, "[LSO Guide to Retention and Destruction of Closed Client Files for Lawyers](#)" (last updated 2014).

Cloud-based Storage and Tools

Cloud-based tools and services offer many benefits to lawyers and enable access to an array of new software services and applications. They also allow lawyers to offload hardware and software maintenance and upkeep to cloud providers. Finally, they allow access to data from virtually everywhere and for the reduction of large capital outlays.

Cloud-based storage and tools may also help resolve some of the previously mentioned risks. However, storage or transmission of information with third-party providers can also bring new risks with respect to the confidentiality of information and solicitor-client privilege as the lawyer is placing data in the hands of third parties. It raises issues of security and privacy, regulatory compliance and risk management, among others.

Confidentiality is of particular concern when information is housed on servers that reside outside of Canada since certain foreign governments have adopted legislation allowing them access to such information. Even servers situated in Canada could fall under foreign jurisdiction if they are operated by providers with foreign interests.

In addition to it being a good practice to keep data on Canadian servers, some records (e.g. corporate and fiscal books) are required to be kept in Canada by law.⁹ The fact that data be *accessible* from Canada doesn't meet the requirement. As such, lawyers should enquire about data location with their cloud storage provider, and contractually require that their data be stored on servers located in Canada.

Unless otherwise instructed by the client, confidential information sent through the Internet to a server or to another person should be encrypted—including to cloud services. When reviewing cloud solutions, lawyers should confirm whether the data is encrypted at-rest or in-transit (*see above section on "Encryption Essentials"*).

Lawyers should also read the terms of service for information on when or how a cloud service responds to a legal notice or request for the release of data. To avoid possible confidentiality breaches, lawyers should prefer services where they can be the sole owner of the encryption keys. Indeed, cloud services may be compelled by law to release data, which may include being forced to decrypt data and release it, possibly without notifying anyone. If the encryption keys are managed by the cloud service, then the service also has the ability to decrypt and access the information in question at any time—as well as any third party that could, legally or maliciously, obtain access to the data stored.

Finally, lawyers should look for cloud services that permit a "local" backup, where the lawyer can keep a backup on their own computer. With this feature, if the Internet or

⁹ See, e.g., Canada Revenue Agency's [guidance notice](#) regarding digital storage of fiscal books.

the cloud service becomes unavailable (e.g. connectivity issue, late payment, contractual disputes, third party request), the local backup will allow the lawyer to continue working.

Learn more:

- Law Society of British Columbia, "[Cloud Computing Checklist v. 3.0](#)" (last updated April 2020).
- Derek Bolen, "[What Lawyers Need to Know about Encryption](#)", *Clio* (last updated 2021).
- Canadian Centre for Cybersecurity, "[Baseline Cyber Security Controls for Small and Medium Organizations](#)" (February 2020)
- LawPRO, "[How to Safely Put Your Data in the Cloud](#)", *PracticePRO* (January 1, 2018).
- David Fraser, "[Cloud computing: A Privacy FAQ](#)", *National Magazine* (2014).

Email

Email is an easy way of sharing information and communicating with others but there are numerous risks associated with using email, especially with respect to preserving the confidentiality of the correspondence. Additionally, emails are often the first and easiest point of attack for cyber-criminals.

Confidentiality

An email to a client might never reach its destination, be intercepted by a third party, or be mistakenly blocked by the client's spam filter. For these reasons, it should be agreed on with a client beforehand that email (or another medium of communication) will be used. When speaking to a client about a medium of communication, they should be made aware of and agree to the risks associated with that medium. For example, clients should be made aware that the providers of free webmail services, or employers if a work email is used, are often contractually permitted to access their private conversations. It should also be explained to clients that copying others on an email can be interpreted as a waiver of privilege. A lawyer should also be cautious when replying to emails themselves—lawyers have been reprimanded for sending an email to the wrong address, or for clicking on "reply all" rather than "reply" in connection with a confidential discussion.¹⁰

¹⁰ See, e.g., *Smith v. Teixeira*, 2009 QCCQ 3402, where a Quebec lawyer was found to have acted unethically for including all of their clients' email addresses in the "to" field of an email announcing an office move, therefore letting every client see the identity and address of all other clients.

Likewise, a lawyer who receives an email communication from an opposing party or their lawyer by mistake needs to act cautiously and comply with applicable professional conduct rules regarding the receipt of inadvertent communications. (see [Rule 7.2-10](#))

The ease of email also makes it an attractive target for cyber-criminals. To protect themselves and their clients, lawyers should send confidential and sensitive information by encrypted email (*see above section "Encryption Essentials"*). Although lawyers should remember that encryption of emails only hide the content of the emails; metadata, including from who to whom, could still be visible (*see below section "Metadata"*).

Electronic Impersonation and Phishing

Phishing involves the use of an email, text message or phone call that appears to come from a trusted source or institution, vendor or company, but is actually from a third-party impostor. Phishing attacks are increasingly used against law firms and other legal organizations.¹¹ These attacks are also becoming more sophisticated—for example, they are often targeted toward a specific person and tailored to reference activities (like fund transfers) that the person is engaged with. Phishing messages are intended to trick you into giving fraudsters information by asking you to update or confirm personal or online account information. All lawyers and staff working in the organization need to be educated about the potential for, and nature of, phishing attacks to make sure they will not fall for them. In law firms, staff and junior lawyers are common targets—for example, in a practice known as the “Boss Scam”, someone contacts an employee impersonating their superior and asking for urgent help with a payment.

As noted above, phishing emails are becoming increasingly elaborate, but red flags of phishing scams include generically addressed messages, different email signatures, or different email addresses. In most cases, the email will be sent from a free email service (e.g. Gmail or Outlook/Hotmail), even when the email is purportedly sent on behalf of a business entity, and the email headers are not consistent (e.g. name and/or email address in the “FROM”; email is sent “on behalf” from another domain).

In many cases, an email will request money or goods (e.g. gift cards) with a sense of urgency (with the goal of trying to avoid usual compliance checks with accounting). A person stating that they prefer email communication due to time zone differences or claiming not to have access to a phone at the moment are indicative of a potential scam.

Similarly, beware if there is a requirement to click on a link to an action or to continue the conversation. Verify that the link is to a legitimate website and that the link points to

¹¹ There are several reports of law firms being victim of [phishing attacks](#), of [being impersonated to defraud clients](#) or [contacted by fake lawyers](#), or [clients' being hacked and sending improper wire transfer instruction](#).

the same URL as noted in the message (place your mouse pointer over the link). If any credentials are asked upon clicking on the link, confirm in the URL bar that you are on the actual website. It is usually recommended not to click on links in emails, but to go to the website through one's usual manner.

Beware that sometimes the email can be seen as coming from the correct email address, but invites the recipient to click on a link, or reply to a different email address. In more advanced attacks, the message can come from the actual email accounts, after hacking into email accounts of third parties including clients, lawyers, staff within a firm, opposing counsel, and opposing parties. The fraudster will monitor the emails of the hacked party to determine if there is a legal matter of interest. When the matter is completed and money is about to change hands, such as following a litigation settlement, real estate closing, or other transactions, the fraudster, posing as the legitimate party awaiting the funds, will send an email with instructions to redirect where the funds should go. If followed through, the money will go to the fraudster.

New instructions for payment (e.g. different amounts, new bank account) are often a sign of potential fraud. In case of doubt, it is safer to confirm with the person through another medium of communications (such as a telephone call) that you used before with them.

Malicious Attachment, Hacking, Spyware and Ransomware

Phishing attacks may also be more sophisticated and go beyond “simply” trying to retrieve credentials and steal money. Upon clicking on a link, users may inadvertently download malware on their computer. Malware could also be contained in an email attachment, such as a fake invoice. Beyond viruses that would corrupt data, malware can include spyware that would allow third parties to access your computer, look into all your files, your emails, and act on your behalf on your network (including sending messages to clients, colleagues, judges). The data collected can be used to defraud you or your clients.

Another increasingly common type of attack involves ransomware.¹² Ransomware attacks usually result from a phishing, where an email containing an infected link is sent to a lawyer or staff. Once the link is clicked on, the ransomware is installed on the victim's computer. It starts to work in the background while the computer is on, encrypting documents and making them inaccessible. The individual(s) who initiated the ransomware attack will then request large payments of money to release the data back to the organization.

Users should have an anti-virus tool that can live-scan web traffic and email, notably any

¹²There have been several reports in recent years of lawyers becoming victims of ransomware attacks at all levels of practice, from [major national law firms](#), to a [law society](#), to firms in [Manitoba](#) and [Alberta](#).

attachments and any content downloaded from the Internet. Security and privacy settings in computers should prohibit any software to run automatically after download.

As previously mentioned, backup data should be separated from the rest of the network. This is a good way not only to prevent an attack but also to be able to retrieve data and restart work once locked out by a ransomware.

Learn more:

- Lawyers Indemnity Fund, "[Fraud Prevention](#)" (last accessed March 14, 2021)
- Juda Strawczynski, "[Wire Fraud Scams on the Rise: 5 Tips to Reduce Your Risk](#)" (2021).
- Derek Bolen, "[What Lawyers Need to Know about Encryption](#)", *Clio* (last updated 2021).
- LawPRO, "[Paying Attention to the Fraud Behind the Curtain](#)", *PracticePRO* (January 1, 2020).
- Canadian Centre for Cybersecurity, "[Baseline Cyber Security Controls for Small and Medium Organizations](#)" (February 2020).
- Raymond G. Leclair, "[Firm Websites Being Impersonated by Fraudsters](#)", *AvoidAClaim* (July 8, 2020).
- Serene-Risc, "[Cybersecurity Tips: Phishing](#)" (last updated 2019).
- LawPRO, "[Fraud Fact Sheet: Cybercrime and Bad Cheque Scams](#)" *PracticePRO* (2011).
- LawPRO, "[Avoid \(and Recover From\) a Ransomware Attack](#)", *AvoidAClaim* (November 15, 2017).

Disclosure of Metadata

Beyond their own contents, electronic documents contain metadata—information about other data (in this case, information about the file). Many computer programs embed information into the program output when it is created, opened and saved. Although hidden on normal viewing, metadata can be revealed and accessed by others when a document is circulated electronically. The information in metadata may include the document author's name, the date the document was created, document revisions (including insertions and deletions), tracked changes and comments added by reviewers, and the location of the stored file.

Except where a lawyer is legally required to retain or communicate metadata (e.g. discovery obligations), steps should be taken to minimize the creation of metadata or to wipe it from sent files. When sharing documents online, notably by email, ensure that documents sent via email do not contain metadata with confidential information.¹³ This should also be considered when uploading a file on a web platform, even for personal purposes, as metadata could disclose information about your location, and thus your client and activities.

Beyond the attachment, the email itself will contain metadata, notably to ensure its authenticity. However, metadata in the header of the email could also disclose your location and the networks to which you are connected, and thus unintentionally disclose potential confidential information and relationships to third parties.

Learn more:

- Administrative Office of the U.S. Courts, "[Guidelines for Editing Metadata](#)" (September 2018).
- LawPRO, "[Beware of the Dangers of Metadata](#)" *PracticePRO* (2004).
- Office of Privacy Commissioner of Canada, "[Metadata and Privacy](#)" (October 2014).

Travel with Electronic Devices

It is important for lawyers to understand how the privacy interests of their clients—and their obligation to protect confidential client information—may be affected by lawyers crossing international borders with an electronic device. On crossing international borders, including to or from Canada, lawyers may not be able to rely on claims of solicitor-client privilege to adequately protect clients' confidential information due to border agencies' broad interpretation of the "goods" they have the authority to examine.¹⁴ Officers may examine the data stored on any electronic device in the actual possession of, or in the accompanying baggage of, a traveller. They may also request passwords for the devices.

Searching the electronic device (i.e. phones, tablets, laptops, or USB keys) of a lawyer when

¹³ While some commercial tools offer to scrub metadata from files, most PDF and word-processing software also offer an option to remove metadata when saving the document (e.g., under the "protect" or "inspect" documents options in Microsoft Word; under the "redact" options in Adobe Acrobat).

¹⁴ Note that, in *R. v. Canfield*, 2020 ABCA 383, the Alberta Court of Appeal held that s. 99(1)(a) of the *Customs Act* is unconstitutional to the extent that it imposes no limits on the searches of electronic devices at the border, and is not saved by s. 1 of the *Charter*. The Court further declared the definition of "goods" in s. 2 of the *Customs Act* to be of no force or effect insofar as the definition includes the contents of personal electronic devices for the purpose of s. 99(1)(a) but suspended the declaration of invalidity for one year to give Parliament the opportunity to amend the legislation to determine how to address searches of personal electronic devices at the border. Leave to appeal to the Supreme Court of Canada was sought but dismissed in the matter.

the lawyer crosses an international border may infringe solicitor-client privilege and result in a breach of [Rule 3.3-1](#) that requires lawyers to protect clients' confidential information. In addition to obligations found in professional codes of conduct, lawyers may also have obligations under rules of their respective law societies and applicable privacy legislation.

Several practical steps have been suggested to lawyers to mitigate the risk that confidential and privileged client information will be exposed when crossing the border. The safest practice is to cross the border without confidential and privileged client information. This can be done by taking "clean" or "blank slate" devices that do not contain any client information, putting the device in "airplane mode" (and disconnected from cloud services), and then accessing any needed information or files once crossed through a secure remote connection. It is also recommended that, if lawyers do travel with confidential or privileged client information, they carry identification that indicates that they are a licensed lawyer. Lawyers may want to include the relevant information in their retainer letters about protecting privileged information during travel. They should discuss the issue with their clients, and provide the appropriate guidance in the circumstances.

Learn more:

- Canadian Bar Association, "[Privilege at the Border Toolkit](#)" (May 13, 2019).
- Federation of Law Societies of Canada, "[Crossing the Border with Electronic Devices: What Canadian Legal Professionals should Know](#)" (December 14, 2018).

External Data Protection Services

Law firms may also want to consider retaining external data protection services as it can be challenging for firms to develop and implement their own cybersecurity policies and infrastructure, from the cost of hardware to making sure it remains up to date. Beyond reducing costs of infrastructure and staffing by sharing them, outsourcing also allows lawyers to have adaptive protection, and scale it up as they grow and take on more sensitive clients or files. Service providers can also support lawyers in case of cyber incidents, ranging from recommending and installing preventative measures to dealing with insurers in the event of a breach.

Learn more:

- LAWPRO, "[Outsourcing your law firm's cybersecurity](#)", *PracticePRO* (August 1, 2017).

Preparedness, Incident Response, and Digital Risk Insurance

Notwithstanding all the security measures put into place, there will always be a risk that clients' data could be disclosed, destroyed or modified. Beyond cybersecurity risks, data can also be destroyed or compromised as a result of natural events, such as floods or fires. It is part of lawyers' duties to develop an information security management framework, from information security, devices and privacy policies, to an incident response plan in order to be prepared for such events.

To ensure that best practices relating to data security, integrity and accessibility are adopted and continuously followed in a legal workplace, it is recommended that lawyers ensure that they have an information security policy in place. Guidance should be given to lawyers and staff on the use of personal equipment for work, or use of work devices and networks for personal purposes. In certain contexts, it can be good practice to limit access to sensitive files or information, to specific devices or on specific networks.

Legal workplaces should have a list—and remote control—of all devices with access to the network, on-device/site and cloud software and solutions used, and where different data are located. The information security framework should also include a list of all individuals with access to data, and which data. Should a user credential or a device become compromised, or a solution have a security vulnerability, it can then be quickly removed or segregated from the network.

The information security framework should also include regular audits, from checking that only people that should have access to files have access to them, to confirming all devices run the latest security patches.

As most cybersecurity risks come through errors made by individuals, the information security framework should include training, and simulation of cybersecurity attacks that are run with or without the knowledge of individuals in the organization (e.g. an organization can run a fake phishing campaign as an educational measure), to confirm individuals' preparedness.

To allow for quick mitigation and solutions, the information security management framework should also include an incident response plan with the different measures to be taken. The incident response plan should include reference to any reporting obligations that lawyers may have, such as duties to report security breaches to clients, law societies or insurance providers (see, e.g., [Rule 7.1-3](#), [Rule 7.8-1](#), and [Rule 7.8-2](#)) in addition to statutory reporting obligations in provincial or federal data protection legislation.

Within organizations, the framework should include assigning information security as a responsibility to one person (and a deputy in case of incapacity or leave), with the power

to approve or reject usages, answer client and stakeholder questions, and to activate and coordinate an incident response within the organization.

Lawyers should also be aware that, while their professional insurance may cover some issues related to the delivery of professional services, it generally does not cover data loss or breach, lost income or equipment after a cyber-attack, or a natural event. Optional cybercrime or data security insurance may be available in some jurisdictions.

Learn more:

- Canadian Centre for Cybersecurity, [Baseline Cyber Security Controls for Small and Medium Organizations](#) (February 2020).
- LAWPRO, "[Does your firm need cybercrime insurance?](#)", *PracticePRO* (January 1, 2018).
- Lawyers Financial, "[Cyber Risk—Is your Law Firm Protected?](#)", *Canadian Lawyer* (September 4, 2018).
- LAWPRO, "[The LAWPRO \\$250,000 cybercrime coverage: What it covers and why](#)", *PracticePRO* (December 1, 2013).
- Law Society of British Columbia, [What to do Before and After a Disaster Strikes](#).

3. Working Remotely with Clients, Collaborators and Courts

Adopting remote work practices, such as working from home or from a virtual office, providing remote commissioning services to clients, and attending virtual meetings and hearings, can result in more efficient and accessible services to clients. Moreover, to the extent that remote processes and tools become mandatory or even widely used in certain legal processes and practice areas, their appropriate use can also be characterized as a matter of competence.

Objective: Ensuring that one's professional obligations are met when working remotely

Below are a number of questions to ask in assessing compliance and the potential systems and practices to fulfill said compliance.

Q: When working in a virtual office, are professional obligations in relation to confidentiality and supervision complied with?

Avoid using unsecure public Wi-Fi networks, and ensure use of:

- ✓ Highest level of encryption available on wireless router
- ✓ Strong password
- ✓ Disable guest networks
- ✓ Disable remote administration
- ✓ Change default administration credentials

If confidential data is carried out of the office:

- ✓ Encryption mechanisms should be adopted to secure it during transport;
- ✓ Consider whether it is possible to access information through a secure encrypted or VPN connection as this is safer than carrying files on a laptop hard drive or USB key.

Working on confidential matters in public spaces should generally be avoided but where done take steps to maintain confidentiality by:

- ✓ Using privacy screens on all electronic devices to restrict who can see your screens;
- ✓ Using headphones;
- ✓ Being careful not to speak too loudly.

When supervising colleagues who are working remotely, ensure that they are aware of their confidentiality obligations and best practices when operating in a virtual office.

Q: When engaged in virtual commissioning or witnessing are all applicable legislative and regulatory requirements complied with? Are best practices adopted?

- ✓ Confirm that virtual commissioning or witnessing is permitted in your jurisdiction.
- ✓ Review and follow your jurisdiction's rules and regulations regarding virtual commissioning or witnessing.

Take steps to guard against key risks, including:

- ✓ Fraud and identity theft
- ✓ Undue influence
- ✓ Adverse impacts on client service
- ✓ Verification challenges arising from poor quality or unreliable technology.

Q: Are applicable law society rules and regulations followed if using a virtual means of identifying or verifying the identity of a client?

- ✓ Review your law society's rules regarding client identification and verification rules.

Where client verification rules require “face to face” verification and the relevant law society permits such verification to take place in a virtual meeting:

- ✓ Be alert to potential red flags;
- ✓ If caution is warranted, consider using a different accepted method of verifying identity;
- ✓ If engaging in virtual identity verification (where permitted) consider obtaining a high-resolution image of the identification document prior to the virtual meeting as a reference.

Q: Are best practices for virtual meetings and hearings adopted?

In circumstances where the lawyer has flexibility in choosing a platform:

- ✓ Consider whether the meeting will require true end-to-end encryption;
- ✓ Use access controls such as a password or virtual waiting room.

If considering recording a meeting:

- ✓ Comply with professional conduct rules regarding recording conversations
- ✓ Comply with any applicable tribunal or court rules.

Adopt confidentiality best practices:

- ✓ Where needed, headphones should be used to prevent third parties from listening to the meeting.

Be aware of, and guard against, risks relating to third parties influencing testimony:

- ✓ Ascertain if there is anybody else present with the witness or listening on a device that might be providing the witness with information during the interview.

Q: Is there appropriate understanding of when and how electronic signatures can be used to execute documents?

- ✓ Review legislative requirements before using electronic signatures.

If an electronic signature is permitted ensure:

- ✓ The electronic signature reliably associates the person with the signature, and reliably associates the signature to the document;
- ✓ Security measures have been put in place to prevent unauthorized access, use, or copying.

Considering using best practices, including:

- ✓ Public-key cryptography that is uniquely associated with the document.
- ✓ Adopting more advanced electronic signature systems that include timestamping and fingerprinting of the document through a third party that could attest to the time, authenticity, and integrity of the signed documents.

If the lawyer is using an electronic signature themselves ensure:

- ✓ Access is strictly controlled (lawyers should have full control and knowledge).

Virtual Office

When using a virtual office—either working from home or a location that is not a dedicated office space for their practice—lawyers need to ensure that they take adequate steps to comply with their confidentiality ([Rule 3.3-1](#)) and supervision ([Rule 6.1-1](#)) obligations.

Virtual Private Networks (VPN) and Remote Desktop Applications can give lawyers a secure way to connect to files and client information. If confidential digital data is physically carried out of a lawyer's dedicated office, encryption mechanisms should be adopted to secure it during transport. When possible, it is safer to access information through a secure encrypted or VPN connection than to carry files on a laptop hard drive or USB key.

When using Wi-Fi networks, lawyers should use the highest level of encryption available on their wireless networks' routers (at least WPA2, if possible WPA3) and use a strong password. They should also disable guest networks and remote administration, as well as change the default administration credentials of their router (often "admin/admin") in accordance with best password practices mentioned earlier. For added security, lawyers should change the public name of their Wi-Fi network and hide it to non-authenticated devices by disabling the broadcasting of their Wi-Fi network's name ("SSID Broadcasting"). Lawyers can also limit the ability of devices to connect to the network by activating "MAC address filtering" which will only authorize a series of specific devices to connect based on their unique identifiers.

Lawyers should remember that if they are able to connect to a Wi-Fi network without a password, the network is unsecured. Lawyers should not use unsecured Wi-Fi to connect to a work server, do banking, or send any type of confidential or personal information.

Lawyers should also ensure that any voice-enabled devices they have, such as smart speakers and virtual assistants, are muted or shutoff when discussing client matters or sharing any other confidential information. Lawyers should consider removing these devices from their workspaces where possible, and from their surroundings when meeting with clients.

Generally, working on confidential matters in public spaces should be avoided, as third parties may be able to view screens and printed documents or overhear conversations. In public settings (shared spaces, coffee shops, trains, airplanes, etc.), lawyers should use privacy screens on all their electronic devices to restrict who can see their screens. Similarly, lawyers should use headphones, and be careful not to speak too loudly to maintain confidentiality.

When supervising colleagues who are working remotely, ensure that they are aware of their confidentiality obligations and best practices when operating in virtual offices. Courts have recognized a risk that virtual working situations can deprive students and junior lawyers of steady and informal contacts with supervising and mentoring lawyers and this can result in inadequate instructions and inadequately reviewed materials being released.¹⁵

Learn more:

- Ontario Bar Association, [Online Lawyering Checklist](#) (2020).
- Juda Strawczynski, [“Work-from-home Technology Tips”](#), *PracticePRO* (2020).
- LAWPRO, [“Beware of cybersecurity risks during COVID-19 and working from home”](#), *AvoidAClaim* (March 20, 2020).
- Law Society of Ontario, [“How can I ensure that client confidentiality is protected while working remotely?”](#) (2021)
- Law Society of Ontario, [“Do my confidentiality obligations prevent office support staff from working remotely?”](#) (2021)
- Law Society of Manitoba, [“What should I consider when working from home?”](#) (2020)
- Crystal Tse and Jonathan Browning, [“Locked-Down Lawyers Warned Alexa Is Hearing Confidential Call”](#), *Bloomberg* (March 20, 2020)

Virtual Commissioning and Witnessing

In many jurisdictions, lawyers are now permitted to engage in virtual commissioning, and virtual witnessing is authorized in a few jurisdictions. Virtual commissioning refers to the signing of affidavits and statutory declarations that takes place in a different physical location than the commissioner (i.e. the lawyer) by using audio-visual technology. Virtual witnessing is similarly defined, but references the remote signing of wills and powers of attorney. Different jurisdictions have different rules for virtual commissioning and

¹⁵ *Polgampalage v. Devani*, 2021 ONSC 1157 at paras. 40-43.

witnessing, and some do not allow for virtual commissioning or witnessing. Lawyers need to review and follow the applicable rules in their jurisdiction.

In many instances, permissions for virtual commissioning and witnessing were specifically introduced in response to the COVID-19 pandemic. Although some jurisdictions have indicated an intent to extend the measures post-pandemic, lawyers need to pay particular attention to ensure that they are following the current rules applicable in their jurisdiction.

There are several risks in relation to virtual commissioning. The Law Society of Ontario [has identified](#) four major risks and issued practice tips in relation to each risk:

Risk 1—Fraud and Identity Theft

Where in-person meetings between the commissioner and the client are reduced or eliminated, there are greater risks of fraud and identity theft.

Practice Tip

Consider whether there are red flags of fraud in the matter. To review these red flags, see the Federation of Law Societies' Risk Advisories for the Legal Profession resource.

Risk 2—Undue Influence:

With remote commissioning, there is a greater risk that undue influence will go undetected. The commissioner may not be able to sufficiently assess whether there are any off-screen influences or other persons coercing the deponent.

Practice Tip

Assess whether there is a risk that the client may be subject to undue influence or duress. If there is such a risk, consider if you can assist the client at this time without meeting in person.

Risk 3—Reduced Level of Client Service

Without safeguards in place, there is a risk that the client is left without copies of documents they have executed remotely. There is also a risk that the client may not feel they have had an adequate opportunity to ask questions or request clarifying information about the documents they are executing, which risk is heightened by the lack of physical proximity.

Determine how to provide the client with copies of the document executed remotely.

Confirm your client's understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the video conference.

Risk 4—Technological Limitations/Uncertainty

Given varying video quality and network connections, as well as the fact that

live-streaming video and audio can be manipulated, it may be very difficult for a commissioner to confidently verify the distinct attributes of the document commissioned.

Practice Tip

Use best practice resources to guide and document your remote commissioning process.

Learn more:

- Law Society of Ontario, "[Remote Commissioning](#)" (last updated 2020).
- FLSC Anti-Money Laundering and Terrorist Financing Working Group, [Risk Advisories for the Legal Profession](#) (December 2019)
- Law Society of Ontario, "[Is Remote Execution and Witnessing of Wills and Powers of Attorney Permitted in the Context of COVID-19?](#)" (last updated February 19, 2021).
- Law Society of Ontario, "[Best Practices for Remote Commissioning](#)" (last updated August 1, 2020)
- Law Society of Ontario, "[Remote Commissioning Checklist](#)" (last updated August 1, 2020)
- Law Society of British Columbia, "[COVID-19 Response](#)" (last updated January 25, 2021).
- Law Society of Alberta, "[COVID-19 FAQs](#)" (last updated November 27, 2020).
- Law Society of Manitoba, "[Can I use Virtual Commissioning in the Context of COVID-19?](#)" (last accessed March 14, 2021).
- Law Society of Newfoundland and Labrador, "[Guidance to the Membership: Temporary Alternate Witnessing of Documents Act](#)" (May 2020).

Virtual Client Identification and Verification

Lawyers need to ensure that they are complying with the client identification and verification rules in their jurisdiction that have been adopted by law societies in order, notably, to combat money-laundering and terrorist financing.

In response to the COVID-19 pandemic, some law societies have indicated that they will permit client verification, where it is required, to take place in a virtual meeting. However, law societies have also cautioned that virtually verifying client identity should be

considered a “last resort” and lawyers need to be alert to potential red flags (see the FLSC’s [Risk Advisories for the Legal Profession](#)). As alternatives to virtual identity verification, lawyers should consider other options for verifying identity such as the dual-process method (i.e. referring to two reliable sources), or by reviewing the Canadian credit file to confirm name, address and date of birth. In some cases, lawyers may be able to rely on the previous verification by another person or verification by an agent. If engaging in virtual identity verification (where permitted), lawyers should consider obtaining a high-resolution image of the identification document prior to the virtual meeting as a reference when viewing the original identification document during the virtual meeting. Lawyers should be mindful of privacy or other statutory provisions that may apply to the processing and recording of virtual client identification.¹⁶ It has also been recommended that, if a lawyer does verify client identity through virtual means, the transaction be treated as a high-risk and that the lawyer document the efforts made to verify the client’s identity in accordance with the existing rules and the reasons why they were unable to verify the client’s identity in accordance with the existing rules.

As with virtual commissioning and witnessing, this is an area where lawyers need to be particularly alert to changing rules and approaches as COVID-19 pandemic restrictions evolve.

Learn more:

- Law Society of British Columbia, [“COVID-19 Response”](#) (last updated January 25, 2021).
- Law Society of Ontario, [“LSO COVID-19 Response—FAQs: Practice Management”](#) (last accessed January 29, 2021).
- Law Society of Alberta, [“COVID-19 FAQs”](#) (last updated November 27, 2020).
- Barbara Buchanan, [“Knowing Your Client—Guidance and Rules during Covid-19”](#) Law Society of British Columbia, *Benchers’ Bulletin* (Summer 2020).
- FLSC Anti-Money Laundering and Terrorist Financing Working Group, [Risk Advisories for the Legal Profession](#) (December 2019).
- Law Society of Saskatchewan, [“Client Identification and Verification”](#) (last accessed March 14, 2021).
- Law Society of Saskatchewan, [Client Identification and Verification](#) (December 19, 2019).

¹⁶ See, e.g., Québec’s *An Act to establish a legal framework for information technology*, CQLR c. C-1.1, s. 44 provides that express consent is required prior to verifying a person’s identity through a process that allows biometric data to be recorded.

Virtual Meetings, Hearings and Interviews

Virtual meetings, including virtual court hearings, may seem more casual. However, like in any other electronic communication, lawyers are still required to comply with the usual professional conduct rules, notably civility ([Rule 7.2-1](#)) and confidentiality ([Rule 3.3-1](#)).

In some contexts, a lawyer will not have an option as to what platform is used (e.g. court hearings). Where there is flexibility as to the platform being used, lawyers should consider what security measures are necessary or otherwise prudent to ensure client confidentiality and effective client services and communication ([Rule 3.3-1](#), [Rule 3.1-2](#) and [Rule 3.2-1](#)).

In circumstances where a lawyer has flexibility on which platform is used, they should consider whether the meeting will require true end-to-end encryption, where even the software provider will not have access to the content of the conversation. As with email, telecommunication services usually insert clauses in their user agreements that allow them to access the content of your conversations, making use of such tools contrary to a lawyer's confidentiality obligations. Clients can relieve their lawyers of those obligations, but only if they are aware of, and accept, the risks. Often, the confidentiality of communication is already guaranteed in the paid version of the platforms. As with emails and files, for extremely sensitive communication, lawyers should choose a platform on which they can control the encryption keys.

In any case, access to the virtual meeting room should be subject to access control. A common access control is to require a password for entry to the meeting. Lawyers should also consider using a virtual waiting room, where attendees will log in and wait until they are specifically granted access by the host.

Certain tools allow for the recording of conversations (either audio, video or the chat). [Rule 7.2-3](#) provides: "A lawyer must not use any device to record a conversation between the lawyer and a client or another lawyer, even if lawful, without first informing the other person of the intention to do so." Determine whether there is a chance the teleconference will be recorded and, if so (and subject to the rules in your jurisdiction), ensure that your client is aware of that possibility and has agreed to the use of the tool.

The same goes for court and tribunal proceedings. Court and tribunal rules may prohibit the recording of a proceeding. Even if no restrictions exist, proceedings should only be recorded with the court's knowledge and consent.

If lawyers (and clients) cannot guarantee the confidentiality of their surroundings, headphones should be used to prevent third parties listening in on the meeting. The possibility of third parties being on the other side of a screen of a client or a witness in an interview is something to consider. Especially in case of an interview or witness testimony,

lawyers should ascertain if there is anybody else present with the witness or listening on a device who might be giving the witness information during the interview (while being mindful of the person's privacy and that not everybody can fully isolate themselves).

Lawyers should also be mindful of what can be seen in the background of their video, and ensure it does not disclose any confidential information (e.g. location, client name, ongoing file). A good practice is to direct the camera to a plain or curated background, or to use a virtual background. However, lawyers should also be aware that use of virtual backgrounds can generate risks in certain contexts: e.g. a virtual background could potentially obscure a client's or witness's location, or hide from view individuals who may be improperly influencing a client or witness.

Finally, as in any other meeting, the lawyer should memorialize the meeting immediately after it ends, and to put any instructions received or advice given in writing.

Learn more:

- Law Society of Ontario, "[LSO COVID-19 Response—FAQs: Practice Management](#)" (last accessed January 29, 2021).
- The Advocates' Society, [Best Practices for Remote Hearings](#) (May 13, 2020).
- LawPRO, "[Ten Tips for Effective Video-Conferencing](#)", *PracticePRO* (April 8, 2020).
- LawPRO, "[Video Conferencing Checklist](#)" *PracticePRO* (March 2020).
- Ontario Superior Court of Justice, "[Best Practices and Etiquette for Remote Hearings](#)" (2020).
- CBA British Columbia Branch, [Best Practices in a Zoom Courtroom](#) (2020).
- Law Society of British Columbia, "[Video Conferencing Technology Information](#)" (last accessed March 14, 2021).
- Law Society of British Columbia, "[Risks and Tips when using Video-Conferencing Technology](#)" (last accessed March 14, 2021).

Electronic Signatures

Electronic signatures can be used to ensure the authenticity, non-repudiation and traceability of documents. Whether an electronic signature is permitted is a substantive issue governed by provincial and territorial legislation as well as any applicable court rules and practice directions. Lawyers need to review legislative and other applicable

requirements before using electronic signatures. Even if a jurisdiction permits electronic signatures in certain contexts, it may not permit them for all documents.

Assuming an electronic signature is permitted, some best practices should be followed. An electronic signature needs to reliably associate the person with the signature and reliably associate the signature to the document. The very definition of an electronic signature varies from one jurisdiction to the next. Across jurisdictions, an electronic marking is generally considered a legitimate signature in the business context. This is usually the most cost-effective option but reliability concerns might be raised because the links between the signatory and document can create plausible deniability along with a heightened risk of fraud. A digital signature can facilitate verification that a signature took place. When authentication and documentation are essential (e.g. when notarizing documents), lawyers should consider using more advanced electronic signature systems that include timestamping and fingerprinting the document through a third party that could attest to the time, authenticity and integrity of the signed documents.

Access to electronic signatures, from the simplest to most advanced ones, should be strictly controlled. Lawyers should have full control and knowledge as to how, when and to whom their proof of signature is shared and therefore guarantee protections to the client's privacy and security, since everything is in the lawyer's control. If you use an electronic signature, you should ensure that security measures have been put in place to prevent unauthorized access, use or copying.

Learn more:

- Law Society of Ontario, "[LSO COVID-19 Response—FAQs: Practice Management](#)" (last accessed January 29, 2021).
- Peter A. Aziz, Marissa Daniels and Hailey Schnier, "[Canada : COVID-19 And Electronic Signatures: A Guide for Organizations](#)", *Mondaq* (June 14, 2020).
- LAWPRO, "[Understanding e-signatures](#)", *PracticePRO* (June 2, 2020).

4. Lawyers' Online Presence

Many lawyers have an online presence in the form of law firm websites or social media accounts. Some lawyers also use email for marketing purposes, in addition to using email to communicate about legal matters. When marketing through online means, lawyers must ensure that they are complying with the applicable ethical rules relating to lawyer marketing. (see [Rule 4.2](#)) It is also prudent for lawyers to take steps to guard

against conflicts of interest that can be generated if a prospective client sends unsolicited confidential information. Lawyers must also follow applicable legislation and governing body rules and regulations on unsolicited commercial emails, such as Canada's Anti-Spam Legislation.

Increasingly, lawyers have an online presence through social media platforms. A lawyer's use of social media is subject to law society marketing rules but can also raise unique risks relating to client confidentiality and civility that lawyers should be aware of and take steps to avoid.

Finally, in creating their online presence, lawyers should be aware of and adopt best practices in relation to accessibility. In some jurisdictions, there are statutory requirements on accessibility that are relevant to lawyers.

Objective: Maintaining an ethical and otherwise appropriate online presence

Below are a number of questions to ask in assessing compliance and the potential systems and practices to fulfill said compliance.

Q: Are appropriate measures taken to make sure electronic communications are accessible?

- ✓ Any online professional presence should follow the Web Content Accessibility Guidelines (WCAG) 2.0, notably making sure all content is fully readable in text (including images).

Q: Are applicable professional conduct rules followed when engaging in online marketing?

Any online marketing should:

- ✓ Be demonstrably true, accurate and verifiable;
- ✓ Not be misleading, confusing or deceptive, nor likely to mislead, confuse or deceive;
- ✓ Be consistent with a high standard of professionalism.

Lawyers should be aware that the following practices may contravene law society marketing rules:

- ✗ Stating an amount of money that the lawyer has recovered for a client or referring to the lawyer's degree of success in past cases—unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;

- ✗ Suggesting qualitative superiority to other lawyers;
- ✗ Raising expectations unjustifiably;
- ✗ Suggesting or implying the lawyer is aggressive;
- ✗ Disparaging or demeaning other persons, groups, organizations or institutions;
- ✗ Taking advantage of a vulnerable person or group; and
- ✗ Using testimonials or endorsements that contain emotional appeals.

Q: Are measures taken to avoid receiving unsolicited confidential information or materials or otherwise inadvertently creating lawyer-client relationships or the impression thereof?

- ✓ Include terms of use and disclaimer statements that warn site visitors to refrain from sending unsolicited information or materials to the firm or leaving confidential information on voicemail; and that access to or use of the firm's site or voicemail does not create a lawyer-client relationship.
- ✗ Avoid answering specific legal questions or otherwise providing legal advice on social media.

Q: Is any use of social media consistent with a lawyer's ethical obligations in relation to confidentiality, integrity, courtesy, discrimination and harassment and encouraging respect for the administration of justice?

- ✓ Clients or client matters are not mentioned in social media posts, either directly or indirectly, without client consent.
- ✓ Caution is taken before using social media platforms to communicate or otherwise connect with clients.
- ✓ Do not post discriminatory material or material that amounts to harassment.
- ✓ With respect to civility obligations, exercise judgment before engaging in criticism of other lawyers or the judiciary.

Q: When sending marketing emails, are the requirements of Canada's Anti-Spam legislation and regulations complied with?

- ✗ No commercial electronic message should be sent to a third party without their prior consent.
- ✓ Commercial electronic messages must provide the identity and contact information of the person who sent the message and, if applicable, of the person on whose behalf it is sent; set out an unsubscribe mechanism, at no cost and as easy as the subscription mechanism.

Web Content Accessibility

Websites and web content can pose access challenges to persons with disabilities. For example, accessibility issues commonly arise when documents are formatted using styles that impede accessibility for individuals using assistive devices like screen readers.

All public communications by lawyers should be accessible and follow accessibility best practices such as the Web Content Accessibility Guidelines (WCAG) 2.0 issued by the World Wide Web Consortium (W3C) (ISO/IEC 40500). In some provinces, this is now a statutory requirement (e.g. in Ontario, as of January 1st, 2021, all firms of more than 50 employees shall respect those guidelines).

Learn more:

- W3C, "[Web Content Accessibility Guidelines \(WCAG\) Overview](#)" (last updated October 17, 2020).
- Government of Ontario, "[How to Make Websites Accessible](#)" (last updated October 19, 2020).
- ARCH Disability Law Centre, [Tips for Lawyers and Paralegals on Providing Accessible Legal Services to Persons with Disabilities in Ontario](#) (January 2019).

Law Society Marketing Rules

When engaged in online marketing—either through law firm websites, social media accounts or emails—lawyers need to comply with their professional code of conduct rules. Many jurisdictions have adopted [Rule 4.2-1](#) of the *Model Code*, which states that a lawyer's marketing must be: (a) demonstrably true, accurate and verifiable; (b) neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive; and (c) in the best interests of the public and consistent with a high standard of professionalism.¹⁷ [Rule 4.3-1](#) also says "[a] lawyer must not advertise that the lawyer is a specialist in a specified field unless the lawyer has been so certified by the Society."¹⁸ It is also recommended that where lawyers make representations in generally accessible electronic forums or formats, they should include the name, law firm mailing address, licensed jurisdiction of practice, and email address of at least one lawyer responsible for the communication.

¹⁷ For law society disciplinary cases deal that with Rule 4.2-1 in the context of a lawyer's online presence, see, for example, *Law Society of Ontario v. Goldfinger*, 2018 ONLSTH 10, appeal allowed in part 2020 ONLSTA 3; *Law Society of Ontario v. Weinles*, 2018 ONLSTH 105; and *Law Society of Ontario v. Forte*, 2019 ONLSTH 9

¹⁸ For law society disciplinary cases that engage with Rule 4.3-1, see, for example, *Law Society of Ontario v. Goldfinger*, 2020 ONLSTA 3 and *Law Society of Ontario v. Mazin*, 2019 ONLSTH 35

This is an area, however, where lawyers should have regard to the relevant rules in their jurisdiction. For example, the Law Society of Ontario's *Rules of Professional Conduct* have additional commentary on the use of awards, rankings and third-party endorsements in lawyer marketing, and specific requirements when advertising a price to act on a residential real estate transaction.

Learn more:

- Law Society of Ontario, "[Technology](#)", *Practice Management Guidelines* (last updated 2020).
- Law Society of Alberta, "[Effective and Ethical Advertising](#)" (last accessed March 14, 2021).

Avoiding Inadvertent Lawyer-Client Relationships

Receiving confidential information from an individual through a law firm's website, email or a social media account can trigger conflict of interest issues even if the individual does not become a client. Relatedly, because a lawyer-client relationship can be established without a formal retainer (see, e.g., [Rule 1.1-1](#), definition of "client"), lawyers also need to take care that their online presence does not inadvertently create a lawyer-client relationship or give an individual the impression that it does.

To avoid problems, lawyers should consider including, on their websites, terms of use and disclaimer statements that warn site visitors to refrain from sending unsolicited information or materials to the firm or leaving confidential information on voicemail; and that access to or use of the firm's site or voicemail does not create a lawyer-client relationship. To avoid the inadvertent creation of lawyer-client relationships, lawyers should also take care not to answer specific legal questions on social media platforms.

Learn more:

- CBA, "[Avoiding Phantom Clients](#)", *Conflicts of Interest Toolkit* (2020).

Ethical Issues Arising from Social Media Use

When using social media, lawyers need to take care not to reveal confidential client information ([Rule 3.3-1](#)). Obviously, explicitly referring to clients and client matters should be avoided. Additionally, as noted in professional conduct rules, a lawyer "should avoid indiscreet conversations and other communications ... about a client's affairs and should shun any gossip about such things even though the client is not named or otherwise

identified” ([Rule 3.3-1](#), Commentary [8]).

Lawyers should also be aware of risks related to social media use and the inadvertent disclosure of confidential client information. For example, messaging services offered by social media platforms are generally not secure and caution should be taken before using the services to communicate with clients. Additionally, by connecting with a client through social media—by, for example, “friending” or “following” a client—it is possible that the client’s retention of a lawyer’s services will be inferred. Lawyers should guard against social media applications viewing or publicizing to others their contact lists in their electronic devices, as this can also amount to a breach of confidentiality.

Several features of social media—the relative informality, speed of communications, and potential blurring between the personal and the professional—can also generate risks for lawyers in relation to their civility obligations (see, e.g., [Rule 7.2-1](#) and [Rule 7.2-4](#)). It is now well known that social media platforms can, at times, be sites of extreme conflict and unnecessarily rude and even discriminatory or harassing comments. At the same time, it is also well recognized that law societies must consider the expressive freedom of lawyers when regulating lawyer civility and that lawyers have an important leadership role to play in educating the public and seeking improvements in the legal system.

For example, as noted in [Rule 5.6-1](#), a lawyer has an obligation to “encourage public respect for and try to improve the administration of justice.” The Commentary to this Rule further elaborates that “[a] lawyer, by training, opportunity and experience, is in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions and public authorities ... [and] should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned.” It should also be noted, however, that, under [Rule 5.6-2](#), “[a] lawyer who seeks legislative or administrative changes must disclose the interest being advanced, whether the lawyer’s interest, the client’s interest or the public interest.”

A lawyer should also have regard to [Rule 7.5](#) (“Public Appearances and Public Statements”) and the commentary thereunder which states, among other things, that “[a] lawyer’s duty to the client demands that, before making a public statement concerning the client’s affairs, the lawyer must first be satisfied that any communication is in the best interests of the client and within the scope of the retainer” and that “[p]ublic communications about a client’s affairs should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that a lawyer’s real purpose is self-promotion or self-aggrandizement.”

As such, lawyers should not be afraid of participating in social media discussions, including those which involve controversial matters. At the same time, care needs to be

taken and judgment needs to be exercised with a view to acting consistently with one's professional obligations in relation to confidentiality, integrity, civility and discrimination and harassment. In terms of specifics on the balance to be struck, it has been [recently suggested](#) that lawyers "should avoid posting critical comments about an identifiable opposing counsel on social media" or refrain from "engag[ing] in personal attacks on the judiciary or unfairly criticize judicial decisions in their public statements, including on social media."

Learn more:

- The Advocates Society, [Principles of Civility and Professionalism for Advocates](#) (February 20, 2020).
- Robyn Schleihauf, "[Conduct Unbecoming: What should the Society do when it comes to gossip, online posts and bad behaviour on social media?](#)", *Nova Scotia Barristers Society* (February 2020).
- EPIQ, "[Social Media Ethical Obligations for Lawyers](#)" (2019).
- State Bar of Michigan, "[Ethics of Social Media—LinkedIn Frequently Asked Questions](#)", (May 2017).
- ABA, "[The Minefield of Social Media and Legal Ethics](#)" (March 24, 2017).
- Stacey McPeck, "[Lawyers and Social Media](#)", *Law Society of Saskatchewan* (February 8, 2017).

Unsolicited Email Messages and Anti-Spam Laws

When sending emails or other electronic messages, lawyers should also be familiar with the requirements of *Canada's Anti-Spam Legislation* that apply to electronic messages with commercial purposes, notably messages that offer to provide services, and advertise or promote such services, or a person who provides such services. No commercial electronic message should be sent to a third party without their prior consent. While consent should usually be express, it can be implied if there is an existing business relationship, or if the recipient posted their contact information online, or directly to the sender, without mentioning they did not wish to be solicited. Beyond consent, the message must state the identity and contact information of the person who sent the message and, if applicable, of the person on whose behalf it is sent; and set out an unsubscribe mechanism, at no cost, that is as easy as the subscription mechanism.

Learn more:

- [“Canada’s Anti-Spam Legislation”](#), SC 2010, c. 24.
- ISED, [Canada’s Anti-Spam Legislation Resource Centre](#) (last updated April 21, 2020).
- Ava Ghisling, [“What’s it all about? How anti-spam legislation can affect your firm?”](#), *CBA Practice Link* (March 18, 2019).