

ACTION TO BE CONSIDERED	NOTES
<p style="text-align: center;">INTRODUCTION</p> <p>Purpose and currency of checklist. This checklist sets out steps that should be undertaken in connection with opening and closing a file. It should be used when taking on a new client, and, in some circumstances, taking on a new matter with an existing client. It is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist, the LAW SOCIETY NOTABLE UPDATES LIST (A-3), and the practice area-specific checklists. It is current to September 1, 2023.</p> <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 1. Threshold Considerations 2. Conflicts of Interest 3. Client Identification and Verification 4. Retainer Agreements, Fees and Other Preliminary Considerations 5. Opening the File 6. Closing the File <p style="text-align: center;">CHECKLIST</p> <p>1. THRESHOLD CONSIDERATIONS</p> <ol style="list-style-type: none"> 1.1 Determine who is your client (or clients). If the client is an organization, determine who has the authority to give instructions. 1.2 Is there a conflict of interest? (See “Conflicts of Interest” below.) 1.3 If your client is an individual (or the instructing individual on behalf of an organization), determine how they should be addressed. Ask the individual the name, pronouns, and honorifics by which you should address and refer to them. Confirm if they should be addressed and referred to in the same manner or differently in the presence of third parties. 1.4 Are there any indicators of fraud, money laundering, or other illegal activities? See the Anti-money laundering measures in BC, Client ID & Verification, and Fraud Prevention pages on the Law Society website. Note <i>BC Code</i> rules 3.2-7 to 3.2-8 and Law Society Rule 3-109. Do not accept money or property in trust, or engage in any activity that you know or ought to know assists in or encourages any dishonesty, crime, or fraud. If there are suspicious circumstances, make reasonable inquiries and record them, then determine whether you can act. If you have practice questions, contact a Law Society of British Columbia practice advisor. In some cases, you may need to consult with counsel familiar with the proceeds of crime legislation before accepting a retainer, negotiating agreements, engaging in transactions, or filing court documents. 1.5 Does the client have capacity? Satisfy yourself that the client is competent to give instructions. Consider factors such as age, knowledge of legal transactions, intelligence, experience, mental health, and physical health. Assess the client’s ability to make decisions. Consider a referral to a professional counsellor or physician. See <i>BC Code</i> rules 3.2-9 and 3.3-1, commentary [10], and the client capacity materials on the “Practice Resources” page on the Law Society website. 	

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<p>1.6 Consider whether someone may be exerting undue influence on the client for you to perform the legal services requested, contrary to the client’s true wishes. Interview the client alone. Review the “Checklist of Recommended Practices” and “Red Flags to Watch For” in Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide on the BC Law Institute website.</p> <p>1.7 Consider any language, literacy, or other barriers such that you may not be able to communicate effectively with the client. You may consider hiring an interpreter, depending on the client’s language proficiency. Consider <i>BC Code</i> rules 3.2-2.1, 3.2-2.2, and <i>BC Code</i> s. 6.3.</p> <p>1.8 Do you have the relevant knowledge, skills and attributes to be competent to deliver the required services on the matter? (See <i>BC Code</i> ss. 3.1 and 3.2.)</p>	
<p>2. CONFLICTS OF INTEREST</p>	
<p>2.1 Check for conflicts as described in <i>BC Code</i> s. 3.4. Do not act for opposing parties. In addressing potential conflicts, consider not only the client(s) but also any third parties who may be involved in the case, including relevant corporate entities. See the Model conflicts of interest checklist on the Law Society website.</p> <p>2.2 Ensure that the client has not retained another lawyer or commenced another proceeding relating to the matter. See <i>BC Code</i> rule 7.2-7 with respect to providing a second opinion and <i>BC Code</i> rule 3.7-10 if you are the successor lawyer.</p> <p>2.3 If you are providing “short-term summary legal services” under the auspices of a not-for-profit organization with the expectation by you and the client that you will not provide continuing representation in the matter, note <i>BC Code</i> rules 3.4-11.1 to 3.4-11.4 and commentaries regarding conflicts and confidentiality.</p> <p>2.4 If you are acting for more than one party to the matter, consider <i>BC Code</i> rules 3.4-5 to 3.4-9 on joint retainers and the sample joint retainer agreement on the Law Society website. If you are acting for multiple parties in a real property transaction, remember that you can only act for more than one party with different interests in the circumstances permitted by Appendix C of the <i>BC Code</i>.</p>	
<p>3. CLIENT IDENTIFICATION AND VERIFICATION</p>	
<p>3.1 Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. See also: Client ID & Verification The Law Society of British Columbia.</p>	
<p>4. RETAINER AGREEMENTS, FEES AND OTHER PRELIMINARY CONSIDERATIONS</p>	
<p>4.1 Be clear about the scope of retainer as well as the services you will not be performing for your client. While lawyers are not required to have a written retainer, it is always best practice to do so. Ideally, send a letter to the client confirming your retainer, the instructions from the client, and your instructions to the client. Ask the client to sign and return to you the retainer letter or agreement, or to confirm by reply email.</p>	

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<p>4.2 If you are permitted to act under a joint retainer, see <i>BC Code</i> rules 3.4-5 to 3.4-9 and consider using the sample joint retainer agreement on the Law Society website. Note <i>BC Code</i> rules 3.6-4 and 3.6-5 regarding the division of fees and disbursements between parties to a joint retainer.</p> <p>4.3 If your retainer will be limited in scope, note that <i>BC Code</i> rule 3.2-1.1 requires that, before undertaking a “limited scope retainer” (a defined term in <i>BC Code</i> rule 1.1-1), you must advise the client about the nature, extent, and scope of the services that you can provide and must confirm in writing as soon as practicable what services will be provided. Also, be aware of the obligations in <i>BC Code</i> rules 3.1-2, 7.2-6, and 7.2-6.1. See “Limited scope retainer FAQs” in the Fall 2017 Benchers’ Bulletin for more information.</p> <p>4.4 If the client is a company, consider having a directors’ resolution confirm your retainer and identify one officer or director who will have the authority to instruct you.</p> <p>4.5 Clarify with everyone you interact with on the file your role in the matter and that of any other advisors to the client. Make it clear for whom you are working and that others should not rely on you for advice.</p> <p>4.6 If you are dealing with any unrepresented persons on the client’s behalf (e.g. the opposing party), ensure that you review <i>BC Code</i> rule 7.2-9. Document when and how you: a) urge the unrepresented person to obtain independent legal representation; b) take care to see that the unrepresented person is not proceeding under the impression that their interests will be protected by you; and c) make it clear to the unrepresented person that you are acting exclusively in the interests of your client.</p> <p>4.7 Advise the client regarding the calculation of your account, the method and timing of payment, and the terms and conditions upon which you will act. Advise the client of the rough costs involved in almost every step in the case. The client should be made aware of the factors that may increase the cost of representation, including the choice and urgency of processes undertaken, as well as the level of co-operation from the client, the level of co-operation from other parties and counsel, and any need for outside expertise. Consider <i>BC Code</i> s. 3.6 regarding reasonable fees and disbursements. Note <i>BC Code</i> rule 3.6-1, commentary [2] and rule 3.6-3, commentary [1] regarding the fiduciary relationship with the client requiring full disclosure and a duty of candour in all financial dealings. Note as well the definitions of “consent” and “disclosure” in <i>BC Code</i> rule 1.1-1.</p>	
<p>5. OPENING THE FILE</p>	
<p>5.1 Place this checklist, the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist, and the practice area-specific checklist(s) in the file, and make all appropriate entries in diary and bring forward systems, including noting relevant limitation periods.</p>	
<p>6. CLOSING THE FILE</p>	
<p>6.1 Be sure to review <i>BC Code</i> rules 3.7-8, 3.7-9, and 3.7-9.1 regarding the steps to take when a lawyer is discharged or withdraws, including the manner of withdrawal, necessary notifications, and confidentiality obligations.</p>	

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<p>6.2 As soon as possible after completing the matter, bill the client for your services rendered. Once again, outline in your final reporting letter how you determined the fee, and confirm that your engagement is complete. Advise the client of any relevant limitation periods. Take reasonable steps to pay out funds held in trust as soon as practicable on completion of the legal services to which the funds relate (Law Society Rule 3-58.1). If you received cash, determine whether any refund must be made in cash or by cheque (Law Society Rule 3-59).</p> <p>6.3 Close the file, and return original documents to the client, if required. Subject to any right of lien, promptly return a client’s “property”, including money (see <i>BC Code</i> s. 3.5, in particular rule 3.5-2, commentary [3], and rule 3.6-10, as well as Law Society Rules 3-65 and 3-78). Ask for acknowledgment of receipt. Advise the client to keep the original documents safe. For guidance, see Closed Files—Retention and Disposition, August 2017, Appendix B on the Law Society website for a suggested minimum retention and disposition schedule for specific documents and files. Also see Solicitors’ Liens and Charging Orders – Your Fees and Your Clients, July 2013, and Ownership of Documents on a Client’s File, July 2017, on the Law Society website.</p> <p>Questions</p> <p>You are welcome to contact a Practice Advisor if you have questions about this checklist. Practice Advisors can be contacted by email at practiceadvice@lsbc.org, by phone at 604.643.5797, or through booking an appointment in Advice Decision-Making Assistant (ADMA).</p>	