

Winding Up A Practice: A Checklist

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Winding Up A Practice: A Checklist

If you are thinking about winding up your practice, the following will assist you with decisions and tasks to be completed. This paper addresses most instances where a practice is being terminated, whether it be to retire from law, to join another firm, to go in-house or otherwise. Since practices and the reasons for winding up vary greatly, there may be additional matters, especially business or legal matters, for you to consider that are beyond the scope of this paper.

The paper does not specifically deal with the sale of a practice. If you are selling your practice, you will need to consider valuation and accounting issues which are outside the topics discussed in this paper. Remember too the duty to maintain client confidentiality during the sale process: no one who is not an employee of the practice is entitled to information regarding a client file without client authorization (see rule 3.3-1 of the *Code of Professional Conduct for British Columbia* (“Code”).

This paper is applicable to either a lawyer winding up a sole practice or to a lawyer who is part of a firm that is winding up. At the end of the article, there is a portion that contains extra considerations for the lawyers in a firm which is winding up a firm.

Short Checklist

1. Deal with **Open Files**.
2. Deal with **Closed Files**.
3. Recognize any **Ongoing Obligations** and make appropriate arrangements e.g., undertakings.
4. Deal with **Finances** – e.g., as applicable, close trust accounts, deal with other valuables and fiduciary property, and file last trust report, which will require an accountant’s report subject to limited exceptions about which you must contact the Trust Assurance Department. See items 4 a. and b. under the heading **Open Files**, and the heading **Finances if you are no longer continuing in private practice**.
5. **Notify the Law Society** pursuant to the *Law Society Rules*.
6. Change Law Society contact information, and **Membership and Insurance** status as applicable.
7. If you cease to be a practising lawyer and you have a **Law Corporation**, either wind up your law corporation or change the corporation’s name to take out the word ‘law’.
8. Give notice to **Staff**, if applicable.
9. Terminate agreements and leases that relate to **Office Premises**, as applicable.

Detailed Checklist

Open Files

1. If you will be retiring or no longer will be practising in the same area of law after termination of the practice, decide when you will cease to accept new files to allow time to accomplish the applicable topics on this checklist, and to wind up other details. Before taking on any tasks that you might not be able to complete before retiring or leaving the practice area, consider always the need to provide reasonable notice of withdrawal to clients. Reasonable notice is a necessary part of withdrawal, except for in the limited circumstances where there are grounds for optional or obligatory withdrawal. (See the *Code* rule 3.6-2, commentary [2] and the rules under section 3.7 for the provisions relating to withdrawal.)
2. Contact current clients in writing to notify them that you will be closing the practice. If you are retiring, or no longer intend to practise in the same area of law, advise clients that you will need to transfer files to another lawyer. If you intend to practice in the same area of law after termination of the practice and hope to transfer the files to your new firm, advise the clients of this intention; remember, the client is able to instruct otherwise. In all cases, clients must be told in writing that they have a choice about where their files are sent, but your letter can indicate that client silence (after a reasonable specified future date has passed) will be taken as an agreement to the proposed transfer, whether it be to a new lawyer as per your suggestion, or to you at a new firm. Or your letter may indicate, if appropriate in the circumstances (see the *Code* rules 3.7-1 *et al* on withdrawal), that the file will be closed if the client remains silent. If you propose that the client file be transferred to your new firm, include a consent to transfer funds to the new firm's trust account in your letter of advice to the client. You may also wish to include other topics in this letter such as set out in paragraphs 4, 6, 7, 9 through 14, and 23 below. (See the *Code* rule 3.7-1, commentary [4] to [10] and the Summer 2017 Benchers' Bulletin article [Ethical considerations when a lawyer leaves a firm](#))
3. Before making a final decision to transfer files to another lawyer, or to you at a new firm, you must consider possible conflicts between your clients and the clients of the lawyer taking over your files, or between your clients and the clients at the new firm where you intend to practice. (See *Code* section 3.4 Conflicts generally, and rules 3.4-17 to 3.4-23 and Appendix D for conflicts provisions when you are transferring client files to another law firm.) Rule 3.3-7 of the *Code* allows for the exchange of confidential information to the extent reasonably necessary to detect and resolve conflicts of interest arising from a lawyer's change of employment, so long as solicitor-client privilege is not compromised or the client is not prejudiced (see the commentary to the rule for further details).
4. Review all your time records and files:
 - a. If you are retiring or are not continuing in the same practice area, or if you are continuing in the same practice area but have clients that do not intend to follow you, attend to the below items:

- i. Prepare an account for work in progress and outstanding disbursements to date of termination of practice. This should be straightforward for files which are billed on an hourly basis.
- ii. If the billing is on a contingent fee basis, refer to the provisions of the contingent fee agreement, specifically to those that relate to the circumstances under which you may withdraw and how you will be paid if this occurs. (See *Code* rule 3.6-2, commentary [2] in particular, which provides a lawyer cannot withdraw from a contingent arrangement except for obligatory reasons under rule 3.7-7 of the *Code*, or unless the agreement specifically states the lawyer has the right to do so under the circumstances). If the contingent fee agreement does not provide for withdrawal in the circumstances, or does not set out how compensation is to be determined upon withdrawal, you will have to try to make arrangements with the client and the new lawyer. You may also have to be prepared to make *quantum meruit* arguments.
- iii. Send the accounts to the clients.
- iv. As time progresses, note any outstanding accounts and follow-up.
- v. If appropriate assert a solicitor's lien over the file. (See the article [Solicitors' Liens and Charging Orders](#) on the Law Society website.) Note that a solicitor's lien is usually possessory — you must hold onto the file — which is counter to your intention to dispose of your practice if you intend to retire or move out of the practice area. It may be better to make arrangements with the new lawyer if you are transferring files to someone else; bear in mind the information in the note immediately below.

NOTE: Even after you cease membership in the Law Society, you may collect fees for work done while you were practising. You may also be compensated for files transferred to another lawyer by receiving a percentage of future billings. (The Ethics Committee is of the opinion that where a percentage of future billings is paid as part of the compensation for the sale of a practice this is not a “fee split” within the meaning of rule 3.6-7 of the *Code*.)

- b. If you are continuing in the same practice area but at a new firm, attend to the below items for those clients that you intend to bring with you to the new firm:
 - i. Arrange to have trust funds transferred to the new firm with appropriate ledger cards and banking arrangements to parallel what previously had been set up for the client (e.g., if applicable, a separate trust account as allowed under *Law Society Rule 3-61*).
 - ii. Make arrangements with the new firm as to how billings should be apportioned for work that overlaps what you did in the practice and what will be done at the new firm.

- iii. Arrange to have any “fiduciary property” (as defined by *Law Society Rule 1*) transferred to the new firm and set up records as required by *Law Society Rule 3-55*.
5. For each active file being transferred to another lawyer, prepare a detailed memo on the nature of the file and the work that remains to be done on it. Limitation, trial, chambers and examination for discovery dates should be prominently noted.
6. If there are any imminent dates in files being transferred to another lawyer, discuss how to proceed with your client and with the lawyer who will be assuming the file. If necessary, seek instructions to obtain adjournments or extensions, and notify your client and opposing counsel.
7. Legal Aid referrals are not transferable to another lawyer. If a Legal Aid file is being transferred, call the referring office to request a change of counsel for the client. The client will have to attend at the Legal Services Society office to get the new referral. You should then send in your referral form as a final bill, marked “Final.”
8. For insurance defence or professional conduct defence purposes, or possibly for the collection of fees, you may need to keep a copy of some of your files which are also to be transferred to another lawyer or returned to the client. For further guidance, refer to the article [Ownership of Documents in a Client's File](#) available on the Law Society website. If you fear that a matter may become the subject of a future claim in negligence, consider whether you have a duty to report the circumstances to the Lawyers Insurance Fund. (See rules 7.8-1 to 7.8-5 of the *Code*, and the B.C. Lawyers' Compulsory Professional Liability Insurance Policy.) If you have ongoing matters with the Lawyers Insurance Fund, discuss your retirement, or change of circumstances with the claims counsel assigned to the matters. (See also rules 3.3-4 to 3.3-6 of the *Code*.)
9. For all open family and civil litigation cases where you will no longer be the counsel of record, make arrangements to get off the record. Refer to Rule 22-6 of the *British Columbia Supreme Court Civil Rules* and Rule 21-4 of the *Supreme Court Family Rules*. You may also arrange for the new counsel to remove your name from the record.
10. For all other cases where you are counsel of record or the equivalent and will no longer be acting (e.g., Provincial Court, Appeal Court, Federal Court, Tribunals) consider whether there is a registry you need to advise and what is the proper process to remove your name from the record. In most cases, you should copy correspondence to the client and to opposing counsel or the Crown. See rules 3.7-8 and 3.7-9 of the *Code*, as well, if it is a criminal matter, rules 3.7-4 to 3.7-6.
11. Seek instructions from corporate clients for whom you will no longer act for new addresses for their registered and records offices, prepare the necessary resolutions and notices and ensure that the notices are filed with the [Registrar of Companies](#). Seek instructions on changing the attorney and BC head office for extra-provincial companies and file the appropriate forms. If you can't obtain instructions from your client, review the *Business Corporations Act* to determine if there are provisions which will allow you to transfer the

location of the registered and records office, or if appropriate to eliminate the registered office. If no relief is available under the *Business Corporations Act* or client instructions are not received, remember that you will continue to be responsible for any corporate records, you may also continue to be the address for service, and you will have to continue to allow access to those records; in such circumstances you should check with Lawyers Insurance Fund about the need to maintain insurance.

12. File a change of address notice, as appropriate, if the practice is named in any builders' liens.
13. Decide whether you will continue to store any original wills, transfer them to another lawyer, or where appropriate and the client is still capable, return them to the client. Remember that you will continue to be responsible for any original wills in your possession unless you can find another lawyer to store them. The Law Society will only store original wills in very exceptional circumstances. (Note: the time period for retention recommended by the Law Society for original wills and wills files is 100 years, or, if a will of the client has been probated, 10 years after final distribution of the estate; see the article [Closed Files: Retention and Disposition](#) on the Law Society website).
14. Ideally if possible, after consultation with the client, a new wills notice should be prepared and filed with the Wills' Registry maintained by Vital Statistics Agency (www.vs.gov.bc.ca/) to note the new storage location of each original will. Vital Statistics charges a flat fee of \$1,700 for any number in excess of 100 notices. An individual notice must be filed for each will, but pre-approved computer generated notices will be accepted. BC Online customers can apply through www.bconline.gov.bc.ca. Filing a notice with the Vital Statistics Agency is voluntary. However, notice to the Law Society under *Law Society Rule 3-87* (see paragraph 31 below) is mandatory.
15. In order to advise the public and clients you have not been able to reach, you may place an ad in the local newspaper that the practice will be closing as of a specific date and who may be contacted after that date about files or wills.

Closed Files

16. Review closed files to determine whether they should be stored, destroyed, returned to the client, transferred to the lawyer who will be assuming ongoing files, or taken with you to the new firm, as appropriate. For additional information on the disposition of closed files, refer to [Closed Files: Retention and Disposition](#) available from the Law Society.
17. If you are not taking clients to your new firm, return client property held in safekeeping to the owner and make arrangements for transfer of any fiduciary property to the appropriate party. (See rules 3.5-1 to 3.5-6 of the *Code* and Part 3, Division 7 and Part 10 of the *Law Society Rules*.)

Ongoing Obligations

18. Consider whether you have any ongoing obligations, such as undertakings, and make arrangements to be relieved of them or to have them transferred to another lawyer if you are not taking the client matter with you to a new firm. Only the party who imposed the undertaking is able to relieve you of the obligation.
19. Wills should be reviewed to determine whether you have agreed to be executor or trustee. If so, you may still wish to act in that capacity. If not, consider asking the testator to revise the will or to add a codicil to appoint someone else. If the testator cannot be located, you may wish to attach a renunciation to the will (which may or may not be effective). In all cases where renunciation is considered determine whether it is appropriate.
20. If you are not taking the client matter with you to a new firm and if you have any certificates of title or other documents held in safekeeping, determine if they are held pursuant to undertakings, conditions of trust or an agreement which will continue to apply. Seek written instructions from the necessary parties to alter the arrangements and to transfer the documents to a new location.
21. Accounting records, trust account records, general account records, records of cash transactions, billing records, records of valuables and records relating to fiduciary property must be retained for at least 10 years after a final accounting. (See *Law Society Rules* 3-55, 3-67 to 3-71 and 3-75.)
22. Client identification and verification records must be retained for the longer of the duration of the lawyer-client relationship and as necessary for the purposes of providing services, and 6 years following completion of the work for which the lawyer was retained. (See *Law Society Rule* 3-107.)
23. If you are not taking the client matter with you to a new firm, try to return corporate records to the client or the client's new lawyer. Under the former *Company Act*, it would normally have been sufficient to keep corporate records for 10 years if your office was the last registered and records office for a company. However, under the *Business Corporations Act*, it is possible to restore a dissolved company or the cancelled registration of an extra-provincial company after 10 years of the dissolution or cancellation. See also paragraph 11 above if your office is the registered and records office.

Finances if you are no longer continuing in private practice

24. Review trust accounts. After billing clients and deducting fees where appropriate, either return trust funds to clients or other persons on whose behalf they were held (see rule 3.5-6 of the *Code*), or with your client's instructions, transfer funds to the lawyer who will be assuming the client's ongoing file. Advise clients that their silence after a reasonable specified time will be taken as an agreement that the funds will be transferred in trust to the lawyer receiving the client's file. Before taking your fees for matters billed, be cognizant of

the restrictions on taking money from trust when you know the client disputes your right to do so (see *Law Society Rule 3-65(5)*, and *Legal Profession Act* ss. 69 and 70).

25. If trust monies are held pursuant to agreements with or undertakings to third parties, the consent of those parties with whom you have agreed or who have imposed the undertaking will be needed before the monies can be transferred. Estate and trust files may have funds being held for substantial periods of time and such funds may be placed in long-term deposits. Arrangements may have to be made with the savings institution where the money is deposited as to how the investment should be handled going forward. It may be that the trust account of the practice has to be maintained until all transactions for which the funds are held in trust are completed.
26. If you hold any unclaimed trust money, determine if *Law Society Rule 3-89* and *Legal Profession Act* s. 34 will allow you to pay it to the Law Society. Here is the [Form](#) for making the application.
27. When all the trust monies have been disbursed, inform the financial institution that the trust accounts can be closed.
28. Review *Law Society Rules 3-79, 3-80, 3-82, and 3-84* and arrange for the preparation of your final trust report, which should be filed within three months of the termination date of your practice. You will receive a filing notice from the Trust Assurance Department that will provide information on how to file your final trust report.
29. Pay any outstanding firm liabilities including payroll, trade debts, GST, PST, WCB, etc. Consider making arrangements for the possibility of a reassessment by any government of the required remittances. Consider any outstanding lawsuits of the firm concerning disputed liabilities.
30. Determine whether it will be necessary to leave open a general account with a reserve to satisfy any outstanding obligations or for receipt of any accounts receivable after the closure of your practice.

Notify the Law Society

31. Review *Law Society Rule 3-87*. Before you leave your practice, under *Law Society Rule 3-87 (1)* you must contact the Law Society in writing to advise you are terminating the practice and how you intend to dispose of:
 - a. open and closed files;
 - b. wills and wills indices;
 - c. titles and other important documents and records;
 - d. other valuables;

- e. trust accounts and trust funds;
- f. fiduciary property.

If you are terminating your practice but intend to take your files and other client items to a new firm, as well as transfer trust funds and fiduciary property to that firm, it will be sufficient to advise the Law Society of that arrangement as your disposal information.

After you have so notified the Law Society under *Law Society Rule 3-87(1)*, you will receive a Disposal Information Checklist from the Trust Assurance Department which will advise you as to how to provide the remainder of the information in *Law Society Rule 3-87*.

Memberships and Insurance

32. Discuss membership status with the Law Society. A partial refund may be possible if you move to a non-practising or retired status. Membership in the Law Society will lapse if you fail to pay the annual fee by December 31. If you are continuing to practice, but under changed circumstances you still must provide the Law Society with notice of the termination of your practice and your new contact information. See [Contact Information Changes](#) for information on the various categories of membership and the time limits on returning to practice from a non-practising or retired status.
33. If you are no longer going to continue in practice, or are moving to a practice which is exempt from the requirement to maintain insurance (*Law Society Rule 3-43*), make arrangements with the Law Society to cancel practice insurance. You will receive a pro rata refund from the date of cancellation. You should make a report to the Lawyers Insurance Fund of any potential liability claims on files prior to the discontinuation of the practice. Coverage under the group compulsory professional liability insurance program will continue, free of charge, for future claims covered by the program arising from professional services rendered while you were insured, subject to the terms, conditions and limits in place at the time the claim was reported. If you have any questions about the compulsory policy, please [contact the Lawyers Insurance Fund](#).
34. Although the compulsory policy insures lawyers for claims arising from errors that occurred while the lawyer was practising (and paying the insurance fee), even though the claim is not discovered until after the exemption from insurance is made (subject to the terms and conditions of the policy in effect at the time the error is discovered), excess insurance does not operate in this manner. If you have purchased excess insurance and are considering winding up your practice, contact your broker for advice to ensure your interests are protected.
35. Contact your broker to discuss terminating your property and general liability insurance, and maintaining coverage for your stored files and records and the availability of coverage for cyber storage including data breaches.

Law Corporation

36. If after you wind up your practice you are no longer a practising lawyer, Law Society Rule 9-5(3) provides that the permit issued for your law corporation ceases to be valid. In such an instance you can continue to use your corporation for purposes other than as a law corporation by applying to change the corporation's name to delete the word 'law', or you can wind the corporation up. In all instances, contact the Membership Services department of the Law Society to determine how best to proceed with the process to comply with the requirements of the *Law Society Rules* and the *Legal Profession Act* in this regard.

Staff

37. Give any staff that is being terminated sufficient notice of termination or compensation in lieu of notice. Verify statutory notice requirements. For staff that may be coming with you to a new firm be aware of rule 3.4-23 of the *Code* which requires compliance by staff with the conflict rules when transferring firms and to maintain firm confidences.
38. Make arrangements to cancel or otherwise deal with any benefit plans for employees.
39. Direct your accountant or bookkeeper to prepare Records of Employment, calculate all necessary holiday pay or other benefits accrued, prepare T-4 slips and make all necessary remittances to the [Canada Revenue Agency](#) (CRA).
40. If you have an articling student, make arrangements to assign the articles to another lawyer who is qualified to act as a principal, if you are no longer in a position to act as a principal.

Office Premises and Equipment

41. Contact your landlord at the earliest possible date and, if necessary, make arrangements to sub-let rented premises or to assign the lease.
42. Contact law schools, community colleges and courthouse libraries to see if anyone would consider purchasing all or part of your library. Post notices in the local courthouse barristers' lounge, and see whether there are any appropriate online postings available.
43. Dispose of office furniture and equipment. When disposing of computer equipment, take steps to erase client confidential information on the hard drives. This may necessitate having the hard drives removed and destroyed. Where physical assets are sold to individuals without a tax number, provincial sales tax must be collected and remitted to the Province. Otherwise, the purchaser remits the taxes owing. Make sure notarial seals, lawyer stamps and the like are disposed of responsibly so that no one else can use them.
44. Where equipment has been leased, contact leasing companies to terminate leases and maintenance agreements or to arrange assignments. When neither cancellation nor

assignment is possible, you should have available a pool of funds sufficient to continue the payments on the leases or to pay them out.

45. Notify publishers of law books and legal directories and cancel subscriptions to reports and journals.
46. Send letters to all suppliers advising them that the practice will be closing and notifying them of the address to which future correspondence may be directed.
47. Notify public utilities. Arrange to forward your telephone calls and mail. Proper arrangements in this regard are an important aspect of winding up your practice. You may continue to be responsible for notices sent to your former address if no proper forwarding arrangements have been made.
48. If there is a web page, arrange for it to be cancelled. Consider the disposition of the intellectual property such as internet domain names, email addresses and any service marks. If you have been using internet services such as an Application Service Provider (ASP) or electronic work spaces, ensure all client information is removed and erased.
49. Consider how electronic data will be stored, archived and retrieved (email, electronic documents and images, accounting data, electronic databases, case management entries etc.) that may be required in the future for liability or other purposes. Consider how this data will be reviewed, accessed and deleted over the passage of time.

WINDING UP A FIRM

Below is a list of additional considerations when the practice that is being wound up is a firm.

Open Files

50. Discuss and determine who is continuing in practice, who is going in-house and who is retiring. Discuss with the clients and seek instructions on the dispositions of the open files. Refer back to paragraphs 2 and 3 of the checklist with this information in mind.
51. In addition to the considerations in paragraph 4 of the checklist, for the continuing files that are not billed on a contingency basis, an agreement must be reached between the partners on the division of the Work in Progress (WIP) up to the time of the wind up of the firm and the WIP thereafter.

Closed Files

52. The disposition of closed files presents a particular problem when winding up a firm. Often there are hundreds if not thousands of closed files – many of which will relate to matters handled by lawyers who have since left the firm, retired, died, or ceased practice. Arrangements must be made for the files that cannot be destroyed or material returned to the

client, to be available for future retrieval and reference and for their eventual destruction. You might want to discuss arrangements in advance with the Law Society if there are unusual circumstances or solutions proposed, but generally, the existing partners could make at least two broad arrangements: First, all closed files could be divided among the partners and each partner makes independent arrangements for the storage, retrieval and destruction of the files. Alternatively, the firm could contact a reputable records storage facility to store the files. Consider setting the reserve to cover the storage costs up and to including the final destruction of all files. The Law Society will require at least one contact person to maintain the file list and to be responsible for retrieval and eventual destruction. (See rules 3.5-1 to 3.5-6 of the *Code*, and Part 3, Division 7 and Part 10 of the *Law Society Rules*.)

Finances

53. Consider all outstanding liabilities of the firm, such as long-term leases for space or equipment, creditors of the partnership, possible outstanding or potential upcoming law suits against the firm, and how these will be resolved and accounted for between the partners after windup.
54. Discuss tax implications of the wind-up of the firm/partnership with the firm's accountant. The accountant (or other mutually agreeable individual) may be helpful to act as a mediator in the event of disagreements between the parties.
55. Consider how all funds realized on the disposition of all assets will be divided. Consider how any losses arising from the wind-up of the firm will be covered.

Memberships and Insurance

56. Consider all practising and excess insurance, and whether or not the firm will apply for a refund or the individual lawyers, or how any portions of ongoing excess insurance premiums will be funded. You will have to contact the excess broker.

Staff

57. Ensure sufficient experienced staff will continue for whatever time period is necessary to wind up the firm.

Office Premises and Equipment

58. Consider seeking the firm's accountant's advice on the valuation and most effective disposition of assets.

Firm Name

59. Determine if any members of the firm can use any part of the name of the former firm. Under Law Society Rules 2-9 and 2-10, all members must notify the Law Society of the names under which they will be carrying on business. In the absence of an agreement, no part of the old firm name should be used by a former partner unless it is the portion that relates to their own name or another living person with whom he or she may form a partnership.