

PRACTICE REVIEW (LAWYER)

LAWYER BASIC MANAGEMENT CHECKLIST

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A. YOUR LAW PRACTICE

1. What is your practice status?

Sole Practitioner

- Practising Alone
- With one or more lawyers/paralegals as employees
- With one or more lawyers/paralegals in a shared facility

Multi-Lawyer/Paralegal Firm

- Partner in a partnership
- Shareholder in a Professional Corporation
- Employee/Associate

2. Do you practice with any other licensees?

3. Do you have formal or informal mentor(s)?

4. What are the main areas of your personal practice?

5. What is the number of open and currently active files for which you are considered to be the lawyer with primary responsibility?

6. How many files have you worked on in the last year?

7. How many full-time and/or part-time staff assist you in your personal practice?

8. Are there arrangements in place to cover vacations or other expected or unexpected absences for you and key staff?

9. Does your firm have a written contingency plan to ensure continuation of client service if your premises are destroyed or are otherwise inaccessible?

10. Are emergency documents (insurance policies, POA, blank cheques, software licenses, emergency contact information, etc.) kept offsite in a secure location?

11. Does your firm take steps, including all risks insurance, to offset losses that could result from fire, theft or any other cause?

12. If you are a sole practitioner, in order to cover absences, have you given Power of Attorney or other written authority to another lawyer over your:

- a) Trust account?
- b) General Account?
- c) Operational Issues?

13. Are there any space sharing or association arrangements with any non-licensees, or any other lawyers or paralegals who are not members of your firm?
14. Are any space sharing or association arrangements in writing?
15. Are there any arrangements with paralegals, lawyers, law clerks, consultants, translators, co-op students, conveyancers and others not part of your firm?
16. Are any such arrangements in writing?

IF YOU ARE AN ASSOCIATE OR EMPLOYEE, GO TO QUESTION 20

17. If you are a partner in a general or limited liability partnership or shareholder in a professional corporation, do you have a written partnership/shareholders' agreement?

If NO, go to question 20.

18. If YES, which subjects are addressed in your agreement?
- The firm's name
 - Capital contribution
 - The allocation of profits and losses
 - The rights and obligations of each party
 - The decision making process
 - The daily management of the firm
 - The effect of a party's departure (voluntary, forced, death), divorce or separation
 - Dissolution
 - An arbitration clause
 - Life insurance between parties

- Disability insurance
- General office insurance
- Business interruption insurance
- Excess professional liability insurance, in particular with respect to claims arising from work before or after the person is a partner

19. Is the agreement reviewed regularly?

20. Does your firm:

- a) Pay referral fees?
- b) Receive referral fees?

21. Does your firm, or any related entity, provide any services other than legal advice/services to your clients?

22. Do you perform agency work for other licensees?

23. Does your firm have written practice management policies?

If YES, which of the following written policies does your firm have?

- Identifying clients
- Confidentiality
- Conflicts of interest
- Tracking limitation periods and other key dates
- Docketing time
- Safeguarding client information
- Computer and email security
- Periodic review of files
- Working hours
- Distribution of work
- Holidays

- Overtime
- Opening and closing/destruction of files
- Welcoming clients (on the phone and in person)
- Mail handling
- Privacy/PIPEDA
- Technology Use
- Workplace harassment and discrimination
- Walk-ins/cold calls
- Contingency planning

24. Does the stationery used in your correspondence include the firm name, address, telephone and fax numbers, and email address?

25. Do your outgoing emails include a disclaimer?

26. Is the office space set up so that there are private areas for discussions with staff and/or with clients?

27. Is your office and the rest of the firm's space set up so that third parties do not have access to client information and files?

28. Is the firm's office easy to locate by means of a sign or otherwise?

29. Do you regularly verify if your support staff properly understand their functions?

30. Do you regularly review and supervise the work of your support staff?

31. Do you regularly review and supervise the work of lawyers, paralegals, or others on files for which you are the responsible lawyer?

32. Does your firm employ articled students?

If NO or N/A, skip questions 33-34.

If YES, does the work of articled students include the following?

- Consultation and research
- Drafting documents

- Negotiation and mediation
- Representation
- Professional practice, code of ethics

33. Are you responsible for supervising articulated students?

34. Do the articulated students have a workstation or office ensuring confidentiality?

B. CLIENT SERVICE AND COMMUNICATION

1. Do you make and file a detailed note of all calls and consultations that do not lead to a retainer?
2. Do you check for conflicts before a call/consultation where you expect to get confidential information?
3. If you receive confidential information in the course of a call/consultation, do you enter the names of all persons and entities involved into the conflicts database?
4. At the conclusion of an initial call/consultation, if no instructions are received to proceed, do you provide the prospect with a non-engagement letter which includes notice of any applicable limitation periods?
5. After a call with a prospective client, do you have an initial face-to-face meeting with the client in order to formally accept the matter?
6. Does the firm maintain a website?

If NO, go to question 7

- a) Does the website include a Terms of Use policy?

If YES, does the Terms of Use Policy include a Disclaimer of Liability?

- b) Are users of the website made aware of the potential risks associated with use of the website including:
 - i. Lack of confidentiality?
 - ii. Use does not trigger lawyer-client relationship?
7. Do you have a blog or similar forum (whether in electronic or print format) where you discuss legal issues?
8. Do you:
 - a) Satisfy yourself as to the new client's identity immediately upon accepting a new matter?
 - b) Satisfy yourself as to the purpose and objective of the retainer and make an appropriate note to file?

- c) Satisfy yourself that you are competent to handle the issues involved, or can become competent without causing the client undue cost, delay or burden?
9. Do you ask questions to determine if the client has capacity to give instructions?
10. Prior to accepting a new matter do you discuss your fees and billing practices with the client?
11. Do you obtain a written retainer agreement or otherwise confirm the terms of the engagement in writing when a client retains the firm?
12. Other than a Legal Aid certificate, do you obtain a retainer agreement or other written confirmation of the retainer from clients funded by Legal Aid?
13. Does your firm accept contingency fee retainers?
14. Which of the following items are normally included in a written retainer?
- The nature and scope of the matter
 - Any obligations to be fulfilled by the client
 - The timetable or expected course of the representation
 - The method and frequency of communication
 - Fee/cash retainer arrangements
 - Details regarding any division of fee arrangements, and the client's consent to same
 - The manner in which a lawyer or client may terminate the retainer
 - The use of agents/duty counsel for routine appearances
 - Lawyer-client privilege
 - The client's assumption of the risks associated with the use of email and texting
 - The consequences of termination of the engagement
15. Are monetary retainers obtained from clients?
16. Is the amount of the retainer sufficient to cover estimated disbursements?

17. Before accepting a new matter, do you ensure that it will not place you or the firm in a position of conflict of interest?
18. Do you check for conflicts on an ongoing basis during the course of a matter (for example when new information is received, new facts learned or a new individual/entity enters the matter)?
19. Do files contain confirmation that a conflicts check has been completed?
20. If a client attends with another person, do you clarify whether or not that person believes that you are also acting for him or her?
21. When dealing with unrepresented persons on behalf of a client, do you ensure that it is clear that you are not representing them, and that you have discharged your obligations under Rule 7.2 – 9 of the *Rules of Professional Conduct*?
22. If you accept a matter where you will be acting for more than one client do you obtain “consent” as defined in Rule 1.1 – 1 of the *Rules of Professional Conduct* before you commence work on the matter, in order to comply with Rules 3.4 – 5 to 3.4 – 7 of the *Rules of Professional Conduct*?
23. Do you act for the vendor and purchaser in the same transaction?
24. Except where the lender is a lending client (as defined in the *Rules of Professional Conduct*), do you act for the lender and borrower in the same transaction?
25. Do you act for a lender or borrower in respect of private, non-institutional mortgages?
26. Do you receive any fees from a title insurer when your client purchases a title insurance policy?
27. Do you act for both parties in the preparation of a domestic contract or separation agreement?
28. Do you accept mortgages or other collateral to secure fees?
29. Do you ever borrow from clients (excluding financial institutions)?
30. Do you send clients elsewhere to obtain Independent Legal Advice or Independent Legal Representation when necessary?
31. Do you ever provide legal services to an organization of which you are an officer, director or majority shareholder?

32. Do you issue formal legal opinions in writing to your clients:
- a) When the matter is complex?
 - b) When the client's position is precarious?
 - c) When an unexpected development occurs?
 - d) When the client's expectations are unrealistic?
33. Do you send your clients copies of pleadings and important correspondence?
34. Do you communicate to your clients all offers of settlement of litigation or, for criminal matters, offers of resolution from the Crown or Provincial Prosecutor?
35. Do you provide the client with a written explanation of the terms and implications of any such offer?
36. Do you obtain written instructions from your client on whether to accept such offers?
37. Do you have the client sign the minutes of settlement/settlement agreement?
38. Do you regularly (i.e., monthly/quarterly) update clients on the status of their file?
39. Are status updates provided to the client:
- a) Verbally?
 - b) In writing?
40. Are verbal updates recorded in writing in the client file?
41. Do you keep your clients informed about new legislation or case law that may materially affect the course of the matter?
42. Are changes to clients' instructions confirmed in writing?
43. Do you send a reporting or closing letter to the client at the conclusion of each matter?
44. Do you check on the client's satisfaction with your professional services?
45. Do you or does your firm have a policy or procedure for dealing with client complaints regarding their file?

- 46. When a matter involves a client deadline, do you advise the client in writing that the client is responsible for ensuring that the deadline is not missed?
- 47. When a matter involves the renewal or registration of a document within the client's control, do you advise the client in writing that the client is responsible for the renewal or registration?
- 48. Do you read all correspondence and documents before signing and presenting them to the client?
- 49. Do your files evidence that you have confirmed with clients that they have reviewed draft documents in detail before they are signed?
- 50. Do you discuss with clients the risk of interception/unauthorized disclosure if they intend to communicate by electronic means?
- 51. Do you advise clients about lawyer-client privilege and privacy issues where they may share information with other advisors?

C. FILE MANAGEMENT

1. Where the client has retained you for more than one matter, is a separate file opened for each matter?
2. Do you, or does your firm, use a file opening checklist or intake form to set up your physical and electronic files?
3. Does the file opening form include the information that you are required to record in accordance with the client identification requirements of By-Law 7.1?
4. Where a new matter may involve receiving, paying or transferring funds which are not exempt under the client identification and verification requirements of By-Law 7.1, do you obtain verification of identity from the client (and make photocopies for the file)?
5. Are key dates noted in individual client files?
6. In addition to a physical file do you maintain an electronic file?
7. Do you organize your physical and electronic client files by placing contents into appropriately named sub-files?
8. Do you save sent and received emails to the client file or client email folder?
9. Do you have a system for reviewing, organizing and following up on email and phone messages?
10. Do you scan and save into the electronic file a copy of all important documents?
11. Do you remit a copy of the original or other important documents to your client, or scan a copy into your electronic file, to ensure that secondary proof may be made should the document be lost?
12. Is the material in physical files organized chronologically?
13. Is the material in physical files properly secured?
14. Do you document the client file of all material telephone calls with the client or third parties involved in the matter?
15. Do you document the client file of all appearances and meetings with the client or third parties involved in the matter?

16. Do you use checklists as part of managing the progress of files?
17. Is preparing wills and powers of attorney ("POA") part of your practice?

If NO, go to question 18

If YES,

- a) Do you use a detailed wills/POA questionnaire to determine the client's intentions and the particulars of all assets, liabilities, dependant relationships, beneficiaries and trustees?
 - b) Does your firm retain the original will and POAs?
 - c) Do you keep such documents in a locked and fire proof cabinet?
 - d) Do you maintain a numerical and alphabetical list of wills and POAs?
 - e) Do you have a policy governing the release of original documents?
18. Do you keep a list of your:
- a) Open files?
 - b) Closed files?
19. Do you have a separate numerical index of all files opened and closed?
20. Are open and closed files cross-indexed for easy retrieval?
21. Do you have an alphabetical index of clients?
22. Are the addresses and telephone numbers noted in a client/matter database or in some other form?
23. Does your firm have a systematic process for closing, securely storing and destroying files?
24. Does the file closing process include returning client materials, including those produced in court?
25. Does the file closing process include a final review to confirm that there are not any matters that have been overlooked?
26. Does your firm have a process for the transfer of file materials to other lawyers, clients or authorized third parties?
27. Are your active files kept apart from closed files?

28. Where are all your active files kept?
29. Are inactive and closed files removed from the open filing system?
30. Where do you store closed files?
31. Do you use a personal tickler/reminder system to track key dates such as limitations, deadlines to avoid administrative dismissal of civil actions, court appearances, filing due dates, closing dates, undertakings, advance reminders etc.?
32. Who else has access to such tickler/reminder system?
33. Does the firm have a centralized tickler/reminder system in addition to your personal system?
34. Do you utilize a bring-forward system to follow-up on undertakings, avoid limitation issues, ensure a response is sent or received and avoid unnecessary delays in the progress of client matters?
35. Do you regularly review the status of, and update, client files?
36. Do you review your files periodically to ensure that no active file is missing and that none has escaped your updating process?

D. FINANCIAL MANAGEMENT

1. Do you have a fixed hourly rate?

If YES, what is it?

2. Does your firm have a fee schedule setting out the hourly rates, block fees and disbursements?

3. Do you accept Legal Aid funded clients?

What percentage of client files?

4. Other than unpaid time on Legal Aid files, do you do *pro bono* work?

5. Do you keep a record of billable time?

If YES, is it:

a) Noted in the client's file?

b) On separate time sheets?

c) Immediately entered into the firm's accounting?

If not always, how many weeks behind are your entries?

6. Are files interim billed?

7. Are monetary retainers replenished upon the issuance of interim accounts?

8. Does the firm keep track of overdue payment on accounts?

9. Do invoices provide detailed information?

10. Is interest charged on past due accounts?

11. If interest is charged, is this indicated clearly in the retainer agreement and in the statement of account?

12. Are invoices adjusted upwards or downwards to take into account the results obtained?

13. Are final invoices transmitted to clients within 30 days of termination of the retainer?

14. Are invoices delivered to the client after services have been rendered and prior to the transfer of fees from the trust account?
15. In the course of the last 3 years, have any of your fee bills been assessed by an Assessment Officer of the Superior Court of Justice?
16. Are monetary retainers deposited in the firm's trust account within one business day?
17. Is a General Receipts and Disbursements Journal maintained?
18. Is a Referral Fees Journal maintained?
19. Is an accounting system used for monies and property received in trust?
If YES, does it include:
 - a) Client ledgers?
 - b) A Trust Receipts Journal?
 - c) A Trust Disbursements Journal?
 - d) Particulars as to the purpose for which money is received or disbursed?
 - e) A monthly Trust Reconciliation and Comparison?
20. Does the firm complete a monthly trust reconciliation and comparison within 25 days of each month end as required by Section 22 of By-Law 9?
21. Is the monthly trust reconciliation and comparison reviewed by the lawyer responsible for completing the Financial Reporting section of the Annual Report Filing?
22. Does the person who reviews the monthly trust reconciliation and comparison compare the firm's aggregate trust ledger balances to a formal account statement provided to the firm by the applicable financial institution?
23. Other than an individual licensed by the Law Society, does any person have online access to the firm's trust account?
24. Other than an individual licensed by the Law Society, does any person have authority to transfer any funds from any trust account?

25. Is the trust accounting system computerized?

If YES:

a) Is a printed copy of the trust accounting maintained?

b) Is a backup copy of the trust accounting maintained?

26. Are originals maintained of:

a) Bank statements?

b) Cashed cheques (or photocopies if cheques not returned by the bank)?

c) Detailed duplicate deposit slips?

27. Who is authorized to sign trust cheques on behalf of your firm?

28. Is a valuable property record maintained that identifies all non-monetary property held in trust?

29. Is the firm's bookkeeping entered and posted so as to be current at all times?
If not, how many weeks behind is it?

30. Does the firm review the trust listing for client trust ledger account balances which have had no activity for some time (e.g., 12 months or longer) to ensure that appropriate action is taken on the file (e.g., returning funds to clients if the matter is closed, registration of outstanding mortgage discharges etc.)?

31. When your firm receives cash, is a receipt issued and signed by both the payor and a member of your firm, and does your firm retain a copy?

32. Are there an expected number of hours that you, or any lawyer you employ, must bill clients during the year? If YES, how many hours are required per year?

IF YOU ARE AN ASSOCIATE OR EMPLOYEE, SKIP QUESTIONS 33-37

33. Do you have a business plan?

34. Does the office have an annual budget?

35. Are income and expense statements prepared?

36. Do you review the fee structure regularly?

37. Do you review the details of your present LawPRO coverage on an annual basis to assure yourself that your coverage (mandatory minimum and any excess coverage obtained) is appropriate and adequate having regard to the current circumstances of your practice?

E. TECHNOLOGY

1. What law practice specific software does your firm use (if any)?
2. Are all computers in your firm networked on a common server?
3. Is there a backup system for your computerized information?
4. Is backed-up information kept outside the office?
5. What is the frequency of backing up data?
 - a) For onsite backup
 - b) For offsite backup
 - c) Cloud backup
6. Does the firm use measures to protect external devices and hardware, from theft/loss and to protect the integrity of stored information/documents (i.e., passwords, virus protection, etc.)?
7. Are mobile devices (laptop, mobile phone, etc.) password protected?
8. Do mobile devices automatically log off?
9. Can your assistant pick up your messages (phone, email, mobile phone) when you are away or out of the office?
10. Can you check voice and email messages when you are out of the office?
11. Can your staff reach you when you are not in the office?
12. Can your staff leave you a message?
13. Are you aware of the security and privacy issues associated with the electronic land registration system?
14. Are you always in possession of your Teraview personalized security package?
15. Have you obtained a Teraview personalized security package for any of your staff members?
16. Have you shared your Teraview personalized security package with any other person?

17. Other than a backup have you made a copy of your Teraview personalized security package?

F. PROFESSIONAL MANAGEMENT

1. During the last calendar year, did you complete the number of hours of eligible Continuing Professional Development ("CPD") activities required by Section 2 of By-Law 6.1?
2. Have you established a file for the retention of the CPD documents specified in Section 4 of By-Law 6.1?
3. Are you a member of any law or Bar Associations?
4. Have you recently reviewed the:
 - a) *Rules of Professional Conduct*?
 - b) *Practice Management Guidelines*?
5. Are you aware of the various CPD/CLE articles and resources available for free on the Law Society website?
6. Do you discuss with colleagues new legislation and case law developments that affect your practice area?
7. Are you aware, in order to maintain coverage, that you must give notice to LawPRO as soon as possible after learning of a situation which may give rise to a claim?
8. Are you aware that you will not be covered by professional liability insurance if you admit liability (to a client for an error or omission), without the consent of the insurer in writing?
9. Are you aware that your undertakings are enforceable even though they lack the consideration necessary to establish a binding contract?

G. TIME MANAGEMENT

1. How much time do you set aside for office management (i.e., day-to-day running of the office, attending to administration or business aspects of the office, accounting and filing requirements)?
2. Do you maintain a "To Do" list?
3. Do you maintain a current active file list with a status column?
4. Do you use time dockets to record and report on non-billable time (for example CPD, business development, administrative tasks, non-billable time on client files so that effective billing rates can be determined on flat fee work)?
5. Does the firm have established targets and measurements to assess productivity and efficient use of human resources?