

Record Keeping

7. Adequate records will be retained by the Law Society of the details of each case where this Policy has been applied and the action that has been taken. Those records will include:
 - a. The name and address of each complaint which has been treated as abusive, vexatious or persistent;
 - b. When the restriction comes into force and ends;
 - c. What the restrictions are; and
 - d. When the complainant was advised of the restrictions.

Executive Committee Meeting 2019-04-10

8. POLICY ON DISASTER RECOVERY AND SUCCESSION PLANNING

Lawyers owe a professional obligation to clients to plan for interruptions in the lawyer's practice, whether due to unexpected emergencies, an unplanned disability or incapacity, or a planned retirement. Proper planning also provides further protection from the risk of an insurance claim while a lawyer may be unable to practice.

Succession planning also minimizes the unfortunate financial consequences for a lawyer or the lawyer's estate should the Law Society be required to appoint a custodian for the lawyer's practice.

Effective January 1, 2020, all lawyers in private practice are required to have a disaster recovery plan and a succession plan. A lawyer's plan may provide for both disaster recovery and succession.

A lawyer shall provide copies of his or her disaster recovery plan and succession plan to the Law Society, or to an auditor appointed under section 47 of the Act, upon request. A lawyer shall provide the lawyer's Procedures Manual for review by the Law Society, or by an auditor appointed under section 47 of the Act, upon request.

Disaster recovery plan

A disaster recovery plan must include plans to recover from:

- Natural disasters (flood, fire, power loss)
- Technology-related disasters (telephone or computer failure, hard drive crash, hacking of system)
- "Antisocial" activities (theft, vandalism, violent intruder)
- Personal problems for lawyer and staff (unexpected absence or termination, long term disability, suspension).

The disaster recovery plan must address:

- Ongoing client matters – open files
- Client wills and wills indices
- Client titles, deeds and other important records
- Client notification
- Confidentiality of client information
- Access to computers, email, accounting and other electronic records
- Staff payroll and other issues
- Trust funds
- Trust and other bank accounts
- Protection of client property
- Maintenance of closed client files
- Any other arrangements necessary to either carry on the lawyer's unique practice

Succession Plan

A succession plan must include plans in the event of either temporary or permanent inability of the lawyer to practice.

The succession plan must address:

- Ongoing client matters – open files
- Client wills and wills indices
- Client titles, deeds and other important records
- Client notification
- Confidentiality of client information
- Access to computers, email, accounting and other electronic records
- Staff issues
- Trust funds
- Trust and other bank accounts
- Protection of client property
- Maintenance of closed client files
- Any other arrangements necessary to either carry on or wind up the lawyer's unique practice

Procedures Manual

As part of a disaster recovery and succession plan, lawyers shall maintain Procedures Manual. The procedures Manual shall contain all information necessary to maintain the operation of the lawyer's practice.

The Procedures Manual must include:

- The lawyer's succession plan;
- The lawyer's disaster recovery plan;
- Details of bank account information, bank locations, any anything else needed to access the lawyer's bank accounts;
- Insurance information for all insurance policies for the lawyer's practice;
- Computer and other passwords and anything else needed to access the lawyer's computer(s), the lawyer's email and the lawyer's calendar;
- Location of, and anything needed to access the lawyer's client files;
- Location of, and anything else needed to access the lawyer's limitation and diarization system;
- Anything needed to access the lawyer's account information;
- Contact information for the lawyer's personnel;
- Contact information for the lawyer's accounting staff;
- Details of the lawyer's space arrangements (details of lease, name of landlord, and anything else needed to access the lawyer's office)
- Details of the location of the lawyer's post box, a key to the lawyer's post box, and anything else needed to access the lawyer's mail;
- Location of, and anything else needed to access client property;
- Location of, and anything else needed to access all closed client files;
- Details of all personnel employment arrangements.

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PART IV

ASSURANCE FUND

1. ASSURANCE FUND PER CLAIM AND AGGREGATE LIMIT

Section 34 of the Legal Profession Act provides that the Society may maintain a fund called the Assurance Fund, for the reimbursement, in whole or in part at the discretion of the Executive, of persons sustaining pecuniary loss by reason of the misappropriation or wrongful conversion by a member of money or other property entrusted to or received by the member in his or her capacity as a barrister and solicitor, or in such other capacity as the Society may designate.

The following guidelines are adopted for use of the Society and are not binding on and should not be used to fetter in any way the discretion granted under Part IV of the Legal Profession Act.

1. The Executive will deal with claims as presented, unless, in its opinion, undue prejudice would occur.
2. All claims on the Assurance Fund must meet the prerequisites of Rule 77:
 - i. the matter must have arose subsequent to January 1, 1978;
 - ii. a member must misappropriate or wrongly convert money or other property;
 - iii. the money or other property must be entrusted to or received by a member in the member's capacity as a barrister and solicitor;
 - iv. the money or other property must be entrusted to or received by a member in the course of the member's practice as a barrister and solicitor in the Northwest Territories; and
 - v. notice of the claim must be given to the Society within one year after the day notice of the misappropriation or wrongful conversion came to the attention of the claimant. The Executive may extend this period if it considers that special circumstances warrant an extension.
3. A person entitled may submit a claim to the Society for compensation from the Assurance Fund in respect of:
 - i. the money, or
 - ii. in the case of property, the value of the property.
4. In accordance with Rule 78, a claimant shall apply in writing, or in the form set out in these guidelines, to the Executive for reimbursement from the Assurance Fund, stating the full particulars of the loss alleged to have been sustained by the claimant, including:
 - i. the name and address of the member whose misappropriation or wrongful conversion is alleged to have led to the loss;
 - ii. the amount of the loss;
 - iii. the business or transaction out of which it is alleged that the loss arose; and
 - iv. the date on which the alleged loss first came to the knowledge of the claimant.
5. Any refusal or failure by the claimant or other parties to respond to questions or to produce documents shall be a factor to be considered by the Executive in the exercise of its discretion.
6. The Executive may appoint a committee to inquire into the matter for the purpose of:
 - i. determining the facts on which the claimant relies;
 - ii. determining whether the application comes within subsection 34(1) of the Legal Profession Act;
 - iii. determining whether the claimant is in need of assistance; and
 - iv. recommending to the Executive whether a payment should or should not be made to the claimant.
7. At the conclusion of the inquiry, the committee shall report its findings and recommendation to the Executive.