

Retirement, succession, and planning for the unplanned exit:



7 tips to prepare your practice for a future without you

Running your own law firm or sole practice can be stressful, but stopping can be even harder. Thinking of stepping away from your practice can create an overwhelming tide of questions and unknowns.

It becomes even more complicated when lawyers consider they may not be able to choose the timing of their own departure. A lawyer's health or other emergencies may force them to stop working on very short notice, and what happens to the practice and clients then?

The Law Society of Ontario recently imposed new client contingency planning requirements for lawyers in private practice.

Beginning January 1, 2025, lawyers will be required to maintain a client contingency plan for their professional business, including a designated "administrator licensee" successor lawyer for their practice, and ensure the administrator will be able to efficiently and effectively step into the lawyer's practice.

To explore how lawyers can best prepare for both planned and unplanned absences, LAWPRO recently hosted a 90 minute CPD program on "Succession planning for your legal practice", where we asked experts working in law, business brokerage, and financial management, to speak with us about the ins and outs of preparing exits plans.

Preparing for retirement or other planned exits from your practice



Tip 1: Know your worth

Take steps now to maximize the value of your practice so it can be sold to a purchaser in the future.

Many lawyers are surprised to discover that their legal practice can hold value as a sellable asset. Like any business, a lawyer's practice is made up of both tangible and intangible assets. The equipment you use, the leasehold for your office, the staff you have assembled, may all be attractive to another lawyer looking to build or expand their practice.

The client relationships you have painstakingly cultivated can also be of value to a potential purchaser. Although clients will not be beholden to any agreement of purchase and sale, and may seek representation elsewhere, they will likely put great weight in your recommendations and assurances that they will be left in good hands with your successor. The simple convenience of staying with a single firm, even if the key lawyer changes, is not to be underestimated.

While there is no simple rubric for valuing your practice, most businesses should be expected to provide a purchaser with enough excess cash flow (after expenses and a market salary for the owner) to pay for the purchase price in 3-5 years. For some practices, there may be great uncertainty in this cash flow. While some corporate law practitioners may have a portfolio of reliable clients that can be convinced to stay after the transfer of the practice to a new owner, other areas of law, such as personal injury lawyers, will have greater uncertainty. This uncertainty would be incorporated into any purchase price.

To maximize the value of your practice on exit, adjust your owner's salary to a market rate, eliminate discretionary spending and unnecessary costs, and sell any unnecessary assets. Ensure that your financial paperwork and 3-year business plan is up-to-date, to show any purchaser where they can expect to earn back the purchase price in the future. If you have flexibility in the timing of your exit, offering to stay on as a consultant and employed lawyer for a period to ensure current clients are comfortable with the change can be of great value for the purchasing lawyer.



Tip 2: Know who to tell

Clients, employees, and colleagues will need adequate notice of your plan to step away from your practice. But telling others too soon can have unwanted consequences. Employees may understandably begin looking for new work immediately and may leave before you are ready. Clients may similarly begin looking for other representation much sooner than you would like, particularly if you are hoping to sell the practice and retain clients for your successor.

When you are ready to make your exit known, take time to personally speak with your staff, colleagues on the other side of files, and your clients, to assure them that their interests will be taken care of. Whether or not you are selling your practice, you may need to refer your ongoing and recent clients to another lawyer that can handle their legal affairs, especially in cases where the continuity of service may be disrupted. Be prepared for past clients to reach out for legal assistance even after you step away from your practice—once clients find a lawyer they are comfortable with they are often reluctant to seek new representation.

Tip 3: Determine your insurance needs



LAWPRO provides \$250,000 of runoff insurance per claim and in the aggregate, at no cost, for all lawyers after they leave private practice. This may not be enough continuing insurance, depending on the risk associated with a lawyer's practice. If there is potential for future claims in excess of this amount, lawyers should strongly consider obtaining additional insurance.

LAWPRO's runoff coverage protection can be increased to \$500,000 or \$1 million on a 2-5 year basis. For lawyers handling files with values above \$1 million (and associated risk above \$1 million), Excess Insurance can be purchased from LAWPRO or third-party brokers.

For more information on your insurance needs when preparing to exit the practice of law, review LAWPRO's corresponding insurance guide.

Preparing for unplanned exits from your practice



Tip 1: Have a buddy

At the heart of the LSO's new contingency planning obligations is a need to select an administrator licensee that is able to take over your files if something were to happen to you. This could be a sudden illness or the proverbial bus that takes the lawyer out of "commission". Whatever the cause, all lawyers must be prepared for such an eventuality.

Lawyers spend years building up a reputation they can be proud of. This reputation relies on taking care to protect their clients' interests. Even if the lawyer is no longer around, their clients will be, and so will their reputation. Ensuring their files do not fall into ruin without them is a basic obligation any lawyer must undertake.

Having a "buddy" in place that has experience in your areas of practice, a general knowledge of your files and practice style, and has agreed to step in if the need arises, will help you comply with your LSO obligations, and give you piece of mind that your practice will be in good hands without you.

If two lawyers practice in similar areas, it is convenient for the buddy system to be reciprocal, with both lawyers agreeing to act as each other's administrator licensee in case of emergency. However, lawyers do not need to limit themselves to a single buddy. If a lawyer practices in multiple areas, it may be necessary to make arrangements with multiple lawyers to take over different files. Similarly, if a lawyer is handling a large volume of files, it may not be reasonable to expect a single buddy to step in and take them all on. Making arrangements for one key administrator who will handle your affairs and, potentially, additional buddies who will be able to take on various files in your absence will ensure your files are protected without unnecessary hardship or confusion.

One additional bonus to the buddy system is the ability to intentionally step away from your practice for a period of time without concerns as to the welfare of your clients or the destruction of key relationships. Parental leave, sabbaticals, extended vacations, and other absences can sometimes seem impossible when a lawyer is managing a sole practice, but having a buddy in place that can temporarily take over your files provides piece of mind for scheduled temporary absences as well as unplanned emergencies.



Tip 2: Talk to your bank

If an administrator lawyer takes over a practice, they may require additional legal powers to access financial and various business accounts established in the absent lawyer's name. This may be necessary to pay out trust funds to clients, pay staff, or pay other invoices that arise.

While power of attorney documents may grant some of these powers, lawyers should not count on a "one-size-fits-all" approach. It's important to speak with your bank to fully understand what they will need to work with any administrator lawyer in the event of emergency absences.

Different bank branches often have different policies and protocols for granting access to customer accounts. Some branches may require additional assurances beyond a power of attorney document or single agreement. Establishing a personal relationship with a business account manager and branch manager will allow lawyers to get clear answers to what documents, evidence, and steps are required to hand off business accounts to another party for a period of time.



Tip 3: Collect your passwords

We're taught to keep all our passwords close to the chest, but if someone else needed to access your files without you, how would they do that?

There are various options for creating contingency protection for your files and online accounts in case of your absence. For example, if you work with a trusted and close staff, an assistant or clerk can be made aware of all important passwords should the lawyer be unavailable. Alternatively, a lawyer can prepare a single document with all key passwords and instructions for accessing online accounts. This document should be stored in a secure place, preferably a safe that can be accessed by a next-of-kin and then passed on to an administrator lawyer. However, one should be mindful of passwords that cannot be shared with others, such as those pertaining to the Personalized Security Package.

A password memo should contain information on all online accounts used by the lawyer for their practice—such as email, any content management systems, online subscriptions to databases, etc.—as well as the passwords for accessing these accounts and

instructions for what they are used for. Password management tools such as 1password or Lastpass, which store passwords and other sensitive information in a “virtual vault” (with data maintained on Canadian servers), can reduce the number of key passwords that must be memorialized in any hardcopy memo and transferred to a successor. However, remember that such virtual vaults should also be protected by Two-Factor Authentication (which your successor will not have). This can usually be bypassed with “single-use-only” recovery codes, which should be stored with your other key information in a password memo.

If your client files are stored in the cloud or in a hard drive, this document should also set out how an administrator can access those files.



Tip 4: Organize your files

Keeping well-organized files is an integral part of any lawyer’s practice. It will always pay off. Even in the absence of emergencies, it saves the lawyer time and ensures that proper documentary records are available for any future disputes or malpractice accusations.

A well-organized filing system uses consistent naming and sorting conventions. For example, files can be organized initially by client, sorted alphabetically by last name or corporate name. When clients have multiple files, they can then be sub-indexed alphabetically.

Documents within a single matter can then be organized by subject. A single document can then be saved under the format “Client – Matter – Subject (e.g., discovery) – Date”, which can be easily sorted in your database, easily accessed by an administrator, and easily understood by any successor.

Files kept as hard copies should be organized in a manner consistent with your computer organization. If the lawyer only has a few documents kept as hard copies, it may be useful to scan those documents and keep digital versions on the computer so that the whole matter can be accessed in a single way.

Conclusion

It’s never too early to start thinking about tomorrow. Putting a plan in place now for future emergencies is not only about fulfilling LSO contingency requirements, but about bringing peace of mind to your clients, your staff, and yourself. As well, there are immediate benefits—better file organization, a buddy that can step in to help when you need it, and increased value for your firm as a sellable asset down the road. ■