

Safeguarding Your Practice

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There's no time like the present to plan for the future – and no better reminder of the importance of planning than witnessing the effects of a local disaster on the businesses and lives of the people affected. It seems that over the past several years, the nature and frequency of disasters that are affecting our daily lives is changing. It used to be that we would hear how tornadoes or earth quakes would cause widespread destruction in parts of the United States. Then there were stories of the devastation to life and practice caused by Hurricanes Katrina and Rita. We saw how lawyers could lose both their homes and their offices in the blink of an eye. Still, these types of natural disasters rarely seemed to affect Alberta lawyers. Similarly, we hear reports on the news about high level breaches of internet security or of yet another incident of workplace violence being carried out south of the border. But as lawyers, even here in Alberta, we are not immune to the forces of nature or the whims of the demented.

Disasters can and do occur, everywhere. Whether natural or man-made, there can be little advance warning. From wild fires, floods, train derailments, to bomb threats closing down the court house, computer hackers compromising internet security, or the sudden heart attack of a lawyer, the potential disruptions to a law practice add up. While many of these catastrophes are beyond one's control, advanced planning can give a lawyer and their firm an edge in overcoming the long-term effects of these unexpected or unimaginable events.

Identifying Potential Risks

The first part of developing a contingency plan is to understand and identify the types of hazards that could present a risk to your practice. Consider the potential threats, in light of your physical surroundings, the nature of your practice and the community that you are in. To what extent are you vulnerable to the following?

- Physical Hazards – are you in an area that can be subject to avalanches, earthquakes, flooding, landslides, lightning strikes, severe storms, tornadoes, or wild fire?
- Other Hazards – are you subject to power failure, water line, gas line or sewer break, building fire, train derailment, chemical releases, pandemic influenza, or hard-drive or server crashes?
- Anti-social Activities – are you vulnerable to theft, arson, a bomb threat, a violent intruder (former client, terminated employee, opposing party), computer hacker, or fraudster?
- Personal Problems (your own or your employees) – there is always the possibility of an unexpected accident, illness or disability, suspension or disbarment or death.

Evaluating Your Current Circumstances

Once you have identified the various potential risks, consider what you need to establish in the way of systems or procedures that will protect you in the event that any of these events occur.

- How effective is your building or office security?
- Should you consider limiting access to certain business area or during certain times?
- How can you secure your electrical and phone systems so that they are not exposed to sabotage?
- How can you protect your computer system from hackers?
- How will you duplicate all file documents and back-up all computer programs?
- Will you arrange for off-site back-ups of your data?
- Would any off-site back-up storage be subject to the same potential threats as your office?
- Will you periodically test your ability to restore a backed-up file?
- How will you create a complete record of all your open matters and associated contact information?
- Will you make arrangements for remote access to all your electronic records?
- Will you have communication protocols in place for contacting the clients, the court, regulatory authorities, opposing counsel, staff in the case of a disaster?
- How will you ensure that your staff is trained in basic response requirements in the event of a disaster?
- Will you have a central place to store records of all critical business information including bank accounts, insurance policies, hardware and software programs and serial numbers, employee benefit policies etc?

- How will you access all this information in the event of a power, or internet failure?
- Who would step in and continue your practice or wind things down in the event of your sudden disability or death?
- Have you made financial arrangements to cover the cost of continuing your practice in your absence?
- What is your retirement plan?

Planning for the future, whether for an unexpected disaster or a future transition into retirement, is an important part of safeguarding your clients' interests as well as protecting your practice, even in the early stages.

The following checklist can serve as a starting point to develop a succession strategy for your law practice.

Planning for the Unexpected

Develop your office systems with a view to the prior analysis that you have undertaken. Elements to consider include the following:

1. Maintain a complete list of all matters and client and file contact information that can be produced at any time.
2. Ensure that each client file contains sufficient detail that another lawyer taking over the file would know where the matter stood at any point in time including full written details of your retainer arrangements with the client.
3. Maintain an office procedure manual outlining all key aspects of your practice and a list of all law office contacts and business information. Include information all insurance policies, accounting information, a firm inventory of all office furniture, artwork, equipment (including all computer hardware and programs, serial numbers, usernames, and passwords) and ensure that a copy of this manual is stored outside the office or in a secured, fireproof location. Consider developing a formal emergency response plan and documenting your policies.
4. Collect and store all employees' home and cell phone information along with at least one emergency contact number, in a secure off-site location.

5. Maintain an office limitation system and client file diary system, accurately reflecting all deadlines and all reminders so that next steps on files can be easily reviewed. Keep these systems up to date.
6. Establish a system for screening for conflicts and follow it. Include details of that system in your procedure manual.
7. Make sure your computer network programs are up-to-date with all security patches downloaded and installed.
8. Use strong anti-virus software and programs that can protect from spyware and adware collecting personal or client information from your computer, and monitor your internet activity.
9. Strengthen passwords, encrypt data, and control and monitor access to your systems.
10. Create office policies relating to technology use in your firm and regularly train staff on these data security measures.
11. Establish multiple systems for backing up data – full system back-up of your client and practice information and daily back-ups with some back-up versions stored in a secure, off-site storage location.
12. Keep your bookkeeping and accounting records up to date.
13. Keep your time and billing entries current.
14. Obtain life insurance along with a disability policy to cover both your personal requirements in the event of loss of your earning power, and also to cover the costs associated with hiring another lawyer to administer your practice and cover cash flow requirements as the practice is closed or sold.
15. Make arrangements with a colleague or another lawyer for them to step-in if you are not able to practice, for whatever reason. Consider whether a formal agreement is appropriate – possible examples of such agreements are available on the LSBC and LSUC websites but it is important to check with the Law Society's Trust Safety department to understand how these agreements will be viewed. Some lawyers prepare a letter to their staff or spouse directing how matters should be dealt with in their absence. (see Chapter 57 of *Flying Solo: A Survival Guide for the Solo* and

Small Firm Lawyer Fourth Edition, for a sample letter) Consideration should be given to:

- a. The scope of responsibility for the assisting lawyer – (wind up , preservation or sale of the practice)
- b. The circumstances that will trigger the transfer of responsibility for the practice.
- c. The compensation for the assisting lawyer's work.
- d. Details of the plans that you have made – including the location of any legal documents, all client record systems and your office procedures manual

Consider including provisions in your retainer agreement as to the provisions in place in the event of your death, incapacity or impairment.

16. Ensure that you have a valid will, including any terms required to deal with practice related issues. Also consider whether an Enduring Power of Attorney is required to deal with banking and trust accounting issues or your practice generally. Law Society of Alberta R. 119.21(1) requires approval by the Executive Director for a lawyer who is not a lawyer of the firm to sign on a trust account.
17. Make sure that your staff, partners/associates, and family are aware of the arrangements that you have made.

There's no time like the present to plan for the future – and no better time to build in systems that will protect your practice and your clients in the event of an unexpected disaster than when you are developing those systems.

Disasters can and do occur, everywhere. Whether natural or man-made, there can be little advance warning. From wild fires, floods, train derailments, to bomb threats closing down the court house, computer hackers compromising internet security, or the sudden heart attack of a sole practitioner, the potential disruptions to a law practice add up. While many of these catastrophes are beyond our control, advanced planning can give you and your firm an edge in overcoming the long-term effects of these unexpected or unimaginable events.

As a lawyer in a small firm setting or sole practice, it is particularly important to have contingency arrangements in place for another lawyer to step in and ensure that clients are not prejudiced and that your staff and family are not placed in an overwhelming position.

Essential information relating to client matters and the ongoing obligations of the practice must be able to be interpreted by an assisting lawyer regardless of whether that is a partner, associate, friend or formal custodian. It is much easier to build this into your practice structure at the outset.