

A person is seen paragliding over a body of water at sunset. The sky is filled with soft, colorful clouds in shades of purple, pink, and orange. The sun is low on the horizon, creating a bright glow. The overall mood is serene and adventurous.

Flying Solo

A CBA Guide to
Solo Law Practice
in Canada



THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DES BARREAUX CANADIENS

*The Canadian Bar Insurance Association
L'Association d'assurances du Barreau canadien*



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Chapter 1

Making my decision

Going solo is one of the great dreams luring people to the practice of law. Almost any lawyer you meet will tell you that he or she has thought about it at one time or another. The lure of being your own boss, setting your own schedule and not having to put up with office politics, bureaucratic burdens and the administrative hassles of someone else's system are a great enticement. But if you are tired of your present situation and are thinking of making the switch to solo practice, beware: going solo is not the universal solution, and the grass is not necessarily greener on that side of the fence - it is only different.

When you go solo, you are trading one set of problems and responsibilities for another. Whether you will be happier with the problems and responsibilities of a solo practitioner than you were with your previous situation depends primarily on who you are and what you want.

The benefits of being a sole practitioner are easy to describe. But each benefit comes with its own burden - sometimes more than one. The biggest benefit is that you are your own boss. You answer to no one but yourself, you get to make all the decisions, and you get all the credit. But you also have no one to rely on but yourself, you have to make all the decisions, and if you make too many bad ones, you have no one to blame but yourself. As a sole practitioner, you can set your hours, spend your own money and run your own office any way you want, and take (or turn down) any case you want. It can eliminate a lot of stresses, but it can also create a lot of different pressures.

Since going solo does not work for everyone, here are some questions to ask yourself to help determine whether it might be right for you.

Am I self-reliant and self-contained?

One of the hardest parts of going solo is being alone. Sure, you will have other people in the office - your secretary, maybe a paralegal or associate or two, and maybe even other lawyers with whom you share offices. But as a lawyer you are alone. You have all the responsibility for the decisions you make, and no matter how good a network of other lawyers and friends you may develop to brainstorm ideas, celebrate successes and commiserate failures, you are alone with the responsibility. If this scares you more than it excites you, think twice before making the jump.

Do I enjoy handling administrative detail?

If you revel in the “pure” practice of law and disdain administrative matters, get ready for a big shock. Administrative tasks will take up a great deal of your practice. Most lawyers can delegate these tasks or ignore them, and for some matters you can. But for the most part, you have to know how to handle them yourself, or closely supervise the person to whom you have delegated the jobs.

Most of the disciplinary and financial troubles that befall sole practitioners come from neglect or mishandling of administrative details. You have to know how to compute payroll taxes, when they are due, to whom they are paid and what happens if you don't. You have to know how to hire and fire people, what insurance is required, and a myriad of other employee-related matters. You have to know how a bookkeeping system is set up, and what kinds of

safeguards are necessary to prevent mistakes. You have to know how to rent an office, select the equipment for it, and set it up. In short, you have to be half small-business person and half lawyer. You can hire staff and outside consultants to help you, but ultimately it is your responsibility to make sure everything is done right and done efficiently. Remember that the cost of the mistakes comes right out of your pocket. If you think running a small business might be fun, solo practice might be for you; but if you resent anything that takes your attention from the “pure” practice of law, you probably will not be happy solo.

Do I have good “street smarts”?

Being a good lawyer will not automatically make you a good sole practitioner. You need to have the “street smarts” and common sense to know what cases and clients will benefit your business and which ones will hurt it. The fact that people may ask you to represent them and take them on as clients may be flattering. However, if they are a bad credit risk and you do not spot it, you may end up doing a lot of work for free and not being able to pay the bills.

You also need to be able to spot trends in the marketplace that may affect your business. For example, if you plan on setting up a plaintiffs’ personal injury or workers’ compensation practice, what is the risk that an insurance reform measure may put you out of business? If you are going to engage in real estate transaction work, what will happen when the market nosedives? If your practice is going to be heavily dependent on one client, what will happen if that client takes his or her business elsewhere, or suffers a business failure?

As a sole practitioner, it is not easy to jump from one practice area

to another; building up a new client base and referral sources for a different type of work can take a lot longer than your cash lasts.

Can I sell myself?

Some lawyers are natural “rainmakers” to whom clients seem to flock; others, who may be equally talented, do not feel comfortable promoting themselves. There was a time when just doing good work might have been enough to guarantee a sole practitioner sufficient referral work from other lawyers to assure a successful practice. But the legal marketplace has become more competitive, and as a sole practitioner, selling yourself is essential to survival. Unless you are comfortable with the idea of selling yourself and your services, sole practice is going to be difficult for you.

Do I have a high tolerance for risk?

As a sole practitioner, you have to live with every aspect of your practice 24 hours a day, 365 days a year. There will be times when business is not going well, when there is not enough money to pay the bills. But after making the investment of going solo, it may not be so easy to just quit and go get a “real” job.

Not only do clients depend on you, but there are often long-term financial commitments on office space and equipment leases. When things are down, you need the fortitude to keep on going, and the objectivity to evaluate your situation realistically, determine whether changes are needed, and then implement them and hang on until they take effect.

If the thought of losing everything you own brings on a state of panic that forecloses all rational thought, you will probably find it

difficult to handle the inevitable business crises that face every sole practitioner. But if you handle adversity well, you will be able to weather the bad months and quarters, and keep on going to enjoy the good times that make being a sole practitioner so rewarding.

Chapter 2

Hanging out my shingle

Provincial requirements

Whatever form of professional entity you use to practice law, you will have to deal with the many requirements imposed by your provincial Law Society. It is suggested that you contact your Law Society for further information. The following is a list of Law Societies.

Law Society of Alberta

600-919 11 Avenue S.W.
Calgary, AB
T2R 1P3
Phone: (403) 229-4700
Fax: (403) 228-1728

Law Society of New Brunswick

206-1133 Regent Street
Fredericton, NB
E3B 3Z2
Phone: (506) 458-8540
Fax: (506) 451-1421

Law Society of British Columbia

845 Cambie Street
Vancouver, BC
V6B 4Z9
Phone: (604) 669-2533
Fax: (604) 669-5232

Law Society of Newfoundland

P.O. Box 1028, Stn. C.
St. John's, NF
A1C 5M3
Phone: (709) 722-4740
Fax: (709) 722-8902

Law Society of Manitoba

219 Kennedy Street
Winnipeg, MB
R3C 1S8
Phone: (204) 942-5571
Fax: (204) 956-0624

Nova Scotia

Barristers' Society
Centennial Building
1101-1645 Granville Street
Halifax, NS
B3J 1X3
Phone: (902) 422-1491
Fax: (902) 429-4869

Law Society of the N.W.T.

4918-50th Street
P. O. Box 1298
Yellowknife, NT
X1A 2N9
Phone: (867) 873-3828
Fax: (867) 873-6344

Law Society of Upper Canada

Osgoode Hall
130 Queen Street W.
Toronto, ON
M5H 2N6
Phone: (416) 947-3344
Fax: (416) 947-9062

Law Society of Prince Edward Island

49 Water Street
P.O. Box 128, Stn. Central
Charlottetown, PE
C1A 7K2
Phone: (902) 566-1666
Fax: (902) 368-7557

Barreau du Québec

600-445, boul. Saint-Laurent
Montréal, QC
H2Y 3T8
Phone: (514) 954-3400
Fax: (514) 954-3407

Law Society of Saskatchewan

1100-2500 Victoria Avenue
Regina, SK
S4P 3X2
Phone: (306) 569-8242
Fax: (306) 352-2989

Law Society of Yukon

201-302 Steele Street
Whitehorse, YT
Y1A 2C5
Phone: (867) 668-4231
Fax: (867) 667-7556

Insurance

You should retain an accountant and establish good relations with an insurance broker. Even if you are a trained accountant, you do not want to spend time trying to learn what the accountant already knows about completing tax returns and making necessary reports to governmental agencies. You want to spend your time practising law - that is what you are trained to do and that is your source of income.

Your insurance agent can obtain the insurance coverage required by law and the other insurance you want. You will want to obtain errors and omissions (malpractice) coverage. In addition, because you are a lawyer, you are a tempting target for recovery in the event of any non-professional liability, such as an automobile accident or a slip and fall in your home. You are viewed by the public as well-off or on your way to becoming so. You should, therefore, obtain a personal liability umbrella policy. Such a policy is cheap and will protect your assets from liability incurred in non-professional settings (*see Chapter 6, page 25*).

Sole proprietorship vs. professional corporation

As a sole practitioner, you have two choices for the form of your practice. You may be unincorporated (a sole proprietorship) or you may form a professional service corporation.

A sole proprietorship is a business conducted by one owner. A sole proprietor may have employees, but not someone who shares in profit or losses. Being a sole proprietor means that every creditor, whether personal or professional, has unlimited access to all of your assets. This is the traditional form of practice for a solo practitioner,

and the only form available where there is no professional corporation act.

In some provinces, you may create a professional corporation, that is, one person may be the sole shareholder, sole director and sole officer. A professional corporation may limit your liability to ordinary creditors, if suppliers will deal with your corporation without your personal guarantee.

Partnerships

Many lawyers practising with other lawyers form partnerships. The partnerships are almost always general partnerships. Many law partnerships are office and expense sharing arrangements.

The partnership agreement should be carefully drafted. It should clearly state the financial terms including how expenses are paid, how profits or losses are shared, what capital contributions are required, what retirement arrangements will be made, how capital and income are paid upon withdrawal. Other things to consider include the number of billable hours expected, how administrative work will be shared, what the vacation and leave policy will be. In 1997, the Young Lawyers' Conference published "So You've Been Invited To Become a Partner: A CBA Guide to Legal Partnership in Canada", which deals with many aspects of partnership. The book can be purchased from the CBA by calling (800) 267-8860 or (613) 237-2925, ext. 156.

Chapter 3

Location, location...

There are many considerations in determining where to establish an office. Some of those considerations are cost; the nature of your practice, the access potential clients will have to your office; the amenities which are important to you, your employees and clientele; and the plans, however vague they may be, concerning the nature of your practice in the future. The following is a discussion of these factors. While by no means comprehensive or exhaustive, the following factors should be taken into consideration.

Costs

The primary consideration is cost. It would be ludicrous for a new sole practitioner to go to a prestigious office building and lease plenty of space for him or herself, a secretary, and future staff including partners and associates. A new sole practitioner's primary concern in the operation of business must be overhead.

A sole practitioner must keep fixed costs at a minimum while at the same time making sure that the best service to clients is being provided. The ambience of a nice office may be impractical at first and lead to a quick and fatal financial disaster.

A sole practitioner will often begin practice with no or very few clients. Thus, an alternative must be found to an outlay of a large amount of cash each month on a fancy office.

Subleasing

One option a sole practitioner should consider is subleasing space from another lawyer or another larger firm. In exchange for the space provided, the solo practitioner may offer the one resource he or she will probably have the most of - time. That is, he or she may provide time and services or a combination of cash and services in consideration for office space. For example, he or she may offer to do research and drafting of appellate briefs that the "landlord" needs to have done plus some lesser amount of cash. This is ideal for a new solo practitioner whose inflow of cash is at a minimum. In addition, this fits the solo practitioner's situation of having a lot of time, but little cash and few clients.

The nature and location of your practice

Another consideration for the new sole practitioner is the image he or she wishes to project to potential clients. This means that the sole practitioner may not want to sublease a space in the corner of an entire floor that has been leased by a larger law firm. First, clients may find it difficult to locate you, and secondly, they may link you with the firm from which you are subleasing space. A new sole practitioner must not only survive financially, but at the same time, get his or her name out there in the community as an independent creditable provider of legal services. Bear this in mind when considering whether to share office space or sublease space from another firm.

Another factor in determining the location of your office is your type of practice. If your practice is based primarily upon business transactions or other matters for which court appearances are infrequently necessary, you may want to look at less expensive commercial space outside of the downtown

financial district where rents are lower.

To succeed you must be willing to perform a wide range of legal services for a wide range of clients. New solo practitioners cannot afford to be picky about new business. Because of this, the nature of the practice, as it evolves, may influence the location of the office.

To accommodate the changing nature of one's practice, enter into leases or subleases that are one to three years long. This provides flexibility to relocate as the nature of the practice changes.

A short term lease also allows for changing needs. For example, you may require additional staff, take on new associates or choose to enter into partnership agreements with other lawyers. If two sole practitioners are interested in combining their practices, but they are both committed to long term leases, this presents another problem to be faced among the myriad of challenges facing a new partnership.

Amenities

In selecting a new office as a solo practitioner, consider the amenities being provided to you, your staff and your clientele. These include parking, access to your office from the public transit and access to the building during non-business days.

Most downtown office buildings allocate spaces according to the amount of office floor space rented. Usually this will mean the new solo practitioner or small partnership will have one or two spaces at best. Administrative personnel will thus need to find parking elsewhere. Clients, often unfamiliar with the downtown area, can find parking to be frustrating and expensive. On the other hand, an

office out of town usually provides parking for free or at a minimal charge.

The information discussed in this section by no means guarantees a successful decision. A practice is as unique as the hopes or aspirations of the individual. These considerations are simply some of the factors important in the selection of the location for a new office. Each new solo practitioner will come to a decision based on his or her own individual circumstances.

Chapter 4

Financing my business

Just about any new business, including a law practice, burns cash at an alarming rate in its early stages. For starters, there will be equipment to buy or lease, a telephone system to install, stationery to purchase, and staff to hire. The list of pre-opening investments can be a long one.

Once open, most businesses discover that operating expenses exceed revenues by a sizeable margin until the business matures and attains a breakeven cash flow. All too often, a business that would otherwise succeed becomes a “money-pit” because the owner runs out of cash prior to the maturity of the business. Simply put, many businesses fail because they lack sufficient cash reserves to last through the early growth stages.

How can you avoid this fate? A forecast of expected cash inflows and cash outflows can be extremely useful in avoiding problems associated with an under funding of capital. A well thought out cash flow model based on conservative assumptions shows you how much cash reserve you must have before you can open up for business.

A cash flow forecast is best done after the development of a sound business plan. Your business plan does not have to be a formal one. It can be a collection of notes and financial data in a paper folder. However, your plan should address the following areas:

1. Services to be offered:

- What legal concentrations will be available?
- To what market(s)? Individuals? Governments?
- How will the fees be charged?

- Will retainers be required?
- How long will it take to collect fees?

2. Resources required:

- Office and support equipment.
- How many staff? At what salaries? What benefits?
- What will you and your family need to live on?
- Other items necessary for business success.

Armed with answers to these and other questions, you can construct a cash flow model.

Projecting revenue

In a law practice that charges by the hour or by the service, fee revenue is a function of the fee per hour or service and the number of times service is delivered to clients. It is possible that different rates will be charged for different categories of service.

To begin constructing a cash flow model, determine the expected number of hours per month for each different category of services you plan to provide to your clients. Then plot the number of hours or services per month and the respective fee rates over 18 or more months.

In most situations, a new business takes a while to build up volume. Your business may follow the usual pattern: a few hours in the first month gradually increasing in each succeeding month. When you are happy with this projection, simply multiply the projected hours or services by the respective fee rates. This will give you your expected monthly professional fee revenues.

Collecting your fees

It is important to recognize that revenues do not equal cash inflow. Unless you can obtain a sizeable retainer in every instance, you will also have to project your revenue collection. In the best of times, and depending on the quality of your billing system, hourly and fee per service based revenues can take between 30 and 75 days to collect. To continue building your cash flow model, stagger the cash received to show the amount of time expected to collect it. If you expect a 30 day collection period, show revenue billed at the end of the first month as being received during the third month of operations. If you expect a longer collection period, adjust the model accordingly.

Expenses

Every law practice has general expenses you must pay for whether you are serving clients or not. Control of these items is important. Businesses just starting up usually incur unusually high expenses in the pre-opening stage due to investments such as furniture and equipment, stationery, rent deposits, a telephone system, supplies and planning consultation. After you have listed your pre-opening items, estimate their costs and note the total of these costs on your cash flow model in your first month column.

Indicate your projected monthly expenses for each of the following items, and any others pertinent to your practice, in each monthly column:

- Personal living expenses
- Staff salaries and benefits
- Rent and utilities
- Accounting and computer services

- Income taxes
- Telephone and messenger services
- Supplies
- Professional dues
- Continuing legal education
- Law society fees
- Postage and freight
- Travel
- Contingencies.

To get a good grasp of the actual amount of your personal living expenses, review your checkbook and credit card activity for the past 12 months or so. Take note of your infrequent expenditures as well as your monthly costs.

Calculating cash flow

Having plotted the expected revenues and expenses of your new business, you are now in the position to calculate the monthly net cash flow and determine the amount of cash you should have when you start out. In the early months, you will likely project significant decreases in your cash reserves.

Greater cash reserves would provide for unexpected contingencies. The amount of extra reserve you need depends on how your practice is constructed. Generally, it is wise to have two or three months of expenses in reserve at all times. If you have to use your reserve to pay bills, you should seriously consider the likelihood of success in your current configuration. Perhaps only a few costs need to be reduced. On the other hand, it is possible that the market will not support your business.

In analyzing your own cash flow consider a variety of factors,

including: years of experience, type of practice, client base, hours you will work, location of office, type of furnishings/equipment purchased.

Securing the capital

The investment necessary to open your practice, if you haven't already accumulated it in your savings account, can probably be borrowed from a bank as long as you can show success as a lawyer and several years income tax returns to confirm your success. You may also need collateral such as substantial equity in real estate. Using your own funds is of course preferable, because borrowing your start up capital will add interest expense and principal repayment to your already high cash requirements.

Budgeting

You can also use your cash flow forecast as a budgeting tool. At the conclusion of each month, analyze all of your cash receipts and your cash payments, total them by category and update the forecast to show the actual results for the latest month. Do this every month. This will help you stay focused on keeping costs low, and will alert you to unavoidable expenses you did not include in your forecast.

Chapter 5

Choosing equipment

Setting up a law office can be an exciting and rewarding endeavor, but there are lots of little things that can easily be overlooked in the rush to meet opening-day deadlines. Here is a list of essential furniture, equipment, and supplies for setting up your new law office.

In using these lists, please remember that everyone has his or her own special needs that may not be adequately addressed in a general list. Furthermore, your computer hardware and software may allow you to delete some items, such as billing cards or client cards.

Furniture and equipment

For each lawyer

- executive desk
- legal-size lateral file cabinet
- three client chairs
- telephone
- executive chair
- chair mat
- wastebasket
- dictation machine
- computer
- printer

Chapter 5

For each secretary/paralegal

- desk
- chair
- chair mat
- telephone
- wastebasket
- computer
- legal-size lateral file cabinet
- printer

Library/conference room

- bookcases
- dictation machine
- adding machine
- conference table
- chairs
- telephone/speaker phone

For each articling/summer student

- desk
- chair
- chair mat
- telephone
- wastebasket
- desktop file holder
- computer

Reception area

- four chairs
- coffee or end table
- coat rack

Other

- answering machine/phone system
- legal-size fire resistant file cabinet
- copier with reduction capability
- fax machine(s)

Supplies

- Office checkbook & deposit slips
- trust account checkbook & deposit slips
- trust receipt book
- letterhead and second sheets
- letterhead envelopes
- plain envelopes
- statement envelopes
- pencil sharpener
- postage stamps
- letter scale
- letter opener
- stamp pad
- rubber stamps
- post-it-notes
- business cards
- pleading paper
- statement cards
- client cards
- file folders

Supplies, cont'd

- staple remover
- paper clips and holder
- file pins
- file labels
- hole punch
- container for client cards
- container for billing cards
- day book
- stapler
- ledgers
- Will envelopes
- Will backs
- Will paper
- manila envelopes
- dictation tapes
- message pins
- Rolodex
- pens and pencils
- legal tablets
- announcements
- plain paper tablets
- expandable files

Chapter 6

Buying insurance

As lawyers, we are trained to read complex legal documents, but if you are like most of your colleagues, the convoluted terms of insurance policies can be baffling. Unfortunately, even after years of practice, most lawyers find that the documents don't get any clearer. However, it is imperative that lawyers practicing on their own or in a small partnership are aware of the necessary coverage.

The following information has been prepared to demystify the world of insurance and provide you with a clear, comprehensive summary of the various types of insurance coverage you should consider for your practice. Please note that the following discussion does not deal with professional liability coverages which you are required by your provincial law society to have in place.

Property and casualty

- *Office and office contents policy*

Your office policy should be an "All Perils" or "Comprehensive" form and should include all of the following (where relevant):

- (a) *Comprehensive general liability*

The comprehensive general liability of your policy will cover legal costs and any settlement if a client or visitor is injured at your office. Due to the high settlements which can arise from personal injury litigation, you should carry minimum coverage of \$1,000,000. This coverage will also pay the costs resulting from any legal action if water or fire spreads from your office to another.

(b) *Tenants' legal liability*

If, as a tenant, your actions cause damage to the premises in which you rent, tenants' legal liability insurance will cover the costs of the damages and associated legal actions.

(c) *Contents*

Office contents insurance covers all the items in your office against theft, or damage from water, fire and other perils. (If you live in British Columbia, you might want to confirm with your agent that earthquake coverage is included.) Make sure that the contents of your office are insured for their full replacement value.

(d) *Business interruption*

In the event of a fire, flood, etc., business interruption insurance will cover your expenses and lost income if your office is so badly damaged that you can't practice.

(e) *Computer coverage*

Since your computer system is probably as vital to your practice as you are, be sure to have coverage which specifically includes your computer equipment and any associated software. Like the rest of the contents of your office, your computer system should be insured for its full replacement value.

• *Automobile insurance*

If you have a car, it is probably insured already. However if you plan to use your car to get to and from work or during the course of the business day, be sure that you are insured appropriately. If your car is only insured for pleasure use, but you've been using it for work purposes (including travel to and from), your insurance coverage may be either fully or partially void. Discuss with your insurer how you plan to use your vehicle and ensure that your coverage meets your needs.

Personal insurance

- *Life insurance*

Your life insurance coverage should be sufficient to pay any outstanding debts and replace the income loss to your family in the event of your death. If you are married or co-habiting, it is a good idea to have insurance on the life of your spouse as well as your own.

Even if you are not married or don't have children, you should consider life insurance. Single people can use life insurance to help secure a bank loan. Also, in case of premature death, life insurance pays for outstanding financial obligations and funeral expenses.

- *Disability income*

Disability income coverage will maintain your personal income if you are unable to practice as a result of an accident or illness. There are various waiting periods available for disability income insurance. If you are a new practitioner, your waiting period is usually no shorter than 90 days. After your cash flow becomes more predictable, you can switch the coverage to a shorter or longer waiting period which will best suit your needs and income.

- *Business expense disability*

You will need business expense disability coverage if you own your own practice (sole proprietorship or partnership). If you are an associate, you will need it if your agreement states that you're responsible for a portion of the overhead costs. Business expense disability insurance covers on-going expenses such as rent, salaries and other overhead costs, if you suffer an illness or injury that prevents you from practicing. Ideally, the coverage should have an elimination period of no

less than 14 days. This will ensure that expenses in connection with your ongoing practice will be covered after only two weeks of total disability.

- *Individual extended health insurance*

Individual extended health insurance covers the cost of medical services which are not covered by medicare. For example, extended health will pay a portion or all of your prescription medication costs and specialized medical treatment. A variety of packages are available on an individual or family basis. You will also want to consider a “group” benefit package when your practice expands to three or more individuals.

- *Travel medical*

If your individual extended health coverage does not include travel medical, you should consider a separate travel policy to cover out-of-country medical expenses and attendant costs. Generally, the costs of medical attention in foreign countries are prohibitive and quickly erode your vacation fund.

Small partnerships

If you are a member of a small partnership, be sure to read this section because there are certain additional insurance issues you should consider.

1. Life insurance on partners

If you or one of your partners dies, the period immediately following could be very difficult for the surviving partners. There are a number of ways to alleviate the practical difficulties during the transition period.

- *Elimination of debt*

The surviving partners can eliminate some of the difficulties by carrying life insurance to pay part of the partnership's debt in the event of a partner's death.

- *Capital buy-out of deceased's interest*

Generally, the surviving partners will want to buy out the deceased partner's interest in the partnership. This could be a costly proposition. It is a good idea for the partnership to discuss the options with respect to capital buy-out options in advance and carry coverage which would provide the necessary capital for a buy-out.

- *Key person*

If a partner dies, the surviving partners will face increased expenses and loss of revenue during the period of adjustment following the death. In addition, each individual brings his or her own unique knowledge base and skill set to the partnership. To offset loss of revenue and expertise, partnerships should carry "key person" insurance which contemplates and covers the loss resulting from the death of specific, individual members of the partnership.

2. Firm-owned business expense disability

If one of the partners is injured, firm-owned business expense disability will offset the partner's share of office expenses while he or she is disabled.

3. Group benefits

Group benefits are similar to the "extended health" benefits outlined above except that the coverage applies to each member of the "group". Group benefits are available to a minimum of three people and come in a variety of packages, and usually offer a discounted "group" premium.

Available coverages CBIA

The Canadian Bar Insurance Association (CBIA) has been providing Canada's legal profession with a full line of not-for-profit business and personal insurance programs for over a quarter of a century. Developed and administered for lawyers by lawyers, the CBIA provides:

- Term Life Insurance
- Permanent Term Life Insurance
- Accident Insurance
- Individual Extended Health Benefits
- Travel Medical Insurance
- Disability Income Insurance
- Business Expense Disability Income Insurance
- Employer/Employee Group Insurance (Life, Disability, Extended Health, Dental).

Each of these products have been developed exclusively with a view to the unique needs of Canadian lawyers, and are provided at very competitive rates. In each province and territory the CBIA has designated authorized agents to provide these products to the lawyers in those provinces.

The agents currently authorized by the CBIA are as follows:

British Columbia & Yukon

Eric Mass/Sam Esaw

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You may also obtain current information on the CBI's authorized representatives from your local Branch of the Canadian Bar Association, or by phoning (800) 267-2242.

Chapter 7

Using technology

The practice of law is an information business. Each day we depend on information technology, which is the strategic use of both computers and telecommunications. Whether it involves meetings, case management, documentation or accounting, every task performed by a lawyer or support staff can be made more productive through the use of information technology. Most lawyers agree that this information technology is essential, but these same advocates (especially those reluctant to pay for it), are often bewildered about what, when and how much technology to buy. The following chapter discusses a sole practitioner's basic information technology needs, describes new technologies and outlines the formulation of a plan for acquiring the necessary equipment.

Sole practitioners compete with larger firms. An investment in information technology enables the sole practitioner to provide a comparable work product in a timely manner. Additionally, a sole practitioner does not have to overcome the institutional impediments faced by larger firms when implementing a new technology. Thus early adoption of information technology coupled with planned expansion becomes a strategic asset.

The basics

At the heart of any business lies a telecommunications system. It is as necessary as an office address because it enables clients to contact you and enables you to conduct the communications associated with your law practice. It is essential that your office have at least two telephone lines. One of these should be dedicated solely to a fax machine or a computer modem. This will prevent loss of data

caused by any interruption during transmission. Where costs prohibit this arrangement, a voice/fax/modem switch should be installed. Additional lines, for general office use, should be equipped with call waiting or conference calling features and an answering service for calls received after hours or when other lines are busy. Each telephone in the office should have multi-line capability with a conferencing feature.

Mobile communications equipment - a cellular telephone and pager - enable others to reach you when you are away from your office. Cellular communications networks provide province wide and continent wide coverage through roaming agreements. Text messaging pager systems allow you to receive critical information instantaneously. Telecommunications hardware is available almost everywhere, and a variety of telephone and pager service packages are available from are vendors.

Computer applications simplify information management. However, before choosing a computer, you must consider the information that you intend to manage, then select the software that best fits your needs. These factors will dictate what type of computer you need to purchase. The most common uses for a computer in the management of a law practice are:

- As a wordprocessor
- For financial management (time and billing)
- For calendar management
- To compile a client database.

The basic hardware prescription will include a personal computer, a letter quality printer and a modem.

Popular wordprocessor and spreadsheet programs can be obtained individually or in office productivity packages. These may be used

in combination to compile documents, pleadings, and financial records. However, the final product will only look as professional as the printer it comes from.

The cost of laser printers has come down significantly in recent years, and they are generally considered the standard. A good quality inkjet printer is only a little less expensive but gives you the capability of printing colour. The disadvantage is that inkjets are generally not as robust as laser printers, and the printing cost per page is higher. In any event, settle for nothing less than a letter quality printer with graphics capability. Note that in spite of the rapid advances in computer technology, it may be helpful to keep a typewriter in your office for emergencies.

There are a multitude of options to consider in deciding which computer to buy. Currently, there are four basic operating systems: DOS, Macintosh, OS/2 and Windows. These set the environment in which the software functions. An operating system essentially provides software the ground to walk upon and air to breathe so that the programs function. The Macintosh system is only used by Macintosh computers; OS/2 is used by IBM computers; and DOS and Windows are used by IBM clones - IBM-style computers made by other manufacturers.

The software you want to use will determine the operating system that you need. While Macintosh is considered the easiest to use, Windows appears to be the most popular with program developers and allows information to be shared between different programs. While it is possible to mix some environments, this practice may add cost, cause programs to run slowly, and result in system errors or system failures. For beginners, it is best to pick a single operating system and stick with it.

The microprocessor is the brain of the computer. Whether it is

known as a 486, a Power PC, a Pentium or a Pentium Pro, the important factor is the speed at which it runs your programs. While faster is more convenient, it is also more expensive.

A modem may be internal or external. Once connected, it allows computers to communicate by the transfer of data over telephone lines. Many modern models are fax/modems which have both modem and facsimile capability. This feature allows you to send or receive documents and images without pre-printing them. These features normally require additional software. The term "baud" refers to the speed at which information is transferred. A higher baud number allows faster transmission and therefore requires a shorter time to exchange data. This can convert to cost savings when connected to pay-per-minute on-line services, or during long distance calls.

The disk drives are where data is stored. In addition to a floppy disk drive, a fixed or hard drive is necessary to run most software. The desired size of your hard drive will depend on the space required by the programs that you intend to use. There are a number of space saving programs that allow you to nearly double the space available for data storage on a disk drive.

The size of your monitor will have an effect on how comfortable you feel using your computer. Many computers use 14-inch monitors, but 15 inches has become the standard. Seventeen-inch monitors are now available as well, although they can be expensive and bulky.

You may also want a CD-ROM drive on your computer. These have become ubiquitous, and are necessary for some types of software. Much legal research can now be done on your computer via CD-ROM.

Your computer system will likely be one of the biggest single expenses for your office, and you should make sure you have the right equipment. Do your homework and talk to people who have the training and experience to advise you appropriately.

Time, billing and accounting

The survival of a law practice as a business depends upon receiving payment for services rendered. Time and billing software automates the recording and organization functions for the time that you have spent on the work that you have done. This enables you to spend less time managing office finances and more time practicing law. There are many popular programs, some of which link time and billing with accounting functions. Your selection will depend upon preference and relative ease of use.

As a sole practitioner, you are responsible for the finances of your office and the management of your client trust accounts. General purpose accounting software is usually sufficient; but there are packages specifically designed for law office practice. If you do not have accounting experience, you may want assistance in setting up your chart of accounts to conform with income tax and Law Society requirements.

Personal information management systems

Personal information managers are programs that provide basic database management, scheduling, and reporting functions. A database is simply a collection of information organized in such a way that it can be reviewed based on selected criteria. Some systems have extended features, like auto dialers (dials a selected telephone number), timers, outliners, mail-mergers (to print envelopes and labels) or a calculator.

The databases typically involved in law practice management focus on client information, calendar information, and litigation management. Centralization of client information on computer promotes access and enables automated conflict checking.

There are software packages that can review conflicts not only by client, but by counsel, transactions, expert witnesses or other prior interactions. The use of a calendar program consolidates the records of your future commitments and reports them in one place. Selection of a particular program again depends upon personal preference. Project management and scheduling software assists in planning litigation matters in accordance with deadlines, while the indexing of documents into a litigation database facilitates organization.

Document assembly

For many trans-national practices (i.e. tax, bankruptcy or real estate), software has been developed to facilitate form and document preparation. Document assembly and indexing software is available to minimize repetitive drafting. There are also search programs and cite checking programs that give automated word processing a distinct advantage over manual methods.

Through a modem, a sole practitioner has access to a wealth of legal resources. The process of computerized research has been made much easier in recent years as online services have introduced interfaces that are more intuitive and easier to use. There are basically two different sources of information available to legal researchers via modem: commercial online services and the Internet. QuickLaw is the senior Canadian online legal research service provider. It contains legal databases falling into seven categories, as well as bulletin board services that provide

up-to-date information on a variety of subjects.

Increasingly, the Internet is becoming a valuable tool to conduct legal research, although it is certainly not about to supplant commercial on-line services. Due to its unorganized nature and unevenness of application, it is not a comprehensive source of information. Nevertheless, there is a surprising amount of information, and more and more is "coming on-line" every day, including statutes, case law, and valuable non-legal information. There are also hundreds of law-related mailing lists and groups that will allow you to keep up-to-date in a particular area of law, or to ask questions of people with expertise in a particular area if the information is not available within the firm.

CD-ROM technology makes it possible to replace shelves of law books with a few disks, saving time and space and money. Initially, the products were only offered in specialized practice areas. Now there are products offering statutory and case law coverage for most areas. The variety and availability of these resources is expected to grow. Access is limited to those who install a compact disc drive onto their computer system. Depending upon the planned frequency of your research, a CD-ROM library may be more cost effective than repeated visits to an on-line service.

Protecting your data

A sole practitioner with a single computer is out of business if that computer fails or if essential files are damaged. Accordingly, it is critical to save or back up your files on a regular basis. The best backup device for this purpose is a tape drive that attaches to the computer's parallel port. After installing programs on your hard drive, the disks that you used will be backups. Any data added to the hard drive or stored on floppy drives should be backed up to the

tape drive on a weekly basis. While the procedure seems redundant, it will be a blessing should there ever be an error in your system.

Beyond the basics

Once you are comfortable with the basics of automation, you will begin to realize the benefits of information technology and the potential for expanded applications. As mentioned above, compact disc and tape drive devices can be useful additions. Depending upon your practice, another addition could involve a scanner and optical character recognition (OCR) software. These tools allow you to capture an image of a document in the computer and translate it into a form that may be used by a wordprocessor or other program. Imaging is useful for litigation support and is also valuable for long-term archival storage.

A sole practitioner should also invest in a second computer, preferably a portable or notebook type. The most compelling argument for this is more billable hours. Modern notebooks are light-weight, easily portable and can have all of the power found in most desktop models. If your desktop computer fails, this second computer can temporarily become your main computer.

Based upon the size of a sole practitioner's staff, additional desktop computers may be advisable. These separate personal computers can be combined and integrated by a local area network (LAN). The LAN allows shared use of programs, data, and printers. With a LAN, your firm's data can be backed up in seconds if you use mirrored drives, or in minutes if you use backup devices attached to a LAN file server. This system also allows inter-office electronic mail to facilitate communications. A LAN can even be set up with

an eye towards expansion by installing extra "guest" accounts for future computer terminals.

Meeting your needs

It is too easy to dive into the sea of computer products and drown by spending more than you intended on items you don't need. Accordingly, acquisition planning is essential to navigating your way to automation. The easiest path involves the following four steps.

- 1. Assess your practice.** You must determine what you will use your computer for and how many staff members will be working on the automated system at the same time. Also consider where your practice is growing and how you want it to expand. By isolating and outlining the objectives of the automation plan, you can measure your progress.
- 2. Compare available products.** Your law practice and your personal preference will determine the choice of software. The size of your office will determine the amount of hardware necessary. Talk with other computer users about hardware and software, then go to an electronics store and see demonstrations of the equipment. You may wish to follow this up by reviewing one of the many periodicals on personal computers.
- 3. Create a budget.** Before you buy, allocate how much you intend to spend on hardware and software. This may be done by comparison shopping or by soliciting proposals from vendors. There is no expense in either, but you will need to know what you're looking for in terms of performance in order to accurately compare prices. Many computers can be purchased with pre-loaded software; integrated software can be obtained at

a discount as part of an office productivity package. The relative advantages and cost benefits will become apparent to you.

- 4. Set time limits for automation.** Once the plan is formulated, schedule dates for specific steps in the implementation process. This plan should complement the objectives outlined in step one.

Conclusion

Typically, sole practitioners and small offices have tight budgets. Consequently, you must make every dollar count. This means beginning with the basic hardware and software requirements and saving the frills for a time when your practice and budget are larger. It is important to accurately assess your current information technology needs and develop a plan that both meets your current demands and is consistent with your anticipated development.

The following checklist will assist as you begin your search.

Telecommunications:

- Multiple incoming telephone lines
- Conference calling
- Answering service
- Two-line office telephone
- Fax machine
- Cellular telephone
- Pager

Software:

- Word processing
- Spreadsheet
- Database

- Time, billing and accounting
- Conflict checker
- Calendar

Computer:

- Operating system & microprocessor
- Inkjet or laser printer
- Fax/modem
- Hard drive capacity
- CD-ROM
- Tape drive

Chapter 8

Recruiting staff

Good, experienced help is often hard to find, especially in the legal community. Much effort must be made to hire the best possible candidate for your position.

Determining your staffing needs

First of all, you need to determine the duties of the position. You may want to create a job description and provide a copy to each candidate you interview. Some things you must consider are:

- Will this person be expected to handle multiple duties?
- Should I hire one person who is able to handle two or more jobs?
- What skill or experience level is needed to complete the job efficiently and effectively?
- What am I willing to pay this person?

You may want to call around town to ask other sole practitioners and small law firms what their pay ranges are to get a general idea of what you can expect to offer your candidate or what you may need to offer to lure an experienced secretary or paralegal to your practice.

Sole practitioners and small firms may often find that they need to pay a higher monthly salary for a number of reasons: the employee is expected to handle multiple duties and wear many hats and large firms may offer more benefits. The solo practitioner or small firm needs to pay a more attractive salary in order to attract qualified, experienced employees.

Be sure your salary level will attract the skill and experience level that your practice requires. If you are a lawyer without much experience, you should consider hiring an experienced legal secretary or legal assistant. His or her experience with the important day-to-day, practical matters such as filing documents and dealing with the court systems will prove to be valuable to your practice and may help you avoid malpractice.

Some solo practitioners and small law firms will often offer parking or health club memberships to attract qualified, experienced employees.

Advertising

Placing an ad in your daily paper is a good way to spread the word that you are looking for someone. The size of your advertisement (display ad versus line ad) does not matter; however, provide enough specifics about the job and the qualifications you are looking for. If your schedule allows, it is a good idea to include your phone number so that applicants can call and ask questions. You can use this opportunity to pre-screen applicants and schedule appointments with the promising candidates. Sometimes you may even weed out some candidates who are looking for a high salary that you cannot afford.

Don't forget word-of-mouth recruiting. Contact the local community colleges or universities especially for part-time positions and internships. Many schools offer career placement services for inexperienced as well as experienced persons. Often, employed legal secretaries and legal assistants return to school and may see your ad and apply for your position or let their friends know about your opening.

Recruiting/employment agencies

If you have a professional fees budget, you may wish to employ a recruiting firm to assist you in your search. Fees vary from agency to agency, so it is wise to shop around for a reputable employment agency. Usually you don't need to engage the services of an employment agency for lower, entry-level positions.

When considering an employment agency, be sure you have the current fee schedule including, the written guarantee that accompanies the position you are recruiting for. An agency also offers the opportunity for you to interview candidates who otherwise may not have considered employment with your firm. Remember, shop around for a reputable employment agency with an affordable fee schedule.

Reviewing the résumé

Whenever you review a written application or résumé, always look for neatness, conciseness and completeness of the document. A résumé along with a handwritten application, can give you a hint to the applicant's attention to detail. If a person does not completely fill out an application (e.g., applicant leaves out information when it is requested or provides minimum information), you may gain some insight to the applicant's attention to detail and diligence to complete a task.

Always look for accuracy of dates of employment. People may exclude information especially if he or she was fired for misconduct or theft. Look especially for gaps in employment. Ask the applicant directly about employment for that period time. Some applicants have very good reasons, such as maternity leave or caring for an ill or ailing parent or other family member.

Conducting the interview

When conducting an interview, you should be aware of what questions should or should not be asked. Check the relevant Sections & Human Rights Legislation to be certain. Be sure that you keep abreast of the latest employment laws.

Always greet each applicant cordially and conduct your interview as scheduled in a quiet atmosphere. Slowly ease the applicant into answering questions about employment history. The more your applicant is comfortable with you, the more he or she will share with you about his or her background.

During the interview, ask the applicants what their current salary is and what they would like to earn if accepting an employment offer from your firm. This may determine whether you may want to even consider the applicant any further.

Testing

It is a good idea to conduct your own test for all clerical positions. Good tests are available through various companies. Although testing provides an insight on a person's ability, employment verification always provides the best avenue for determination of a person's ability and probability of success for your position. Also, be aware that certain tests are considered illegal and discriminatory. If you do decide to test, you may want to seek out testing materials from reputable testing companies.

In the past, when the typewriter was the fastest means of getting the job done, many employers used to test for typing speed. This type of testing is outdated as many people can type at greater speeds on a computer keyboard. Secretaries should be familiar with the software you have to increase their productivity. Be sure the

applicant is at least computer literate. You probably cannot afford the time it may take for them to learn. The best way to ascertain a person's speed and productivity is to call former employers.

Reference checking

Reference checking is always a must. Invest time in getting as much information as you can from the prospective candidate's former employers.

It is always a good idea to have the prospective candidate sign a release form so that you may call all references listed on the application form. Be sure to call each employment reference and ask questions such as:

- Was this person's work performance satisfactory?
- Can you tell me if he/she was prompt and reliable in terms of his/her attendance?
- What would you say are his/her strong points and areas to improve?
- Can this person maintain confidentiality?
- Is he/she eligible for rehire?

You will find that many employers are willing to assist you as long as you will maintain confidentiality and that you are serious about filling a position. However, you will find that many employers will only provide you with "dates of employment and position only" verification. If you contact employers who are unwilling to provide qualitative information, ask the applicant to provide names of supervisors (other than the Personnel Department) who can provide information regarding his or her character and work performance.

Salary and employment offer

Before making the employment offer to your top candidate, you should consider whether the person's personality and flexibility will fit in with your current office staff and daily operations. Because of the size of your staff, each person's contribution is especially critical. Does it appear that this person can get along with the rest of your staff? Is his or her schedule flexible to accommodate emergencies or special needs that will likely happen?

After your interview process and reference checking are completed, you probably have a good idea who is your top candidate. Before writing off all the other candidates, be sure to contact your top candidate and offer him or her the position. In the event the top candidate declines your offer (for whatever reason), you should be ready to counter-offer (if your budget allows) especially if he or she receives a number of other employment offers. If your choice candidate still declines your offer, you have the opportunity to consider the other candidates without them knowing that they were not your first choice. If necessary, you could start your interview process over again.

Other alternatives

If your budget allows, you may want to call a temporary service agency to fill your position immediately. Many agencies will allow you to hire their temporary employee after about six to eight weeks on the agency's payroll. An advantage of this is that you are able to evaluate the person's work performance and determine whether the person fits in with the rest of your staff and daily operations also you don't have to deal with the interviewing process or personnel

matters. If the person is not performing well, all you do is contact the agency and let them handle any disciplinary action. You don't have to pay the person any benefits until he or she is on your payroll. It is a good idea to shop around for the best hourly rates from different temporary service agencies.

If you have the patience and knowledge to train someone, you may want to consider hiring an individual with an administrative assistant or executive secretarial background. There are many people who would like to enter the legal field, but often positions require legal experience. If you practice in the real estate area, you may even consider someone who has practiced in the real estate area, someone who has banking or savings and loan experience (especially in mortgage loan processing or servicing), or someone who has real estate office experience.

Chapter 9

Attracting clients

A “rainmaker” is defined as a lawyer who attracts clients and creates business. This skill is the life blood of any legal practice, and success in this field is fundamental to sole practitioners. Unfortunately, rainmaking is one of those courses never taught in law school. Most lawyers learn to market their practices through trial and error, missing many opportunities in the process.

This chapter seeks to dispel the shroud of mystery that surrounds marketing a legal practice and sets forth suggested methods for attracting clients. In order to effectively implement these suggestions, it is essential that you formulate a plan rather than proceed haphazardly. This plan, termed a marketing strategy, will vary depending upon your area of practice, your allocated budget and your own personal style. Some lawyers rely on referrals from colleagues, while other lawyers are more comfortable wining and dining clients at expensive restaurants. Each of these methods can be effective, but success in developing a legal practice requires a comprehensive approach.

The basics

The purpose of a marketing strategy is to focus your energy and expenses so that the effort produces maximum benefit. Central to this strategy is an understanding of your current practice and the areas into which you intend to expand. What clients do you now have? What type of clients do you want in the future? Once you define your clientele, it will be easier to determine where they are and how to reach them.

Your client business will come from four sources:

- Current acquaintances
- Referrals
- Networking contacts
- Advertising.

Your family and friends will form the foundation of your practice, if only because they will be the first to know that you have opened your office. It is important that you provide quality representation in these matters, as their satisfaction will shape your professional reputation and promote future referrals.

Referrals are the most effective client source, but they are also the most difficult to control. This area consists primarily of word of mouth recommendations made to those seeking legal services. The secret to generating these recommendations is making your name and the quality of your counsel known in the community.

Networking and advertising serve to broaden the pool from which potential clients may be drawn. Networking is a modern euphemism for getting to know others and their talents while sharing similar information about yourself. The goal is to gain contacts for future reference and lay the groundwork for future referrals.

The final step in formulating a marketing plan is developing a budget. Marketing is an essential and ongoing expense.

Although your budget will be limited by your income, adequate funds must be allocated to promote your presence through both networking functions and advertising media.

Client service

As a sole practitioner, you must realize that you are in a service business. Clients look for quality service when they seek legal advice. This involves competent representation, communication and attention to the clients' needs. Clients, as consumers of legal services, want more than a knowledgeable professional to solve their problems. They want a lawyer who returns their telephone calls and informs them about their case status. They want a lawyer who will take the time to explain matters so that they understand. A satisfied customer can become the best marketing tool, not only in terms of repeat business, but as a source of new business referrals.

Where possible, get to know your clients on a personal level. A client who becomes your friend is much more likely to return with future business and to refer friends and colleagues. There is no set method for achieving this result, but your personality and pocketbook will provide guidance in this area. Lunches and dinners with clients are still a time-honoured tradition, and they provide an excellent opportunity to reinforce your business relationship. In addition, you should try to determine mutual areas of interest, and look for opportunities to socialize outside the office setting.

If your client has a business, then make an effort to visit it, meet the employees and gain some understanding of the operations. Clients are usually delighted when their lawyer demonstrates a personal interest in their business; and seeing the operation first hand will often allow you to provide better legal advice.

It is vital that you maintain contact with your past and present clients. Failure to communicate is the most frequent client complaint in Law Society grievance matters. Updating clients on pending matters will let them know that you are concerned about

and attentive to their situation. Moreover, asking clients how you can serve them better and listening to their responses will give useful feedback on areas where your practice can improve.

Positive name recognition

Positive name recognition is the engine that drives referrals in both the legal community and the community as a whole. It requires that people know you are a lawyer and that you are good at what you do. While a checklist of steps to achieve this goal is impractical, it is essential that you develop and maintain a quality reputation.

As a sole practitioner, you will develop your reputation through contact with your first clients, the courts and opposing counsel. Preparation, attention to detail and adherence to ethical standards will keep you on the proper path. The positive results that you obtain for clients will propel you towards this goal.

In attempting to promote name recognition, you should publicize your legal expertise. Look for opportunities to speak at seminars or to write for newsletters or other publications. These activities will bolster the impression that you are an expert.

Networking

Networking is an inexpensive and productive way of attracting new business. The only investment required is time. Participation yields new business contacts while increasing name recognition. The basic categories of networks for lawyers are social, legal and professional.

Social networks are the least structured of the three. They may

involve friends and family, leisure pursuits or religious affiliations. In this setting, your personality plays a greater role than your professional status. Since most members of this network will already know who you are and what you do, you need only inform them that you are available and able to assist them with their legal problems.

Sole practitioners should join Sections of the CBA. There are Branch and National Sections, which address many areas of the law. These Sections provide valuable educational support as well as the opportunity to interact with lawyers in your field. These lawyers can become sources of future referrals as a result of conflicts or excess business.

Professional networks include clubs, organizations and interest groups directed towards a specific goal. Some, like a Chamber of Commerce or a trade association, are organized around community and economic development while others, like Amnesty International, may be devoted to social policy. Organizations of this type provide an excellent opportunity to meet individuals who may require legal representation. They also enable you to gain greater insight into the issues and problems that need to be addressed in that field.

It is best to select an organization consistent with your goals and interests. Many in the community will characterize you according to the associations that you keep. As you become involved with professional organizations, take on responsibility and strive for leadership, make sure you can fulfill your obligations. Achieving a position of prominence in the organization will allow you to demonstrate your capabilities. Failing to satisfy your commitments however, will damage your reputation. Accordingly, you should think about your ability to perform quality work before volunteering your time.

Advertising

Advertising is protected as a form of free expression and limited by ethical considerations of good taste and prohibitions against false or misleading representations. It, like the preceding marketing methods, must be considered in light of the Rules of Professional Conduct.

Before spending money on advertising, you should carefully consider the type of client you are attempting to reach. This will allow you to direct your message to your intended audience. If your practice primarily serves other lawyers, publicize in legal newspapers. If you are trying to attract estate planning clients, pattern your promotion efforts so that they will reach the elderly. When you want clients in a particular industry or geographic region, target your advertisements to publications that cover those areas.

In print advertising, larger is better, as it increases the probability that the message will be noticed.

After you begin advertising, develop a method for determining the effectiveness of your ads. Ask new clients how they heard about your office and why they decided to choose you for legal services. Based on this information, you can determine which advertising media and methods are most cost effective.

Chapter 10

Getting organized

The busy life of a lawyer places many demands on his or her time. One has to keep track of court appearances, examinations, deadlines, telephone calls, to name a few. Without a system to organize all these deadlines, life can become hectic and disorganized quite easily. There is little time left to do your personal errands and spend time with your family and friends.

Effective organization can help you gain time for yourself and keep all your work organized and flowing. To do this, you need a good diarizing system, good organization of your files, and sequencing of your work priority. Finally, you have to discipline yourself to use the system and stick to it.

Types of diarizing systems

You should first set up a list of your files and update the list periodically. There are a number of different daily planners available, both in stationery stores and through outside commercial vendors. As well, there are daily planners that can be used in computers.

It is important to have one main calendar with all matters docketed by date and time. You also need to have a tickler notice in advance of the due date so you can prepare prior to deadline. In multi-lawyer offices, it is helpful to have a centralized calendar docket so that all the individual items for each lawyer are listed and circulated on a periodic basis.

There is always the difficulty of where to keep the calendar so that both you and your secretary share the information. This is not a

problem if the information is on a computer. If it is manually entered, it is advisable to provide a copy to whomever needs the information as it is updated.

As well, you should keep a list of items "to do" on a calendar. This can be next to your schedule calendar so that you can fit "to do" into your schedule.

Although one main calendar should contain all the information, it is helpful to have a redundant calendar in the form of an office calendar or a particular calendar within a file. The important thing is to get a system that works for you and to use it. It may take some adjustment and refinement but once implemented, it should be followed.

File organization

Your files should be organized by functional categories. A suggestion is to segregate correspondence, notes, billings and memos. Pleadings should be kept separately. Each file should have a permanent location where it is returned after use.

Each file should have a flow chart listing the important deadlines in sequence. If a trial has been set, the trial date should be listed and all other deadlines should be included in sequence. These deadlines should then be put on your calendars.

The front of the file should also contain a list of names, addresses, phone numbers, and fax numbers of the client and all important contacts.

The file should be broken down functionally by subject so that papers can be easily and quickly filed and found. As the file

becomes more complicated, each segment should be separated and broken down. Once the files are set up, it is important to ensure that a new matter is filed promptly after you review it. Nothing is worse than trying to find an unfiled pleading or letter.

Remember the cardinal rule: after using a file, put it back where it belongs.

Organizing work in sequence

Your work should be organized in sequence and then you should follow that sequence. The order should be reviewed each day and new matters inserted by priority.

Telephone calls should be similarly organized. Calls should also be responded to by priority.

This organization will make sure that vital matters are given the priority they deserve and are handled in a timely fashion. Always allow some time each day or week for routine matters so that you won't ultimately be delayed with a backlog of tasks.

Using your system

No system is fool-proof and all systems require review and attention. In order to make your system work, you must review the calendars on a daily basis. You must plan in advance and try to anticipate matters that are coming up.

Telephone calls should be prioritized and returned shortly after they are received. Most importantly, remember that the best system is not helpful unless you follow through on it.

Chapter 11

Collecting fees

Billings and collections are an annoying but vital part of any law practice. Unfortunately, lawyers tend to be more philosophic than economic and often encounter serious difficulties because they fail to pay attention to the billings and collections process.

This chapter will give you some insight into effectively handling the billing process.

The retainer agreement

The first step to help ensure a smooth billing relationship with your client is to prepare a clear and effective written retainer agreement between you and the client. It is appropriate and necessary with each new matter for which you are retained. A written retainer agreement eliminates misunderstandings and conflicting recollections down the road.

The retainer agreement should be sufficiently detailed to cover completely the understanding between lawyer and client. The following 10 items should be considered.

1. The identity of the client

Is the client a corporation or its principal officer or shareholder?
Is the client the mother of an injured minor or the guardian of that injured minor? Or is it more than one person or entity?

2. The scope of the work

Be specific. For example, "I will represent you with regard to your matrimonial proceedings." "I will do the necessary real estate documentation with respect to your sale of 123 First Street."

3. The fees that will be charged

So long as the fee is "reasonable," a wide latitude exists. By making the fee charged reasonable, you strengthen the probability that it will be paid.

4. How your client will be billed

Contingency fee. Contingency fee is a term used to describe a solicitor's compensation which is dependant or contingent upon the successful disposition of the subject matter. This type of arrangement is often used in personal injury claims or collection arrangements. Check with your Law Society for the rules in your jurisdiction. In some jurisdictions, the rules of court set out the conditions applicable to contingency fee arrangements.

Hourly fee. Most lawyers rely upon the hourly fee arrangement. The lawyer is paid a certain rate per hour for each hour spent on the matter. This is perhaps the most common fee arrangement, but it may be used more often than is appropriate. It is a useful method when the time that will be spent on the file is unpredictable, such as cases involving litigation, extensive negotiation or interaction with another party with whom the lawyer has little or no control.

Value billing. Value billing is a term of art in current legal economic circles. Lawyers do not bill by the hour but wait until certain milestones have been reached or until the end of the case or conclusion of the business negotiations to determine what has been achieved by the client. The fee is then fixed accordingly. The difficulty with this type of billing is that it is very hard to set the parameters of the fee in advance.

Fixed fee. The time required for certain legal matters, such as probate of estates, real estate conveyancing and incorporation is more predictable and therefore amendable to fixed rate fees.

Care should nevertheless be taken in ascertaining the value of such work, to ensure that time spent on the file will be adequately compensated.

5. Who performs the services

Will the work be done by you alone, by you and your partner, or by you and other members of your firm?

6. Payment of costs

A lawyer may advance costs but the client must generally remain "ultimately liable," subject to limited exceptions as to representations of indigent clients and in certain contingency cases. The retainer agreement thus must specify whether the costs will be paid periodically, out of a retainer deposit, or out of the ultimate recovery in the suit.

7. Retainer deposit

If a retainer for fees or costs is desired, the amount should be specified. It should also be made clear that additional retainers may be required and that the initial retainer does not necessarily constitute the entire fee. A retainer for fees must be placed in a trust account and applied to bills only when earned.

8. Frequency of billing

Specify when the client will be billed. Hourly cases should be billed as frequently as practical, monthly if at all possible. Flat fee cases can be billed in one lump sum or in installments.

9. Responsibility for payment

Make clear who will pay. Is it the client or some third person? If a third party is to guarantee payment, that guarantee should be part of the retainer agreement.

10. Terms of Payment

Specify when payment is due, e.g. upon receipt of the invoice or within 30 days of the date of billing. If interest is charged, the rate and terms must be agreed to by the client in advance, in writing. If a discount is allowed for prompt payment, that should also be stated.

There is one important final caution. Do not begin work until the retainer agreement has been signed and the retainer paid. Many times you may be eager to jump right in and start working on a particular matter, but without being paid first as stated in the retainer agreement, you may find yourself involved in a case without an understanding with the client as to what work will be done and what fees will be paid, and without the ability to get out.

While it is preferable to replenish the retainer if and when it becomes necessary, this is not always possible. To guard against non-payment of a balance owed at the end of a case, there should be language in the retainer agreement which irrevocably authorizes the lawyer to receive any proceeds to be paid to the client as a result of the case and to deduct the fees owed before releasing the balance to the client. In some jurisdictions, the lawyer may be permitted to take security for his or her future fees or disbursements, subject to the right of taxation.

The value of timekeeping

The records of economic surveys of lawyers consistently reflect that those who always keep contemporaneous time records have 25-40% higher income than those who do not. There are a number of reasons why this is the case. One is that lawyers who keep time records can effortlessly draft highly detailed, descriptive bills. Another is that lawyers who keep time know the true value of their

services and are more likely to send bills that reflect all of the time and effort put into the matter. A third is that lawyers who keep time are able to determine which types of cases are less profitable than others, and so are able to spend more time performing more profitable work. They can also better ascertain during the year whether or not they are on target toward their yearly income goals.

The narrative bill

The narrative bill, which explains in detail everything done for the client during the billing period, is also a valuable tool in maintaining communication with the client. Such bills, when forwarded to the client on a regular basis, inform the client of the work performed on his or her behalf and the expense involved.

This form of bill is most easily produced when contemporaneous times records have been kept as it avoids the necessity of reviewing the file to ascertain the work performed during the billing period. Timekeeping systems, both paper and computerized, are useful for organizing your time records. When completing the time record, note the time that you commenced work on the file. After your work has been completed, describe in your time records the work performed in the form that you would like your client to see and then note the time that your work was completed. Your assistant can then produce a narrative bill in chronological form, using your billing rate, which can be forwarded to your client without further elaboration.

The bills should tell the story of the case, emphasizing items that show special effort, great time expended or good results. It is better to over-describe than under-describe your efforts, by writing, for example, "attending meeting to obtain statement of witness, John Doe" rather than simply stating "attending meeting". Describe the

nature of any research done. Also, use words which reflect your special skills as a lawyer, such as “negotiate” instead of “talk” and “draft” instead of “write”.

Not all cases require an itemized bill, such as a case with a contingent fee or fixed fee arrangement. Nevertheless, even in these cases, a bill in this form may allow your client to better appreciate the services provided, increasing the likelihood of client retention or referrals.

Collecting fees

The first step to collecting your fee involves the careful selection of your clients and cases. Some potential clients are less willing than others to pay your fees and the warning signs are often readily apparent from the outset. By avoiding clients who are unlikely to pay your bill willingly and promptly, the time required for bill collection will be greatly reduced.

Beware of the potential client who:

- has switched lawyers several times; advises you of another lawyer whose hourly rate is lower than your own;
- insists immediately on obtaining legal advice over the phone, before scheduling an appointment;
- does not cooperate in providing in an orderly manner the documents you require to evaluate or proceed with his or her case;
- insists that it is not necessary for you to review certain documentation that you have requested;
- does not appear willing to accept your evaluation of his or her prospects for success or of your assessment of the complexity or

- expense that will be involved in handling the matter;
- appears to want revenge or who appears disproportionately upset than warranted.

The potential client should be fully informed of the billing structure, so he or she can decide whether your services are affordable. A retainer should be obtained from the client whenever possible.

It is also important to select cases which you are able to handle competently and effectively. If you are developing a new area of expertise, take the simpler matters, associate with a lawyer with expertise in this area, or take on cases where the stakes are lower until you have built up your expertise.

It is more difficult to collect your fee from a disgruntled client. Some clients are destined to be disgruntled from the outset and attention should be paid to the warning signs. Other potential clients may become disgruntled if they did not have a full appreciation of how the billing arrangements worked. They may feel they could not afford your services or believe the costs were out of proportion with what was at stake. Such a client, if fully informed from the outset, might himself or herself decide not to pursue the case or look for a lawyer with a lower hourly rate.

As well, the client who appreciates the work done on his behalf will likely be more willing to pay the bill. There is no better time than the day the matter is concluded to send the narrative bill, as this is the time that your work is most likely to be appreciated.

The unpaid bill

Acting promptly to an unpaid bill often leads to successful collection. When a bill is not paid within 30 days, a telephone call to a new client without an established payment history and to an old client who routinely needs a reminder is an effective technique. A telephone call at this early stage is probably unnecessary for the client with a good track record.

It is preferable for such a call to be made by someone other than the lawyer involved. He or she might find this task distasteful and put it off, defeating the purpose of early intervention. He or she may be angry that his or her work is not appreciated, which makes it difficult to strike the right tone. This lawyer might have a higher priorities, such as working on projects for this or other clients.

When the client is contacted regarding the unpaid bill, an effort should be made to ascertain the clients plans for payment. Payment by credit card or a monthly payment schedule are options which can be explored. It is crucial to get a firm answer from the client regarding his or her intentions, particularly if there is an ongoing relationship. If the client indicates that he or she will not pay the bill, then steps may need to be taken to terminate representation. It may not always be possible for a solicitor to immediately terminate representation for this reason. For example, when litigation is ongoing, a solicitor may not be successful in applying to be removed as solicitor of record for non-payment of fees. It is therefore advisable to ensure that adequate arrangements for fee payment are made initially.

If the client complains about the bill or the representation, the lawyer should then take over. The lawyer should be willing to explain the bill. Sometimes the problem is legitimate or can otherwise be resolved, perhaps by a small reduction in the bill. A

client can also be made aware that the invoice can be “taxed” by a taxing officer to ensure the fees are reasonable or you yourself can have the bill taxed. Check with the rules in your jurisdiction governing this procedure.

You should ascertain whether the problem is simply fee-related or whether there is any dissatisfaction with the quality of the representation. The latter problem may require that you withdraw from the case.

As a last resort, you may decide to hire a lawyer to write a letter on your behalf or sue for payment of the account. Such an action might produce a counterclaim, so it is advisable to think twice before suing, especially if you are vulnerable because of mistakes made in your representation, if the client is likely to counterclaim regardless of the merits, or if the bill is simply too small.

Alternatively, an application may be brought in some jurisdictions for a declaration that a lawyer is entitled to a charge for proper fees and disbursements in a proceeding upon the property recovered or preserved through the lawyer’s instrumentality in the proceeding.

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