



NOVA SCOTIA BARRISTERS' SOCIETY

## A MANAGEMENT SYSTEM FOR ETHICAL LEGAL PRACTICE (NOVEMBER 2015)

This **self-assessment tool** is designed to ensure that your legal entity has an effective Management System for Ethical Legal Practice. It comprises ten elements:

- ELEMENT 1 – DEVELOPING COMPETENT PRACTICES
- ELEMENT 2 – COMMUNICATING IN AN EFFECTIVE, TIMELY AND CIVIL MANNER
- ELEMENT 3 – ENSURING CONFIDENTIALITY
- ELEMENT 4 – AVOIDING CONFLICTS OF INTEREST
- ELEMENT 5 – MAINTAINING APPROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS
- ELEMENT 6 – ENSURING EFFECTIVE MANAGEMENT OF THE LEGAL ENTITY AND STAFF
- ELEMENT 7 – CHARGING APPROPRIATE FEES AND DISBURSEMENTS
- ELEMENT 8 – HAVING APPROPRIATE SYSTEMS IN PLACE TO SAFEGUARD CLIENT TRUST MONEY AND PROPERTY
- ELEMENT 9 – SUSTAINING EFFECTIVE AND RESPECTFUL RELATIONSHIPS WITH CLIENTS, COLLEAGUES, COURTS, REGULATORS AND THE COMMUNITY
- ELEMENT 10 – WORKING TO IMPROVE THE ADMINISTRATION OF JUSTICE AND ACCESS TO LEGAL SERVICES

You are required to have in place the elements that apply to your legal entity and to demonstrate commitment to those elements.

Throughout the self-assessment, “you” and “your” is used and is intended to refer to all legal entities, including sole practitioners, all sizes of law firms, and legal departments.

You are asked to assess yourself on a scale of 1 to 5 in relation to each element. In an instance where you believe that one of the elements is not relevant to your practice type, you should indicate “Not Applicable” and in the Comment section provide an explanation. There is no one “correct” answer.

To assist you in completing this assessment, each element contains a list of examples of practices and considerations. The examples and considerations relating to each element are non-exhaustive. “Examples of practices” consist of policies, priorities, procedures, etc. that you have in place to ensure that you are meeting the requirements of the elements. “Considerations” are things you would think about in determining if you actually had the practices in place. There may be other factors you think are relevant to each element that you may wish to reflect on as you complete your self-assessment.

Please note that the “resources” links in relation to each element are there to assist you in both assessing your entity’s compliance with the elements and undertaking any improvements you determine you will need upon assessment.

## DEFINITIONS

- **“Client”** includes a person or persons to whom or for whom legal services are provided.
- **“Legal entity”** refers to a lawyer or a group that carries out work supervised by a lawyer, whether the work is done by a lawyer or a non-lawyer, including but not limited to law firms, in-house counsel and department/team, government lawyer and department/team, and Legal Aid.
- **“Guideline”** is a statement that determines a course of action by streamlining particular processes according to a set routine or sound practice, and may include your policy that governs the matter.
- **“Staff”** includes lawyers, paralegals, legal assistants and any other employee who assists in or provides legal services to clients.

## ELEMENT 1 – DEVELOPING COMPETENT PRACTICES

**Your legal entity delivers legal services with appropriate skill and expertise, and in an ethical manner.**

When you prepare your answer, please reflect on the following examples of practices that support your conclusions. Though none of these are mandatory, they provide some illustrations of what a prudent legal entity should have in place, dependent upon the type or area of practice.

In the 'Comment' box, you may add any additional information or explanation that you think will assist in understanding your assessment.

<b>RATING:</b>	<b>COMPLETELY DISAGREE</b>	<b>1</b> <input type="checkbox"/>	<b>2</b> <input type="checkbox"/>	<b>3</b> <input type="checkbox"/>	<b>4</b> <input type="checkbox"/>	<b>5</b> <input type="checkbox"/>	<b>COMPLETELY AGREE</b>
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EXAMPLES OF PRACTICES	CONSIDERATIONS
<ul style="list-style-type: none"> <li>• You hire and employ competent staff.</li> <li>• You supervise all staff to ensure delivery of competent legal services.</li> <li>• You assign work only to staff with the experience and qualifications to provide a competent level of advice.</li> <li>• You only take a retainer for services where you have or can obtain the necessary skills and resources to carry out the clients' instructions.</li> <li>• You understand the need for and have performance objectives to deliver good quality legal services.</li> <li>• You conduct internal reviews and staff performance reviews to ensure the highest levels of regulatory compliance and competent service delivery.</li> <li>• You review complaints, both internal and those made to the Nova Scotia Barristers' Society, as well as claims reported to LIANS, to learn lessons from errors and mistakes to identify training needs.</li> <li>• You provide your staff with ongoing education and training.</li> <li>• All professional staff have professional development plans that are relevant to their areas of practice.</li> <li>• All legal services are delivered in a manner that is ethical, respects diversity, reflects an awareness and understanding of clients' unique cultural and other circumstances, and that does not, intentionally or on the basis of adverse effects, discriminate against, victimize or harass anyone.</li> </ul>	<ul style="list-style-type: none"> <li>◆ You conduct background and reference checks, and review résumés upon hiring.</li> <li>◆ You provide training to staff when they are first hired and when major procedural changes occur.</li> <li>◆ An office policy and procedures manual, which is regularly updated, is available and accessible to staff.</li> <li>◆ Staff receive ongoing education in relation to their practice type as well as in relation to the following subjects:               <ul style="list-style-type: none"> <li>➤ identification of conflicts of interests;</li> <li>➤ the use of trust accounts;</li> <li>➤ data security;</li> <li>➤ ethics;</li> <li>➤ billing practices;</li> <li>➤ appropriate communications with clients, colleagues, regulators and the judiciary;</li> <li>➤ physical security;</li> <li>➤ health and wellness;</li> <li>➤ clients' unique cultural circumstances; and,</li> <li>➤ dealing with complaints.</li> </ul> </li> </ul>

COMMENT:

**RESOURCES**

- **Nova Scotia Barristers' Society / Code of Professional Conduct [Rule 3.1: Competence; Rule 3.2: Quality of Service; Chapter 6: Relationship to Students, Employees and Others]**
- **NSBS Family Law Standards / Standard #3: Lawyers' Competence**
- **CBA Ethical Practices Self-Evaluation Tool**

## ELEMENT 2 – COMMUNICATING IN AN EFFECTIVE, TIMELY AND CIVIL MANNER

**Communications with clients are clear, so they understand their position throughout the life of a retainer, and are in a position to make informed decisions about the services they need how their matter will be handled and the options available to them.**

When you prepare your answer, please reflect on the following examples of practices that support your conclusions. Though none of these are mandatory, they provide some illustrations of what a prudent legal entity should have in place, dependent upon the type or area of practice.

In the 'Comment' box, you may add any additional information or explanation that you think will assist in understanding your assessment.

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### EXAMPLES OF PRACTICES

- You have written guidelines, in relation to communication, that are disseminated to all staff and regularly reviewed.
- You communicate with clients in a manner that is respectful of the client's culture and diverse needs.
- You listen to clients as part of the communication process, and ensure that their thoughts and wishes are acknowledged and given appropriate consideration.
- You have a process for receiving client feedback.
- You make key information about your legal entity publicly available and accessible, including its range of services, staff employed and contact details.
- You have a process to ensure that publicly available promotional materials, including those on your website, are true, verifiable, factual, and give a clear and reliable expectation to potential clients of the services available and how fees will be charged.
- You provide an opportunity for clients to make appointments with their lawyer or other staff within a reasonable time frame.
- You schedule appointments at times and, if necessary, places convenient for the client.
- Initial appointments are long enough to allow clients to receive a good quality of service.
- You spend the appropriate amount of time with the client and are, as required, empathetic.
- You provide clients or prospective clients with written retainer agreements, confirmation of retainer and declination letters where appropriate.
- You inform clients at the outset of their matter how disputes or complaints that may

### CONSIDERATIONS

- The communication guidelines include provisions in relation to the following:
  - confidentiality;
  - retainers;
  - the use of email/telephone/text and other forms of communication;
  - how clients are informed of/updated on the status of their matters such as material changes in the scope of the retainer, costs or timelines;
  - compliance with privacy and anti-spam legislation;
  - requirements in relation to non-lawyer communications to ensure clarity and that they are not holding themselves out as a lawyer;
  - conducting communications in a timely and efficient manner;
  - conducting communications in a manner that is most comfortable for the client;
  - processes for dealing with language barriers;
  - processes for ensuring that communications with clients reflect cultural competence, equity and diversity; and
  - the methods of communication available to

## EXAMPLES OF PRACTICES

- arise will be resolved, including fee disputes.
- You address clients' complaints promptly, fairly, openly and effectively.
- Where appropriate, you provide unbundled legal services allowing the client to take the responsibility for some of the work, and provide the client with a clear explanation of the potential consequences if that work is taken out of the scope of the retainer.
- You manage your clients' expectations.
- If you have to cease acting for a client, you explain to the client their possible options for pursuing their matter.
- You use language that is appropriate to the individual client in communicating with them, including addressing issues of cultural competency, equity and managing diversity.
- In taking instructions and during the course of the retainer, you have proper regard for your clients' mental capacity or other vulnerabilities, such as incapacity or duress.
- You inform clients about the manner in which they can communicate with their lawyer and other staff, and about the manner in which you will communicate with them and how often.
- You inform clients regularly and, where appropriate, in writing, about the progress of their matters including cost.
- You have a culture of ensuring courtesy and civility in all internal and external communications, including with members of the junior and senior Bar and the judiciary.
- You provide training to all staff in relation to communicating with members of the Bar, the judiciary, clients and the general public and include matters of equity, inclusion, anti-discrimination and substantive law.
- You have procedures in place to obtain client feedback.

## CONSIDERATIONS

- clients.
- ◆ The guidelines are regularly reviewed to ensure currency and compliance with applicable ethical standards.
  - ◆ Compliance with the guidelines is part of performance reviews.
  - ◆ You regularly obtain client feedback.
  - ◆ The information you provide to clients about your legal entity includes the following:
    - the range of services you offer;
    - details about legal and non-legal staff;
    - your practice hours; and,
    - your contact information (including after hours).

COMMENT:

## **RESOURCES**

- **Lawyers' Insurance Association of Nova Scotia / Client service**
- **Lawyers' Insurance Association of Nova Scotia / Documenting/Effective Communication**
- **Lawyers' Insurance Association of Nova Scotia / Retainer Agreements and Engagement Letters**
- **Nova Scotia Barristers' Society / Code of Professional Conduct** (current to September 2014) [**Rule 3.2:** Quality of Service; **Rule 5.1:** The Lawyer as Advocate; **Rule 7.2:** Responsibility to Lawyers and Others; **Rule 6.3:** Equality, Harassment and Discrimination]
- **Law Society of British Columbia / Communications Toolkit**
- **Law Society of Upper Canada / Client Service and Communication Practice Management Guideline**

## ELEMENT 3 – ENSURING CONFIDENTIALITY

**Your legal entity keeps the affairs of clients confidential unless disclosure is required or permitted by law, or the client consents.**

When you prepare your answer, please reflect on the following examples of practices that support your conclusions. Though none of these are mandatory, they provide some illustrations of what a prudent legal entity should have in place, dependent upon the type or area of practice.

In the 'Comment' box, you may add any additional information or explanation that you think will assist in understanding your assessment

RATING:	COMPLETELY DISAGREE	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	COMPLETELY AGREE
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### EXAMPLES OF PRACTICES

- You have written confidentiality and privacy guidelines that are disseminated to all staff and regularly reviewed.
- You provide education on the importance of confidentiality, including the consequences of breaches.
- You explain the concept of confidentiality to clients in plain and appropriate language, and ensure they understand their confidentiality rights as part of the solicitor-client relationship.
- You ensure that no client files or other confidential materials are left in any publicly accessible places.
- Your reception area is arranged so visitors cannot overhear confidential conversations that may occur in a nearby offices/conference rooms.
- When non-staff are present in the reception area, your receptionist protects the confidentiality of client names and matters when talking with others in person or on the telephone.
- You take precautions to guard client confidentiality in areas entered into by non-staff.
- You have data security guidelines.
- In computer maintenance and technical support contracts, you take steps to ensure all third parties with access to your computers will protect the confidentiality of any and all client information.
- Where outsourcing work, you take steps to ensure that the outsourcing provider has in place appropriate security measures to maintain confidentiality and reduce risks of unauthorized access, inadvertent disclosure and reckless or intentional compromise.
- If using social media and/or cloud computing services, you take steps to ensure appropriate access settings to prevent inadvertent access or disclosure of

### CONSIDERATIONS

- Employees sign a confidentiality letter or agreement.
- You enforce confidentiality requirements (including agreements) for third parties (such as landlords, contractors, bookkeepers, computer service providers, cleaners, interns, volunteers, family members) who may access physical space or computers, tablets and smart phones.
- You protect confidentiality in office areas entered by persons not employed by or associated with the entity.
- Confidential conversations do not take place in areas where confidentiality may be compromised, such as in reception of the office.
- Client files and other confidential materials are not left in any publicly accessible places.
- Copiers, fax machines, mail, etc. are located in areas where confidential information cannot be seen by persons not employed by or associated with the legal entity.
- You implement appropriate office security to protect confidential information – including electronic information.
- You protect confidentiality when using social media or cloud based services.



### EXAMPLES OF PRACTICES

- confidential client information.
- You use available technology to effectively protect confidentiality, i.e., protecting mobile devices, thumb drives and laptops from hacking.
- You have effective processes for identifying where confidential information has been lost, and clear processes for reporting such loss to the client and appropriate authorities, including your regulator.

### CONSIDERATIONS

- ◆ Staff understand all relevant legislation and law relating to privacy and confidentiality.
- ◆ If sharing office space, you take steps to ensure confidentiality with respect to others with whom the space is shared.

### COMMENT:

### RESOURCES

- Lawyers' Insurance Association of Nova Scotia / Confidentiality Agreement - General
- Lawyers' Insurance Association of Nova Scotia / Confidentiality Agreement – Service Provider
- Nova Scotia Barristers' Society / Code of Professional Conduct [Rule 3.3: Confidentiality]

## ELEMENT 4 – AVOIDING CONFLICTS OF INTEREST

**Your legal entity does not act where there is a conflict of interest, or a significant risk of conflict, between you and your client.**

When you prepare your answer, please reflect on the following examples of practices that support your conclusions. Though none of these are mandatory, they provide some illustrations of what a prudent legal entity should have in place, dependent upon the type or area of practice.

In the 'Comment' box, you may add any additional information or explanation that you think will assist in understanding your assessment.

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EXAMPLES OF PRACTICES	CONSIDERATIONS
<ul style="list-style-type: none"> <li>You have written guidelines in relation to conflicts of interests that are disseminated to all staff and regularly reviewed.</li> <li>You provide training on the avoidance of conflicts and the consequences of a conflict.</li> <li>You maintain an effective master list or database of current and former clients.</li> <li>You check for potential conflicts that your partners and staff may have due to their prior employment or personal/business interests, for example sitting on boards or acting for related entities.</li> <li>You obtain a signed waiver from a client if representation is requested and agreed to after a conflict has been discussed.</li> <li>You avoid practices that are potential common conflicts traps, such as having a financial interest in a client matter; representing adverse parties; engaging in business with a client; taking equity in lieu of fees; or holding office or board memberships that may give rise to conflicts.</li> </ul>	<ul style="list-style-type: none"> <li>The conflicts of interests guidelines include information relating to the legal entity's procedures for the following:               <ul style="list-style-type: none"> <li>identifying potential conflicts;</li> <li>checking for and evaluating conflicts prior to accepting a new matter and before receiving confidential disclosure;</li> <li>checking for and evaluating conflicts when a new party is added;</li> <li>checking for and evaluating conflicts when a new person is hired;</li> <li>checking for and evaluating conflicts that may result from prior employment, volunteer work, business interests, or personal interests of staff and others associated with the entity.</li> </ul> </li> <li>You maintain a master list or database of current and former clients.</li> <li>You obtain information regarding names of corporate officers and directors in the course of completing conflict checks.</li> <li>You obtain information regarding other names (maiden names, married names, etc.) in the course of completing conflict checks.</li> <li>You obtain information regarding all adverse parties in the course of completing conflict</li> </ul>

EXAMPLES OF PRACTICES	CONSIDERATIONS
	<p>checks.</p> <p>◆ You obtain a signed waiver if a client requests representation after a conflict has been identified and discussed.</p>

COMMENT:

**RESOURCES**

- Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3: Relationship to Client; Chapter 3.4: Conflicts; Chapter 5.2: Lawyer as Witness]
- Nova Scotia Barristers' Society / Family Law Standards / Standard #1: Conflict of Interest
- Lawyers' Insurance Association of Nova Scotia /RPM Conference presentation / Conflict of Interest (December 2014)
- Canadian Bar Association / Task Force on Conflicts of Interest Toolkit (2008)
- The Law Society [UK] / Practice Notes: Conflict of interests (March 2015)
- PracticePRO / Managing Conflict of Interest Situations

## ELEMENT 5 – MAINTAINING APPROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS

**Your legal entity maintains accurate and up-to-date records using an appropriate file management system that safeguards clients' documents and information.**

When you prepare your answer, please reflect on the following examples of practices that support your conclusions. Though none of these are mandatory, they provide some illustrations of what a prudent legal entity should have in place, dependent upon the type or area of practice.

In the 'Comment' box, you may add any additional information or explanation that you think will assist in understanding your assessment.

<b>RATING:</b>	COMPLETELY DISAGREE	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	COMPLETELY AGREE
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<b>EXAMPLES OF PRACTICES</b>	<b>CONSIDERATIONS</b>
<ul style="list-style-type: none"> <li>• You have written guidelines on your record retention policy that are disseminated to all staff and regularly reviewed.</li> <li>• You use a tickler system for deadlines.</li> <li>• You have written guidelines on file opening procedures and file closing procedures for each matter.</li> <li>• You obtain written receipts from clients when original documents are returned to a client or third person.</li> <li>• You have a file tracking procedure so the whereabouts of a file is known at all times.</li> <li>• If you use cloud-based systems, you are confident in the provider maintaining the required level of service, and that relevant data protection legislation is complied with in respect of the location where data is stored.</li> <li>• You use document removal forms or electronic systems that indicate when a particular document was removed from a file and where it is currently located.</li> <li>• You review every open file (including files stored in the Cloud) on a regularly scheduled basis, and diarize for that purpose.</li> <li>• You have a written fire prevention and other disaster recovery policy.</li> <li>• You keep irreplaceable documents and other valuable materials in fireproof cabinets/safes, and negatives and original photocopies are stored separately.</li> <li>• You carry adequate insurance for all risks.</li> <li>• You have backup systems and regularly complete system backups. Backups of diaries and computer-generated work are stored in a fireproof cabinet or at an approved offsite location.</li> <li>• You advise clients when you anticipate destroying their file after closing their matter and obtain their agreement, or make other arrangements.</li> </ul>	<ul style="list-style-type: none"> <li>◆ The record retention policy guidelines include the following information:                             <ul style="list-style-type: none"> <li>➢ the centralized filing system (including cloud-based systems) utilised;</li> <li>➢ the supervisor appointed to manage that system;</li> <li>➢ the standardized arrangement for naming of electronic files (e.g., last name, first name, subject matter/area of law, file number);</li> <li>➢ how files are reviewed;</li> <li>➢ the storage of files in a secure area and safe from water and vermin damage and fire damage;</li> <li>➢ what types of documents can be turned over to clients, and;</li> <li>➢ how files are retained and destroyed, including electronically stored files in the Cloud.</li> </ul> </li> <li>◆ The tickler system for deadlines includes the following information:                             <ul style="list-style-type: none"> <li>➢ relevant statutes of limitations;</li> <li>➢ appointments;</li> <li>➢ discovery or specific filing deadlines;</li> <li>➢ court appearances;</li> <li>➢ review dates;</li> <li>➢ remote calendar access;</li> <li>➢ staff calendar access; and,</li> </ul> </li> </ul>

## EXAMPLES OF PRACTICES

- You have a guideline for data security.
- You have an appropriate business continuity or succession plan.
- Where outsourcing providers, including cloud-based services are used, they are subject to contractual arrangements that enable the NSBS or its agent to obtain information from, inspect the records (including electronic records) of, or enter the premises of the third party, in relation to the outsourced activities or functions.

## CONSIDERATIONS

- checkout procedures for physical files.
- ◆ The written guidelines on file opening and file closing procedures include the following information:
  - conducting “conflicts of interests” checks;
  - the use of engagement letters;
  - retainer agreements;
  - the use of appropriate checklists;
  - returning original documents to clients; and
  - sending closing letters at the end of the retainer / matter.
- ◆ The guidelines on data security include the following information:
  - how electronic records are maintained;
  - how electronic material is stored;
  - how electronic material is secure; and
  - how data can be retrieved from legacy/archived systems.

## COMMENT:

## RESOURCES

- Lawyers' Insurance Association of Nova Scotia /Law Office Management Standards / **Standard #1 Record Retention**
- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Rule 3.5: Preservation of Client's Property]
- Lawyers' Insurance Association of Nova Scotia / **Risk Management /Intake Procedures**
- Law Society of Upper Canada / **File Management Practice Management Guideline**
- Lawyers' Insurance Association of Nova Scotia /**Practice Management / Time Management Missed Limitations**
- The Law Society [UK] / **Practice Notes: File Closure Management** (June 2014)
- Law Society of British Columbia / **Closed Files: Retention and disposition** (June 2013)

## ELEMENT 6 – ENSURING EFFECTIVE MANAGEMENT OF THE LEGAL ENTITY AND STAFF

**Your legal entity adequately supervises, supports and manages staff in their delivery of legal services to clients.**

When you prepare your answer, please reflect on the following examples of practices that support your conclusions. Though none of these are mandatory, they provide some illustrations of what a prudent legal entity should have in place, dependent upon the type or area of practice.

In the 'Comment' box, you may add any additional information or explanation that you think will assist in understanding your assessment.

RATING:	COMPLETELY DISAGREE	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	COMPLETELY AGREE
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### EXAMPLES OF PRACTICES

- You have a comprehensive, up-to-date office policy and procedures manual that is readily accessible and regularly reviewed by all staff.
- You hold regular staff meetings, including for support staff.
- You provide staff with clear and complete instructions regarding work assigned, including sufficient background information.
- You provide staff with clear and complete instructions about the end product required.
- You have a succession plan.
- Lawyers and other management personnel set good examples for staff by providing and faithfully using dependable management guidelines and systems including, but not limited to, conflicts of interest checks, work allocation, file management, non-discrimination, documentation and communication.
- You provide staff education and training in relation to supervision and management.
- Staff with supervisory responsibilities are fairly and appropriately selected and trained on how to supervise internal and external staff, such as outsourcing providers and ensuring equity.
- You have effective performance management.
- You have effective performance management systems that include the requirement for non-discrimination.
- You use mentors and ethical role models, and encourage and train staff for leadership, where appropriate.
- If you share space with other lawyers or professionals who are not members of your legal entity (including business centres), you have a policy in place that sets the parameters of the arrangement.
- You maintain a respectful workplace environment and appropriately accommodate

### CONSIDERATIONS

- ◆ The office policy and procedures manual includes the following information:
  - job descriptions;
  - termination procedures;
  - overtime, sick leave and medical insurance;
  - clear lines of authority;
  - governance arrangements for the management of staff and related entities; and
  - the succession plan in the event of unforeseen accident, illness or death, including details of who to contact and the steps to take in order to address the interests of your clients.
- ◆ Staff are provided with education and training on the following issues:
  - how and what to delegate;
  - effective and appropriate supervision;
  - cultural competence and diversity;
  - mental health services relevant to the legal profession;
  - how to monitor and encourage staff and lawyer well-being; and
  - the role and availability of the Nova Scotia Lawyers Assistance Program.
- ◆ You provide information to staff about the priority status and deadline of matters.

<p><b>EXAMPLES OF PRACTICES</b></p>	<p><b>CONSIDERATIONS</b></p>
<p>diversity and disabilities.</p> <ul style="list-style-type: none"> <li>• You have a policy that encourages equality of opportunity and respect for diversity in recruitment.</li> <li>• You maintain a respectful workplace environment that promotes diversity and appropriately accommodates disabilities.</li> <li>• You have a policy that encourages substantive equality and respect for diversity in all areas of recruitment and workplace and management relations, including: <ul style="list-style-type: none"> <li>- encouragement for diversity and cultural knowledge;</li> <li>- accommodation of disabilities;</li> <li>- assignment and evaluation of work free of bias; and</li> <li>- a clear mechanism for staff to raise employment issues, including discrimination and harassment.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>◆ You give appropriate and timely feedback to staff.</li> <li>◆ You give constructive criticism in a private and timely manner.</li> <li>◆ You have adequate insurance for your practice, including excess professional liability coverage and Outside Directors Liability coverage.</li> <li>◆ The policy in relation to sharing space with other professionals who are not members of your legal entity includes the following information: <ul style="list-style-type: none"> <li>➢ the steps taken to clearly distinguish the entity to prevent confusion by clients and the general public (entryway, signage, letterhead and other written materials);</li> <li>➢ separate banking and trust account arrangements;</li> <li>➢ where staff are shared, the steps taken to ensure the confidentiality of client materials and/or disclose to clients the limits of your ability to maintain confidentiality where staff are shared; and</li> <li>➢ where office equipment is shared (fax machines, servers, etc.), you have addressed confidentiality issues, made proper disclosures to clients and clarified ownership of the shared equipment.</li> </ul> </li> <li>◆ The policy encouraging equality of opportunity and respect for diversity in hiring includes the following provisions: <ul style="list-style-type: none"> <li>➢ encouragement for diversity and cultural knowledge;</li> <li>➢ accommodation of disabilities;</li> <li>➢ assignment and evaluation of work free of bias; and</li> <li>➢ a clear mechanism for staff to raise employment issues, including discrimination and harassment.</li> </ul> </li> </ul>

COMMENT:

### **RESOURCES**

- Lawyers' Insurance Association of Nova Scotia / Law Office Management Standards / **Standard #4 Maintenance and Backup Electronic Data**
- Lawyers' Insurance Association of Nova Scotia / Law Office Management Standards / **Standard #6 Cloud Computing**
- Lawyers' Insurance Association of Nova Scotia /Practice Management / **Human Resources Staff Management**
- Lawyers' Insurance Association of Nova Scotia /Practice Management / **Succession Planning**
- Law Society of British Columbia / **Lawyers Sharing Space**
- LAWPRO / **Supervision of employees: The buck stops with you** (2009)
- The Law Society [UK] / **Practice Notes: Supervision** (October 2011)
- The Law Society of British Columbia / **Promoting a Respectful Workplace: A Guide for Developing Effective Policies** (December 2014)
- PracticePRO / **Delegating responsibly and effectively** (Summer 2007) LawPRO Magazine
- Nova Scotia Lawyers Assistance Program / **www.nslap.ca**



## ELEMENT 7 – CHARGING APPROPRIATE FEES AND DISBURSEMENTS

**Your legal entity charges clients fees fairly and appropriately, and is clear about the costs or likely costs incurred during their legal transaction.**

When you prepare your answer, please reflect on the following examples of practices that support your conclusions. Though none of these are mandatory, they provide some illustrations of what a prudent legal entity should have in place, dependent upon the type or area of practice.

In the 'Comment' box, you may add any additional information or explanation that you think will assist in understanding your assessment.

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						<input type="checkbox"/>	NOT APPLICABLE

### EXAMPLES OF PRACTICES

- You have written guidelines in relation to billing practices that are disseminated to all staff and regularly reviewed.
- You require all clients to sign a retainer agreement.
- Your fees are fair and reasonable.
- You maintain accurate and complete time records, and it is clear when time recording is used as a management or billing tool.
- Where time is used, you record it each day and as each task is completed.

### CONSIDERATIONS

- ◆ The retainer agreement includes the following information:
  - the billing process and timing of accounts;
  - the timing for payment of accounts and interest to be paid on unpaid bills;
  - who will work on the file and at what rate;
  - the amount of the retainer and how it is replenished;
  - the consequences of non-payment of an account;
  - terms for withdrawal as counsel;
  - the possibility of a solicitor's lien on the file;
  - the distinction between fees and disbursements;
  - any limitations on scope of service;
  - whether the retainer is being funded by a third party and if so, the nature of their relationship with you; and,
  - the right to have the account reviewed by a taxing authority.
- ◆ You thoroughly explain the billing process to clients during the initial meeting, and any changes as their matter progresses, and confirm the arrangements in writing.
- ◆ You notify clients in advance of a change of fee

**EXAMPLES OF PRACTICES**

**CONSIDERATIONS**

or disbursement charges.

- ◆ You keep time on all files, even those for which a fixed fee or contingency charged.
- ◆ You post disbursements and other charges to client files regularly.
- ◆ You bill clients on a regular basis, and the billing items are clearly identified.
- ◆ The responsible staff member or lawyer reviews and approves bill before they are sent to the client.
- ◆ You communicate to clients the consequences of failing to pay on a timely basis.
- ◆ Where appropriate, you require a fair but adequate retainer up front before proceeding.
- ◆ Disbursements included in bills reflect the actual amount spent or to be spent on behalf of the client.

**COMMENT:**

**RESOURCES**

- Nova Scotia Barristers' Society / Code of Professional Conduct Rule 3.6: Fees and Disbursements
- Lawyers' Insurance Association of Nova Scotia / Law Office Management Standards / **Standard #5 Retention and Billing**
- Law Society of British Columbia / Fees, Disbursements and Interest (2012)
- Scott, Todd C. / **Nine Rules for Billing Ethically and Getting Paid on Time** (November 2011)

**ELEMENT 8 – HAVING APPROPRIATE SYSTEMS IN PLACE TO SAFEGUARD CLIENT TRUST MONEY AND PROPERTY**

**Your legal entity holds client funds and property securely and separately from other funds received, and maintains appropriate records of these funds and property.**

When you prepare your answer, please reflect on the following examples of practices that support your conclusions. Though none of these are mandatory, they provide some illustrations of what a prudent legal entity should have in place, dependent upon the type or area of practice.

In the 'Comment' box, you may add any additional information or explanation that you think will assist in understanding your assessment.

<b>RATING:</b>	<b>COMPLETELY DISAGREE</b>	<b>1</b> <input type="checkbox"/>	<b>2</b> <input type="checkbox"/>	<b>3</b> <input type="checkbox"/>	<b>4</b> <input type="checkbox"/>	<b>5</b> <input type="checkbox"/>	<b>COMPLETELY AGREE</b>
							<b>NOT APPLICABLE</b>

<b>EXAMPLES OF PRACTICES</b>	<b>CONSIDERATIONS</b>
<ul style="list-style-type: none"> <li>• You understand your obligations pursuant to the <i>Legal Profession Act</i> and the Society's Regulations relating to trust accounts, and review them regularly.</li> <li>• You train staff to understand the difference between "trust money" and other funds received.</li> <li>• Your staff is qualified and trained in record keeping and accounting for trust funds and other valuable client property.</li> <li>• You hold regular meetings with relevant staff to discuss trust account rules and procedures.</li> <li>• You maintain trust money and other property separate from other money and property at all times.</li> <li>• You have written guidelines relating to the signing of trust cheques, or otherwise authorizing payment of monies from trust, that are disseminated to all staff and regularly reviewed.</li> <li>• You provide clients with a written accounting when receiving or disbursing funds on their behalf.</li> <li>• You maintain records that indicate what trust funds are being received and disbursed and from/to whom.</li> <li>• You closely supervise staff working with trust monies.</li> <li>• Your procedures and records are always in an audit-ready state.</li> </ul>	

COMMENT:

**RESOURCES**

- **Nova Scotia Barristers' Society / FAQs: Trust Account Regulations**
- **Nova Scotia Barristers' Society / Regulations under the Legal Profession Act [Part 10]**
- **Law Society of British Columbia / Practice Resource Sample Checklist for Internal Controls: Trust reports**
- **Law Society of Upper Canada / How to Open and Operate a Trust Account**

## ELEMENT 9 – SUSTAINING EFFECTIVE AND RESPECTFUL RELATIONSHIPS WITH CLIENTS, COLLEAGUES, COURTS, REGULATORS AND THE COMMUNITY

**Your legal entity's dealings with clients and other third parties are conducted in a fair, open, effective and respectful way that respects diversity.**

When you prepare your answer, please reflect on the following examples of practices that support your conclusions. Though none of these are mandatory, they provide some illustrations of what a prudent legal entity should have in place, dependent upon the type or area of practice.

In the 'Comment' box, you may add any additional information or explanation that you think will assist in understanding your assessment.

<b>RATING:</b>	<b>COMPLETELY DISAGREE</b>	<b>1</b> <input type="checkbox"/>	<b>2</b> <input type="checkbox"/>	<b>3</b> <input type="checkbox"/>	<b>4</b> <input type="checkbox"/>	<b>5</b> <input type="checkbox"/>	<b>COMPLETELY AGREE</b>
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<b>EXAMPLES OF PRACTICES</b>	<b>CONSIDERATIONS</b>
<ul style="list-style-type: none"> <li>• You have written guidelines in relation to client communication that are disseminated to all staff and regularly reviewed.</li> <li>• You have written guidelines in relation to communications with colleagues, the Society, the judiciary and the community that are disseminated to all staff and regularly reviewed.</li> </ul>	<ul style="list-style-type: none"> <li>◆ You conduct communications with clients, colleagues, the Society, the judiciary and the community in a timely, respectful and courteous manner.</li> <li>◆ The client communication guidelines include provisions in relation to the following:               <ul style="list-style-type: none"> <li>➢ ensuring each client receives a retainer letter;</li> <li>➢ client instructions are confirmed in writing;</li> <li>➢ an active case list is maintained; and</li> <li>➢ client matters are completed in a timely fashion.</li> </ul> </li> <li>◆ The guidelines in relation to communications with colleagues, the Society, the judiciary and the community include the following:               <ul style="list-style-type: none"> <li>➢ you respond to communications in a timely manner;</li> <li>➢ information about client undertakings;</li> <li>➢ making public statements;</li> <li>➢ communications being culturally competent and without discrimination or harassment; and</li> <li>➢ dealing with the media (including social media).</li> </ul> </li> </ul>

COMMENT:

### RESOURCES

- **Nova Scotia Barristers' Society / Code of Professional Conduct** (current to September 2014) [**Rule 2.1-1**: Integrity; **Rule 3.2-2**: Honesty and Candour; **Chapter 5**: Relationship to the Administration of Justice; **Chapter 7**: Relationship to the Society and Other Lawyers; **Rule 7.2.11**: Undertakings and Trust Conditions; **Rule 7.3-1**: Maintaining Professional Integrity and Judgment]
- **Law Society of Upper Canada / Undertakings and Trust Conditions**
- **QBE Europe Professional Indemnity Risk Management / Solicitors: A Guide to Undertakings** (January 2013)
- **Lawyers' Insurance Association of Nova Scotia / Practice Management / Social Media in the Workplace**
- **Shields, Allison C. / Managing Your Reputation in an Online World** (July/August 2014) ABA Law Practice Magazine
- **Law Society of British Columbia / Communications with the Law Society**

## ELEMENT 10 – WORKING TO IMPROVE THE ADMINISTRATION OF JUSTICE AND ACCESS TO LEGAL SERVICES

**Your legal entity plays a role in improving the administration of justice and enhancing access to legal services.**

When you prepare your answer, please reflect on the following examples of practices that support your conclusions. Though none of these are mandatory, they provide some illustrations of what a prudent legal entity should have in place, dependent upon the type or area of practice.

In the 'Comment' box, you may add any additional information or explanation that you think will assist in understanding your assessment.

RATING:	COMPLETELY DISAGREE	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>	COMPLETELY AGREE
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EXAMPLES OF PRACTICES	CONSIDERATIONS
<ul style="list-style-type: none"> <li>• You have <i>pro bono</i> guidelines.</li> <li>• You encourage <i>pro bono</i> services and activities.</li> <li>• You provide legal services in a rural community</li> <li>• You provide legal services an underserved area</li> <li>• You encourage staff to take part in volunteering activities that offer legal services.</li> <li>• You offer alternatives to litigation to clients where appropriate.</li> <li>• You take steps to provide affordable legal services to clients, including offering alternative fee arrangements and unbundled legal services.</li> <li>• You train your staff to engage with self-represented litigants, and to communicate with them professionally at all times.</li> <li>• You provide staff education and training in relation to cultural competence, client-centred thinking and the use of plain language.</li> <li>• You use processes to enable better case management, and to deliver efficiencies to reduce cost.</li> <li>• You encourage staff to suggest measures to increase the efficiency and effectiveness of your legal entity</li> <li>• You encourage staff to suggest measures to improve the administration of justice.</li> </ul>	<ul style="list-style-type: none"> <li>◆ <i>If you were not practicing where you are, there would be significantly fewer legal services available.</i></li> <li>◆ <i>You accept Nova Scotia Legal Aid Certificates.</i></li> </ul>

COMMENT:

**RESOURCES**

- **Lawyers' Insurance Association of Nova Scotia /Practice Management /Practice Tools/ Limited Scope Retainer Resources**
- **Lawyers' Insurance Association of Nova Scotia / Law Office Management Standards / Standard #5: Retention and Billing**
- **Nova Scotia Barristers' Society /Family Law Standards / Standard #7: Unrepresented Party**
- **ABA Standing Committee on Pro Bono & Public Service and the Centre for Pro Bono / Resources for Law Firms**
- **Canadian Bar Association / The ABCs of Creating a Pro Bono Policy for Your Law Firm**
- **Harvard Law School / Pro Bono Guide: An Introduction to Pro Bono Opportunities in the Law Firm Setting**
- **MacLaughlin, Paul / Managing Pro Bono (Law Society of Alberta)**



