



Trusteeship Manual

The Law Society of Saskatchewan
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REGINA, Saskatchewan
S4P 3X2

A. INTRODUCTION

As a trustee appointed under Section 61 of *The Legal Profession Act, 1990*, your duties and responsibilities are in the first instance to the Court of Queen's Bench and secondly, but of equal importance, to the profession. You are to manage and maintain the practice so that clients are properly served and the value of the practice to the member or his or her beneficiaries is not diminished. Please keep track of your time even though you may be paid on a contract basis. The hours expended on a trusteeship will be of assistance in determining the extent of reimbursement to the Law Society.

From the time of your appointment, the practice in question is your responsibility. Thus, upon being appointed, you should not hesitate to take full control, nor should you tolerate any delay or hinderance from the member, his or her staff, financial institutions or any other person.

The following comments have been gleaned from the experience of previous Law Society trustees. They will give you the basis upon which to proceed in most cases. However, no two trusteeships are alike. You have been chosen to act as trustee because you have the skills and experience necessary to deal with unusual situations in an efficient manner and the Law Society expects that you will bring these skills and that experience to bear on problems as they arise. The Law Society also expects that if you find that the guidelines contained herein are inappropriate, you will discuss your options with the co-ordinator before proceeding.

Co-ordinator

The Co-ordinator will be appointed by the Law Society in each case as a liaison between yourself and the various Law Society Committees which are interested in the trusteeship. You should report, communicate and deal with the Law Society only through this person. There is a tendency, particularly in urgent situations, for lines of authority and communication to become crossed and confused. **Regardless of who else you communicate with, within or without the Law Society, the Co-ordinator must be kept informed of all developments on a priority basis.**

Step 1: Seize the property of the member as described in Section 61 or in the Queen's Bench Order.

First
attendance at
Member's
Office

Attached for your information is a common form of Order appointing a trustee. This Order will be obtained and served on the member by the Law Society. It may be, depending on the circumstances, that the Chambers Judge will particularize the Order and this of course must be observed. It will be necessary for you to attend at the member's office to physically take control and preserve the status of the practice. It may be necessary for you to change the locks and change the combination on any vault or safe, and may be necessary restrict access to staff and/or remove items and records immediately. In particular, the member should be restricted from access to records. This will be in your discretion based on the circumstances and upon consultation with the Co-ordinator.

Bank,
Registries, etc.

You should, as soon as possible, contact all financial institutions in the area in which the member practiced or where there is any indication that he/she kept accounts, advising them of your appointment, serving them with a copy of the Order and instructing them to freeze all accounts until further notice.

It will also be necessary to advise ISC if the practice has a deposit account, the Queen's Bench Registrar's Office and, depending on the requirements of the practice, other lawyers, registries, government departments, etc. Everyone with whom the member was dealing at the commencement of the trusteeship has to know who to contact.

Community
and Recording

If there is an allegation of criminal conduct on the part of the member or the possibility of any litigation to which the member is a party, you may at some point be called upon to testify in court or to account to the authorities for your initial actions. It is therefore essential to maintain continuity of potential exhibits by making note of where they were found and in what condition. Previous trustees have found it helpful to carry a pocket dictaphone to their first visits to the member's office and record their observations and activities. Initialling and dating of documents may also be of benefit, as may photographs or videotapes of the premises.

Find and
Secure
Records

Files and records may not be necessarily where expected. You should search all parts of the office, including the supply cabinets, storage areas, cupboards, etc. If the member's staff are co-operative, they can be of valuable assistance in locating improperly filed or stored documents and obtaining client lists. Occasionally, a member may keep files and records in his or her home, summer cottage, safety deposit box or even vehicles.

- Trust Ledger Of primary importance, in most cases, will be trust account records, including individual client ledgers. These should be secured at the earliest opportunity. If these records are on computer, reliable and discreet technicians may be needed to retrieve same.
- Diary Often times a member's diary will be of assistance in determining which files and matters are urgent and require immediate attention. You should be wary, however, of relying too much on the diary as often members who have run into difficulty do not properly record appointments, limitation dates, court appearances, etc. Again, a co-operative staff can be of great assistance. In dealing with a member with a busy criminal practice, the trustee's assistant should review court diaries so as to check for unrecorded trials and appearances, especially out of town.
- Member's Staff When you first visit a member's office, you should have copies of the Order appointing you and explain to the member's staff that you are now in charge of the practice. It will usually not be necessary to go into any detail as to the reasons for your appointment and you should be careful to emphasize that, while you will be co-operating with any discipline investigation as appropriate, you are not a part of that investigation. Your duty is simply to manage the practice. The events leading up to the trusteeship, whether illness, death or discipline will have been very stressful and traumatic to staff, especially those with a long relationship with the member. You will have to balance your sensitivity to their feelings with the need to get on with the job. Good staff will appreciate clear, calm, decisive management, which often was missing in the days before you arrive. You will be expected to deal with the tougher situations yourself (i.e. irate clients who the staff have already "put off" too many times), rather than delegate them.
- Police Assistance The Act provides for the assistance of a peace officer in entering any place named in the Order.

Step 2: Consolidation

It will be necessary very quickly to assess and categorize individual files into urgent and non-urgent. The non-urgent files can be sub-categorized at a later date. The urgent files must be taken care of before anything else. Ultimately, all files will have to be reviewed, hopefully before they become urgent. Be on the lookout for files which you, as a local practitioner, may be in conflict. These need to be sealed and reviewed by independent counsel, both to protect the client and to prevent you from having to withdraw on your own client.

Urgent file clients must be notified immediately of the situation and advised of their options. In some cases, it may not be possible to contact clients immediately and, in such cases, you, your firm or another independent solicitor may be required to step in to protect the client's interests. It may be that you will have to determine whether or not to complete a closing, for example, using monies available in trust. The Co-ordinator should be advised of this immediately (see Trust Disbursements, page 8). Examples of urgent files include:

1. criminal matters where an appearance or even a trial is pending;
2. litigation matters where the claim has not been issued and a limitation is pending;
3. litigation matters where the other side is threatening to note for default;
4. real estate closings.

Clients on all open files must be notified of the situation presented with the options that are open to them, and asked for confirmation of the nature and amount of any monies held in trust. You should also enquire as to whether there are any matters of urgency to be attended to. Depending on the nature of the trusteeship, it may not be necessary to deal with individual files other than on a monitoring basis. You should be aware of the provisions of Section 62 which requires notice to the clients, however, in such manner as you see fit. If there is a possibility of criminal investigation or major tax audit, you should advise the clients of this possibility. They may wish to seek advice as to their claims to privilege.

In conducting a file review, you might wish to prepare a memo of your understanding of the status of the file, leaving a copy in the file and keeping a copy in a binder or on computer for reference. Also keep master lists of:

- files with money in trust so as to spot potential defalcations;
- files with potential E & O insurance claims

During the course of the file review, after the urgent files have been identified and dealt with, you should be formulating an overall plan with respect to the

conduct of the trusteeship, including estimates of value of the practice, whether it should be preserved for a time, whether it should be wound up immediately or sold. This will also depend on the nature of the matter that led to the trusteeship (i.e. death, illness or discipline). It is anticipated that the practice will in fact be wound up as the saleability of legal practices is by and large low. There are, however, some assets such as an extensive will bank, which might be saleable and occasionally practice can be more attractive if it has a solid clientele and can be passed as a turnkey operation. You should also make a preliminary assessment of the work that will be required, including costs and timeframe. This should be put into a report to the Co-ordinator, which will also deal with trust accounts, defalcations, possible conflicts of interests, types of files and problems encountered. This is intended as a preliminary report and is expected to be revised as the trusteeship continues. Therefore, while we would expect you to be as accurate as possible, you should not delay the delivery of this report beyond three to four days waiting to confirm any particular facts.

Step 3: Maintenance

Preserve the Practice

In most cases, the most intense part of the trusteeship will be with respect to steps 1 and 2. The maintenance of the practice simply requires that the clients' interests be protected, that the business of the practice be attended to so as to preserve it for the member or prospective purchasers or for orderly winding up. Usually, you will be in the best position to determine which is appropriate.

Report to Co-ordinator

You should report in writing to the Co-ordinator on identifiable defalcations, potential E & O insurance claims, the value and description of fixed assets of the practice, accounts receivable and estimate of recovery thereon,, and an approximate valuation of the practice, as soon as practicable after the preliminary report. This report should be revised as necessary and provided monthly. Potential insurance claims should also be reported to SLIA.

Discipline

As noted, it is expected that you will cooperate with any discipline investigation as provided for in Section 62(1).

Move Files

Depending on the urgency of the files, the size of the practice, its location, etc., it will normally be appropriate for you to transfer the files and records to your own office to be dealt with by your own staff. If possible, the member's phone number should be diverted and the post office advised to send the member's mail directly to your office. The member's staff should be instructed as to how to deal with clients, the media and the public generally without creating undue suspicion or negative impact upon the member or the practice. One of your staff members should be assigned the task of dealing with the public and be kept updated.

Acting for Member's Clients

There may well be files that can be handled by yourself or by your firm with the client's approval and in such cases, it will be appropriate for you to bill the client directly for your services. To avoid misunderstanding, make sure it is apparent on the statement of account that you are billing for your work.

In some cases, the client may wish to formally discharge the member and become your client, although this should not be encouraged as it may amount to a diminution of the practice contrary to your duty as trustee. On the other hand the client may wish to engage your services in order to deal with a particular matter, but otherwise be content to remain a client of the member. In either case, you are acting as a solicitor; not as a trustee. Your instructions and fees are the client's responsibility and the client should be so advised.

Billing for Member's Work

Billing for previously performed work is an important part of a Trustee's responsibility. Accounts receivable represents, in most cases, the most valuable asset of the practice. It is therefore important that the Trustee pursue these

receivables with diligence. As well, in the interests of maintaining the practice, it may be appropriate to bill files on which the member had previously performed work. You should only do this, however, where there is confirmation that the work has in fact been done and that any account which you send to the client can be defended and proved if required. It is not acceptable to bill files on a speculative basis. Inspect the files carefully for fee agreements on scraps of paper or contained in letters so as to avoid embarrassment when a bill is challenged. To avoid misunderstanding, make sure it is apparent on the statement of account that you are billing for the member's work. You should ensure that GST and PST are included. Billing is a disciplined way to review the file. It will get the attention of some of those clients who ignore your initial contacts. It will give clients an idea of the status of the matter so they can make a decision whether the matter should be continued. It also leaves the impression that business goes on. Many clients who do not receive a bill in a timely fashion are reluctant to pay when a bill is rendered later. Upon a member being suspended, some clients will "assume that they no longer owe for work already done".

It is the intent of *The Legal Profession Act, 1990* and the Law Society that as far as possible, clients are to be put in the same position they would have been had the member properly carried out his/her function. Therefore, on files where there has been money received by the member in anticipation of work being done which has not been done and it is not possible to refund that money, it will be appropriate for you to complete the necessary work and bill the Law Society directly. This should be only undertaken, however, with the approval of the Coordinator.

Releasing
Client Files

As you are aware, the files ultimately belong to the client. If a client decides to remove his or her files to another lawyer, you must:

- (a) confirm the client's identity;
- (b) claim any solicitor's liens applying to the file or make suitable arrangements to collect the debt owing to the member;
- (c) obtain receipt and trust fund acknowledgement in the form provided with any necessary amendments;
- (d) ensure that the file material can be accessed, if needed, for defending an insurance claim, investigating defalcation or discipline proceedings. Whether that is done by photocopying or by forwarding on trust conditions for return if requested depends on the size of the file and likelihood it will be needed.

General Duties

Accounts

It will be necessary for you to keep the trusteeship separate from your own practice and therefore you should have separate trust and general accounts in your own name as trustee. Both of these are, in fact, trust accounts.

Privilege and Confidentiality

As noted above, while your primary responsibility is to the court, as a member of the Law Society of Saskatchewan and pursuant to *The Legal Profession Act, 1990*, you have a responsibility to the profession to cooperate with any discipline investigations and to make the Law Society aware of any apparent breaches of *The Code of Professional Conduct* or *The Criminal Code*. Should there arise a conflict between this duty and other duties, for example solicitor/client privilege, the client should be advised of your ethical responsibilities and if he or she is unwilling to cooperate, the file should be returned to him or her forthwith and notice that this has been done given to the Co-ordinator. The client also should be advised very clearly of his or her own potential liabilities and the possible consequences of collusion in unlawful behaviour. A written waiver of privilege/confidentiality, limited or otherwise, is advisable from all clients and should be asked for early in the process to give the clients time to seek advice on their options and save separate communication.

Complaints

Clients or third parties who have complaints of a discipline nature against the member should be referred to the Complaints Officer. You should not act as advocate or facilitator for complainants, but it will be appropriate to advise the Co-ordinator of the complaint.

Media

The media should be directed to the Coordinator or as you may be advised.

Property

Depending on the extent of the Order, in individual cases, the term "property" in Section 64 of *The Legal Profession Act, 1990* is very wide and may, in fact, include what have been alleged to be personal bank accounts. Attached is a copy of a decision of the Supreme Court of British Columbia in *Re: Kirk* for your information in that regard. An Order can be varied if necessary.

Trust Disbursements

Do not disburse trust money until the whole situation has been determined. This will take time and a complete canvass of all clients. While there may be exceptions to this general rule, they will be rare.

Office Expenses

As well, the general office account may not be equal to the demands against it. In most cases, it is best not to pay office debts until the whole financial picture is available. Often bankruptcy will intervene. Obviously, the financial health of the practice will be a factor in deciding whether it should be maintained, wound up, or sold. Therefore, you should make an early assessment of the operating costs of the practice and economize where possible. The expenses of the trusteeship

may not be paid from the member's general account.

Bank Loan

If the practice is viable but is experiencing cash flow problems, it may be possible to obtain interim financing. This should only be done with the written approval of the Co-ordinator.

General

Be way of file covers with no notes or apparently missing information. As well, most lawyers fasten file material together with "brade" or "posts". If these are missing, there may be file material missing too. Extra attention should be paid to these files.

Often, if money is being "kited" from one client trust account to another, there will be a flurry of activity on ledger cards at month end in order to balance the books and cover shortage. Be suspicious of large, round numbers or numbers which would be round but for the GST and PST.

Although, as noted above, it is essential that there be no question in anyone's mind of your authority over the practice, you should always be conscious that the imposition of a trusteeship is a traumatic and upsetting experience for staff, clients and associates of the members. Your job will be made easier by their cooperation, so it will be in your best interest to foster their trust. Clear, definite action will be appreciated in times like these.

Further, while you are custodian, the practice does not belong to you. You hold it in trust and at the direction of the Court.

Receivables

While there are many other more urgent matters, some attention should be paid to the receivables, both as a result of the member's billings and those on his/her behalf. If receivables are not followed up on a timely manner, they soon become uncollectible. Some clients will assume that with their lawyer gone, they need not pay. A letter explaining that one is a trustee, that the money is still owing and where the proceeds will go has been found to bring in some money. In a recent trusteeship with a major defalcation, the assurance that the receipts would go for reimbursement of the victims and not go to the just-disbarred member brought in a number of debts. The new amendments to *The Legal Profession Act* provide that the Law Society is to be reimbursed for money spent on trusteeships from the receivables and assets (section _____).

Sale or Wind-up

One must remember that the strategies for the sale versus wind-up of a practice are often opposite. Decisions made early can affect which is more effective. To illustrate, here are some assets and issues which are affected:

Item	Sale	Wind-Up
Staff	retain staff as valuable to buyer	give notice so as to reduce severance claim
Office premises	retain as valuable to Buyer	give notice so as to reduce new commitment
Equipment	sell as individual items	keep together as a package
Closed files	leave for buyer to sort as may help retain clientele	strip and destroy those >7 years. Store the rest until time expires
Files nearly done	leave for buyer	finish, close and bill
Files part way along	maintain, bill WIP to show value to buyer	bill and send to other counsel
Files just started	maintain and retain. No use billing as work will overlap - get retainers	have client find other counsel – no point billing as work will overlap
“Dog” files	leave or clean out low dogs. Increase saleability, but who says what is a dog. Bill to train clients	Bill WIP and send clients away. Withdraw from record
Files where contact is lost	leave for buyer	bill to get attention. Withdraw from record
Files with retainers	enumerate as part of ad	finish, transfer or refund retainer after bill
Files with trust funds	enumerate as part of ad	finish, transfer or refund, if possible. See below

Receivables

list and give buyer choice.
They may not want to be
able to pay extra for these

collect or sell to
collection agent

Sale of Practice

While some time is needed for the trauma of the trusteeship to dissipate, a practice declines in value with inactivity. Thus, the decision to sell should be made and implemented as early as possible. The coordinator will keep in contact with discipline and the member so as to decide this. A prospective buyer will need information on the following:

Community

The local Chamber of Commerce will have material such as:

Premises	is it rented what is the rent how long is the lease how big is it
	A floor plan of the current premises might help.
Equipment	the itemization made at the start will help here
Staff	ascertain who might stay for a new lawyer
Files	what type are they (i.e. criminal, family, real estate, etc.) whether they have retainers or money in trust some idea of the WIP
Receivables	including the age of the bills. The receivable part of accounting software will help with that
Previous Billings	although the member's records are often not reliable, a disclaimer is needed
Revenue and Expenses	although the member's records are often not reliable, a disclaimer is needed

What steps you, as trustee, have taken to:

- ensure there are no files which could be liabilities
- clean out the "dog" files
- train clients about paying bills

One's reports to the coordinator will have much of this material.

Remember that there is no property in clients. Subject to liens, the files belong to the clients. So files really are not a saleable part of the practice. About all one can count on is client inertia in that those who have not left by the time the

decision to sell is made might well stay around rather than looking for other counsel. This is especially applicable where there have been discipline problems since those clients with initiative will be gone due to the reputation, while others will not want to go elsewhere and take their chances.

Sales requires targeting prospects. In this case, local firms are poor prospects, since they already have the premises, equipment and staff. They might pay something to reduce the competition. They will hope to get the files if there is a winding-up.

The best prospects are associates in other firms who are interested in starting their own firm. This presents the advantage of a ready-made or "turn key" operation, without the time and effort needed to hire staff, rent space, buy equipment, establish systems, etc. As well, with some files to work on there is something to do and some receipts fairly soon after starting. In pricing, the cost to set-up is a comparison.

Winding-up

This is difficult in that one has a responsibility to ensure no file is just left. Thus, you need to complete them, have the clients find other counsel, or withdraw. One should therefore start not with the easy or small files, but rather the larger ones that will take the longest to finish or send elsewhere.

Compensation

Compensation will be provided at the rate contained in your Agreement with the Law Society.

However, it will still be necessary for you to keep a track of time spent on the trusteeship as, in some circumstances, reimbursement can be obtained from the lawyer, his or her estate or clients. Further, it will of course be necessary to obtain a discharge from the Court who appointed you and a record of time spent on the trusteeship will be of assistance in justifying costs involved.

In certain circumstances it may be appropriate for the attention of an accountant, outside counsel, investigator and, very rarely, counsel to protect your own interests. **The Law Society will not underwrite these expenses without prior approval. The Law Society of Saskatchewan Auditor is available for some purposes and should be used in preference to outside auditors where possible.**

Basic Checklist

1. Freeze bank accounts.
2. Secure all files and records, including client lists.
3. Check for court dates and limitation periods.
4. Identify urgent files.
5. Advise clients by mail.
6. Open trust accounts for office and client trust.
7. Report to Co-ordinator.
8. Review all files and take appropriate steps to maintain, wind-up or prepare the practice for sale.

Receipt and Trust Fund Acknowledgement

I, _____, of the City of _____, in the Province of _____, hereby that I have received from _____

(trustee)

on the date below written, the contents of File No. _____ (or file name as applicable) kept by

_____ and consisting of:
(member)

(a) list contents:

(b) list documents

I also acknowledge receipt of \$_____, being the entire amount of funds held in trust by _____ on my behalf (or as appropriate).
(member)

DATED at the City of _____, in the Province of _____, this _____ day of _____, A.D. 20_____.

Witness

Client