

Transition to Retirement: Strategy and Success
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Retirement is a big change - whether planned or forced by unplanned events - and it needs a thoughtful strategy to make it work smoothly. Whether it is coming soon or fifteen years away, there are things you can do now to make it easier for you, your firm and your clients when the time comes. This article will give a personal recounting of the planning and implementation process and a review of decisions to be made and rules and obligations to be considered in making your exit from the profession.

I want to be clear that I have no qualifications as an author on this topic other than that I am retired and to reach that point I had to wind down my practice and transition it to others. Some of what is discussed comes from personal experience and observation. A lot more of what I have to say comes from what I have read.

I am aware that I am not really going to tell you anything you have not already heard somewhere else and I am unlikely to tell you much, if anything, that you do not already know. My intent is to get you thinking.

I reviewed a lot of material in preparing this article you will find a Reading List of the resources I accessed. They were all available to me on-line so all I am really doing is sorting the information for you a bit. I hope you find it helpful. You can just follow the links to anything that interests you.

WHAT WILL YOU EXPERIENCE IF YOU RETIRE?

Simply put, a retired lawyer is not a lawyer anymore. You very quickly become someone who used to be a lawyer. That will be difficult for many of you to accept. I read a lot about the mental side of the process while I worked towards my own retirement, but reading it again as I prepared this article let me understand it way better, especially after living it daily for almost three years.

What is written is true - retirement is a letting go of a lot of inner connections and adapting to a new way of life:

- you cut back or end your hours of work
- you give up accounting for your life in 6 minute increments
- you reduce your income
- you re-learn to live life within your means
- you lose the opportunity for the intellectual challenge that you got everyday as a lawyer and you need to find a way to replace it, crossword puzzles are not enough
- you suffer a loss of your colleagues - I think its easy to overlook that law firm life surrounds you with very bright people functioning at a high level - that is not easy to replace in retirement life
- you lose a place to go five or more days a week that is outside your home
- you have to find a new structure to your day
- you may lose touch with your social contacts if they are derived from your professional life
- you will need to find new ways to satisfy your “competitive” needs.

Those are the negative changes. The positive changes are better expressed by authors but the ideas are that you get to move from a life of “doing” to one of “being”. You are no longer defined by your label as a “lawyer”, so you can create a new definition of yourself - a chance to be “what you are” instead of “who you are”. You can do things that matter to you rather than having to spend your time resolving the problems of others. I have found all of these things to be very real experiences.

HOW DO YOU KNOW THAT IT'S TIME TO GO?

What are the signs that you should be considering retirement? Here are some. They are actually posed to you as questions, based on personal experience, reading and talking to others:

- Do you look forward to going to work or have you had enough?
- Do you go to work because you have nothing else to do?
- Are you burned out?
- Do your client's demands annoy you?
- Are you getting grumpy or irritable?
- Have your partners stopped asking for your input on firm matters?
- Will your partnership agreement force you to go?
- Are the associates steering clear of you?
- Are other people asking you when you are planning to retire or telling you that you should slow down or retire?
- Do you hate change?
- Is your health declining?
- Is the health of other family members making larger demands on time you have available for work?
- Are you losing the mental edge that your clients need and deserve?
- Is your memory declining?
- Do you really need more money?
- Is your workload falling off - it used to be that a lawyer's practice peaked at age 55 and then gradually went into decline. It is not that way so much anymore it seems.
- Have your clients stopped calling and you don't know why?
- Conversely, is your workload increasing instead of reducing?
- Are you working harder than you used to or more than you want to?.....you didn't sign on to be worked to death.

For me it was a combination of several of those considerations, some in greater degrees than others. The next question is “how do you get ready to go?” Some resources suggest that you should practice at retirement by expanding your weekends or taking more holidays. I did it a bit differently.

I took a lot more one and two week breaks from the office but traded that for longer workdays and working weekends to keep up the billable hours lost by being away - but I didn't use a Blackberry to keep in touch - for me, away was away. That was how I tested withdrawal. It is also suggested that some of you may benefit by starting to

do some of the things you think you will do in retirement. That will allow you to get a foothold into your area of interest - or find out it isn't what you thought it would be and let you find a different approach before you fully commit to go.

HOW DO YOU DO IT?

In my experience, I have seen retirement 3 ways:

- forced retirement through illness
- retirement later in practise once interest is lost
- my own, with more of a long term plan and a lengthy phasing in.

Although there is little you can do about it, forced is not the way you want to go. Every firm is different but when it happened to ours and we lost a partner to illness it created some serious challenges. To some degree, younger partners were in place with knowledge of major client needs that allowed an ongoing relationship to continue but not without some stress. However, the experience in another whole practice area was lost entirely and younger lawyers had to learn the area from the ground up without the benefit of any mentoring or knowledge of the clients, their industry or their unique needs.

The concept of waiting late into practice to retire works well enough for the lawyer, but not necessarily the firm. If the decision to retire just means playing it out until the last file is done, then all you see is a declining interest become a waning interest, short days, short weeks, less firm involvement and no effort to transition clients. I see transition of clients to be extremely important, especially if your firm owes you money. You want the firm as healthy as it can be when you go.

TIMELINE

Assuming it's your decision as to when to go, as opposed to outside forces beyond your control, you need a timeline in place to get everything done. On that timeline you have to look at several different forces moving in parallel and you have to manage them so that they all complete or converge more or less simultaneously. It's really no different than the management of a large client file so it is definitely well within your expertise and skill-set to do it successfully. But to finish the simile, you do have to open the file, put it on your diary and create some limitation dates and monitor them rigorously.

So what are the forces you have to harness? I will list them but they are pretty obvious:

1. Personal Financial Planning
2. Firm Related Financial Considerations
3. Business Obligations
4. Ongoing Firm Needs
5. Communication Plan
6. Regulatory Requirements

1. PERSONAL FINANCIAL PLANNING

Over and above anything else, I recommend that you get an honest, independent analysis of your finances and what you will need to live on in your chosen lifestyle. I did it - it was really hard to do. I worked with an experienced financial planner. I put together all of the detailed information needed to get a proper assessment done. I did it along with my wife so that it was our assessment, not mine alone.

We did three serious runs through the process - a preliminary to see how it looked - a revised one based on corrected or modified assumptions - and a third one after final tweaking. That process gave us the confidence to know that we could afford to retire. Does it work? It has so far. Our reality has been consistent with our projections.

As a side point on this topic, I found the use of a Professional Corporation to be of great benefit in my retirement, especially to control taxation of income that continued from my partnership interests. This would be different for everyone but if you have not yet looked into the benefits available, you should do so.

Once you retire, you are able to take advantage of pension income splitting with your spouse and I found it valuable to defer personal professional income to have it taxed at lower rates over time. If retirement means cutting back a bit there was as an interesting piece of advice I read from a retired British Columbia lawyer. He recommended getting rid of as many sets of keys as possible before you retire - keys to office buildings, condos, cottages, second residences, extra cars, boats, airplanes, etc., as the ongoing cost of things that need keys - insurance, upkeep, taxes and so on - is a burden to retirement income. I thought it was a good common sense way of looking at things but it takes foresight to get it done.

2. FIRM RELATED FINANCIAL CONSIDERATIONS

For me, the financial aspect of my practice was pretty predictable. I was a partner in a good sized law firm that would be ongoing well into the future. The old adage applies about pulling your fist out of a pail of water and watching how long the ripples last until it goes back to normal. I wasn't going to be missed for very long.

I knew I would get my capital contribution back. There was a process in place for valuing and paying for Work in Progress and for sharing profit. I knew what I would be entitled to receive, and I knew it would be paid to me, even if I didn't know exactly when I would get it. Many of you will be in similar circumstances but several of you probably will not. Some larger firms may have the capacity for semi-retirement, decreased commitment, trading equity partner status for income partner status or designation of "of counsel" status.

The thought of part-time practice to me played out as too complicated for a solicitor's practice because every new file had its own life with multiple tasks to be performed - usually with deadlines dictated by the client or the deal itself. I think part-time would be too restrictive on your freedom to fully commit to anything else or travel extensively, if that is in your plans. Maybe barristers would have more control over the timing of work commitments in a part-time format.

I know of other lawyers who restricted part-time work to the needs of only specific long term clients - a good gradual exit strategy if it is available to you. But, if you are going to try any of these options, you are going to need to get a support network in place made up of willing lawyers and/or strong, experienced legal assistants to be there when you're not. When it comes again to solo and small firms, I cannot help much in how to exit other than to synthesize some of what I have read about options open to you.

The most common is the "internal sale" to young lawyers you develop as associates, although we all know there are not a lot of young lawyers out there to draw on for this approach. Even then, they will likely just take over your space, continue your staff, store your files and keep your client list. Rural practitioners clearly suffer the most in

this regard. It is unlikely that your successors will pay you much - if anything - for your practice but they may help you realize your Work in Progress and assist in collecting your Accounts Receivable. Less common is the “external sale” - not impossible, but rare in my experience. If you are lucky enough to have a saleable practice then you need a way to value it. Most of what I read says there is not much value, but others disagree. I have listed some resources on valuation on the Reading List.

Then, there is the “part time” model which comes with the “home office” option. If you still need income but want less responsibility there is the ability to do law related work without being a lawyer. You can still do mediation, arbitration or expert witness work without holding a practice certificate. There is the “merger” option if you can find a candidate firm to work with. Or, you can close the doors and walk away - and this one takes as much planning - or more - than the others.

And by the way - the norm is about five years planning for all of those models. With closure, you have to have the discipline to stop taking on new files. You see your income drop but your expenses for staff and space remain constant. You have to accurately project forward as to the time needed for completion of Work in Progress. You have to find a transition process for things you can’t get done. A former partner gave a barrister’s experience on this aspect. As he planned for his retirement he received great co-operation from opposing counsel to schedule matters that allowed for completion of cases or movement to a stage where transition to another lawyer was easier.

One question that I am unable to answer but makes for good discussion is whether you can simply hand your incomplete file to your client and tell him or her you are done and will not be working on it anymore. The Code of Conduct says it is okay to withdraw if there is “good cause” - and although the Commentary to the Rule addresses “incapacity” as such a cause, it makes no mention of retirement.

In addition, both the Courts and the Code of Conduct have something to say about getting your name off a civil or criminal Court record - those practicing in those areas will know the specific rules. As already stated, I do not have the experience to give any advice but I did come across a Toolkit for assisting lawyers in their long term planning for these issues that was prepared for the Law Society of Upper Canada. It doesn’t tell you what to do, but it does direct you through a planning process by asking tough questions and channeling you through a series of steps to put the answers into action. It is a serious approach and a project in itself but worth the effort if you need a guided entry into the process. It’s only accessible on-line and requires registration to use it.

Also, the New Brunswick and North Carolina Bar Associations have good checklists on closing down an office. Although directed to their particular environments, they are still fairly applicable. These resources are all on the Reading list.

3. BUSINESS OBLIGATIONS

I probably do not really need to touch in any depth on the business aspects of retirement planning but I am going to list a few because, where applicable, there is sometimes the need for real long-term planning:

Leases - Obviously, the term of the lease is a key consideration. You want your retirement to coincide with giving up your space. That may mean letting it expire or negotiating in a right of assignment or other strategies to allow a sale of your practice to existing or incoming lawyers.

Staff - You need to give proper, and sometimes lengthy notice to staff to avoid termination pay obligations.

Furniture and equipment - You need an outlet for these things, especially if your practice is closing. Equipment leases are a similar concern to leases of space.

Long term storage - You will definitely need this if you do not find a successor to take your files and records off your hands. The Law Society mandates that there be some specific record retention but good business practice will have you wanting to keep more. In this regard, I recommend to you the article '*Retention, Storage and Disposition of Client Files*' authored by Rod MacDonald in his capacity of Practice Advisor (a link to this article is included in the Reading List).

Accounts Receivable - Will these remain with you for collection or will they be passed on to successors?

Work in progress - Similarly, does it stay or do you keep its value and get paid as it is billed or as bills are collected? This could affect your income and your income tax liability so needs to be understood.

Website - If you have one, how will you shut it down or transition it to successors?

Ongoing liability - This is a big concern. You may not be aware that you remain covered by your mandatory SLIA policy after you retire. This is a good deal and it is one way that your Law Society is really looking after you. The coverage comes about as a result of the Law Society Rule that requires every member to be insured and to pay a premium unless exempted from doing so. The Rule goes on to exempt retired and inactive members from having to pay. The Law society and SLIA interpret that to mean that coverage remains without the obligation to pay any premium.

The policy is a "claims made" coverage. That means that the applicable insurance policy is the one in place at the moment the claim is made, not at the moment the error was made. You are still required to give notice to your insurer as soon as you have knowledge of the claim and you are still responsible for the deductible if the policy pays but the fact that the coverage exists has to give you comfort. The next amazing fact is that you are limited to an aggregate of \$2 million/year but your mandatory coverage essentially keeps renewing year over year.

The extension coverage that your firm may have now to protect you beyond the mandatory, particularly if it is from CLIA, probably does not cover you after retirement - except maybe indirectly. Extension insurance is generally sold to the firm and not to the individual lawyers in the firm. If you were pursued for an error where the claim exceeded your mandatory limit, your firm would probably also be made party to the claim. If the insurer responded, the entire claim could be paid or settled in excess of the mandatory.

I was not an insurance lawyer so I do not know whether there would be a subrogated claim from the firm's insurer back against you now that you are not a firm member - especially if you were a firm member when the error was made. In any event, you are not able to carry CLIA extension insurance into your retirement in the same manner as the SLIA insurance.

Stephen McLellan, SLIA Director, tells me that a retired lawyer can buy excess insurance coverage if he or she was with a firm that currently has excess - however, retirees cannot buy the extended coverage if they did not have it before retirement. The retiree applies in the same manner as would a law firm and pays the same price. The policy is the same but has an endorsement on it that states that it is for work done prior to the applicant's retirement date. Don't take what I am saying as the final word on this. Stephen McLellan tells me that every lawyer who is considering retirement should be talking to him to make sure they understand the coverage. And as a final note on this, Stephen reminded me not to give any error ridden legal advice at cocktail parties now that I am retired because the coverage only applies for errors made when I was an active member actually paying premiums.

4. ONGOING FIRM NEEDS

Your retirement plans should also consider that your firm may still want or need your skills. Much is written about the use of senior lawyers as mentors within firms. I think that is a lot of what the traditional "Of counsel"

designation is intended to imply. Experience is the “human capital” that senior lawyers bring to law firms. I saw a perfect example of this when retired Chief Justice Ed Bayda joined our firm after his retirement. He wanted a place to go each day and he wanted to stay involved in the law. He shared his stories and his intellect with students, associates and partners to the benefit of all.

There are all sorts of examples of lawyers who keep going into the office in their senior years - not really practising - or not practising much - but providing experience and perspective, perhaps even without compensation. I think that is a very workable retirement model for the lawyer without compelling outside interests. Maybe you stay on with your firm. Maybe a sole practitioner can be given space in a larger firm in exchange for the benefit of client transition to his or her hosts - a sort of loose form of merger.

5. COMMUNICATION PLAN

For the most part, clients hire lawyers - not law firms. When you retire, you are leaving your clients feeling exposed. Almost without exception, when I told clients I was retiring, right after their congratulations and good wishes came a question in one form or another that asked -“but what about me?” Your clients have a need to be looked after - and it’s understandable - if you consider your own experience in losing a doctor or dentist or accountant. You worry until you find another, unless a successor has been arranged for you, and has been endorsed by the professional person you are losing.

I had a communication plan. I invented it but it seemed to work just fine. I took client lists from our firm’s data and divided it into groups made up of:

- clients to speak to face to face
- clients to speak to personally by telephone
- clients to inform by personal email or letter
- clients to inform by a general mail out
- clients informed by the firm’s website information and by the telephone receptionist after retirement

I wanted as many clients as possible to hear about my retirement from me before they heard it from someone else. When I made contact, I let them know that I had considered their needs and that they were valued by the firm. I gave them the “best contact” person for their future work. That was not always the person I knew would ultimately do their work. It was the person I thought was best suited to the client’s personality. I let my partners and associates know to whom I had given their names. I arranged face to face meetings with the referred lawyer for clients who wanted such meetings.

As before, I wanted to leave the firm with my good clients, because when a lawyer leaves a firm, it is easy for the client to decide to leave at the same time. I had clients that competing lawyers would be glad to have and my goal was to keep them for my firm. Accordingly, I tried to keep my retirement plans under wraps from my competitors until I had completed the client communication phase.

From what I can tell, my plan worked. Nobody bolted immediately and my former partners and support staff speak anecdotally to me about many of my former clients so I know they remained with the firm. But as to my competitors, I also thought it preferable to speak to them individually about my retirement plans and to take the opportunity to express my appreciation for their professionalism towards me during our several years of parallel practice.

6. REGULATORY REQUIREMENTS

The Law Society has some things to say about retirement planning. Part 21 of the Rules are aimed mainly at the solo practitioner. They mandate prior notice to the Society and details of disposition of files, trust funds, valuable property and successors and subsequent verification that the actions were carried out. You will also have to decide about your ongoing status with the Society. I opted for “retired member” status which you can have for free if you are over 55 and were in practise for at least ten years. You have the privileges of membership, like electing Benchers and receiving the Benchers’ Digest and, as highlighted, insurance coverage, but you cannot practice and you do not get all of the benefits of membership - for example I cannot access the members section of the website to get at research resources.

Another option is “inactive member” but it has a fee and I do not know whether it comes with benefits or not. That category is more typically used for brief absences from ongoing practice. I have also know of other retirees who maintain their “active member” status so as to allow them to continue in practice intermittently if called upon to do so or to avoid re-qualification which is required after extended absence from practice.

DISABILITY AND FORCED RETIREMENT

This is a tough decision and probably a bit outside the parameters of my topic. Despite all of the planning you do otherwise, there is always the possibility of being knocked out of the game by forces beyond your control. My experience with trusteeships from my years as a Bencher taught me that they are very expensive to the lawyer involved, and sometimes to the Law Society as well, as someone else essentially takes over the practice and pays themselves from the Work in Progress.

Winding a practice down in this way takes away any intrinsic value out of it so anything that can be done to get a succession plan in place is definitely for your own benefit. Both the New Brunswick and the North Carolina Bar Association have good articles and guidelines for things you should have written down (basically the “where is” and “how to” of your practice) in case you get knocked out by surprise and someone has to step in, even temporarily.

PERSONAL OBSERVATIONS

The one thing I dreaded was cleaning out my office. Surprisingly, it turned out to be one of the easier things to deal with. Like most lawyers, I had an office full of STUFF...my STUFF consisted of a lot of precedents, articles and CLE materials related to my work collected over many years. I finally forced myself to deal with the STUFF.

I went into the office on a Saturday morning to make a start on it -amazingly by mid-afternoon I was completely finished. I do not know exactly how it dawned on me, but as I looked at each thing I picked up, the relevant question became - “would anybody else want this?” Now, out of fairness, a lot of our firm’s precedents had been librated in electronic format so a good deal of what I had saved personally was already available to others. But even without that luxury it was easy to decide what might be useful to others and what was there just for my own personal comfort. I made piles of what I thought others might use, based on who was taking on elements of my practice and left it to them as to whether they wanted the STUFF. I faced the tough question of whether I would ever need any of the remaining STUFF again myself. I threw most of it out. I confess I kept some, but only enough to fill two Bankers Boxes, and I can honestly report that after almost three years, those boxes still sit unopened in my home office.

And now a pitch for the Canadian Bar Association. I have kept up my membership in their “retired” category. The value of their member benefits far exceed the membership fee I pay. I insure my house and vehicles through the

insurance program and use their car rental affinity partner. The rates are substantially lower than anything else available to me as an everyday consumer.

WHAT AM I DOING

I had a long term plan. I started on my retirement saving in my late thirties. I had a final ten year plan that took me eleven years plus to complete but it worked. My wife, and I talked about our vision of retirement and where to spend it. We wanted a life in the mountains - nearer to - but not on top of our children who had moved to Alberta when the pastures there were greener. I wanted to build things. My wife wanted to grow things and create art. We both wanted to spend time outdoors. So we had a house half built for us on an acreage in the Alberta's foothills and we built the other half ourselves. It has a woodworking shop for me and an art studio for my wife. Next project up is a good sized greenhouse. I get to build it - my wife gets to grow things in it.

We hike, we mountain bike, we cross country ski, we snowshoe. My wife has organized the neighbourhood women with a walking group and a book club which has given us a new social circle. I am on the Subdivision and Development Appeals Board for our municipality, although it seldom meets. My wife is a Library Board Trustee. We involve ourselves in community issues that affect us. My day is structured to include news and current events, research or reading - usually project related - working out or getting outdoors and probably most important to me, trying to accomplish something every day. People know I was a lawyer but I was never their lawyer, so I don't get asked a lot of legal questions.

I tell anyone who asks me about retirement that I am really good at it....I'm glad I did it. My message to you - start your plan now, no matter how long you have until you intend to go..... and then...follow your plan to its conclusion.

This article is an adaptation of a presentation made to the senior bar as part of the Law Society of Saskatchewan CPD Select series.

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