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News

President's Report



SACHA PAUL
President

The 2022 Call to the Bar will be held in person this year at the Convention Centre. The most relevant aspect of my last sentence is the phrase "in person."

I understand that for many in the 2022 call year, they were in second year at Robson Hall when the pandemic hit and their various professors had to tell them to go home. Their third year was virtual. I do not believe that Robson Hall had an actual in person graduation dinner for them. Articling likely was a primarily virtual event as the pandemic washed into 2021 and 2022.

This likely makes the 2022 Call to the Bar one of the few opportunities these (soon to be) lawyers will actually get to see their classmates at the same time. It is also likely the last time that family and friends will be able to celebrate the hard work of these articling students and for the articling students to thank their families and friends for all they have done for them.

I am happy that the Call of 2022 will get this experience like so many other calls before them.

What's New

PREPARE NOW FOR BIG CHANGE: New Limitations Act Comes into Effect

LOCAL FIRM SENDS \$500,000 TO FRAUDSTER'S ACCOUNT

LEAVING A LAW FIRM:What Lawyers and Firms
Need to Know



The call ceremony takes a lot of work, of course. The logistics of large events are beyond me. Like many, I simply show up and trust all arrangements are made. Too often we take for granted the hard work done to make events happen. I thank the staff of the Law Society and the Court of Queen's Bench in advance for working hard to make the Call to the Bar a success.

As the smiles and photos of the 2022 Call to the Bar fade into memory, we as a profession will continue to have an obligation to make sure all junior lawyers who entered practice during the pandemic get to experience law "in real life." Our newest members of the Bar have not (yet) had the ability to fully see how law is practised when there is no Microsoft Teams meeting firmly scheduled.

In my early years of practice (and really to this day), I enjoyed running into classmates as we would walk to court or to another law firm's office for a discovery. We could just check-in with each other to see how life was going. Even if the discussion never got beyond vague pleasantries or general comments about keeping files moving, these chance in-person encounters were nice at the time and have become more valuable now when the pandemic took these encounters from us all.

Things were that much better when I would simply tag along with more senior lawyers for lunch or just see them chat with a colleague as we would await a pre-trial. These little pleasantries underscore the true professionalism and courtesy of our profession and can be missed as we are awaiting admission into a Zoom meeting.

Our collective obligation to junior members is to let them experience law beyond Zoom. I have all the confidence that the profession can rise to this challenge.

Notice of Annual Meeting

The Annual Meeting of the Law Society of Manitoba will be held on **Thursday**, **June 23**, **2022** at **12:30 p.m**. at the Law Society offices and via videoconference.

All members are invited to attend.

Please contact Pat Bourbonnais at pbourbonnais@lawsociety.mb.ca to receive the conferencing details.



News

CEO Report



LEAH KOSOKOWSKYChief Executive Officer

The benchers approved of amendments to the Law Society Rules in the complaints area which will enable complaints matters to be diverted into a health recovery program as an alternative to discipline where appropriate.

It has been an exciting month at the bencher table where we were able to welcome new and returning benchers and also bid farewell to some of our most dedicated volunteers. Following the bencher election on May 4th, we were pleased to see the return of **Kyle Dear, Tony Kavanagh, Ken Mandzuik, Christian Monnin, Gerri Wiebe** and **Mason Broadfoot** who all were re-elected. We also were pleased to welcome newly elected benchers **Sharyne Hamm, Leah Klassen, Kameron Hutchinson, Blair Filyk** and **Mathieu Lafreniere**.

With President **Sacha Paul** having been appointed at the March 24th bencher meeting and following the election, the Nominating Committee rolled up their sleeves and began the work of reviewing applications, conducting interviews and recommending individuals for the remaining three appointed lawyer bencher positions. I am pleased to advise that at the May 31st bencher meeting, **Joëlle Pastora Sala** and **Kelli Potter** were re-appointed and **Serena Ehrmantraut** was appointed.

Finally, the Nominating Committee was also tasked with the responsibility of recommending six individuals to sit as lay benchers. The committee's recommendations were accepted by the benchers at the May 31st meeting. As a result, the benchers' recommendations have been delivered to the statutory committee chaired by the Chief Justice of Manitoba, with a request that the committee make the recommended appointments. If all progresses well, we will have our full complement of benchers at the June 23rd bencher meeting.

With the arrival of new benchers comes the departure of others. The benchers were sad to say goodbye to **Ashley Joyce** who devoted eight years to the Law Society as a representative of the Western Electoral District. Ashley sat on nearly every Law Society committee during his tenure and he chaired many of those committees as well. I extend my heartfelt gratitude to Ashley for all the time and expertise that he brought to our work.

The benchers also said a goodbye of sorts to outgoing past president, **Lynda Troup**. In addition to countless years as a bencher, Lynda steered the board through a (hopefully) once in a lifetime pandemic. In layman's terms, Lynda took on all of the work without any of the fun. Lynda was also my first president and I am beyond grateful for her wisdom, support and hilarious sense of humour. We are fortunate that Lynda has taken on the role of Manitoba's representative at the Federation of Law Societies and therefore she is not completely done with us.

Throughout the month, the benchers conducted their regular business as well. They received a report from the Admissions and Education Committee regarding the Law Society's good character assessments conducted in the admissions process. The benchers resolved to work with a national committee that is reviewing the good character requirements across the country, but also directed the Law Society to expand its communications to prospective applicants and the public regarding the nature of the good character process and the rationale for making good character assessments.

The benchers also reviewed the status of the Forgiveable Loans Program which is intended to attract newly called lawyers to work in underserviced communities in Manitoba to improve access to justice. It was resolved that a committee ought to conduct a more thorough analysis of the program and explore a variety of options to increase access to justice in rural and remote communities. That work will begin in the fall and will continue throughout the year, culminating with a report and recommendations to the benchers.

The benchers approved of amendments to the Law Society Rules in the complaints area which will enable complaints matters to be diverted into a health recovery program as an alternative to discipline where appropriate. A report also was delivered to the benchers regarding the Law Society's performance against national discipline standards which highlighted some amendments to the discipline process so as to move matters through to hearing more efficiently.

The benchers also received a monitoring report from the insurance department which manages professional liability insurance claims. While the monitoring report focused mainly on operations, it also highlighted the increase in claims arising from dismissal for delay motions and appeals based upon allegations of ineffective assistance of counsel.

The benchers will meet again on June 23rd for both our annual general meeting and a regular bencher meeting. We are pleased to advise that both the President and the Chief Executive Officer of the Federation of Law Societies of Canada will attend the meeting as guests of the Law Society.





New Act Takes Effect September 30, 2022

On Friday, September 30, 2022, <u>The Limitations Act</u> comes into effect and the old *Limitation of Actions Act* is no more. So circle September 30, 2022 in your calendar and save the date.

While you are at it, make a date with yourself for well before September 30, 2022 to review all files where you haven't yet sued. The introduction of the new *Act* may chop down the time you have left to bring an action on existing files.

Read on.



New Limits

This new legislation might take some getting used to. In some ways, the new *Act's* "two years across the board" limitation period will be easier. Our days of figuring out whether something was a chattel or a fixture or contract or tort are over. And now clients will only have two years, instead of six, to sue their lawyer.

When Does the Clock Start Ticking?

Under the old Act, the clocked starting running from the date the cause of action arose. The limitation could be extended by way of a Part II (section 14) Application, but only if certain criteria were met. The new Act takes a different approach. The new Limitations Act says a claim must be commenced within two years from the day the claim is discovered.

In many cases, the injury/loss/damage is going to be discovered on the same day it occurs. In other cases, the meaning of 'discovery' will be a critical issue. Also note that "injury, loss or damage" does not seem to require that the damages be crystalized, simply that the plaintiff be in a worse position as a result of an act or omission.



What Does Discovery Mean?

Section 7 of *The Limitations Act* reads as follows:

- 7) A claim is discovered under this Act on the day the claimant first knew or ought to have known all of the following:
 - (a) that injury, loss or damage has occurred;
 - (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
 - (c) that the act or omission was that of a person against whom the claim is or may be made;
 - (d) that, given the nature and circumstances of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.

SCC Case

The wording in the new *Act* is similar, but not identical, to legislation in a number of Canadian provinces. Unfortunately, the wording is just different enough from these other statutes that case law interpreting other provinces' legislation might be distinguishable by the Manitoba courts. The Supreme Court of Canada recently considered the issue of when a claim is discovered in <u>Grant Thornton LLP v. New Brunswick</u>, 2021 SCC 31 (CanLII)

The SCC's reasons were published July 29, 2021. When I last checked CanLII, that decision had been cited by 48 courts, including 11 times by provincial appellate courts. So there will be lots of case law for comparative purposes, but nothing definitive for our new *Act*.

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Transition Rules

The new *Limitations Act* has a number of transiton rules which you will want to read well before September 30, 2022.

For instance, you may have a file now where the limitation period under the old Act was 6 years. If you have not yet filed a Statement of Claim, on Friday September 30th, the limitation period changes to two years, even if it used to be a six year limit claim (see section 31(1)). So, if you have a file now that arises out of something that happened more than two years ago, read the transition rules carefully. You may not have



as much time to issue a Statement of Claim as you thought you had.

Transition section <u>31(3)</u> says that in the case of a claim discovered before September 30, 2022, a proceeding may be commenced under the new *Act* if it is commenced before the **earlier** of:

- (a) two years after the coming into force of the new Act; and
- (b) the day the limitation period under the former Act expires or would expire.

So, after September 30th, 2022 you must file your Statement of Claim either two years from September 2024 or by the date the old limitation would have expired, whatever is earlier. Pay attention to your original limitation - you don't get a bonus two years to file a claim just because there is a new *Act*.

Watch in particular for files where your client has recently discovered the material facts on an otherwise statute-barred claim and currently has grounds for an Application to extend time under Part II of the old *Act*. There is some debate about the limitation that will apply under the new Act which has no provision comparable to the current Part II Application provisions. Be on the safe side and file your client's Part II Application under the old *Act* before September 30, 2022. Let someone else's client be the test case.

Ultimate Limit

Under the new *Act*, most claims will now have an ultimate limitation period of 15 years, regardless of the date of discovery. An exception is aboriginal claims, where the limit is a controversial 30 years. A limited class of claims have no ultimate limitation, including sexual assault and assault by a person with whom the victim had an intimate or dependent relationship and also certain limited debtor/creditor claims (see section 18(1)) but you should review these sections of the *Act* carefully to see how they apply to the files on your desk.

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You should also take steps with your clients to manage their expectations of the new Act and protect yourself at the same time. Explain to the client that the law has just come into effect and that no one knows exactly how the Courts will interpret it. This warning is particularly relevant on cases where discovery of a cause of action is an issue. Warning the client that the law is not yet certain is a good idea. You can never guarantee outcomes in litigation, particularly when the law is new. Make sure your client understands this and confirm your advice in a letter or email.

And remember, clients may not always tell you everything or provide you every document before you file your action. You may think you know that date of discovery, but subsequent revelations and new information can throw that assumption off. So warn the client that you are proceeding based on the information they have provided you. This is also another good reason to file a statement of claim early and not at the very last minute!



Reporting Claims

I am expecting that we will see professional liability claims against lawyers arising out the introduction of the new *Act* – it is inevitable. If you miss a limitation, call me or anyone else at the Professional Liability Claims Fund as soon as you get the bad news.

It is your obligation under the Law Society Rules and the *Code of Professional Conduct* to report potential claims, like a missed limitation, to your insurer. If you have missed a limitation, you are going to want coverage. Because your insurance policy requires you to report claims as soon as practicable, don't delay. Report promptly if you have missed a limit. When you report a claim to the insurer, the insurer will look after it for you. Make the claim your insurer's problem, not yours.

Communicating with staff and other lawyers in your office is good loss prevention

Make sure other lawyers in your office – even those who never go to Court - know about the changes to the legislation. Transaction lawyers may not litigate, but they should know how much time their clients with matters that might need to be litigated have to get their action going under the new Act. So educate them.

Make sure the support staff in your office know about the new legislation. If your assistant understands **why** they are being asked to do something, they will do a better job and will have greater job satisfaction. A good assistant should be your safety net, and may also 'crack the whip' to make sure the claim gets filed in time. In an effective practice, you work as a team, but everyone on that team has to know when the rules have changed. So let your staff know about this change in the law.

Protect Yourself

To protect yourself and make it less likely that you will fall victim to this legislative change, you should review the <u>legislation</u> carefully yourself. Read the recent <u>Supreme Court decision</u> too.



Check out the video replay of this recent program available on CPD online:

The New Limitations Act



APPOINTMENT OF Complaints Review Commissioner

Thomas (Tom) Vowell

As part of the Law Society's process for investigating and responding to complaints about members, the benchers must appoint a person who is not a member of the Law Society, a lawyer or a bencher to act as complaints review commissioner. The commissioner must be appointed for a term not exceeding two years and is eligible for reappointment.

After conducting an extensive search, the Law Society is pleased to announce that the benchers have appointed **Thomas (Tom) Vowell** as the Law Society's complaints review commissioner. Mr. Vowell brings a wealth of knowledge and experience to the role both in a professional and volunteer capacity.

Special Presentations

from the May Bencher Meeting



President Sacha Paul presents Grant Dredger with a special gift as he transitions to the role of Past President.



Ashley Joyce is presented his life bencher status and certificate by President Sacha Paul.

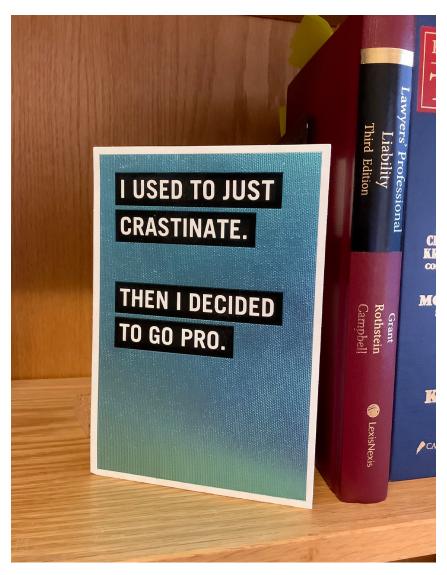


PRODUCTIVITY: Fight Procrastination

TANA CHRISTIANSON, Director - Insurance

Sometimes, I see articles that are so good, I just have to share them.

The following article was originally posted on LawPro's always excellent <u>Avoid a Claim Blog</u>. It also inspired me to finally photograph a card I have had on my bookshelf for many years.



Don't put it off!Read the article on procrastination today on the following pages.

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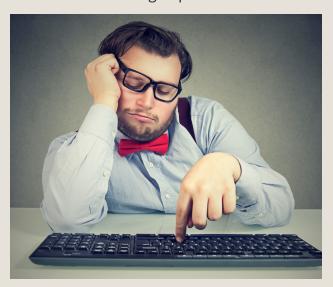
FEATURE

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Time Management Tips Tuesdays - Productivity: Fight Procrastination

Posted May 3, 2022 by Juda Strawczynski

Procrastination is a word we use to describe when people struggle to get tasks done and delays. But the description is the tip of the procrastination iceberg. Procrastination is a complex phenomenon. It's important to recognize some of the underlying factors that could be contributing to procrastination.



Research proves there are different reasons people procrastinate. In academic settings, studies (such as this study and this study) have shown that some reasons for procrastination include:

- Fear of failure: The fear of making mistakes or not succeeding
- Task aversion: Avoiding tasks because we do not enjoy doing them / do not value them etc.
- To create stress to optimize performance: Using delay as a tool to "light a fire" to then produce

In each example, further exploration would be needed to ensure that tasks are completed.

For example, for:

Fear of failure: What's causing the fear? Is it because instructions were not clear? Because it is the first time taking on a new task? Because of the lawyer perfectionism trait? If we can reflect on what may be causing the fear, we can then address it. (In these instances, we can seek further clarification about instructions, seek a mentor or colleague to help walk us through how to succeed with a new task, and accept the 'good enough' to get started.)

Task aversion: A first step is to consider whether task aversion is in play, and in what way. Sometimes we don't like a task because it is dull. Sometimes we don't like a task because it will be difficult, like breaking bad news to a client. Sometimes task aversion may be masking fear of failure. (We tell ourselves we don't like Task A because it's easier to say we don't like doing something than admitting that deep down we're afraid of doing Task A wrong.) Here again, more work may be necessary to tackle 'procrastination'.

Creating stress for success: Any sports movie can show us we all sometimes need to feel 'pumped up' to get out there and excel. Lawyers and staff who wait until the last minute to get a task done may get great results. But there are risks in using procrastination as a tool, including waiting too long before starting a task, or finding that the added stress creates too much stress to optimally complete a task, or complete it at all. If completing tasks closer to deadlines helps you succeed, it's prudent to build in some cushion time just in case. Or you may find there are other ways to create some energy to get you thriving and on task.

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For procrastinators where these issues are hindering personal and/or professional success, help is available. Cognitive behavioral therapy – or CBT – is one form of aid that can help legal professionals unpack what happens when they try to tackle a task but end of 'procrastinating'. The Law Society of Manitoba's Health and Wellness Program has resources to help.

Embrace "First is the worst!"

One way to work through the to-do list is to think about that kindergarten chant "First is the worst! Second is the best!" Make your first task of the day an "ugh" task, something that you've been avoiding or don't want to do but need to do. That's your cue. Do it. Your reward is that now you've cleared away that to-do item, you no longer have any anxiety about it. And you can then further reward yourself by turning to work you love doing – proving that everything you needed to know you learned in kindergarten – "Second is the best!"





Schedule It In

Another tip to wrangle work at the bottom of the "to-do" list is to schedule it in. Block it into your calendar. This helps force yourself to just do it. Set up enough time. Set up a series of times if it helps. Use your calendar to set yourself up for tackling tasks.

Tackle Big Projects One Piece at a Time, With a Project Calendar

Sometimes work is overwhelming. A particular project may seem too daunting, too complicated or simply too big to tackle. One approach is to break a complex issue into its constituent parts. Any legal matter can be broken down into smaller and smaller components.

When you break out your legal matter into its components, develop a project plan. You can work back a schedule based on deadlines and the related deliverables. If others need to be involved at key stages, you can include this information, or any other details that will keep you on track.

Then tackle it one step at a time. As each step is completed, you get to check it off your project plan and celebrate. You're on your way to completing the larger task.

Each week, Avoid a Claim has been sharing some tips on getting the most productivity out of the time you have dedicated to a task. <u>Subscribe</u> to the avoidaclaim.com blog to have the post emailed right to you.



LOCAL FIRM SENDS OVER \$500,000 TO FRAUDSTER'S ACCOUNT

TANA CHRISTIANSON, Director - Insurance
IN COLLABORATION WITH THE AUDIT DEPARTMENT



The Mistake

Yes, you read that correctly. Last month, someone at a law firm made a mistake. Sale proceeds were sent to a bank account based on instructions the firm received in an email, purportedly from a client. However, the email had not actually come from the client. A fraudster, posing as the client, had sent the phony instructions. The firm did not confirm the payment instructions by phoning the client at the number they had on file, so the money went to the fraudster's account, not the client's.

The Fraudster's Game

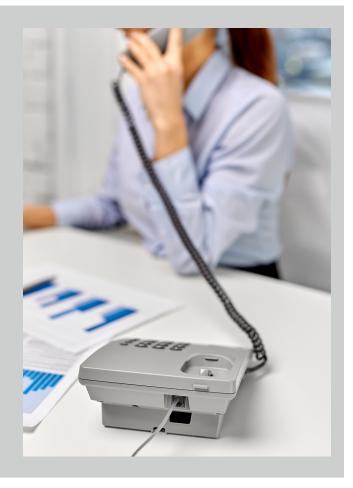
The instructions were not for a wire transfer, but to issue a cheque. A vigilant bank manager was able to recover some, but not all of the money. If the instructions had been for a wire transfer, where the funds move almost instantaneously and can't be called back, the entire amount would likely be gone for good.

The instructions here came from a spoofed account – that is, an email account had deliberately been set up that was similar, but not identical to the client's. BC lawyers just got hit with two similar frauds, one where the client's email account was hacked and taken over by a fraudster and another where the fraudsters compromised the email of another law firm involved in the transaction. One of these BC transactions was for \$2 million! That is why you should **NEVER** accept payment instructions or changes to payment instructions sent by email. An industrious fraudster could mail or deliver a fraudulent hard copy as well. If you do get something setting up or changing payment or transfer instructions, call the instructing party at the phone number you already had on your file. Do not use the contact info in the payment email and do not reply to the payment email.

The Trust Account Rules

Lawyers who have taken the <u>Trust Accounting</u> <u>Fundamentals education program</u> will know to always confirm changes to payment instructions. That Trust Safety course says:

- Always confirm new or changed transfer instructions with the client in person or on the phone on a call you initiated with a number previously provided to you by this client. Under no circumstances should you confirm by email or call using contact information provided with the changed instructions. (False contact information included in written instructions is a common fraud technique.); and
- Beware the last minute change, or instructions that do not make sense in the context - for an example - a client who has recently moved to Alberta asking you to wire funds out of Canada.



Don't Let This Happen to You!

Remind the lawyers and staff in your firm:



BEWARE!

Call to confirm before you send money.

You can print this warning and stick it on everyone's monitor, or write it on everybody's hands with a Sharpie. Just get the word out. We don't want to see this happen again.

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Protecting Trust Money from Beginning to End

- Flow of funds: For every legal matter involving trust money, establish the flow of funds together with your client as early as possible. This is for funds to be received or disbursed. Why? Creative fraudsters insert themselves AT ANY POINT in the flow of money. If you nail down the flow of funds, preferably in person when you are verifying your client's identity, you can have a frank discussion with your client about the risks of money movement and how you can work together to reduce them.
- Receipt of trust money: Tell your client how you are to receive money in this matter, that your instructions will not change and to be automatically suspicious of such an event. The client is to call you if this happens only at the phone number they already have for you NOT using any number accompanying the changed instruction! This protects your client's money on the way to your trust account.
- Payment of trust money: At that same meeting, discuss how trust money is to be disbursed in the matter. Obtain written payment instructions at that time if you can, but that's not always possible. Help the client be ready to have that discussion at your first meeting by telling them in advance of the meeting that you will need that information. Tell you client that if you don't have the written instructions at the first meeting, there will be extra steps later to verify the information received by the firm, so they're not surprised when it happens later.
- Receiving funds from or paying out to counsel opposite? Take the same precautions and beware the last minute changes!

It's Not Just about Wire Transfers

Not all frauds involve law firms sending wire transfers to the wrong account. Sometimes, the fraudsters ask for direct deposit or trust cheque. That is why you have to be alert to the red flags. Always:

- Receive payment instructions either:
 - o in person from someone whose identity you have verified or
 - o if received any way other than in-person, get verbal confirmation
- Beware the changed payment instructions!
- Protect from the inside as well as the outside.
 Unfortunately not all frauds are external.
 Properly designed internal controls, executed every single time, will help protect you and your clients from internal threats as well.



Fraudsters are always changing their game. What if you receive changed payment instructions, followed by a phone call or message from someone who reasonably sounds like your client (or the person speaks to someone at the firm who doesn't know your client's voice) that confirms the change? **BE SUSPICIOUS!** Use the contact information you obtained at the inception of the matter to reach out to your client and confirm. The phone call can be part of the scam!

Speak Now or Forever Hold Your Peace

Your professional liability coverage under the current insurance policy will expire July 1, 2022. So, if you aware of an issue which might possibly, at some point in the future, give rise to an insurance claim against you, report it now.

What should you report?

Report all files that have the potential to turn into a claim where:

- You think you might have made an error or are concerned about a file;
 or,
- 2) Someone is making allegations even unmeritorious allegations against you.

Why should you report now?

The new insurance policy only covers claims where you had no knowledge of the claim or potential claim before July 1, 2022 and could not have reasonably foreseen that a claim might arise. That means if you want coverage and are aware of a problem or have a file keeping you up at night, report before July 1, 2022 when the current policy runs out.

How should you report?

Call or email

Tana Christianson	204-926-2011	e-mail: tchristianson@lawsociety.mb.ca
Kate Craton	204-926-2012	e-mail: kcraton@lawsociety.mb.ca
Jim Cox	204-926-2024	e-mail: jcox@lawsociety.mb.ca
Will Barnstead	204-926-2013	e-mail: wbarnstead@lawsociety.mb.ca

Or, go to the Member's Portal on the Law Society website and fill in and submit a Claim Report form. If you would like a form mailed or e-mailed to you, contact:

Kristin Forbister	204-926-2047	e-mail: kforbister@lawsociety.mb.ca
Heather Vanrobaeys	204-926-2036	e-mail: <u>hvanrobaeys@lawsociety.mb.ca</u>

Late reporting can compromise your insurance coverage, so speak now or forever hold your peace.

LEAVING A LAW FIRM:

What Lawyers and Firms Need to Know



DARCIA SENFTGeneral Counsel, Director Policy and Ethics

... departing lawyers should not remove open client files from the firm unless the clients have received the appropriate notice letter and have provided their consent...

When a lawyer leaves a firm, many ethical and business questions arise regarding the obligations of the lawyers involved. The *Code of Professional Conduct* sets out specific obligations for **both** the departing lawyer and the law firm at Rule 3.7-7A. It states:

3.7-7A When a lawyer leaves a law firm, the lawyer and the law firm must:

- (a) ensure that clients who have current matters for which the departing lawyers has conduct or substantial involvement are given reasonable notice that the lawyer is departing and are advised of their options for retaining counsel; and
- (b) take reasonable steps to obtain the instructions of each affected client as to who they will retain.

At times, the pending departure results in some tension between the departing lawyer and the law firm because of issues regarding work in progress and how outstanding legal fees may be apportioned between the lawyer and the firm. While such matters are not for the Law Society to resolve, what does concern the Law Society are the ways in which these transitions may negatively affect clients. The commentaries that follow the rule are informative and helpful.

Commentary 2 states:

The client's interests are paramount. Clients must be free to decide whom to retain as counsel without undue influence or pressure by the lawyer or the firm. The client should be provided with sufficient information to make an informed decision about whether to continue with the departing lawyer, remain with the firm where that is possible, or retain new counsel.

On a practical level, this means that:

- if there is no one at the firm who is competent to quickly step in and assume conduct of the client matter, the option of remaining with the firm ought not to be provided.
- until the departing lawyer has left the firm and until affected clients have made decisions about whether or where to transfer their files, the file remains a law firm file such that the needs of the client must be attended to with all that might entail.
- the departure should not result in an unsavoury "tug-of-war" over clients. The parties must refrain from making disparaging remarks about each other. Clients must be free to make their own informed decisions. They need sufficient information.

Commentary 3 illustrates how clients should receive that information:

The lawyer and the law firm should cooperate to ensure that the client receives the necessary information on the available options. While it is preferable to prepare a joint notification setting forth such information, factors to consider in determining who should provide it to the client include the extent of the lawyer's work for the client, the client's relationship with other lawyers in the law firm and access to client contact information. In the absence of agreement, both the departing lawyer and the law firm should provide the notification.

This means that:

- departing lawyers should not remove open client files from the firm unless the clients have received the appropriate notice letter and have provided their consents to the release of their files (and any associated trust funds) to the departing lawyer.
- law firms should not prevent departing lawyers from attending to the needs of clients who choose to follow them by unnecessarily delaying the transfer of files.
- if there is no agreement as to who should send the notice letters to affected clients, both the departing lawyer and law firm should provide the notification. Accordingly, client contact information should be shared with the departing lawyer so that two letters can be sent out.

Commentaries 4 and 5 speak to the need for cooperation in the interest of clients:

- 4 If a client contacts a law firm to request a departed lawyer's contact information, the law firm should provide the professional contact information where reasonably possible.
- 5 Where a client chooses to remain with the departing lawyer, the instructions referred to in the rule should include written authorizations for the transfer of files and client property. In all cases, the situation should be managed in a way that minimizes expense and avoids prejudice to the client.

Departing lawyers need to be mindful of **commentary 6** which sets out the expectation that the lawyer should provide notice to the law firm as is reasonable in the circumstances.

Commentary 7 advises firms that when a client chooses to remain with the firm, the firm should consider whether it is reasonable in the circumstances to charge the client for time expended by another firm member to become familiar with the file.

When a firm dissolves, issues regarding client files can be fraught with difficulty. It is important to note that the principles outlined above apply where there is a dissolution of a law firm. (**Commentary 8**)

Finally, whenever a client moves between firms, obligations under Rules 3.7-8 to 3.7-10 are triggered regarding solicitor's liens and the duties of former and successor counsel. **Commentary 9** reminds us that departing lawyers and affected law firms should review those rules and commentaries to ensure they are complying with their professional obligations.

At the heart of the relevant *Code* rules and commentaries is the main principle that the interests of the client always must be put first before the interests of the departing lawyer and the affected law firm. All members should familiarize themselves with the rules in question.



The Law Society of Manitoba is a subscribing member of the Canadian Lawyers Insurance Association (CLIA), a reciprocal insurance exchange established in 1988. CLIA provides a long-term professional liability insurance solution for the legal profession in Canada. Each Manitoba lawyer has mandatory Errors and Omissions insurance with a limit of \$1M per claim and a \$2M annual aggregate limit. In addition, lawyers have mandatory Cyber insurance ranging from \$100K to \$250K for various common cyber claims.

CLIA Excess Coverages

For many lawyers, the mandatory limits may not be sufficient coverage, so CLIA's Voluntary Excess Program (VEP) provides lawyers the following additional coverages and limits:

- Errors and Omissions insurance the coverage options available under the VEP: \$1M, \$2M, \$3M, \$4M, \$6.5M, \$9M, \$14M and \$19M in excess of \$1M;
- Cyber insurance the coverages protect lawyers from claims that arise because of a cyberattack. The stand-alone cyber insurance can be purchased in conjunction with the excess liability coverage or on its own. The stand-alone cyber insurance includes coverages with limits up to \$2M.



New in 2022!

In response to requests received from CLIA customers, CLIA is offering additional limits of liability coverage in 2022 above the traditional \$10M excess limit. New this year are \$15M and \$20M excess limits that will be available effective July 1, 2022.

To ensure lawyers are adequately protected from various cyber threats, the VEP Cybercrime Endorsement is being phased out in favour of a broader Stand-Alone cyber excess policy through the VEP program. The optional Stand-Alone program provides much higher limits, broader coverages, and is competitively priced.

Pricing

Each year CLIA negotiates pricing terms for reinsurance contracts with its long-term existing reinsurance companies as well as new potential insurance markets. This provides lawyers participating in this program with the best coverage and price available in the global reinsurance markets. Detailed pricing can be accessed through CLIA's website under "buy excess insurance" and navigating to the online <u>Ouote Tool</u>.

Retired Lawyers Discount

Lawyers who have retired from practice continue to be responsible for work they performed prior to retirement. There is an option for retired lawyers to purchase excess coverage on an individual basis to provide coverage for any unforeseen circumstances that may develop after retirement, provided they are retiring as a current member of CLIA's VEP, either as a sole practitioner or as a member of a firm. CLIA provides all retired inactive lawyers with a **25% discount**.



Referral Program

If a law firm refers a new client to CLIA for excess liability coverage, they will receive a **10% discount** on their following year renewal.

Important: Claims-Made Policy

Like most liability policies, CLIA's excess liability program is "Claims Made", meaning you will need to have insurance in place when a claim is made and not when the work was done. It is not transactional based coverage. Statutes of limitations provide for a time in which to present claims, and firms that do not renew their insurances will not have coverage for losses reported after the expiry date of the policy. As such, coverage purchased out of the need for a single transaction will need to be purchased if the possibility of a claim still exists.

Renewal Opening

It is important for you to renew your coverage before the end of the policy year to avoid gaps in coverage that may leave you unnecessarily exposed to risk of uninsured liability. This year the online application process will open on **Monday**, **June 6**, **2022**, to ensure that you have time to complete the application and submit premium payments prior to the July 1st policy renewal.



NEW CYBER COVERAGE

Clia in cooperation with Ridge Canada now offering **STAND ALONE CYBER INSURANCE** protecting you from claims as a result of a cyber attack



Alberta Law Firms please refer with your Law Society for your Cyber coverage details.

EXCESS CYBER VS MANDATORY CYBER

GET COVERED FOR MORE

The following coverages are not included as part of your mandatory insurance, but are included as part of the new stand-alone excess cyber insurance product:

- \$1M or \$2M Multimedia & Intellectual Property Liability
- \$1M or \$2M Privacy Regulatory Defense & Penalties
- \$1M or \$2M Reputational Damage
- Optional\$250K Electronic Theft, Computer Fraud & Telecommunications Fraud
- · Optional \$250K Social Engineering Fraud
- \$1M or \$2M Dependent Network Interruption & Recovery

COVERED FOR HIGHER AMOUNTS

The following categories are covered under your Mandatory cyber insurance, but the CLIA stand-alone excess cyber product provides higher limits:

- Security & Privacy Liability \$1M or \$2M vs \$250K
- Network Interruption & Recovery \$1M or \$2M vs \$100K
- Event Support Expenses \$1M or \$2M vs \$100K
- Network Extortion \$1M or \$2M vs \$100K
- Bricking \$250K vs \$100K

NEED A FAST+EASY QUOTE?





21%

CANADIAN BUSINESSES IMPACTED BY CYBER SECURITY

Just over one in five Canadian businesses reported that they were impacted by cyber security incidents which affected their operations.

HAVE AN URGENT CRISIS?

Cyber incident Breach Coach is available with CLIA's Excess cyber insurance for crisis management or legal advice



FOR MORE INFORMATION WWW.CLIA.CA SERVICE@CLIA.CA

cyber coverage insurance

SIMPLE. EFFECTIVE. BEST-IN-CLASS

Protect you and your clients against claims arising from errors and omissions. We offer best-in-class protection. Seamless transition from mandatory to excess! A report to your law society is a report to CLIA.

ABOUT THE PROGRAM



RETIREE DISCOUNT

As a retiree, you remain responsible for work performed prior to retirement. We want you to be at ease during your retirement. We provide all retired inactive lawyers with a 25% discount.

CLIA IS A

DESIGNED FOR LAWYERS BY

LAWYERS



REFERRALS

Savings for you is our thank you for helping us grow! Referrals are the best compliment you can give us. Save 10% on next year's renewal when you refer a client for excess liability



IMPORTANT

Like most liability policies, our excess liability program is "Claims Made", meaning you will need to have insurance in place when a claim is made and not when the work was done. It is not transactional based coverage. Statutes of limitations provide for a time period in which to present claims, and firms that do not renew their insurances will not have coverage for losses reported after the expiry date of the policy. As such, coverage purchased out of the need for a single transaction will need to be purchased as long as the possibility of a claim still exists.

CUSTOMER SATISFACTION

Ninety-two percent of CLIA's survey respondents said they are either likely or very likely to recommend CLIA's excess insurance program to other lawyers

VOLUNTARY EXCESS PROFESSIONAL LIABILITY INSURANCE

new for 2022 - 2023 higher excess liability limits of 14 million and 19 million

in excess of 1 million

Now higher limits available! You asked we listened!

NEED A FAST+EASY QUOTE?*

* The renewal period will be open until July 31st; applications submitted after that date will be prorated for coverage.



FOR MORE INFORMATION WWW.CLIA.CA | SERVICE@CLIA.CA excess liability insurance

new

PRACTICE MANAGEMENT QUICK TIPS To Make Practice (and Life) Easier

TANA CHRISTIANSON, Director - Insurance



Barney (Bjorn) Christianson is the Law Society of Manitoba's Practice Management Advisor. In addition to providing free and confidential practice management advice to all Manitoba lawyers, from articling students to imminent retirees, Barney monitors practice management materials from all across North Barney identified the following America. article from the American Bar Association (ABA) Law Practice Division's monthly digital publication, Law Practice Today, as one worth sharing. With calls to the Bar ceremonies for over 130 new lawyers scheduled for Winnipeg, Brandon and Dauphin this June, this article seemed particularly relevant.

Barney has been 'in the trenches' for a long time, practising as a litigator and solicitor in both small and large firms. Barney can talk to you about how to make your practice more effective and efficient. Call or email Barney about tweaks and changes that might make your years in practice long and productive.

Tips for New Lawyers

Give yourself some grace. It is also relevant to someone who is not so new but is feeling the pressures of this crazy world. Read these helpful tips.

If you would like to contact Barney Christianson, Q.C., the Law Society of Manitoba's <u>Practice Management Advisor</u>, for free confidential advice about practice management issues, call him directly at 204-857-7851 or by email at <u>barney.christianson@gmail.com</u>.



PREP and ARTICLING - *Important Dates*

With more than one offering of the bar admission program provided each year, please refer to the following table which highlights the important dates for articling students according to the relevant program, depending on which offering of PREP is being taken.

	June 2021 Intake	December 2021 Intake	Accelerated PREP	June 2022 Intake
June 2022	Call to the Bar Ceremony Capstone Re-Assessments	Phase Three: Virtual Firm Business Law rotation continues	Complete work on Phase One: Foundation Modules	Phase One: Foundation modules opens
July 2022		Phase Three: Virtual Firm Criminal Law rotation	PhaseTwo: Foundation Workshops Phase Three: Virtual Law Firm begins	Registration closes July 15 Continue work on Phase One
August 2022		Phase Three: Virtual Firm Family Law and Real Estate rotation continues	Phase Three Completion and Capstone Assessment: Monday, August 29 to Thursday, September 1, 2022	Continue work on Phase One
September 2022		Phase Four: Capstone Assessment Monday, September 19 to Thursday, Sept. 22, 2022		Complete Foundation Workshop Pre-work

2022 Articling Students

If you are looking for an articling student to start in 2022, please know that the Law Society has resumes from a number of individuals looking for articling positions. These resumes can be provided to you upon request by contacting Lisa Ehnes by email at lehnes@lawsociety.mb.ca.



Well-Being



Winnipeg Lawyers:

Do you prefer walking?

Are you a morning person?



Law(yer) Strong's own Board Member, Marty Minuk of MLT Aikins, and his dog Ruby, set out each morning at 6:00 a.m. Monday to Friday from the corner of Grosvenor and Niagara for a three to four mile walk.

Come out and get a jump start of peace and exercise to make your days better!

You are invited to join Marty any day during the week, and enjoy great company, fresh air and exercise. It is also the prettiest time of the day!

Walking days are weather permitting, of course. (Word has it they dislike the rain!)

If you are planning to head out, feel free to email us at support@lawyerstrong-mb.ca and we will let Marty know to watch out for you.

It's not too late to join in!



Two more weeks to participate in the Law(yer) Strong's first outdoor healthy lawyer activity! The weekly fun run continues on Mondays at noon, led by Corrine Kulyk of Taylor McCaffrey.

Bring your running shoes to work on Mondays and plan to check-in with other lawyers while having a healthy break from the office and getting some fresh air and exercise!

Meet Corrine at noon in front of the 201 Portage Avenue building at Portage and Main for an enjoyable half hour fun run.

Tamara McCaffrey will also be there for those that prefer a walk/run combo.

Running club is every Monday at noon, until the end of June.

Everyone is welcome.





Notice of Benchers' Meeting

The next regular meeting of the benchers of the Law Society of Manitoba will be held on:

Thursday, June 23, 2022 at 12:45 p.m. at the Law Society offices and via videoconference.

The dates of future meetings of the benchers are as follows:

- September 9, 2022
- November 10, 2022
- December 15, 2022
- February 9, 2023
- March 23, 2023
- May 18, 2023
- lune 22. 2023

Members of the Law Society are encouraged to attend and participate in the deliberations of the governing body.

If you wish to attend a meeting via videoconference, please contact Pat Bourbonnais at <u>phourbonnais@lawsociety.mb.ca</u>.

Agenda and meeting minutes are published on the website here.



Insurance Payment

July 4, 2022

On June 1st, all practising members received their Professional Liability Claims Fund assessment by email.

This year's assessment is due **Monday**, **July 4**, **2022** and can be paid in one or two instalments.

Check your email!
Your invoice is in the Member's Portal!



NOTICE OF SUSPENSION Robert Ian Histed

Pursuant to a resolution of a Panel of the Discipline Committee of The Law Society of Manitoba, **ROBERT IAN HISTED** was found guilty of professional misconduct and is suspended from the practice of law for a period of six (6) months, commencing on May 30, 2022 through to and including November 29, 2022.

May 6, 2022

Leah KosokowskyChief Executive Officer

Issued: May 6, 2022



Practising to Non-Practising:

May 7, 2022 Keith T. Addison May 23, 2022 Anna K. Solmundson-Birch

May 31, 2022 Jacqueline A. St. Hill

Practising to Inactive:

March 31, 2022 Duncan D.N. Ross April 29, 2022 Lauren N. Fourmeaux Clemens Kendra J. Jarvinen May 2, 2022 May 20, 2022 Todd W. Hewett May 20, 2022 Tatiane De Oliveira Dias May 26, 2022 Susan K. Eros Alan J. Ladyka May 27, 2022 May 30, 2022 Melanie L. Mireault

Inactive to Practising:

May 16, 2022 Jasmine V. Bissoon June 2, 2022 Michael C. Reimer

Non-Practising to Practising:

May 2, 2022 Margaret H. Girard May 9, 2022 Kyla A. Pedersen June 1, 2022 Johanna Willows

Practising to Suspended:

May 15, 2022 Orvel L. Currie

New Admissions:

May 1, 2022

May 2, 2022	Premmal Patel-David
May 16, 2022	Lidet D. Getachew
May 16, 2022	Amber L. Harms
May 16, 2022	Suraj Lakhi
May 16, 2022	Alexsondra L. Moar
May 16, 2022	Devon Molloy
May 16, 2022	Owen R.L. Park
May 16, 2022	Peyton C.M. Smith
May 16, 2022	Jilian P.S. Stefanson
May 16, 2022	Erin A. Tramley
May 17, 2022	Hannah B. Franz
May 17, 2022	Zachery K. Hillis
May 17, 2022	Joshua S. Micflikier
May 17, 2022	Parker R.J. Neal
May 17, 2022	Michelle M.J. Pearson
May 17, 2022	Erika M. Brenner
May 19, 2022	Emilie J. Cook
May 19, 2022	Shequille (Shea) S. Peplinskie
May 20, 2022	Bethany L. Friesen
May 20, 2022	Gregory T. Pusztay
May 20, 2022	Owen A. Sasek
May 24, 2022	Megan E. Fultz
May 24, 2022	Meghan C. Bjorklund
May 24, 2022	Evan M. Chrusch
May 24, 2022	Kathleen E. Hester
May 26, 2022	Aliza Lalji
May 26, 2022	Alexandra M. Philippot
June 1, 2022	Zaid Shams

Lauren E. Parrish

Jeremiah E.C. Kopp

Update your membership information by using the <u>Member Forms</u> located in the For Lawyers, Membership Services section of the Law Society's website.

June 2, 2022

IN MEMORIAM

Charles Jerome Phelan, Q.C., who passed away on March 15, 2022 at the age of 80. Mr. Phelan received his call to the Bar on June 2, 1967. After serving as a crown attorney for the Department of Justice for one year, Mr. Phelan joined Monk Goodwin LLP where he practised for 44 years, retiring in 2012. Mr. Phelan was appointed Queen's Counsel in 1988.

Robert Lorne Zaparniuk, who passed away on March 19, 2022 at the age of 64. Mr. Zaparniuk received his call to the Bar on June 23, 1983. He practised with Campbell Marr for 18 years and then with Deeley Fabbri Sellen LLP for an additional 17 years.

Martin Searle Corne, Q.C., who passed away on March 22, 2022 at the age of 88. Mr. Corne received his call to the Bar on September 22, 1958. He practised with Corne & Corne (known today as Bennet Waugh Corne) for 54 years, retiring in 2012. Mr. Corne was appointed Queen's Counsel in 1977 and in 2009 was recognized by the Law Society for having practised law for 50 years.

The Honourable Alan Reed Philp, who passed away on April 12, 2022 at the age of 91. Mr. Philp received his call to the Bar on September 12, 1955. He practised with Fillmore Riley LLP for 18 years. In 1973 Mr. Philp was appointed Chief Judge of the County Courts of Manitoba and in 1983 he was appointed a judge of the Manitoba Court of Appeal. Mr. Philp served in this position until his retirement in 2005.

Richard Ira Good, who passed away on April 19, 2022 at the age of 78. Mr. Good received his call to the Bar on June 29, 1970. He practised with Fillmore Riley LLP for 51 years and then, in January of 2022, joined BD Oakes Jardine Kaneski UnRuh LLP where he practised up to the date of his death.

Melville Neuman, Q.C., who passed away on April 26, 2022 at the age of 97. Mr. Neuman received his call to the Bar on May 16, 1963. He practised with Neuman MacLean for 28 years and then with the firm known today as Taylor McCaffrey LLP for 17 years, retiring in 2008. Mr. Neuman was appointed Queen's Counsel in 1968.

George Ernest Ulyatt, who passed away on April 30, 2022 at the age of 73. Mr. Ulyatt received his call to the Bar on June 25, 1976. He practised with Monk Goodwin for 12 years and then joined the firm known today as Tapper Cuddy LLP where he practised for 30 years, retiring in 2018.

Dennis Michael Troniak, who passed away on May 2, 2022 at the age of 71. Mr. Troniak received his call to the Bar on June 30, 1977. He practised as an associate and partner with several Winnipeg law firms but primarily practised as a sole practitioner. Mr. Troniak retired in 2019 after 41 years of active practice.

October 27, 2022 | 1 p.m. to 4 p.m. | RBC Convention Centre

A LEGAL EDUCATION SEMINAR

on the occasion of the retirement of Chief Justice of Manitoba Richard Chartier



3 EPPM hours



Join the Chief Justice of Manitoba,

The Honourable Richard Chartier

and special guest presenter, **Professor Aimée Craft**

for a fun and interactive exploration of the impact of historical events on the legal system in Manitoba and Canada.

Featuring a keynote address by
Supreme Court of Canada Justice Nicholas Kasirer

Register Here

October 27, 2022 | Evening | RBC Convention Centre

Retirement Gala for the Chief Justice of Manitoba, **Richard Chartier**



The Honourable Richard Chartier is retiring this fall as Chief Justice of Manitoba.

Do not miss this special evening with our guest speaker The Right Honourable Richard Wagner, P.C., Chief Justice of Canada.

Champagne Reception and Hor d'oeuvres:

5:00 p.m. - 6:15 p.m.

Dinner and formal program:

6:30 p.m.

Location:

RBC Convention Centre York Ballroom

Dress code:

Business/Cocktail

Reserve Your Seat

Education Centre Calendar of Events

CPD Program Summer Replays

You can always access past program recordings on CPDonline but we know some of you miss the classroom experience so ... we invite you to enjoy ...

CPD and Complimentary Cookies & Coffee with your Colleagues in the Classroom this summer!

Hot Topics Real Estate 2021

July 14, 2022 1:00 p.m. - 4:00 p.m.

Basics of Death and Family Law

July 21, 2022 1:00 p.m. - 4:00 p.m.

Show Me the Money

Debt, Default and Enforcement Receivership and Bankruptcy Basics **August 18, 2022** 1:00 p.m. - 4:00 p.m.

Time, Email and Technology Management Tips

August 25, 2022 1:00 p.m. - 4:00 p.m.



Register

Register

Register

Upcoming Programs

2022 Central Bar - Portage la Prairie *Morning CPD, lunch and afternoon golf!*

Legal Education Seminar

on the Occasion of the Retirement of the Chief Justice of Manitoba, Richard Chartier

Wills & Estates (2 day program)

August 12, 2022

October 27, 2022

1:00 p.m. - 4:00 p.m.

December 1 & 2, 2022

Save the Date!

<u>Register</u>

Save the Dates!

Available for a Limited Time on CPDonline

We recently hosted a webinar featuring mindfulness expert, Patricia Galaczy, where she provided practical ways to increase our capacity for calm and clarity. The participant feedback was very positive! The video recording of this webinar, **Taking Care of the Mind that Leads** (and everyone leads) is **only available until June 21** so access it today!

Taking Care of the Mind that Leads Available until June 21, 2022

Upcoming IMPORTANT DATES At a Glance



JUNE 23 BENCHER MEETING AND ANNUAL MEETING 12:30 p.m.

JULY 4 PAYMENT DUE

2022-2023 Insurance Payment

AUGUST 12 CENTRAL BAR

Portage la Prairie

SEPTEMBER 9 BENCHER MEETING

12:00 p.m.

OCTOBER 1 PAYMENT DUE

2022-2023 Practising Fee and Contributions (2nd Instalment) for lawyers called to the Bar on June 16, 2022

OCTOBER 27

ON THE OCCASION OF THE RETIREMENT OF CHIEF JUSTICE RICHARD CHARTIER

LEGAL EDUCATION SEMINAR

1:00 p.m. to 4:00 p.m.

RETIREMENT GALA

5:00 p.m.



PRESIDENT

Sacha Paul

VICE PRESIDENT

Wayne Onchulenko

CHIEF EXECUTIVE OFFICER

Leah Kosokowsky

DIRECTOR OF REGULATION

Rennie Stonyk

Mailing Address

200 - 260 St. Mary Ave Winnipeg, Manitoba R3C 0M6 - MAP

Telephone: 204-942-5571 Facsimile: 204-956-0624 Toll-free: 1-855-942-5571

Office Hours

Monday to Friday 8:30 a.m. - 4:30 p.m.

Law Society staff working remotely remain available by either email or phone during core office hours.

lawsociety.mb.ca

