

Preparing for the Unexpected

Anticipating and Planning for the Future

Prepared For: Legal Education Society of Alberta

Law and Practice Update

Presented by:

Jocelyn Frazer

Law Society of Alberta

Calgary, Alberta

For Presentation In:

Edmonton – November 1 & 2, 2013

PREPARING FOR THE UNEXPECTED ANTICIPATING AND PLANNING FOR THE FUTURE

INTRODUCTION

It seems that over the past several years, the nature and frequency of disasters that are affecting our daily lives is changing. It used to be that we would hear how tornadoes or earth quakes would cause widespread destruction in parts of the United States. Then there were stories of the devastation to life and practice caused by Hurricanes Katrina and Rita. We saw how lawyers could lose both their homes and their offices in the blink of an eye. Still, these types of natural disasters rarely seemed to affect Alberta lawyers. Similarly, we hear reports on the news about high level breaches of internet security or of yet another incident of workplace violence being carried out south of the border. But as lawyers, even here in Alberta, we are not immune to the forces of nature or the whims of the demented.

Disasters can and do occur, even here. These disasters can be both natural and man-made, and there can be little advance warning. From wild fires, floods, train derailments, to bomb threats closing down the court house, computer hackers compromising internet security, or the sudden heart attack of a sole practitioner, the potential disruptions to a law practice are adding up. While many of these catastrophes are beyond our control, advanced planning can give you and your firm an edge in overcoming the long-term effects of these unexpected or unimaginable events.

Anticipating and planning for unexpected disruptions to practice is something that every lawyer in active practice, regardless of the stage that they are at in their career, or their practice setting, should undertake. All lawyers need to have a plan in place to ensure that client interests are protected in the event of their sudden illness, death, incapacity, or other unexpected periods of absence. For a lawyer in a small firm setting or sole practice, it is particularly important to have contingency arrangements in place for another lawyer to step in and ensure that clients are not prejudiced and that your staff and family are not placed in an overwhelming position.

Essential information relating to client matters and the ongoing obligations of the practice must be able to be interpreted by an assisting lawyer regardless of whether that is a partner, associate, friend or formal custodian.

Many times, lawyers think that succession planning is about retirement but there can be many situations that give rise to the need for a contingency plan. As the age demographic of the profession shifts, the potential for more lawyers to find themselves in a position where they are forced to leave practice suddenly is also increasing, but age alone isn't the only factor to consider. When a lawyer does make a sudden exit from practice, and there is no succession plan in place, the plan is incomplete, or no arrangements have been made relating to access to the trust account, the costs to the practice and the risks to the clients can be significant.

In addition to circumstances beyond their control, lawyers can decide to wind down their law practice for any number of reasons: change of career, pursuit of non-legal opportunities, retirement, moves to in-house counsel positions, judicial appointment, or parental leave. It is important to have a plan in place to deal with these career transitions in a systematic way and to allow sufficient time to cover the necessary steps.

Where the exit plan includes the sale of a law practice, prior planning can greatly impact the value that stands to be realized. Good practice management over the life of a practice (or at least the last five years) can go a long way toward creating an asset that someone is willing to purchase. There