



LOSS PREVENTION BULLETIN

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A A R E B C

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■ Bulletin # 226 Expecting the Unexpected

There are a myriad of reasons why lawyers need to plan for the unexpected to occur in their practices. A law practice may be significantly affected by natural or other disasters, including weather events like tornados or ice storms, power outages, train derailments or fire.

A law practice may also be impacted by the critical illness of a lawyer or key staff member or sudden incapacity of one of its members due to an accident or death.

No matter how young or healthy or capable, every lawyer is vulnerable to the potential impact of such events and should therefore make the necessary contingency plans to ensure that professional obligations to clients are maintained. For example, a lawyer's responsibility to protect clients' confidential information and property, and to provide competent assistance continues despite the lawyer's own circumstances.

The key points of a contingency plan are as set out in The Law Society of Alberta's checklist:

1. Maintain an office procedure manual outlining all key aspects of your practice and a list of all law office contacts....
2. Maintain an office limitation system and client file diary system, accurately reflecting all deadlines and all reminders so that next steps on files can be easily reviewed. Keep these systems up to date.
3. Ensure that each client file contains sufficient detail that another lawyer taking over the file would know where the matter stood at any point in time.
4. Keep your time and billing entries current.
5. Obtain life insurance along with a disability policy to cover both your personal requirements in the event of loss of your earning power, and also to cover the costs associated with hiring another lawyer to administer your practice and cover cash flow requirements as the practice is closed or sold.
6. Make arrangements with a colleague or another lawyer for them to step in if you are not able to practise, for whatever reason....Consider including provisions in your retainer agreement as to the provisions in place in the event of your death, incapacity or impairment.
7. Ensure that you have a valid will, including any terms required to deal with practice-related issues. Also consider whether a

Power of Attorney is required to deal with banking and trust accounting issues or your practice generally.

8. Make sure that your staff, partners/associates, and family are aware of the arrangements that you have made.

Ample materials are available on this subject and in many cases you'll find that the best resources are found through your law society or through your local CLIA insurance program. Check their websites for succession and contingency planning tools that include:

- Checklists
- Forms, including office inventory forms, staff and management contact lists
- Model letters communicating information and options to clients of an incapacitated colleague

In addition to online and paper-based tools, consider meeting with a practice advisor (if available to you) for practical suggestions that address the particular needs of your firm or practice.

Succession and contingency planning for small and solo firms is especially important, as there may not be human resources available to provide competent coverage in the event of a lawyer's sudden departure from practice or sufficient financial resources to address infrastructure and office management issues.

Having adequate business and personal insurance coverage is also critical, both for the individuals involved as well as the firm as a going concern. You'll need to consider whether you have appropriate coverage for business interruption, disability or critical illness and death. Your insurance broker can help to assess your needs and provide options.

For more detailed information and additional links, consult:

- Checklist: Planning for the Unexpected: http://www.lawsociety.ab.ca/lawyers/practice_advisors/practice_management/practice_advice_succession_plan/practice_advice_succession_plan_unexpected.aspx
- Succession Planning webinar for lawyers: <https://www.youtube.com/watch?v=XoxqpIUUY4g> (Law Society of British Columbia)
- The Contingency Planning Guide for Lawyers <http://www.lsuc.on.ca/ContingencyPlanningGuideLawyer/> (Law Society of Upper Canada)
- Practice Coverage and Succession Planning Resources (Law Society of British Columbia) <https://www.lawsociety.bc.ca/page.cfm?cid=273&t=Practice-coverage-and-succession-planning>
- Succession Planning Package <http://www.lians.ca/sites/default/files/documents>

■ **Bulletin # 227**

Billable Hours: Is More Always Better?

(Based on the article, 80 Hours and Counting, published on Slaw.ca on May 20, 2015:

http://www.slaw.ca/2015/05/20/80-hours-and-counting/)

I heard recently about a mid-career lawyer who is a partner in a small, boutique litigation firm, and who began her career in a large firm setting. Though established in her career, she still arrives at the office early each morning and rarely leaves before midnight. Those who work with her understand that this is expected of them as well. I suspect that among lawyers, she's not at all unusual in her habits or expectations.

That's never been my approach to work and so I struggle to understand both the motivation for that kind of work-life imbalance and how it benefits either the lawyer or her clients. I know that my own productivity dips seriously after eight hours at my desk, even with breaks. That experience makes me wonder how effective other lawyers are when they're working 12 or more hours in a day, and even more, whether clients are receiving any value at all when their work is done at the end of their lawyer's long day.

In fact, the dip in productivity I've noticed is borne out by recent research that reveals a sharp drop in gains after 50 hours per week, and after 55 hours no additional gains in productivity at all.ⁱ But even if productivity did not decline, I can't help but wonder about how individuals manage their 80-hour workweeks. Fortunately, someone else wondered that too. In research published last month, Erin Reid of Boston University explains how at least some are managing this work-heavy lifestyle.

Reid looked at the work habits of members of an international consulting firm with a workplace culture that emphasizes long hours and prompt responsiveness to its clients. Within the 100 consultants interviewed, she found three broad groupings. Neil Irwin, describing her findings, notes:

Some people fully embraced this culture and put in the long hours, and they tended to be top performers. Others openly pushed back against it, insisting upon lighter and more flexible work hours, or less travel; they were punished in their performance reviews.

The third group is most interesting. Some 31 percent of the men and 11 percent of the women whose records Ms. Reid examined managed to achieve the benefits of a more moderate work schedule without explicitly asking for it.

They made an effort to line up clients who were local, reducing the need for travel. When they skipped work to spend time with their children or spouse, they didn't call attention to it. One team on which several members had small children agreed among themselves to cover for one another so that everyone could have more flexible hours.ⁱⁱ

The third group caught my attention. Essentially, they are

faking it, or "passing," to use Reid's language. Their colleagues, or at least their superiors, for the most part, see them as buying fully into the corporate culture of long hours, while they are traveling under the radar with a much more balanced approach to work and the rest of life.

This begs the question, if it's possible to work less time and still get the job done to the clients' satisfaction, why isn't everyone doing so? Given it's not productive to work longer hours beyond a certain point, and that at least some employees don't or won't buy in, why does this culture of success through long hours persist? Why do so many firms, whether in the legal profession or outside it, place such value on working long hours, often measuring success on the basis of perceived devotion to the work?

The answer, according to Irwin is:

...the fact that the consultants who quietly lightened their workload did just as well in their performance reviews as those who were truly working 80 or more hours a week suggests that in normal times, heavy workloads may be more about signaling devotion to a firm than really being more productive. The person working 80 hours isn't necessarily serving clients any better than the person working 50.

In other words, maybe the real problem isn't [people] faking greater devotion to their jobs. Maybe it's that too many companies reward the wrong things, favoring the illusion of extraordinary effort over actual productivity.

Reid suggests that:

...a critical implication of this research is that working long hours is not necessary for high quality work. The experiences of those men who passed show clearly that, even in a client service setting, it is possible to reorganize work such that it is more predictable and consumes fewer hours.ⁱⁱⁱ

In the legal profession, the emphasis on billable hours persists despite what you may have read about the necessity for change in this area. Such conventions perpetuate the mindset that more hours worked will yield greater success. Yet, typical billable hour targets put lawyers in a position of conflict, struggling to balance the desire for greater income with their ability to deliver competent service and quality products to clients.

If more time doesn't necessarily produce a better product for the client and if it's possible to work less while achieving the same quality of results, why would lawyers continue these habits? Reid's research lends support to reducing reliance on the billable hour as the basis for setting legal fees and should give pause to law firm owners and managers setting billable targets for the future.

ⁱ <http://thenewdaily.com.au/money/2015/04/22/successful-people-work-less-study/>

ⁱⁱ <http://www.nytimes.com/2015/05/05/upshot/how-some-men-fake-an-80-hour-workweek-and-why-it-matters.html?abt=0002&abg=0&r=0>

ⁱⁱⁱ <https://hbr.org/2015/04/why-some-men-pretend-to-work-80-hour-weeks>