

THE RETENTION AND DESTRUCTION
OF CLIENT FILES AND BUSINESS
RECORDS FOR LAWYERS

Report of the Law Office Management Standards Committee

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Introduction

The Law Office Management Standards Committee formed a Sub-Committee tasked with research into the retention and destruction of law office records, and developing sample policies and guidelines on how to manage law office records.

This report describes the regulatory and common law framework in which law practice records are managed, addresses both the management of client files and law office business records, and speaks to categories of documents and the development of internal policies, as well as external guidelines and standards.

In the context of law firms, client business record retention and appropriately timed destruction is one of their greatest challenges. The ever-increasing volume of client records and business records, and the cost of maintaining such records, demands an approach that addresses record availability, record relevance, risk containment, and risk removal with respect to record retention. This report provides an outline of the issues involved in the development of policies and standards for presentation to Bar Council.

In the course of this report, we discuss client file records and property, as well as business records and overlapping areas, such as trust records, that have both a client file component and a business record component.

Part One: Framework and Limitations for Record Retention

Reasons for Retention of Records

The main reasons for the retention of records in a law office relate to:

- regulatory obligations,
- legal obligation ,
- risk containment, and
- future use.

While the last of these reasons has had limited use in the past, this has changed over the past fifteen years. Whereas reams of paper records were once too unwieldy to effectively provide an easily accessible precedent bank, electronic document records now provide easy accessibility to precedent records.

Regulatory Framework

Regulatory requirements regarding the retention, storage, and eventual destruction of files for Nova Scotia lawyers, law offices, and law firms are found in the *Legal Profession Act*¹ (LPA) and the Regulations pursuant to that Act², and in the Nova Scotia Barristers' Society (the Bar Society) Code of Professional Conduct³. The LPA provides authority for the Bar Society to establish and adopt ethical standards for members of the society⁴, and requires that every member maintain books and records of account as required by regulation⁵. Some standards of retention are enumerated by the Regulations outright, such as those pertaining to “foundation documents” under the Land Registration Act⁶, while lawyers themselves must determine others.

¹ *Legal Profession Act*, S.N.S. 2004, c. 28.

² Regulations made pursuant to the *Legal Profession Act*, S.N.S. 2004, c. 28.

³ Nova Scotia Barristers' Society, *Code of Professional Conduct*, (Halifax: 2012).

⁴ *Supra* note 1 at s. 28(2)(a).

⁵ *Ibid.* s. 29, which is reflected in s. 32, which empowers the society to make regulations to the same effect.

Other specific requirements set out by the Society include the duty to identify and verify the identity of clients and record such information⁷, and a duty to preserve clients' property "as a careful and prudent owner would when dealing with like property"⁸, but do not answer the questions of when, where, and for how long records must be kept. To set policies on such practical aspects of record retention, lawyers in Nova Scotia must look to the limitation periods set out in various statutes. While there has been discussion⁹ of amending Nova Scotia's *Limitation of Actions Act*¹⁰, to provide for an ultimate limitation period, as does Ontario's *Limitations Act 2002*¹¹, Nova Scotia's *Act* currently contains limitations that vary depending on the action involved. Some of those limitation periods are set out in the table below¹²:

⁶ *Supra* note 2.

S. 1.1.1(ma) of the Regulations provides that "foundation documents" means information on which a practicing lawyer relied in support of the exercise of professional judgment in rendering an opinion of title or certificate of legal effect, and includes an abstract of title, searches, documents, notes, survey fabric, or other title information, whether prepared by the lawyer or others and all information required to be kept pursuant to the Land Registration Administration Regulations.

⁷ *Ibid.* at s. 4.5.3.

⁸ *Supra* note 3 at 3.5-1.

In this rule, "property" includes a client's money, securities as defined in the *Securities Act*, original documents such as wills, title deeds, minute books, licences, certificates and the like, and all other papers such as client's correspondence, files, reports, invoices and other such documents, as well as personal property including precious and semi-precious metals, jewellery and the like.

⁹ The Lawyers' Insurance Association of Nova Scotia reported on its website on July 18, 2011 that the new Act proposes to replace these various limitation periods with a new two-year limitation period from when the claim is discovered, and a 15-year ultimate limitation period. A discussion paper and proposed draft *Limitations of Actions Act* can be found at the LIANS website as well.

See "Feedback requested by July 24 for limitation of actions act" *Lawyers' Insurance Association of Nova Scotia* (18 July 2011), online: Lawyers' Insurance Association of Nova Scotia <http://www.lians.ca/news/feedback_requested_by_july_24_for_limitation_of_actions_act>

¹⁰ *Limitation of Actions Act*, R.S., c. 258, s. 1.

¹¹ *Limitations Act, 2002*, S.O. Chapter 24, Schedule B.

¹² Olga Gil Research Services, "Limitation Periods in Canada's Provinces and Territories" (August 2008), online: Fenn & Fenn Insurance Practice Inc. <<http://www.fenninsurance.com/pdfs/Limitation.pdf>> at 22.

<i>Subject</i>	<i>Period</i>
<i>Actions for assault, wounding, slander & other torts</i>	<i>1 year</i>
<i>Action for penalties, etc. under statute</i>	<i>2 years</i>
<i>Judgments</i>	<i>20 years</i>
<i>Medical/health care malpractice actions</i>	<i>2 years</i>
<i>Contracts</i>	<i>6 years</i>
<i>Motor vehicle accidents</i>	<i>3 years</i>
<i>Trade accounts</i>	<i>6 years</i>
<i>Counterclaim/3rd party proceeds relating to motor vehicle offences</i>	<i>Note barred by 3 year period for vehicle accidents</i>
<i>Sexual abuse</i>	<i>1 year from time victim aware</i>
<i>Acknowledgement of debt</i>	<i>20 years</i>
<i>Action respecting land or rent by Crown</i>	<i>40 years</i>
<i>Recovery of payments relating to land</i>	<i>20 years</i>
<i>Payments relating to mortgage & recovery actions</i>	<i>20 years</i>
<i>Arrears for rent</i>	<i>6 years</i>
<i>Hit & run</i>	<i>1 year, with 2 months' notice</i>

In addition, the *Insurance Act*¹³ has the following provisions¹⁴:

<i>Subject</i>	<i>Period</i>
<i>Accident & sickness insurance</i>	<i>1 year</i>
<i>Motor vehicle liability</i>	<i>1 year</i>
<i>Motor vehicle limited accident insurance - unidentified driver</i>	<i>6 months</i>
<i>Motor vehicle accident policies & benefits</i>	<i>As set forth in the contract, but not less than one year</i>
<i>Insurance contracts other than accident & sickness, life or marine insurance</i>	<i>60 days or any shorter period fixed by contract</i>
<i>Fire insurance</i>	<i>1 year</i>

Because Nova Scotia does not have an ultimate limitation period, standards of record retention not laid out in Regulation or the Code of Professional Conduct must be based on common law, Court Rules, and common sense informed by statute, and lawyers should be sure to check the details of limitations set out here against the relevant Acts. Lawyers should also keep in mind that although the likelihood of a negligence claim decreases with time, without an ultimate limitation period, the possibility of a claim may still exist long after a file has been closed. Earlier guidelines on file retention from the Bar Society suggest that all files be kept for a minimum of ten years¹⁵, while the Lawyers' Insurance Association of Nova Scotia (LIANS) reports on their website that they have seen family and real estate claims up to twenty years after representation has ended¹⁶.

¹³ *Insurance Act*. R.S., c. 231, s. 1.

¹⁴ *Supra* note 12.

¹⁵ Risk and Practice Management Program, "File Retention: Resources and Practice Aids" (October 2010), online: Lawyers' Insurance Association of Nova Scotia <<http://www.lians.ca/documents/FileRetentionPackage.pdf>> at page 5.

¹⁶ "Records Retention" *Lawyers' Insurance Association of Nova Scotia* (2010), online: Lawyers' Insurance Association of Nova Scotia <http://www.lians.ca/rpm/practice_management/record_retention/>.

In addition to the *Limitation of Actions Act* and the *Insurance Act*, the body of Nova Scotia legislation with reference to limitation periods includes¹⁷:

Adoption Information Act, S.N.S. 1996, c. 3
Age of Majority Act, R.S.N.S. 1989, c. 4
Agrologists Act, R.S.N.S. 1989, c. 8
Applied Science Technology Act, S.N.S. 1999, c. 3
Architects Act, S.N.S. 2006, c. 12
Builders' Lien Act, R.S.N.S. 1989, c. 277
Building Code Act, R.S.N.S. 1989, c. 46
Canadian Forces Reservists Protection Act, S.N.S. 2006, c. 13
Child Abduction Act, R.S.N.S. 1989, c. 67
Collection Agencies Act, R.S.N.S. 1989, c. 77
Commercial Arbitration Act, S.N.S. 1999, c.5
Companies Act, R.S.N.S. 1989, c. 81
Compensation for Victims of Crime Act, R.S.N.S. 1989, c. 83
Constables Protection Act, R.S.N.S. 1989, c. 88
Consumer Reporting Act, R.S.N.S. 1989, c. 93
Court Jurisdiction and Proceedings Transfer Act, S.N.S. 2003 (2d Sess.), c. 2
Criminal Notoriety Act, S.N.S. 2006, c. 14
Dangerous Goods Transportation Act, R.S.N.S. 1989, c. 119
Defamation Act, R.S.N.S. 1989, c. 122
Direct Sellers' Regulation Act, R.S.N.S. 1989, c. 129
Endangered Species Act, S.N.S. 1998, c. 11
Engineering Profession Act, R.S.N.S. 1989, c. 148
Environment Act, S.N.S. 1994-95, c. 1
Expropriation Act, R.S.N.S. 1989, c. 156
Fatal Injuries Act, R.S.N.S. 1989, c. 163
Fire Safety Act, S.N.S. 2002, c. 6
Fisheries and Coastal Resources Act, S.N.S. 1996, c. 25
Forests Act, R.S.N.S. 1989, c. 179
Gaming Control Act - Part 3, S.N.S. 1994-95, c. 4
Labour Standards Code, R.S.N.S. 1989, c. 246
Land Registration Act, S.N.S. 2001, c. 6
Land Surveyors Act, R.S.N.S. 1989, c. 249

¹⁷ *Supra* note 12 at 23.

Land Titles Clarification Act, R.S.N.S. 1989, c. 250
Limitation of Actions Act, R.S.N.S. 1989, c. 258
Maintenance Enforcement Act, S.N.S. 1994-95, c. 6
Mandatory Testing and Disclosure Act, S.N.S. 2004, c. 29
Motor Vehicle Act, R.S.N.S. 1989, c. 293
Mutual Insurance Companies Act, R.S.N.S. 1989, c. 306
Occupational Health and Safety Act, S.N.S. 1996, c. 7
Petroleum Resources Removal Permit Act, S.N.S. 1999, c. 7
Primary Forest Products Marketing Act, R.S.N.S. 1989, c. 355
Private Career Colleges Regulation Act, S.N.S. 1998, c. 23
Safer Needles in Healthcare Workplaces Act, S.N.S. 2006, c. 7
Student Aid Act, R.S.N.S. 1989, c. 449
Survival of Actions Act, R.S.N.S. 1989, c. 453
Tobacco Damages and Health-care Costs Recovery Act, S.N.S. 2005, c. 46
Weights and Dimensions of Vehicles Regulations, N.S. Reg. 137/2001
Wilderness Areas Protection Act, S.N.S. 1998, c. 27
Wildlife Act, R.S.N.S. 1989, c. 504
Workers' Compensation Act, S.N.S., 1994/95, c. 10

For more specific limitations, also see Appendix 1 - Lawyers' Insurance Association of Nova Scotia 2011 Limitation Periods.

Business Records (Clients')

Clients' Property & Business Records

Rules governing appropriate safekeeping of clients' property are found in section **3.5-1** of the Code of Professional Conduct (the Code), which provides that property includes a client's money, securities as defined in the *Securities Act*, original documents such as wills, title deeds, minute books, licences, certificates and the like, and all other papers such as client's correspondence, files, reports, invoices and other such documents, as well as personal property including precious and semi-precious metals, jewellery and the like. Under section **3.5-2**, lawyers must:

- (a) care for a client's property as a careful and prudent owner would when dealing with like property; and*
- (b) observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer.*

Commentary on this duty advises that the duty to protect clients' property is closely related to duties related to the safeguarding of confidential information. Just as a lawyer must maintain the safety and confidentiality of client files, she should keep clients' papers and other property out of sight and out of reach of those not entitled to see them. Subject to any rights of lien, the lawyer should promptly return a client's property to the client on request or at the conclusion of the lawyer's retainer¹⁸. Aside from merely keeping clients' property safe and secure, the Code also requires lawyers to promptly notify clients of any money or other property of the client they receive¹⁹, clearly label and identify clients' property, and keep records of property in lawyers' possession²⁰, and account for and deliver clients' property to them on request or at conclusion of the retainer, if appropriate²¹.

Trust Money

While the Code does not specifically discuss trust monies as distinct from other client property, lawyers should apply the same principles of guardianship of clients' property to these monies as they would to any other client property entrusted to them.

¹⁸ See Commentary *Supra* note 3 at s.3.5-1.

¹⁹ *Ibid.* at 3.5-3 - A lawyer must promptly notify a client of the receipt of any money or other property of the client, unless satisfied that the client is aware that they have come into the lawyer's custody.

²⁰ *Ibid.* at 3.5-4 - A lawyer must clearly label and identify clients' property and place it in safekeeping distinguishable from the lawyer's own property and

3.5-5 - A lawyer must maintain such records as necessary to identify clients' property that is in the lawyer's custody.

²¹ *Ibid.* 3.5-6 A lawyer must account promptly for clients' property that is in the lawyer's custody and deliver it to the order of the client on request or, if appropriate, at the conclusion of the retainer and

3.5-7 If a lawyer is unsure of the proper person to receive a client's property, the lawyer must apply to a tribunal of competent jurisdiction for direction.

Law Office Administrative Records

Policies and standards for the retention of staff records, such as employee payroll, should be based on the requirements of legislation governing business records in Nova Scotia and Canada such as:

Canada Business Corporations Act, (R.S.C., 1985, c. C-44)

Canada Pension Plan, (R.S.C., 1985, c. C-8)

Employment Insurance Act, (S.C. 1996, c. 23)

Excise Tax Act, (R.S.C., 1985, c. E-15)

Income Tax Act, (R.S.C., 1985, c. 1 (5th Supp.))

Nova Scotia Companies Act, (R.S., c. 81, s. 1.)

Sales Tax Act, (1996, c. 31, s. 1.)

The table below sets out some standards established by these statutes:

Statute	Standard
<i>Canada Business Corporation Act</i>	<ul style="list-style-type: none">- Office records such as articles and by-laws, minutes of meetings and resolutions of shareholders, copies of certain notices, and a securities register must be maintained at a corporation's registered office (s. 20(1)). Registers and records may be maintained on computer (s.267). - If directors' records (including accounting records) are kept outside Canada, accounting records adequate to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis should be maintained at the registered office (s. 20(5)).

Canada Pension Plan

- Corporate records must be retained for 6 years after the dissolution of a corporation (s. 225), or less if a court orders otherwise (s. 223(3)).

Employment Insurance Act

- Records of Earnings obtained under the *Act* must be maintained for at least 6 years (s. 95).

- Employers paying persons employed in insurable employment must maintain records and books of account at the employer's place of business or residence in Canada or as designated by the Minister for 6 years (s. 87).

- Electronic records may be used, but must be generated and retained in an electronically "readable" format at all times (s.87).

Excise Tax Act

- Registrants must maintain adequate records for 6 years from the end of the last taxation year to which they relate.

- Records necessary for dealing with an objection or appeal must be retained until the objection or appeal is resolved and the time for filing any further appeal has expired (s.98)

- The Minister may demand in writing that a taxpayer retain records for a longer period of time, or give written permission to advance the normal disposal date for certain records (s.98)

Income Tax Act

- Users of commercial accounting packages are required to keep adequate electronic records even when a hard copy is available. They must be generated and retained in an electronically “readable” format at all times (s. 98).

- Books and records must be kept by any person who carries on business or who is required to pay or collect taxes in Canada. “Person” includes individuals, corporations, trusts, and exempt entities such as a charity or not for-profit organization. Registered amateur athletic associations and official agents for a registered political party or candidate in a federal election must also maintain books or records (ss. 230, 149(1))

- “Books and records” must²²:

- (i) provide for taxes to be determined, collected, withheld, or deducted
- (ii) substantiate the qualification of registered charities or amateur athletic associations for registration under the *Income Tax Act*
- (iii) allow for verification of all charitable, athletic, and political donations received for which a deduction or tax credit is available

- Books and records must be supported by source documents, including but not limited to: sales invoices, purchase invoices, cash register receipts, credit card receipts, deposit slips, work orders, cheques, bank statement, tax returns, general correspondence²³

²² “Income Tax Information Circular”, *Canada Revenue Agency* (June 2010), online: Canada Revenue Agency <<http://www.cra-arc.gc.ca/E/pub/tp/ic78-10r5/ic78-10r5-10e.pdf>> at para 6.

²³ *Ibid.* at paras 6-7.

- Financial records that must be kept for the entire life of the organization plus an additional 2 years from the dissolution date include:

- (i) annual financial statements
- (ii) general ledger and year-end adjusting journal entries
- (iii) a copy of all Board of Directors or Shareholder meeting minutes
- (iv) capital stock ownership and transfers
- (v) significant contracts and agreements (s.5800)²⁴

- Non-incorporated businesses must retain records for 6 years from the end of the tax year in which the business ceased²⁵

- Records relating to political contributions must be retained for 2 years from the end of the calendar year to which they relate²⁶

- A corporation must maintain at its office its registered office records such as its memorandum, articles and by-laws minutes of meetings and resolutions shareholders, and copies of certain notices (ss. 79-90). Corporations are permitted to maintain registers and records on computer (s. 90).

- No stipulation on how long records must be retained.

Nova Scotia Companies Act

²⁴ *Ibid.* at para 27.

²⁵ *Ibid.*

²⁶ *Ibid.*

Sales Tax Act

- An individual who applies for and is paid a rebate must keep records related to the rebate application, including the originals of any copied documents submitted to the Minister as part of the rebate application, for 6 years following receipt of the rebate (s. 32 of Regulations).

Summary

Office records should be maintained on site and should be readily accessible and “readable” if stored electronically. Section 8 of the *Electronic Commerce Act* provides that the requirement that information be in writing is satisfied by information in electronic form if the information is “accessible so as to be usable for subsequent reference”²⁶. In its recently released “Guide to Retention and Destruction of Closed Client Files”, the Law Society of Upper Canada (LSUC) advises that documents in electronic format may require that appropriate hardware or software be maintained for the duration of the retention period to ensure accessibility and readability. This is of particular concern given the speed at which electronic technologies evolve, rendering others obsolete²⁷.

Limitations will be satisfied in most instances by the retention of administrative records for 6 years, with certain exceptions. As the *Nova Scotia Companies Act* does not provide a limitation period, Nova Scotia corporations may only need to retain records for the life of the corporation, but it is advisable to retain records at least as long as the 6 years after dissolution required by the *Canada Business Corporation Act*.

²⁶ *Electronic Commerce Act, 2000, c. 26, s. 1*

²⁷ “Guide to Retention and Destruction of Closed Client Files”, *The Law Society of Upper Canada* (March 2012), online: The Law Society of Upper Canada <<http://rc.lsuc.on.ca/pdf/practiceGuides/retentionDestructionGuide.pdf>>.

Retirement and Record Retention

The LSUC advises that lawyers determining whether to destroy closed files upon retirement should be guided by the same considerations as for real estate files closed while in practice²⁸. While in Ontario this will usually mean a file destruction date fifteen years after the closing date of the file, thanks to the ultimate limitation period in effect there, Nova Scotian lawyers will be wise to consider the information provided by LIANS, which suggests that files should be maintained for ten years at an absolute minimum, but that twenty years is safer. This being said, lawyers should consider the unique circumstances of each file, keeping in mind the likelihood that they will have need of the file at a later date.

To plan for retention of records beyond retirement is part of the business of running a law office. Such plans cannot be put in place 12 months prior to retirement. Planning record retention and destruction should be part of the day-to-day operation of a law office. Early planning, policies, and execution of a plan will substantially reduce costs.

²⁸ *Ibid.* at 36.

Part Two: Practical Guidelines for Records Management

Document Storage

An issue of particular interest to sole practitioners contemplating retirement will be where to store their files. Those who will give up rented office space upon retirement and have no partners to whom records may be given may be tempted to store records in any space available to them that seems reasonably secure, such as basements, attics, barns, or warehouses. Lawyers should be aware, though, that these are undesirable storage locations for a number of reasons, including security, confidentiality, flooding, fire, vermin, temperature, and humidity²⁹. While one alternative is to rent another space and set up a storage facility, sole practitioners may also wish to consider commercial storage facilities or entering into an agreement with another lawyer or firm for storage of files.

Document imaging or scanning of records is another possibility, but is too expensive and time-consuming for remedial use when done after retirement. Costs of converting a modest number of files in a solo firm are substantial. By contrast, conducting conversion as part of your usual practice on file closure reduces this cost significantly. It is an excellent way to reduce the resources needed to store files, in terms of financial expense and space requirements, and should be considered by lawyers going forward in practice with an eye to retirement. If files are stored electronically, the lawyer may wish to encrypt and password protect client files. Care should be taken as well that if the lawyer upgrades software to newer versions, either it must be capable of keeping retained files accessible or the records should be electronically converted into a format that is compatible with the new software.

It is important to note that lawyers must ensure that a paper printout of electronically stored files is readily available and can be produced at the request of the insurer or the Society if such a request is warranted. It is suggested that each category of document, (such as notes, court documents, correspondence and trust records) be scanned into discrete bundles to be able to appropriately reconstruct the file.

In order to meet evidentiary requirements with regard to electronic records, the lawyer must

²⁹ Felicia S. Folk & Jackie Morris, “Closed Files: Retention and Disposition” (January 2007), online: The Law Society of British Columbia <<http://www.lawsociety.bc.ca/docs/practice/resources/ClosedFiles.pdf>> at 9.

ensure that all appropriate steps are taken with regard to the admissibility of such documents. With respect to electronic documents, a written policy for file closure must be in place to confirm the documentation as a business record. To qualify as evidence, the lawyer may be required to produce an electronic copy in addition to a printed out paper copy of all materials in the client file. In scanning client documentation from the file, care should be taken that the resulting electronic document is readable and accessible for the applicable retention period, including maintaining appropriate hardware and software during the retention period. For this reason it is recommended that the electronic file be reviewed to ensure readability prior to the destruction of the paper file. This is a matter of quality control.

Closing Client Files

Lawyers should establish a file closure policy that addresses when and how client files are to be closed, keeping in mind the following guidelines. Sample policies are attached in Appendix Two.

When Files Should Be Closed

Files should be closed when:

- All of the work on the file for which the lawyer was retained has been completed;
- A reporting letter has gone to the client to advise that the file will be closed;
- The file has been reviewed for loose ends and questionable items, including that all trust conditions have been met and all undertakings have been completed;
- No balances remain in trust;
- No unbilled time entries are left on the matter;
- All original documents have been returned to the client or other document owners;
- All redundant and unnecessary material has been removed from the file.

Pursuant to the Code of Professional Conduct, a lawyer has an ethical obligation to care for a client's property as a careful and prudent owner would³⁰. The lawyer must observe all relevant rules and law about the preservation of client property entrusted to the lawyer and ensure that any client property and/or documentation owned by the client is returned on completion of the matter. The legal obligations for lawyers with regard to the preservation of client property are set

³⁰ *Supra* note 8.

out in a body of law developed by the Courts³¹.

The retention of original third party documents must be returned to the client as well. Lawyers are required to return all property that the client provided to the law office, together with all original documents produced by the lawyer in the course of the retainer. If documents are retained as the result of an agreement with the client, those documents should be listed and the list appended to the closing letter with a confirmatory statement that the client agreed that the lawyer should retain the documents. In such cases, a physical file must be retained in which the client's property is kept and protected, unless the agreement specifies that the file will be converted to electronic format.

If a file is transferred in the course of a retainer, Section 2.07(9) of the *Code of Professional Conduct* is applicable. This Section provides that subject to the lawyer's right to a lien, all property must be delivered to, or to the order of, the client, including all papers and property to which the client is entitled. It also obliges the lawyer to give the client all relevant information in connection with the matter. Appended to the report to the client is a summary of the documents contained in the file³².

Before A File Can Be Closed

- The file should be purged of all material that is either unnecessary or irrelevant. The obligation to remove redundant material from the files can be delegated to staff, but it is the lawyer's responsibility to ensure that all necessary and relevant documentation is retained.
- Electronic information should be carefully vetted before it is purged to ensure that in depth conflict searches can be done in the future.
- Documentation that can be used for precedent should be stripped of all personal

³¹ *Aggio v. Rosenberg*, 1981 CarswellONT 407;

Spencer v. Crowe, 1986 CarswellNS 251;

McInerney v. MacDonald, 1992 CarswellNB 63 (S.C.C.);

Nova Scotia (Attorney General) v. Royal & SunAlliance Insurance Company of Canada, 2005 CarswellNS 80;

Callinan Mines Ltd. v. Hudson Bay Mining & Smelting Co., 2010 CarswellMAN 596;

Price v. Lambrinos, 2012 CarswellONT 10559.

³² For further discussion of file transfer in the course of a retainer, see The Law Society of Upper Canada's "Guide to Retention and Destruction of Closed Client Files". *Supra* note 27.

information referencing the client to ensure client confidentiality is maintained in accordance with the Code of Professional Conduct.

- The lawyer should consider that documentation that is available from third parties such as the Courts, the Registry office, or other Government offices may be removed from the file and destroyed when the file is closed, except in circumstances where there are specific legal or other reasons to retain such information.

See Appendix Three for suggestions and recommendations for dealing with contents when preparing to close a file.

The File Destruction Date

Although lawyers are not required to retain all client files permanently, it is good practice to establish a destruction date at the time of closing the file. One of the reasons to carefully establish destruction dates for retained records is connected to the discoverability rule.

It is important to understand that Courts have been very cautious in applying the discoverability rule to matters that are significantly removed in time from the time a lawsuit is brought. *Milbury v. Nova Scotia (Attorney General)*³³ is particularly instructive in this regard. In it, the Court distinguished between facts and law to determine that it is only the discovery of facts that could give rise to a cause of action that starts the time running under limitation periods.

Objective facts supporting negligence have to be discovered at a time outside of the limitation period and are an absolute prerequisite to an extension of the limitation period. In *Milbury*, the Court made it clear that the burden is on the plaintiff to show that the necessary information was not discoverable during the intervening period of time. Essentially, if the plaintiff ought to have known facts and took no appropriate steps to inform himself, the discoverability rule does not apply.

In assigning a destruction date, lawyers should be aware of ethical, legal, and professional considerations, as well as economic and practical factors. For some practice areas such as real estate and family law - and in particular custody disputes - considerations such as the ages of any children involved, marketable title legislation, regulatory provisions, and legal obligations should

³³ *Milbury v. Nova Scotia (Attorney General)* 2007 CarswellNS 199.

be part of the decision making process. Moreover, it is not uncommon that a file has to be retrieved at some point in time for information purposes. If such retrieval gives rise to potential concerns over the assigned destruction date, a new destruction date should be assigned after the file has been reviewed and is replaced in electronic or physical storage.

As part of the lawyer's consideration, the following should be reviewed:

- Legal and regulatory requirements;
- Client needs;
- Defence against allegations of malpractice or misconduct;
- The nature of the matter;
- Clients under disability, minors and incompetent persons.

Lawyers should develop a system to organize, retrieve and destroy closed files. Once a file is closed, it should be listed as "closed" in a database that contains an up-to-date record of all closed files. This list should contain the file name and original file number, and the closed file number if it is different from the active file number, and should include the location of the file (where it is stored), and should be reviewed regularly to ensure that files assigned for destruction are actually destroyed. Records such as foundation documents that are to be retained indefinitely should be reviewed periodically in lengthy intervals to determine whether a change has occurred that would permit the destruction of the files.

Destruction of Client Files

In the destruction of client files, lawyers must consider the following:

- Maintaining client confidentiality in the process;
- Ensuring that all documents in the file are destroyed, including hybrid records of paper and electronic documents including meta data;
- Maintaining a complete record of the destruction of the file, including client name, address, file number, description of the retainer, file closure date, file destruction date, the date when original documentation was returned to the client (including a list of the document so returned), and the name of the lawyer who authorized the destruction of the file.

This will serve to prove due diligence.

Standards and Guidelines

We submit that any standard should closely follow the Statute and Regulations. In our view, the Standard should introduce the concept of file closure and retention policies as well as an accessibility and preservation of records standard. A first draft is attached as Schedule B.

In addition best practices should be made available through checklists, guides and information about available options with reference to size of the firm and technological ability. Attached are examples of various policies and guidelines developed by firms practicing in Nova Scotia.

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Apology Act, S.N.S. 2008, c.34	Apology/ <i>Limitations of Actions Act</i>	3(2) An apology made by or on behalf of a person in connection with a matter does not constitute a confirmation of a cause of action or acknowledgment of a claim in relation to that matter for the purpose of the <i>Limitations of Actions Act</i> ;
Arbitration Act, R.S.N.S. 1989, c.17	Application to have arbitrator or umpire removed	16(1) and (2) - Originating Notice to be issued and served within 60 days after service of copy of arbitrator's award
Assessment Act, R.S.N.S. 1989, c.23	Actions relating to assessments or rates based on assessment	95(a) - Action in court must be brought within six months after date on which assessment roll forwarded to the clerk. 175 - No action to be commenced for anything done under the Act after six months from the date of the act or omission complained of unless Plaintiff absent from the province, in which case limitation period extended to two years from the date of the action or omission complained of
Builders' Lien Act, R.S.N.S. 1989, c.277	Lien for provision of materials, services and wages	24(1) - Contractor or subcontractor may register lien claim before or during performance of contract, or within 60 days after completion of contract or abandonment of contract (2) - Lien for materials to be placed before or during supply of materials, or within 60 days after last date on which materials supplied (3) - Lien for services to be registered during performance of service or within 60 days after completion of service (4) - Lien for wages to be registered during performance of work or within 60 days after last work performed for which lien claimed (5) - Contractor's lien claim relating to contract under supervision of architect or engineer to be made within 7 days after refusal to provide final certificate
Builders' Lien Act, R.S.N.S. 1989, c. 277	Action / Certificate of Lis Pendens following registration	26(1) - Action must be commenced within 105 days of completion of work or service or provision of materials or expiry of credit period or within 30 days after registration of claim under 24(5) (2) - Lien claim for credit must be re-registered within six months to be effective unless action commenced and Certificate of Lis Pendens obtained
Builders' Lien Act, R.S.N.S. 1989, c. 277	Period of credit	27 - If no period of credit given or expiry unstated in lien, lien ceases to exist after 90 days following service completed or materials furnished unless action commenced and Certificate of Lis Pendens registered
Builders' Lien Act, R.S.N.S. 1989, c. 277	Lien on mining claims	33(5) - Proceedings to enforce liens on mining operations to be taken at any time within six months from the registration and are deemed taken on behalf of all persons holding mining operation liens at the time the proceedings are commenced or within 30 days after commencing proceedings
Builders' Lien Act, R.S.N.S. 1989, c. 277	Liens respecting mining operation	34(7) - Statement of Claim to be served within a month after it is filed, but the court may extend the time for service (8) - Statement of Defence to be filed within same time period as Defence in Supreme Court Action
Canada – Nova Scotia Offshore	Section 159 - Petroleum spills in the offshore area	159(5) - Proceedings to be instituted within three years after the day when the loss, damage, costs or

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Petroleum Resources Accord Implementation (Nova Scotia) Act, S.N.S. 1987, c. 3 as amended		expenses occurred but in no case after six years after the loss occurred
Child Pornography Act, S.N.S. 2008, c.35	Mandatory Reporting	3 Every person who reasonably believes that a representation or material is child pornography shall promptly report to a reporting entity any information, whether or not it is confidential or privileged, that the person has respecting the representation or material. 7 (2) No prosecution for a contravention of Section 3 may be commenced more than two years after the contravention occurred.
Children and Family Services Act, S.N.S. 1990, c. 5	Section 48 – Orders for permanent care and custody	48(6) - Party may not apply to terminate an Order for permanent care and custody within 30 days of the Order or within six months of the Order except with leave of the court or within six months of dismissal of previous applications to terminate the Order; party must apply to terminate the Order within two years and 30 days of the Order being granted or the date of the final disposition or discontinuance of an appeal
Children and Family Services Act, S.N.S. 1990, c. 5	Section 83 - Ability to set aside an Adoption Order	83(2) - A person who has not received notice of an Adoption Order may apply to set aside the order within one year of the date of the Order
Commercial Arbitration Act, S.N.S. 1999, c. 5	Expedited arbitration procedure under Schedule B	33(3) - Parties can use expedited arbitration procedure within five days of dispute if not already referred to arbitration
Commercial Arbitration Act, S.N.S. 1999, c. 5	Application to set aside arbitration award on basis of fraud (Section 50)	50(2) - Application to set aside fraudulent arbitration award to be commenced within thirty days after discovery of fraud 54(3) - Application to enforce arbitration award must be made within two years after date of award or two years after expiry of appeal periods, whichever is later
Companies Act, R.S.N.S. 1989, c.81, as amended	Striking off of company from Register (Section 137)	137(4) - Action may be brought against shareholders of dissolved company within one year of dissolution date
Companies Winding Up Act, R.S.N.S. 1989, c.82	Dissatisfaction of Contributories following dissolution of company	62(1) - Contributories must apply to the court to rescind the dissolution orders within four clear days after meeting or resolution
Constables Protection Act, R.S.N.S. 1989, c.88		5 - No action against any constable unless commenced within six months after the cause of action has accrued
Corporation Capital Tax Act, R.S.N.S. 1989, c.99	Action for overpayment of corporate tax	35(2) - No action to recover any overpayment after four years from the date on which the overpayment occurred
Creditors Relief Act, R.S.N.S. 1989, c. 112	Section 10 where a claim is contested by an execution debtor	10(3) - Debtor to file and serve an Affidavit on the claimant within ten days after personal service or within time period ordered by the judge
Defamation Act, R.S.N.S. 1989, c.122	Claim for published defamation Notice requirement	18(1) - Within three months after defamatory publication comes to Plaintiff’s attention, Plaintiff required to give seven days written notice to Defendant daily newspaper of fourteen days written notice to any other newspaper or where defamatory publication broadcast.

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Defamation Act, R.S.N.S. 1989, c.122	Limitation for published defamation	19 - Defamation action against newspaper, owner / operator or broadcasting station or employees thereof to be commenced within six months after the publication of the defamatory matter coming to the notice or knowledge of the Plaintiff; action within six month period can include a claim for other defamation by same publisher taking place within a year before commencement of the action
Expropriation Act, R.S.N.S. 1989, c. 156	Claim for injurious affection following expropriation of real property	31(1) - Claim for compensation for injurious affection to be made by person in writing with the particulars of the claim within one year after damage sustained or damage / loss became known to the Plaintiff; if Plaintiff is incompetent, action to be made within one year after Plaintiff ceasing to be under disability or within one year of death
Fatal Injuries Act, R.S.N.S. 1989, c. 163		10 - Only one action to be commenced with respect to the subject matter of the complaint and must be commenced within 12 months after the death of the deceased person
Fur Industry Act, 2010		22(3) - No prosecution under this Act may be commenced more than two years after the day upon which the offence was committed.
Geoscience Profession Act, S.N.S. 2002, c. 7	Refusal of governing council to register or licence a member	22(4) - Aggrieved member has right to apply to Supreme Court for order of membership after giving ten days' notice to the secretary of the governing council
Halifax Regional Municipality Charter, S.N.S. 2008, c. 179	Inspection or Failure to Inspect. Proceedings against the Municipality, the Council, a Council member, an officer or employee or any person acting under their authority	368 (3) Notwithstanding the <i>Limitation of Actions Act</i> or any other statute, the Municipality and its officers and employees are not liable for a loss as a result of an inspection or failure to inspect, if the claim is made more than six years after the date of the application for the permit in relation to which the inspection was required. 376 (1) For the purpose of the <i>Limitation of Actions Act</i> , the limitation period for an action or proceeding against the Municipality, the Council, a Council member, an officer or employee of the Municipality or against any person acting under the authority of any of them, is twelve months.
Halifax Regional Municipality Charter		370A Notwithstanding the <i>Summary Proceedings Act</i> , the limitation period for the prosecution of an offence under a land-use by-law or a development agreement is two years from the date of the commission of the alleged offence.
Home Ownership Savings Plan (Nova Scotia) Act, S.N.S. 1989, c.6		19 - Proceedings to enforce the Act to be commenced within six years of the date of the release of the assets of the plan or within six years of receipt of any assets of the plan by a plan holder
Insurance Act, R.S.N.S. 1989, c.231	Part V - Accident and Sickness insurance	Schedule, Section 12 - Action against insurer for recovery of claim under accident / sickness contract to be made within one year after the date the insurance money became payable or would become payable
Insurance Act, R.S.N.S. 1989, c.231	Part VI – Automobile Insurance Motor vehicle liability policy	133(2) - A person with a claim against an insured for recovery of judgment may bring an action against insurer for payment of the insurance money within or before one year of the final determination of the action against the insured, including appeals,

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		if any
Insurance Act, R.S.N.S. 1989, c.231	Part VI – Automobile Insurance Motor vehicle policies - limited accident insurance	139M(1) - Where action for damages for injury or death involving unidentified driver has been dismissed by the court, Plaintiff may apply to bring action against unknown party within three months of date of dismissal, pursuant to Sections 139J and 139K
Insurance Act, R.S.N.S. 1989, c.231	Part VI – Automobile Insurance Motor vehicle accident policies and Section B benefits	145 - Every action against an insurer under an insurance contract (Section A and Section B benefits) to be commenced within limitation period specified in contract, but in no event shall be less than one year after the happening of the accident
Insurance Act, R.S.N.S. 1989, c.231	Part II – Insurance Contracts in the Province Insurance contracts other than accident and sickness, life insurance or marine insurance	24 - No action against insurer for recovery of insurance money until 60 days after proof of loss or proof of the happening of the event triggering payment of insurance money or any shorter period fixed by the contract
Insurance Act, R.S.N.S. 1989, c.231	Part VIII – Life Insurance	209(1) and (2) - Action or proceeding against insurer for recovery of insurance money to be commenced no more than one year after furnishing the evidence required (particulars of deceased) or more than six years after happening of the event upon which insurance money payable, whichever period first expires; where declaration made under Section 212 (presumption of death), action to be commenced within one year after date of the declaration
Insurance Act, R.S.N.S. 1989, c.231	Schedule to Part VII - Fire Insurance	Section 14 - Every action or proceeding against insurer for recovery of any claim under the contract to be commenced within one year after loss or damage occurs
Interjurisdictional Support Orders Act, S.N.S. 2002, c. 9	Registration of orders made in reciprocating jurisdictions outside Canada	20(2) - Party must make an application to set aside an order made in a reciprocating jurisdiction within 30 days of receiving notice of the registration of the order
International Sale of Goods Act, S.N.S. 1988, c. 13	Right of buyer to bring action against seller where goods do not conform to description	Article 39(1) and (2) - Buyer to give notice to seller of lack of conformity within “reasonable time” after lack of conformity discovered or ought to have been discovered. Seller must give notice of lack of conformity within a period of two years from the date on which the goods were actually handed over to the buyer, unless that limitation period inconsistent with a contractual period of guarantee
Judicature Act, R.S.N.S. 1989, c.240	Cestui que trust	43(1) - No limitation period relating to cestui que trust against trustee for property held on express trust or in breach of trust
Land Registration Act, S.N.S. 2001, c.6	Filing an interest in land by the Registrar	18(16) - Person requesting review must file a notice of Lis Pendens within 30 days after confirmation of the Registrar's decision, or request for revision will be cancelled
Land Registration Act, S.N.S. 2001, c.6	Request for rectification of registration of property	18(15) - Person requesting rectification must apply for a review of the Registrar's decision within 30 days after the refusal or request will be cancelled. 18(16) - Person requesting rectification must file notice of Lis pendens within 30 days after confirmation of Registrar's decision or Registrar will cancel notice of request for rectification.
Land Registration Act, S.N.S. 2001, c.6		85(4) - Notwithstanding the Limitation of Actions Act, person must commence action for compensation or enter into agreement with Registrar General for

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		compensation within six years of learning that losses may have been sustained
Land Registration Act, S.N.S. 2001, c.6	Request for reasons	90(1) - In relation to registration, cancellation, revision of recording or decision of Registrar, applicant can request written reasons and must apply within 30 days of receipt of reasons for the court to order Registrar General respecting remedy
Land Registration Act, S.N.S. 2001, c.6	Claims for adverse possession	115A - The changes to the Limitation of Actions Act contained in Section 115 apply to interests that arise before or after the coming into force of this Act except for claims of adverse possession that were determined by a Court prior to the coming into force of this Act.
Land Titles Clarification Act, R.S.N.S. 1989, c.250	Objection by other person claiming interest in land	7(3a) - Person filing a notice regarding an interest in land may commence an action for a declaration of validity of the interest in Supreme Court within 60 days after filing the notice
Language Schools Act, S.N.S. 2013, c. 5	Offense pursuant to the Act	20 (2) A prosecution for an offence pursuant to this Act may not be commenced more than two years from the date of the alleged offence.
Legal Profession Act, S.N.S. 2004, c.28	Section 57 - Reimbursement Fund	57(4) - No payment from reimbursement fund unless executive director receives notice of the loss within six months after discovery of the loss, subject to further twenty-four month extension pursuant to 57(5)
Limitation of Actions Act, R.S.N.S. 1989, c.258	Nominate torts	2(1)(a) - Actions for assault, menace, battery, wounding, imprisonment or slander, to be commenced within one year after cause of action arose
Limitation of Actions Act, R.S.N.S. 1989, c.258	Statutory grievances	2(1)(b) - Actions for penalties, damages or sums of money given to parties aggrieved by statute to be commenced within two years after the cause of action
Limitation of Actions Act, R.S.N.S. 1989, c.258	Judgments	2(1)(c) - Actions for rent upon an indenture of demise, actions upon bond or other specialty, actions upon judgment or recognizance, to be commenced within 20 years of cause of action arose or recovery of judgment
Limitation of Actions Act, R.S.N.S. 1989, c.258	Medical / health care malpractice actions	2(d) - Actions for negligence or malpractice relating to registered practitioners under Medical Act or Dental Act, or against officer, nurse or employee of hospital which has on staff qualified medical practitioners and nurses qualified under the Registered Nurses Association Act, or against any employer of officer, nurse or employee by reason of any services rendered to be commenced within two years after the date of termination of the professional or hospital services rendered in the matter complained of
Limitation of Actions Act, R.S.N.S. 1989, c.258	Contract and actions on the case	2(e) - Actions granted on lending, contract (expressed or implied) without specialty or for money levied by execution, actions for direct injuries to real or personal property, conversion or taking away of property, good and chattels, libel, malicious prosecution and arrest, seduction and criminal conversation and actions for all other causes of action under trespass on the case to be commenced within six years after cause of action arose
Limitation of Actions Act, R.S.N.S. 1989, c.258	Motor vehicle accidents	2(f) - Actions for recovery of damages on account of injury to persons or property relating to ownership, maintenance, operation or use of motor vehicle to be commenced within three years of cause of action

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		arising
Limitation of Actions Act, R.S.N.S. 1989, c.258	Actions on account or concerning trade accounts	2(2) - Actions of account or not accounting, or accounts concerning trade of merchandise to be commenced within six years after cause of action arose
Limitation of Actions Act, R.S.N.S. 1989, c.258	Counterclaim / third party proceedings relating to motor vehicle offences	2(4) - Notwithstanding Section 38, where action pertaining to motor vehicle commenced within three year time period, time period will not bar counterclaim or third party proceedings
Limitation of Actions Act, R.S.N.S. 1989, c.258	Sexual abuse	2(5) - In action for assault, menace, battery or wounding based on sexual abuse, cause of action does not arise until victim becomes aware of the injury or harm resulting from the sexual abuse and discovers the causal relationship between the injury or harm and the sexual abuse; limitation period of 1 year does not begin to run while victim not reasonably capable of commencing proceeding because of physical, mental or psychological condition resulting from the sexual abuse
Limitation of Actions Act, R.S.N.S. 1989, c.258	Plaintiff under disability	4 - Persons under the age of 19 or of unsound mind may commence actions referred to in Section 2 either within five years of becoming age of majority or of sound mind or within the statutory limitation period, whichever period is shorter
Limitation of Actions Act, R.S.N.S. 1989, c. 258	Defendant under disability	5(1) - Where a Defendant is under the age of 19 or is of unsound mind, Plaintiff is entitled to bring action against Defendant under disability within statutory time periods after Defendant becomes of age or of sound mind
Limitation of Actions Act, R.S.N.S. 1989, c.258	Acknowledgement of debt	8 - Where a party has acknowledged debt, or made partial payment or satisfaction on account of principal or interest, Plaintiff may bring an action for remaining unpaid money within 20 years after acknowledgement in writing or payment in partial satisfaction; where a debtor under legal disability such as under age of 19 or of unsound mind, then Plaintiff may bring action against Defendant within 20 years after disability has ceased; Plaintiff's action shall state acknowledgement by the debtor and that action brought within the time referred to in this section of the Act
Limitation of Actions Act, R.S.N.S. 1989, c.258	Action respecting land or rent	10 - Person making entry or distress or bringing an action to recover land or rent shall do so within 20 years after the time at which right to bring an action first accrued 19 - Where Plaintiff having a right to make entry or distress or bring an action to recover land or rent is under a disability of infancy or unsoundness of mind, then may bring the action for recovery within five years after ceasing to be under a disability or died, whichever first happened 20 - Absolute limit of 25 years for action for entry, distress or action relating to land or rent, regardless of whether person under legal disability (infancy or unsoundness of mind) reaches the age of majority, and whether 25 year period has expired or not
Limitation of Actions Act, R.S.N.S. 1989, c.258	Action respecting land or rent by Crown	21 - Crown must bring claim for land or rent within 40 years after the right of action to recover land or rent first accrued

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Limitation of Actions Act, R.S.N.S. 1989, c.258	Recovery of payments relating to land	23 - Action to recover money secured by mortgage, judgment or lien in relation to land or rent to be made within 20 years after right to receive payment has accrued to person capable of giving a discharge for or release of payments, unless in the meantime some part of the principal or interest has been paid or acknowledgement has been given in writing signed by the person by whom the money is payable, to the person entitled, and in such case no action to be brought except within 20 years after the payment or acknowledgement or the last of any such payments or acknowledgements
Limitation of Actions Act, R.S.N.S. 1989, c.258	Payments relating to mortgage and recovery actions	24(1) - Any person claiming under a mortgage of land may make an entry or bring an action to recover the land within 20 years after the last payment of any principal or interest secured by the mortgage, even if more than 20 years have elapsed since the time of the right to make first entry or bring the action first accrued (2) - No person claiming under a mortgage can bring an action after 20 years have elapsed from the maturity date set out in the mortgage or any registered or recorded renewal of the mortgage
Limitation of Actions Act, R.S.N.S. 1989, c.258	PPSA security	24A - Actions to enforce security pursuant to part V of the Personal Property Security Act shall be made within 20 years after the right to take the proceedings first accrued to the secured party or within 20 years after the right first accrued to the person claiming through the secured party
Limitation of Actions Act, R.S.N.S. 1989, c.258	Dower	25 - Actions for arrears of dower or damages on account of arrears of dower to be commenced within six years
Limitation of Actions Act, R.S.N.S. 1989, c.258	Arrears for rent	26 - No arrears for rent or interest in relation to land or rent to be recovered by distress, action or proceeding except within six years after the arrears have become due or after acknowledgement in writing given by debtor or his agent
Limitation of Actions Act, R.S.N.S. 1989, c.258	Actions for land or rent in event of fraud	29 - In cases of concealed fraud, right of action for recovery of land or rent are deemed to have first accrued at time when fraud was first known or discovered or with reasonable diligence might have been known or discovered
Limitation of Actions Act, R.S.N.S. 1989, c.258	Prescription and easement	32 - No claim for prescription, grant or easement over land or water to be defeated where person claiming the right has had uninterrupted use for a full 20 year period before the claim, but the claim can be defeated where although claimant has enjoyed rights for 25 years, claimant has used land by way of agreement by express agreement or consent or easement / prescription given by way of deed in writing
Limitation of Actions Act, R.S.N.S. 1989, c.258	Access and use of light	33 - Right of access and use to light for buildings absolute and indefeasible after 20 year uninterrupted period unless access was by way of express consent or agreement or deed in writing
Limitation of Actions Act, R.S.N.S. 1989, c.258	Claims relating to prescription and access / use of light where defendant under disability	36 - For actions relating to Sections 32 and 33 (prescription and access / use of light), time during which defendant under disability (infancy, unsound mind, tenant for life), or during which action has been pending and has been diligently prosecuted

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		until death of any party, such time to be excluded in the computation of periods mentioned in Sections 32 and 33 except where the right or claim to prescription / access to light is declared to be absolute and infeasible
Limitation of Actions Act, R.S.N.S. 1989, c.258	Prescription claim relating to term of life or term of years	37 - Where use of or access over land or water is held by virtue of a life term or any term exceeding three years, that time period will be excluded in the computation of the 25 year time period for limitation of actions where a claim resisted within three years after the end of the term or determination of the term by any person entitled to any reversion at the end of the term
Maintenance and Custody Act, R.S.N.S. 1989, c.160	Payments to single mother S. 11 – Maintenance for child of unmarried parents	14(1) - Application for payments to a single mother in relation to the birth of a child shall be made within two years of the date of the birth of the child 14(2) - Application under Section 11 may be commenced within a year after the return to the province of the father of the child who left the province before the child attained two years of age or within a year of the last payment made by the father for child maintenance, or within one year of the date of the father's written admission of paternity
Marketable Titles Act, S.N.S. 1995-96, c. 9	Tax deed actions	6(2) - Actions to set aside tax deeds must be made within six years after registration of the tax deed which thereafter conveys absolute and infeasible title to the land 7(4) - Section 3 of the imitation of Actions Act does not apply to any time period set out in the Marketable Titles Act
Matrimonial Property Act, R.S.N.S. 1989, c.275	Division of assets on death of spouse	12(2) - Application for division of matrimonial assets to be made by surviving spouse within six months after probate or administration of deceased spouse's estate 12(3) - If court determines surviving spouse did not know of grant of probate or administration, may extend time to make application at own discretion, but only relating to assets not yet distributed
Metalliferous Mines and Quarries Regulation Act, R.S.N.S. 1989, c.284		27 - Any complaint or suit in pursuance of the Act to be brought within six months of the time when the matter of such complaint or suit arose
Mineral Resources Act, S.N.S. 1990, c.18	Application for declaration of substance as minerals	8(2) - A person engaged in mining activities and claiming an interest in a mineral has one year to apply for compensation to the Expropriations Compensation Board following regulation declaring the substance to be a mineral
Mortgage Regulation Act (This Bill replaces the 1966 Mortgage Brokers' and Lenders' Registration Act)	Inspections, investigations and enforcement	72 (1) A prosecution for a contravention of this Act must not be commenced more than two years after the date on which the alleged contravention occurred.
Motor Vehicle Act, R.S.N.S. 1989, c. 293	Hit and run claim	256(2) - Two months' notice of intention to commence action necessary where hit and run claim brought against Registrar (Judgment recovery)

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		(3) - No action to be brought in relation to hit and run claim against Registrar after expiry of one year from the date on which the cause of action arose
Municipal Elections Act, R.S.N.S. 1989, c.300	Application to declare election vote void	158(5) - Application to declare an election or vote to be void to be commenced within 21 days after ordinary polling day for the election or for the vote of the electors to which the application relates
Municipal Government Act, S.N.S. 1998, c.18	Inspection of property or buildings by municipality	504(3) - Notwithstanding Limitation of Actions Act, claim against municipality, village and officers or employees must be made within six years of the date of the application for the permit in relation to which the inspection was required
Municipal Government Act, S.N.S. 1998, c.18	Limitation period generally Notice period required	512(1) - Limitation period for an action or proceeding against a municipality, village, council, council member, village commissioner, officer or employee of municipality or village or any person acting under the authority of any of them is 12 months (3) - No action to be brought unless one month's notice served on party / parties stating cause of action, name and address of person intending to bring action, and name and address of that person's solicitor or agent
Municipal Government Act, S.N.S. 1998, c.18	Surplus of funds following sale of property for taxes	125(1) - Person claiming balance of funds following sale of property must bring claim for balance within 30 days after sale (2) - Claim to balance of funds following sale must be made by owner or lien holder within 30 days
Municipal Government Act, S.N.S. 1998, c.18	Claim to land in right of province	136(2) - Application by a person claiming to own land vesting in the Crown may apply to the Supreme Court for declaration of rights within ten years after the land vests in the Crown or, where a claimant is under the age of 19 or is of unsound mind, within ten years after that person attains the age of majority or becomes of sound mind; no application claiming declaration of rights in land may be made more than 20 years after the land vests in the Crown
Mutual Insurance Companies Act, R.S.N.S. 1989, c.306		54(1) - No action to be brought against a mutual insurance company upon any policy or contract after one year following the loss or damage in respect of which the action was brought, except in cases where parties under legal disability
Non-Essential Pesticides Control Act, 2010		12 - A prosecution for an offence under this Act may not be commenced more than two years after (a) the date on which the offence was committed; or (b) the date on which evidence of the offence first came to the attention of an inspector or the Minister, whichever is later.
Optometry Act, R.S.N.S. 1998, c.328	Application to compel executive to perform duties prescribed	21(3) - Aggrieved person to give ten days' notice to the Secretary / Treasurer and may apply to Supreme Court to grant an order requiring executive member to perform prescribed duties
Partition Act, R.S.N.S. 1989, c.333	Application for partition by previously unknown part-owner	33 - Any person who is a part-owner and for whom a share of property was assigned in partition, where the person described as unknown and with no personal service, may apply within three years after final judgment for a new partition of the premises
Pension Benefits		100(7) - No proceeding under the Act shall be

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Act, R.S.N.S. 1989, c. 340		commenced more than two years after the date when the subject matter of the proceeding came to the knowledge of the Superintendent
Personal Information International Disclosure Act, S.N.S. 2006, c.3	Report to the Minister by head of public body where access or storage allowed outside Canada	5 (3) Where the head of a public body makes a decision pursuant to subsection (2) in any year allowing storage or access outside Canada, the head shall, within ninety days after the end of that year, report to the Minister all such decisions made during that year, together with the reasons therefor.
Pharmacy Act, S.N.S. 2001, c.36	Negligence action	76 - No action for negligence to be brought against a registered pharmacist by reason of professional services rendered unless action commenced within one year from date in which professional services were rendered
Probate Act, S.N.S. 2000, c.31	Judicial review of any decision	104 - Application for Certiorari must be made within six months after the order, decision, judgment, report, award or other proceeding had or made
Proceedings Against the Crown Act, R.S.N.S. 1989, c.360	Notice period	18 - No action against the Crown unless two months' notice in writing served on the Attorney General stating name and residence of proposed Plaintiff, cause of action and court in which action to be brought
Public Trustee Act, R.S.N.S. 1989, c. 379	Application respecting money held by the Minister of Finance from the Public Trustee	35(1) - Person claiming entitlement to money held by Minister of Finance under Public Trustee Act to apply for declaration of rights within ten years after money has been paid over to Minister of Finance or, where a claimant is under legal disability, claim to be made within ten years after attaining age, sound mind or returning to province, and in ny event within 40 years after payment of money to Minister of Finance
Public Utilities Act, R.S.N.S. 1989, c. 380		115(2) - No action or proceeding for violation of any of the provisions of the Act to be commenced after the one year of the time of any such violation
Safer Communities and Neighbourhoods Act, S.N.S. 2006, c.6	Application by resident to vary provision in order	13 (3) The resident shall make the application within fourteen days after the resident is served with the order.
Safer Communities and Neighbourhoods Act, S.N.S. 2006, c.6	Application to Court by complainant for a community safety order	14 (3) The complainant's application must be made within two months after the date of the Director's written confirmation
Safer Communities and Neighbourhoods Act, S.N.S. 2006, c.6	Notice of intention to abandon application	16 (1) A complainant shall notify the Director in writing of any intention to abandon an application at least thirty days before taking any step to abandon it.
Safer Communities and Neighbourhoods Act, S.N.S. 2006, c.6	Leave to appeal court order	21 (2) An application for leave to appeal must be made within fourteen days after the day the order is made or within such further time as a judge may allow.
Safer Communities and Neighbourhoods Act, S.N.S. 2006, c.6	Appeal of removal order to the Court by owner or occupant of a fortified building	52 (2) A notice of appeal must be served on the Director within fourteen days after a removal order has been served.
Safer	Request to the Director to	60 (5) An owner who has been served with a copy

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Communities and Neighbourhoods Act, S.N.S. 2006, c.6	reconsider a costs and expenses certificate	of a certificate pursuant to subsection (2) may, within thirty days after receiving the copy, make written representations to the Director requesting the Director to reconsider the amount of the costs and expenses.
Safer Communities and Neighbourhoods Act, S.N.S. 2006, c.6	Appeal to the Court against amount of costs and expenses set out in certificate	61 (1) An owner with respect to whom a certificate has been filed pursuant to Section 60 may appeal against the amount of the costs and expenses set out in the certificate to the Court (a) within thirty days after the date of the filing of the certificate; or (b) where the owner has made representations to the Director pursuant to Section 60, within thirty days after the Director has notified the respondent of the decision.
Securities Act, R.S.N.S. 1989, c.418		136(1) - No proceedings to be commenced in court more than six years from the date of the occurrence of the last event upon which the proceeding is based (2) - No proceedings under the Securities Act to be commenced before the Securities Commission more than six years after the date of the occurrence of the last event upon which the proceeding is based
Securities Act, R.S.N.S. 1989, c.418	Situations where prospectus or takeover bid circular not delivered as required or where security is wrongfully traded	141(4) - No action to enforce a right of a purchaser for rescission against seller or right of damages against underwriter to be commenced more than two years after transaction giving rise to the cause of action in the case of rescission, or in the case of action for damages, three years after the date of the transaction giving rise to the cause of action
Securities Act, R.S.N.S. 1989, c.418	Rescission of securities contract	144(5) - No action respecting rescission to be commenced more than 90 days after the date for mailing or delivering of the notice sent to the dealer rescinding the security purchase or in relation to rescission where dealer fails to state that he was an undisclosed principal
Securities Act, R.S.N.S. 1989, c.418	Rescission of securities contract	144 (6) No action respecting a rescission shall be commenced under this Section after the expiration of a period of ninety days from the date of mailing or delivering the notice pursuant to subsection (1) or (2).
Securities Act, R.S.N.S. 1989, c.418		146(1) - Unless otherwise provided, no action to be commenced to enforce a right in the case of an action for rescission more than 180 days after the date of the transaction giving rise or in the case of an action other than for rescission, the earlier of 180 days after first knowledge of the facts giving rise to the cause of action or three years after the date of the transaction giving rise to the cause of action 146(2) - No action to be commenced to enforce the right created under Section 138 (misrepresentation in offering memorandum) more than 120 days after the date on which payment was made for the securities or after the date on which the initial payment was made where multiple payments were made pursuant to a contractual commitment
Security and Investigative Services Act, 2010		47 - No proceeding respecting an offence under Section 46 may be commenced more than one year after the Registrar first became aware of the facts on which the proceeding is based.
Social Assistance Act, R.S.N.S. 1989, c. 432	Actions against administrators of estates of deceased social assistance recipients	12(2) - Claim against an executor or administrator (personal representative) or an application for administration must be made within one year after

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		the death of the person receiving social assistance
Solemnization of Marriage Act, R.S.N.S. 1989, c.436	Applications to annul marriage by minors	45(1) - Either party to a marriage under the age of 18 may apply to the Supreme Court for declaration of the marriage to be invalid as long as parties did not cohabit and live as husband and wife after the marriage ceremony and as long as the application is brought before the party reaches the age of 19
Survival of Actions Act, R.S.N.S. 1989, c.453		5 - Where a cause of action survives by reason of the Act, cause of action subject to the Limitation of Actions Act
Sydney Steel Corporation Sale Act, S.N.S. 2000, c. 33	Actions against Sysco and purchaser of Sysco	6(1) - Any action against Sysco or subsequent with respect to any act or omission and relating to the operation of the company to be commenced within one year after the Designated date (2) - Section 3 of the Limitation of Actions Act does not apply
Teachers' Collective Bargaining Act, R.S.N.S. 1989, c.460	Sections 39 and 40 relating to prohibited activities of union and employer	41(1) - Any person or organization may make a complaint in writing to the Board that a person acting on behalf of the a union or a teacher has failed to comply with Section 39 or 40 (2) - Complaint to be made no later than 90 days from the date on which the complainant knew or the Board ought to have known of the action or circumstances giving rise to the complaint
Testator's Family Maintenance Act, R.S.N.S. 1989, c.465		14(1) - Application for an order under Section 3 (order for adequate maintenance and support) to be made within six months of the grant of probate of the Will or administration of the testator's Will (2) - If court considers it just, may allow application to be made at any time in relation to any portion of the undistributed estate remaining at the date of the application
Trade Union Act, R.S.N.S. 1989, c.475	Manufacturing employer with employees at more than one location in relation to application for collective bargaining unit	26(4) - Application for an order for collective bargaining unit must be made by the employer within one year following the commencement of production at the second location of the manufacturing plant in the province or within one year of commencement of production at any additional manufacturing plant where employer already affected by order
Trade Union Act, R.S.N.S. 1989, c.475	Complaints	55(2) - Complaint to the Board regarding prohibited activity of employer or union to be made within 90 days from the date on which the complainant knew or ought to have known of the action or circumstances giving rise to the complaint
Woodmen's Lien Act, R.S.N.S. 1989, c. 507	Statement of Claim by person claiming lien for labour / services	8 - Statement of Claim to be filed within 60 days after the last day upon which labour or services or some part thereof were performed
Woodmen's Lien Act, R.S.N.S. 1989, c. 507		10(1) - Any person having a lien upon any logs or timber may enforce the action in court where the statement of lien is filed, and action may be commenced to enforce the lien if same due immediately after filing the statement or if credit has been given after the expiry of the credit period, and lien ceases to be a lien on the property unless the proceedings to enforce the lien are commenced within 30 days after the filing of the Statement of Claim or within 30 days after the expiry of the period of credit
Workers' Compensation	Submission of compensation claim	14(1) - No compensation payable under Section 13 (silicosis or pneumoconiosis) unless claim is file with

Appendix One – Lawyers’ Insurance Association of Nova Scotia Table of Limitation Periods

Act, S.N.S. 1994-95, c. 10		the Board within five years after the worker ceased to be regularly employed in an industry where the worker was exposed to silica dust or coal dust and within one year of the worker or worker's dependant learns that the injury or death resulted from silicosis or pneumoconiosis;
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Appendix Two - Sample File Closure Policies

The following file closure policies have been generously shared by various law firms in Nova Scotia to serve as educational resources. They are to be used as informational materials only and should not serve as precedents. They cannot be relied on as guarantees of limitations periods and will not meet the needs of every individual lawyer or firm.

Closed File Procedures- January 1, 2010

Effective January 1, 2010 we will no longer be accepting paper files for transfer into dead storage.

The exceptions include:

- Wills} Powers of Attorney and Medical Consents (these are stored separately in the Fire-proof cabinets located in the Estates Department)
- Original Documents relating to child protection and custody access

Under the new paperless system the following are the steps to be taken to get a file closed in Prolaw:

1. Review file to confirm that everything from the paper file that is required has been scanned into Prolaw. If necessary scan all printed emails into Prolaw and any other hand-written notes} external documents} etc. that have not yet been moved into Prolaw.
2. Check the Inquiry tab in Prolaw to be sure that:
 - a. The file has been billed.
 - b. There are no monies remaining in trust
3. At this point your options include:
 - a. Return the file materials to the client (if the client wants to have them). Get acknowledgement from the client that they have had the opportunity to keep the file, or parts of it. Set a deadline for file pick-up. On the Referral Information tab you would check off that the file was returned to client and on what date. You would then email The Document Centre to request that the file status be changed to reflect that the file is no longer active.
 - b. For Regular files: indicate "SHRED" on the file, and take it to the usual spot for files to be closed. The Document Centre will close the file, updating the Referral Information tab and Prolaw file status. These files will be *boxed*} and shredded on the same schedule as box files.
 - c. For box files: Let the document Centre know how many boxes (tagged for destruction) are to be shredded} and where they are. They will be removed to a temporary area} to be shredded on a regular schedule.
4. If the file is being shredded and not being returned to the client the Document Centre will allow 3 to 5 days from receipt of the file before destroying the physical file. This will ensure that all of the electronic documents have been fully captured on our network backup system.

Please note that the Document Centre will only accept a physical file for storage if approval has first been obtained from the Executive Director or the Managing Partner based upon reasonable justification for retention of the physical file being provided by the file lawyer. Confirmation of approval must accompany the file when sent to Document Centre.

CLOSED FILES AND SHREDDING OLD FILES

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When a file is closed, a coloured sticker is placed on the corner of the file to indicate how long the file is to be kept before destroying.

Each year a staff member or someone hired will go to the closed file room downstairs and pull the files from the individual lawyers' closed files that are coded to be destroyed that year. The files to be destroyed go into the blue bags or file boxes for the shredding company to take.

Attached is a list of the different categories and the length of time the files are to be retained.

The files are colour coded as follows:

- Red - keep indefinitely
- Blue - destroy after 25 years
- Purple - destroy after 10 years
- Orange - destroy after 7 years
- Yellow - destroy after 6 years
- Green - destroy after 3 years

The files are coded to destroy as follows:

- 1. Property**
 - a. Sale - 6 years
 - b. Mortgage - indefinitely
 - c. Migration - indefinitely
 - d. Purchase - indefinitely
- 2. Guardianship** - until estate closed
- 3. FCS - 3 years** (lawyer review before destruction)
- 4. Divorce**
 - a. 6 years for court docs
 - b. 10 years for full file
- 5. Other family files** - 25 years
- 6. Collections** - 25 years

CLOSED FILES AND SHREDDING OLD FILES

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- 7. Mechanics' Liens** - 6 years
- 8. Motor vehicle accident** - 6 years
 - a. Infant Action - 6 years after age 19
- 9. Other litigation** - 6 years
- 10. Dept. of Justice** - retain all with special group indefinitely
- 11. Depart. of Labour** - 10 years (lawyer review before destruction)
- 12. Research and Opinion** - File opinion separately - 6 years
- 13. Probate & Estate files** - 6 years
- 14. Corporate files**
 - a. 6 years (annual resolutions, registered agent, miscellaneous - kept with closed files for each individual lawyer)
 - b. Indefinitely for incorporations, reorg., family trusts, most general.
 - c. Amalgamations - 10 years
- 15. Immigration** - 25 Years
- 16. Others** (i.e. committees, miscellaneous, personal - 3 years)

Appendix Two - Sample File Closure Policies

FILE CLOSURE CHECKLIST

DATE:	CLOSED BY:
MATTER NO:	APPROVED BY:
CLIENT NAME:	CLOSED FILE LOCATION:

ITEM	DONE
1. REPORTING LETTER TO CLIENT	
2. ALL TRUST CONDITIONS MET, ALL UNDERTAKINGS COMPLETED	
3. REVIEW FILE FOR LOOSE ENDS/QUESTIONABLE ITEMS	
4. NO BALANCES IN TRUST	
5. NO UNBILLED TIME ENTRIES ON MATTER	
6. ALL ORIGINAL DOCUMENTS RETURNED TO CLIENT/REGISTRY/OTHER	
7. ALL UNNECESSARY MATERIAL REMOVED FROM FILE (REDUNDANCIES, ETC.)	
8. CLOSED FILE INDEXED AND MOVED TO CLOSED FILE LOCATION	
9. ALL PAPER OF FILE SCANNED AND PLACED IN CLIENT DIRECTORY SCAN DATE: _____	
10. ANY MATERIAL USEFUL FOR FUTURE REFERENCE (I.E. TITLE SEARCHES, ABSTRACTS, RESEARCH....)	

FILE SENT TO CLIENT

DATE:
CLIENT SIGNED RECEIPT:

Determine whether you may close the file³³

The following are some factors that you may wish to consider in determining whether a file has been completed and should be closed.

Have you completed all work that you were retained to complete?

Have you reported to the client?

Have you forwarded an account to the client?

Has the account been paid or has the firm written off any balance owing on the final account?

Have all undertakings been satisfied?

Have you dealt with any balance in the trust account?

Strip the File

Have you removed unnecessary duplicate copies?

Have you removed or copied material for precedent or future use?

If so, have you stripped the precedent material of all personal information within the meaning of PIPEDA?

Have you returned documents belonging to the client or third parties?

Have you determined copies of which documents you will retain?

Communicate with the Client

Have you advised the client that the file is being closed and will be destroyed after a certain decade? This advice may be contained in the retainer agreement.

³³ Supra note 27 at p. 23.

Have you established a file destruction date?

Have you established a file review date to review the file prior to destruction or alternatively, do you have a system in place to ensure that the file destruction date is postponed where there are changes in circumstances during the file retention period that necessitate a postponement of the date?

Have you entered these date(s) into your tickler system?

Classify File as Closed

Have you classified the file as closed?

Have you entered this data into your office system?

Have you determined the method(s) of storage?

Paper

Electronic

If documents are going to be stored electronically, consider:

Do you have a legal or ethical obligation to store the file in paper form?

Do you have the necessary hardware and software to retrieve these documents during the retention period?

Do you have a procedure in place for ensuring that you have the hardware and software to retrieve these documents during the retention period?

If the documents are likely to be used as documentary evidence, have you complied with any evidentiary rules governing 'admissibility' of electronic copies?

Do you have a backup system for the materials stored electronically?

Have you considered whether documents, data or information should be encrypted?

Place the File In Storage

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Is the storage location secure?

Have you ensured that you can meet confidentiality obligations?

Do you have adequate insurance to cover loss or damage?

Review the File Prior to Destruction

Have you reviewed the file before destruction to determine if the destruction date should be changed?

Destruction of the File

Have you ensured that the file will be destroyed in a way that will maintain lawyer/client confidentiality?

Establish a Record of Destruction or Disposition

Have you established a record of the destruction in accordance with your retention policy?

Schedule B: Draft File Retention and Destruction Standard

Draft File Retention and Destruction Standard (FOR DISCUSSION ONLY)

- A lawyer must care for clients' property as a careful and prudent owner would when dealing with like property;
- A lawyer must draft or adopt an internal policy for file closure, retention, and destruction with regard to:
 - a. Legal and regulatory requirements;
 - b. Client needs and abilities;
 - c. The nature of the matter;
 - d. Limitation periods.
- A lawyer must store client files and business records in a manner that is accessible and readable;
- A lawyer must store client files in a secure location with regard to:
 - a. Client confidentiality;
 - b. Preservation of records;
 - c. Accessibility