

## To keep or not to keep ...

To keep or not to keep ... that is the question. Had the Bard been faced with the issue of file retention that might have been the question. Fast-forward more than 400 years and as reams of paper are piling up and files are becoming quite dated, we are faced with two big questions: what documents do we need to keep and for how long?

From a risk and practice management perspective, the answer is always the same - keep it all, do not throw anything out! However, given limited storage space and the cost of physical storage, a better solution would be to create a records management policy so you save only what is necessary and only for as long as required.

### *What is a record?*

A record is any document in any medium, created in the course of business that records information about that activity. Records are created, received and used in the conduct of your business activities to support the continuing conduct of your business, comply with the regulatory environment and provide necessary accountability.

### *Records Management Policy*

A records management policy should establish principles to:

- Improve efficiency and reduce costs. Establishing retention schedules, organizing filing systems, controlling access to records, creating index tools and reducing office space required to store records all contribute to making records easier to use and reduces the costs associated with handling them.
- Support compliance by establishing retention schedules in accordance with statutory and regulatory laws related to records, such as your obligations pursuant to the *Legal Profession Act*, your ethical obligations under the Handbook and the provisions of the *Limitations of Actions Act*. Think about what your lawyer would need in order to reconstruct your file in a professional liability insurance claim or what you would want to produce if a client complained.
- Records have a life cycle and can be altered or misinterpreted at every stage of that cycle. Therefore, you must undertake analyses and make recommendations regarding the appropriate creation, storage and use of information to ensure its integrity.

Your records management policy should stipulate whether it applies to all paper and electronic files (this is recommended), when it becomes effective and how you are going to apply it to current files, closed files and those files already in storage.

You can and should thin your files. Remove duplicates and case law. Consider scanning your files and saving them electronically with OCR capability for ease of future searching.

Your records management policy should identify who is responsible for implementation and should also create a naming convention that is logical, consistent and easily understood.

Lastly, think about destruction. An effective retention policy should allow for the routine destruction of records after a predetermined time period, in accordance with your record retention schedule. Also, care and consideration need to be exercised when destroying a file so properly shredding paper documents will ensure you continue to protect your client's confidentiality. Remember, electronic files are not destroyed by simply hitting the "delete" button.