



NOVA SCOTIA
BARRISTERS' SOCIETY

NSBS Template File Retention/Destruction Policy

Draft version of Dec 1st, 2022

The attached policy and schedule are drafts as NSBS tests them in actual use and seeks feedback from members. NSBS is in the process of considering a revised file retention standard that recognises the important role of privacy law (currently PIPEDA) among other factors. At the time of writing, new privacy legislation is before the House of Commons, which is expected to make privacy obligations tighter.

The goal of this work is to update our standard and guidance to better protect the public by:

- Assuring that personal information is retained for a valid purpose and destroyed in a timely manner in accordance with the law;
- Simplifying the rules to achieve better compliance and reduce costs that would otherwise ultimately be borne by clients;
- Improving access to justice by recognising that prolonged retention of files and other data is an obstacle to succession and thus the viability of small, and particularly rural practices.

Guidance is changing to recommend specified minimum retention periods, based on what happens in British Columbia. Each firm should make a policy for retention and destruction, then follow it for all paper and electronic files. A Guide to Retention & Destruction in NS will be available in the months ahead.

Questions? [iss.nsbs.org](https://www.iss.nsbs.org)

You may use this draft template subject to your own skill and judgement. Please email us with feedback, including suggestions for improvement.



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NSBS Template File Retention/Destruction Policy

Date _____, 202_

Firm Name _____

Footnotes, and italicized words, apart from statute names, do not form part of this policy.

Main Purposes

1. To provide for retention of closed files for a reasonable time in case of a need to respond to a possible liability claim or a professional misconduct complaint; and
2. To provide for the timely destruction of records to protect privacy.

Scope

Applies to all client files, paper and electronic, now or hereafter in our possession.

Recital

We considered the twin purposes of this policy, the applicable law and our professional obligations to our clients and colleagues including:

Obligation to follow all privacy laws including *PIPEDA*, including an obligation not to retain personal information longer than necessary;

The *Limitation of Actions Act*;

Limitations which might apply to some files (e.g., children) and whether they are relevant to the issue of retention/destruction.

See attached Schedule A

Signed:

Schedule A to File Retention & Destruction Policy Dated _____

- 1) Retain long enough to satisfy client ID Reg as well as virtually all potential complaints and insurance claims.
- 2) Destroy entire file when that time ends, both paper & electronic content.
- 3) Longer retention than the suggested minimums requires a valid reason and consent. You should write it in your policy in place of the number(s) below.

Retention periods start at the closing of the file. Suggested minimum retention periods are as below.

Part A General Retention Period (everything not listed below as an exception): 6 yrs.

Reasoning: given the Limitation of Actions Act and other factors, very few claims or complaints are made beyond this time. Our Regulations require keeping client ID for 6 yrs.

Part B Exceptions to the General Retention Period

1) Real Estate

- a) Foundation documents: indefinite, required by regulations.
- b) The rest of the real estate file: (both LRA and non-LRA files): 15 years

Reasoning: real estate files have a greater possibility of a claim in later years, relative to most other files. Because claims, if they happen, are sometimes made directly against the lawyer in contract and tort, as opposed to through the RG, claims can arise after 10 years.

- c) However, a subsequent transaction changes the risk:
 - i) If the property is **sold by the firm**, retain the sale file. Destroy any preceding purchase or mortgage files once 6 yrs have passed from the date they were closed, and, in the case of the mortgage file, it is discharged.
 - ii) If the property is **remortgaged by the firm** destroy the original mortgage file once the mortgage is properly discharged and 6 yrs have passed from the date original mortgage file was closed.
 - iii) If a property the firm acted on for the client is subsequently **sold by a different firm**, see*, below. Destroy the purchase file once 6 yrs have passed from the date they were closed. Also destroy any mortgage file at that time provided it is discharged.
 - iv) If a mortgage which your firm placed is subsequently **discharged by a different firm** or entity, see*, below. Destroy the file once the mortgage is discharged and 6 yrs have passed since the mortgage file was closed.

Where an authorised lawyer has a duty to correct per LRA Adm Reg s. 22, the 15 year retention period restarts when the file is reclosed after a correction.

*If you wish to destroy real estate files pursuant to 1) c) iii or iv, have a process, for your protection, for systematically checking your closed real estate files to identify sold properties and discharged mortgages. That is, check all files of a certain date range date on POL to see if any properties were sold or the mortgage discharged by a different lawyer. This is to avoid any suggestion your destruction decision is arbitrary.

3. **Tax ____ years.** *At the time of writing this draft we have no suggested minimum for tax advice. You will have to determine what retention period is appropriate.*

4. **Wills (client property) & will instructions & supporting file:** Recommend not keeping original wills unless your firm has a good way to protect them and to maintain contact with clients. Consider what might needed beyond the practice of the lawyer.

Wills & client property: return to client. (If you hold them, have an agreement covering the terms of retention).

Will instructions – *at the time of writing this draft, we have no better suggestion than to make an agreement with your clients respecting the terms of retention, including duration and remaining in contact.*

5. **Minute Books (client property):** if holding a minute book for a client to whom it cannot be returned, and if the company has been struck off at RJSC, recommended minimums:
 - a) For single shareholder companies for which there are no minutes documenting assets which could still be important: destroy after strike-off. *(Put in retainer agreement)*
 - b) For other companies: retain evidence of ownership (legal and beneficial) and minutes for ____ years after strike off, if then reasonable to assume it is abandoned and of no value. *(Insert your preference after due reflection; recommend you put this in your retainer agreement)*

6. **Client is a minor:** the latter of the date determined above and client's 19th birthday plus 6 years.

7. **Client is known to have incapacity (s 19 Limitation of Actions Act):** *set a retention period at file opening that considers the risks (privacy and liability for the type of file) and your comfort therewith. The representative for the client should sign a retainer agreement, if possible, that covers retention.*

Option (delete as appropriate)

8. **Criminal Law, acquittal:** 2 years after appeal period passes, but must keep client ID information for 6 years. *(or you may simply use the General Retention Period of 6 yrs).*