

FILE RETENTION AND DESTRUCTION POLICY
(applicable to all files closed after June 12, 2020)

1. Purpose

The purpose of this policy is to provide procedures for the closing, retention and disposition of client files.

2. Definitions

“disposition of client files” means the final action taken with the contents of client files and includes destruction, transfer to the firm’s precedent bank and permanent retention.

“client documents” means all documents provided to the firm by the client, such as physical documents, electronic documents, and/or physical items such as videos, shoes etc.

“client file ” means the physical paper folder(s)/box(es) containing the physical documents related to the matter and/or the electronic folder or directory containing the electronic files, documents , data or information related to the matter.¹

“closed file” means the final electronic file and any documents that remain in original paper format as required by this policy.

“final electronic file” means the electronic copy of the client file.

“file destruction date” is the date on or after which a file may be destroyed.

“lawyer” is the lawyer who has carriage of the file or another lawyer in the firm who has been assigned responsibility for the file.

“paper file” means the physical paper folder(s)/ box(es) containing the physical documents related to the matter.

3. Closing the File

(a) When a matter has been completed, the lawyer shall review the file to determine if the file may be closed.

(b) No file shall be closed unless:

¹ Electronic data and information may include email, draft versions of documents on a server or document management system, scanned/imaged documents, faxes (where there are no paper copies),voicemail, metadata and any other information or data relating to a matter saved and stored in electronic form (e.g. on servers, magnetic media, magneto-optical systems, compact discs, DVDs)

- (i) the retainer has been completed;
 - (ii) a final account, if any, has been forwarded to the client;
 - (iii) all accounts have been paid or forgiven;
 - (iv) there is a final distribution and accounting of all trust balances relating to the file;
 - (v) documents set out in paragraph 4 below have been returned to the client; and
 - (vi) there are no outstanding undertakings.
- (c) No file shall be closed unless a letter has been forwarded to the client by ordinary mail or delivered to the client advising the client that:
- (i) the matter has been completed;
 - (ii) all documents and property belonging to the client as set out in paragraph 4 below have been returned to the client or alternatively confirming any arrangement between the lawyer and the client regarding the storage of the client's property;
 - (iii) the law firm may store the file off-site and if the client requires copies of documents from a file stored off-site, an administrative fee will be charged to retrieve the file;
 - (iv) in accordance with the law firm's policy, a file destruction date has been established and the file will be destroyed on or after the file destruction date without further notice to the client.
- (d) Prior to closing the file, at the lawyer's discretion copies shall be made of any documents that may be used as precedents and placed in the firm's precedent bank for future use. The lawyer will ensure that such precedent documents are stripped of all personal information within the meaning of *The Personal Information and Electronic Documents Act* (PIPEDA) and that client confidentiality, in accordance with the *Rules of Professional Conduct*, is maintained with respect to any other information that identifies the client
- (e) When the file is closed, the file shall be moved from an active status to an inactive status.
- (f) The firm shall maintain a list of closed files including the date that the file was closed.

4. Documents returned to Client

- (a) Prior to closing the client file, the following documents will be returned to the client, pursuant to the procedure set out below, unless otherwise agreed, per practice area and file type. We will retain electronic copies of any documents or papers provided to the client:

Solicitors

Real Estate:

- (i) all originally executed documentation with the reporting letter

Wills/Estates:

- (i) Upon request of the client, authorized attorney or estate trustee as the case may be, the Original Will and Powers of Attorney, which have been stored in our fire-proof vault

Corporate:

- (i) original executed copy of all documents bearing original signatures including, Shareholder Agreements, Contracts, Leases etc. except for Promissory Notes sent by mail or provided in person to the client
- (ii) copy of Promissory Note(s), the original to be kept in the file with Cohen Highley sent by mail or provided in person to the client
- (iii) Upon request of the client and receipt of payment of reasonable expenses to provide same, the original corporate resolutions, by-laws and share certificates, which shall be placed in the Corporate minute book

Regulatory Affairs

The administrative assistant will call the client to ask if they wish to pick the documents up or have them mailed. If the documents are voluminous, the client will be charged the cost of shipping the documents. If the documents are able to fit into an 8 ½ X 11 envelope, the documents will be mailed free of charge. If they choose to pick up the documents and have not done so within 30 days from when the matter was resolved, two (2) warning letters shall be sent to the client. After 30 days from the date the final warning letter is dated, if the client has not picked up the documents, they will be destroyed and only an electronic copy of the documents will be kept. If the client requests a copy of the documents that have been destroyed, they may receive same at their expense. Please note that this department will review each matter on a case-by-case basis depending on the circumstances.

Pipeline and Energy files

- (i) All client documents (documents provided to Cohen Highley from the client). Paper copies of any document singled out by the lawyer will be retained.
- (ii) Authorization and Directions

General Civil Litigation files

- (i) All client documents (documents provided to Cohen Highley from the client)

Municipal, Administrative and Residential Tenancies

Within 30 days from when the matter is resolved, the client may request that the documents listed below may be mailed to them at their cost or be made available to be picked up. If they choose to pick up the documents and have not done so within 30 days from when the matter was resolved, two (2) warning letters shall be sent to the client. After 30 days from the date the final warning letter is dated, if the client has not picked up the documents, they will be destroyed and only an electronic copy of the documents will be kept. If the client requests a copy of the documents that have been destroyed, they may receive same at their expense. Please note that this department will review each matter on a case-by-case basis depending on the circumstances.

Landlord and Tenant Board

- (i) All client documents
- (ii) Authorizations and Directions
- (iii) Original copies of Orders, Releases and Judgments
- (iv) Mediated Agreements

Human Rights

- (i) All client documents
- (ii) Original copies of Orders, Releases and Judgments

Provincial Offences

- (i) All client documents
- (ii) Original copies of Orders, Releases and Judgments

All Other Municipal, Administrative and Residential Tenancies (including Court of Appeal, Divisional Court, Superior Court, Small Claims, OMB, ARB)

- (i) All client documents
- (ii) Original copies of Orders, Releases and Judgments

Family Law and Estate Litigation

Within 30 days from when the matter is resolved, the client may request that the documents listed below may be mailed to them at their cost or be made available to be picked up. If they choose to pick up the documents and have not done so within 30 days from when the matter was resolved, two (2) warning letters shall be sent to the client. After 30 days from the date the final warning letter, if the client has not picked up the documents, they will be destroyed and only an electronic copy of the documents will be kept. If the client requests a copy of the documents that have been destroyed, they may receive same at their expense. Please note that this department will review each matter on a case-by-case basis depending on the circumstances.

Family Law

- (i) All original copies of every document signed by the client, lawyer or other party as the case may be, excluding correspondence
- (ii) Authorizations and Directions
- (iii) Original copies of Orders, Releases and Judgments
- (iv) Separation Agreements
- (v) All documents and property provided by the client
- (vi) Any other documents identified by Lawyer

Estate Litigation

- (i) All original copies of every document signed by the client, lawyer or other party as the case may be, excluding correspondence
- (ii) Authorizations and Directions
- (iii) Original copies of Orders, Releases and Judgments
- (iv) Original Death Certificates
- (v) Original Certificate of Appointment of Estate Trustee with or without a Will
- (vi) All documents and property provided by the client, including Wills and Powers of Attorney
- (vii) Any other documents identified by Lawyer

Personal Injury and Insurance Defence

Personal Injury (including medical malpractice)

The documents listed below will be provided to the client as set out in the Acknowledgement and Request for Documents (attachment 1):

- (i) Client documents (documents provided by the client to Cohen Highley)
- (ii) Property provided (if applicable, such as shoes etc.)
- (iii) Original copy of the release, Minutes of Settlement (if applicable), Orders and Judgments
- (iv) Any other documents requested by the client as set out in attachment 1

Insurance Defence

- (i) Client documents (documents provided by the insurer to Cohen Highley) unless otherwise directed
- (ii) Original copy of the release, Minutes of Settlement (if applicable), Orders and Judgments

Non-profit Co-operative Housing Corporation

The documents listed below will be provided by overnight courier at the expense of the client.

- (i) Client file provided by the Co-operative Housing Corporation
- (ii) Original copy of the order unless directed to enforce the order
- (iii) Original copy of the Minutes of Settlement (if applicable)

Bankruptcy, Insolvency, Commercial Law

When your matter has been completed, you will be entitled to receive copies of any documents relating to the legal services performed by us for you not previously provided to you, at your own cost, excluding our internal accounting records and other documents belonging to us.

Please note that in the normal course of the file management, you will be provided with copies of all essential or pertinent documents on an on-going basis.

- (i) Documents requested by the client, billed at the hourly rate at the time of the request for the time and costs associated with the duplication of the material;

Employment Law

The following documents will be made available for pick up by the client. If the documents have not been picked up, two (2) warning letters shall be sent to the client. After 30 days from the date the final warning letter is dated, if the client has not picked up the documents, they will be destroyed. Please note that this department will review each matter on a case-by-case basis depending on the circumstances.

- (i) A copy of originally signed Agreements, Releases, Judgements and / or Orders, or any other document containing original signatures;
- (ii) All client documents;
- (iii) Any other document(s) specifically requested by the client. The lawyer retains the right to retain copies of documents such as confidential internal correspondence or memorandums;
- (iv) The lawyer also retains the right to charge a reasonable amount for the cost of providing such documents.

Class Actions

The following documents will be made available for pick up by the client. If the documents have not been picked up, two (2) warning letters shall be sent to the client. After 30 days from the date the final warning letter is dated, if the client has not picked up the documents, they will be

destroyed. Please note that this department will review each matter on a case-by-case basis depending on the circumstances.

- (i) A copy of originally signed Agreements, Releases, Judgements and / or Orders, or any other document containing original signatures;
- (ii) All client documents;
- (iii) Any other document(s) specifically requested by the client. The lawyer retains the right to retain copies of documents such as confidential internal correspondence or memorandums; and
- (iv) The lawyer also retains the right to charge a reasonable amount for the cost of providing such documents.

5. Retention of Files

- (a) Closed files shall be stored in facilities located in a different location than the offices of the Cohen Highley LLP. The facilities are physically secure so as to maintain client confidentiality and to protect against damage or loss.
- (b) Closed files shall contain original copies of paper documents listed below at paragraph 5.1 and an electronic copy of the entire file.

5.1 Prior to closing the file, the paper file shall be scanned and kept electronically only, except for the following documents, per practice area and file type, which will be retained in both paper and electronic formats:

For all files:

- (i) Retainer Agreements
- (ii) Accounting Records (ie. Pre-Bills, Suppliers' invoices for services provided to Cohen Highley LLP)

Solicitors

Corporate:

- (i) All documents signed by the client, lawyer or third party
- (ii) Promissory notes
- (iii) Original corporate resolutions, by-laws and share certificate shall be placed in the Corporate Minute Book

Wills/Estates:

- (i) Original Will and Powers of Attorney shall be stored in our fire-proof vault

- (ii) Notarial Copy of the Will and Powers of Attorney
- (iii) Original Certificate of Appointment of Estate Trustee with or without a Will
- (iv) Releases
- (v) Original Death Certificates

Real Estate:

- (i) All original copies of every document signed by the client, lawyer or other party as the case may be
- (ii) The solicitors retain the discretion to retain additional documents in their original form on a file by file basis

Regulatory Affairs

Pipeline and Energy files:

- (i) Any originating process (ie notice of action, statement of claim, etc)
- (ii) Orders
- (iii) Documents issued from the court office
- (iv) Intake and retainer forms and agreements
- (v) Releases
- (vi) Oversized maps
- (vii) Minutes of Settlement
- (viii) PIPEDA form
- (ix) Any other documents identified by Lawyer

General Civil Litigation files:

- (i) Any originating process (ie notice of action, statement of claim, etc)
- (ii) Orders
- (iii) Documents issued from the court office
- (iv) Intake and retainer forms and agreements
- (v) Releases
- (vi) Minutes of Settlement
- (vii) PIPEDA form
- (viii) Any other documents identified by Lawyer

Municipal, Administrative and Residential Tenancies

Landlord and Tenant Board:

- (i) Intake and retainer forms and agreements
- (ii) Releases
- (iii) PIPEDA form
- (iv) Financial records
- (v) Any other documents that Lawyer or Paralegal considers appropriate.

Human Rights:

- (i) Any originating process
- (ii) Orders
- (iii) Documents issued from the Tribunal
- (iv) Intake and retainer forms and agreements
- (v) Releases
- (vi) Minutes of Settlement
- (vii) PIPEDA form
- (viii) Financial records
- (ix) Any other documents that Lawyer considers appropriate

Provincial Offences:

- (i) Any originating process
- (ii) Orders
- (iii) Documents issued from the Court
- (iv) Intake and retainer forms and agreements
- (v) PIPEDA form
- (vi) Financial records
- (vii) Any other documents that Lawyer considers appropriate

All Other Municipal, Administrative and Residential Tenancies (including Court of Appeal, Divisional Court, Superior Court, Small Claims, OMB, ARB)

- (i) Any originating process (i.e. notice of action, statement of claim, etc)
- (ii) Orders
- (iii) Documents issued from the Court, Board or Tribunal

- (iv) Intake and retainer forms and agreements
- (v) Releases
- (vi) Minutes of Settlement
- (vii) PIPEDA form
- (viii) Financial records
- (ix) Any other documents that Lawyer considers appropriate

Family Law

- (i) All documents bearing original signatures, except correspondence and pleadings

Estate Litigation

- (i) All documents bearing original signatures, except correspondence and pleadings

Personal Injury and Insurance Defence

Personal Injury (including Medical Malpractice):

- (i) Judgments and/or Orders
- (ii) Releases
- (iii) Minutes of Settlement
- (iv) Originating Process

Insurance Defence:

- (i) Judgments and/or Orders
- (ii) Releases
- (iii) Minutes of Settlement
- (iv) Originating Process

Non-profit Co-operative Housing Corporation

- (i) Originating Process
- (ii) Release
- (iii) Minutes of Settlement
- (iv) Order (if instructed to enforce)

Bankruptcy, Insolvency, Commercial Law

- (i) Originally executed Agreements
- (ii) Originally executed Releases
- (iii) Documentation/Reporting Book
- (iv) Accounting records
- (v) Title search notes
- (vi) Correspondence
- (vii) Original pleadings
- (viii) Court Orders/Judgments

Employment Law

- (i) None

Class Actions

- (i) None

6. Destruction of Files

- (a) All files shall be retained permanently in electronic form only
- (b) No file shall be closed unless the lawyer reviews the file and determines whether the original copies of paper documents listed in section 5 above (“Section 5 Documents”) are appropriate for destruction at a future date or whether they should be retained permanently in paper form.
- (c) If the Section 5 Documents are appropriate for destruction, they shall be destroyed pursuant to the following guidelines:
 - (i) If the lawyer determines that the Section 5 Documents are appropriate for destruction at a future date, the lawyer shall establish:
 - a destruction date no earlier than 15 years after the date that the file is closed (or such shorter or longer period as may be determined by the responsible lawyer at the time the file is closed); and
 - a date for the review of the file no earlier than 90 days prior to the file destruction date (“file review date”).
 - (ii) The lawyer will exercise professional judgment in determining whether Section 5 Documents are appropriate for destruction and in establishing a destruction date. In making these decisions, the lawyer shall consider:

- the length of time that the lawyer is required to retain documents pursuant to specific laws or regulatory provisions;
 - the client's age and competency;
 - the likelihood that the lawyer or law firm will require the Section 5 Documents for the future representation of the client;
 - the length of time that the lawyer or law firm may be liable for claims involving professional negligence; and
 - the likelihood that the lawyer or law firm will require the Section 5 Documents because of the nature of the matter, the outcome of the matter or the fact that the file involved a difficult client.

- (iii) All destruction dates and file review dates shall be entered into the firm's tickler system.

- (iv) The lawyer shall review the file on or after the file review date and prior to the file destruction date to determine whether circumstances have changed since the establishment of the file destruction date and whether the destruction should proceed.

- (v) The closed files shall be destroyed in the following manner, to ensure that client confidentiality is maintained:
 - All documents not retained in paper format shall be shredded and disposed of by an independent contractor retained to destroy confidential paper documents.
 - Section 5 Documents shall be shredded and disposed of by an independent contractor retained to destroy confidential paper documents.
 - Electronic Copy of the Entire File will remain in a secure format on both hard drive and disk

- (vi) A list or database of files that are only retained in electronic form shall be maintained.

- (vii) A record of destruction or disposal shall be maintained. The record shall include the following information: the name and address of the client, the file number, a brief description of the matter, the file closure date, the file disposition date, and the name of the lawyer who authorized the file disposition.