

CHAPTER 1

THE LEGAL OFFICE ENVIRONMENT



Laws should be like clothes; they should be tailored to fit the people they are meant to serve. And when the laws do not fit the people, or the people do not fit the laws, legal wars break out and land on the doorstep of the legal profession — happily, the *second* oldest profession.

This chapter covers an overview of the legal office environment and the role of lawyers, law clerks, legal assistants (also referred to as legal administrative assistants), and paralegals. At points of the gavel, you will read decided court cases that will reinforce the substantive law discussed and also help you see how our courts interpret our laws when people sue.



THE LEGAL OFFICE

The legal office, or law firm, is the place where lawyers carry on the business of law. Most law firms practise as **L**imited **L**iability **P**artnerships, identified by the abbreviation **LLP** following the partnership name, which basically means that the law partners are not personally liable for any negligent acts of other partners or employees who are directly supervised by other partners. Law firms vary in size, ranging from one lawyer to over two hundred lawyers. Figure 1.1 shows the organizational structure of the small law firm of Michael, Eliad & Redford LLP. The law firm consists of the three partners whose surnames make up the name of the law firm. The law firm employs one associate (hired lawyer), who is Margaret Nesh, and one articling student (student lawyer). Both Ms. Nesh and the articling student report to the partners. The law firm also employs legal assistants, law clerks, a paralegal, a receptionist, and a bookkeeper.

Note from Figure 1.1 that you are a **law clerk/assistant** to Mr. Robert B. Redford. You report directly to Mr. Redford and, by extension, to the remaining partners. Whenever the need arises, you are also expected to do work for the associate and the articling student. The same applies to the remaining legal support staff. This reporting structure is typical of many small law firms. Figure 1.2 is an organizational chart of a large law firm. It features a sophisticated organizational hierarchy with numerous departments, services, and career positions typical of many large law firms.

LAWYERS

Education Generally, Ontario lawyers must obtain a university degree; pass a Law School Admission Test (LSAT); obtain from a law school a Bachelor of Laws degree (LLB) or its equivalent Juris Doctor (JD) degree; write a barrister and a solicitor licensing examination; complete either (a) an articling period during which they work under the supervision of a lawyer, or (b) a Law Practice Program consisting of a training course and a work placement; and comply with the

Figure 1.1 Organizational Chart of Michael, Eliad & Redford LLP, Small Law Firm

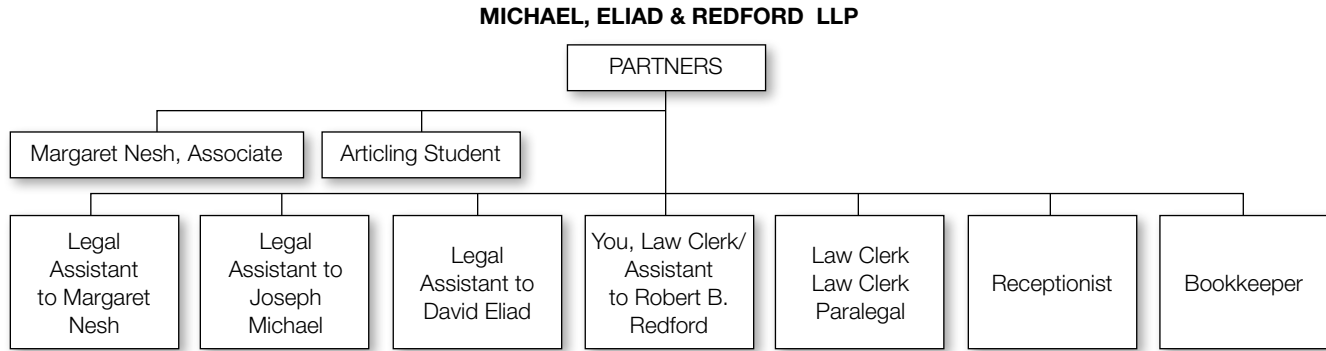
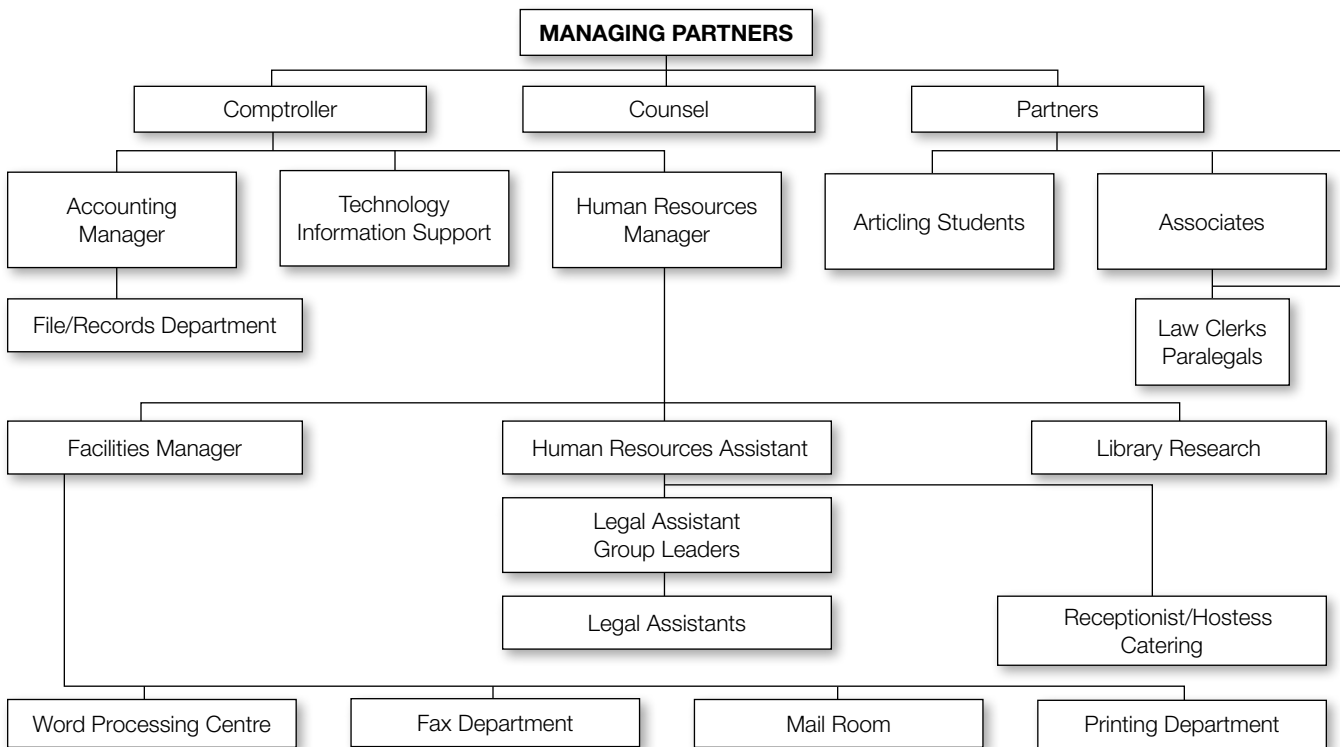


Figure 1.2 Organizational Chart, Large Law Firm



terms of the good character requirement under Part VI of the Lawyer Licensing Process Policies. Lawyers are then said to be “called to the bar,” which is basically a graduation ceremony for lawyers; they are issued a class L1 licence and can practise law in Ontario as barristers and solicitors.

Barristers and solicitors The terms come from early English usage. Originally in England, the section of the court where only the lawyers for the parties involved in a law suit were permitted to enter was physically divided from the area of the spectators by a **bar**; hence, **barrister**. In England, barristers are trial, or litigation, lawyers, and solicitors are lawyers who work in all non-litigation areas of law, e.g. real estate. Canadian lawyers perform both functions and are referred to as barristers and solicitors.

Lawyers Litigation lawyers in Ontario are known as **lawyers**. The *Rules of Civil Procedure* have been amended to replace the terms solicitor and counsel with the term lawyer. The change

was made in the interest of plain language and consistency as all three terms: solicitor, counsel, and lawyer, had been inconsistently used in the *Rules of Civil Procedure*. The *Courts of Justice Act*, the *Family Law Rules*, and the *Rules of Small Claims Court* also use only the term lawyer.

LAW SOCIETIES

The Canadian legal profession governs itself through a law society in each province, Figure 1.3. In Ontario, it is the Law Society of Ontario. All Ontario lawyers must become members of the Law Society of Ontario in order to practise law. Lawyers in practice must comply with the Law Society's *Rules of Professional Conduct*. Here are two sample rules from the *Rules of Professional Conduct*:

Rule 3.2-7 A lawyer shall not

(a) knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct;

Rule 3.3-1 A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless (a) expressly or impliedly authorized by the client; (b) required by law or by order of a tribunal of competent jurisdiction to do so; (c) required to provide the information to the Law Society; or (d) otherwise permitted by rules 3.3-2 to 3.3-6.

LAW ASSOCIATIONS

Canadian lawyers may voluntarily become members of the Canadian Bar Association, which has branches in each province. The Ontario branch is called Ontario Bar Association. There are also county and district law associations. Law associations are to be distinguished from law societies in that law associations aim to represent the interests of lawyers, whereas law societies aim to protect the interests of the public against unscrupulous lawyers.

LAW CLERKS, LEGAL ASSISTANTS, AND PARALEGALS

There is a wide variety of careers in today's law office. The ones working closest with the lawyer and the client are **law clerks**, **legal assistants** (also referred to as **legal administrative assistants**), and lawyer-supervised **paralegals**. The legal work among these legal careers often overlaps, in that all require knowledge of procedural law, i.e. practical "how to" knowledge, as well as substantive law, i.e. knowledge of the theory of law. A general distinction is that law clerks and lawyer-supervised paralegals require a greater knowledge of substantive law. For facility, we refer to law clerks, legal assistants, and lawyer-supervised paralegals, collectively, as **law clerks/assistants**. Law clerks/assistants may work in any area of law in which the supervising lawyer practises.

PRACTICAL SKILLS

Proficient keying, computer literacy, competency in language craftsmanship, spelling, proofreading, checking for exactness, sense, and coherence, and questioning when in doubt are crucial skills in all aspects of legal work. As important is knowledge of legal software that is commonly used in practice, some of which includes: Elite Enterprise and PCLaw for legal accounting, Divorce-Mate for family law, ACL for civil litigation, Fast Company for corporate, Unity for real estate, Teraview for real estate electronic registration, and Estate-A-Base for wills and estates, almost all of which are used in this manual.

Legal TIP

Law Clerks/Assistants must never give legal advice and must always keep client matters confidential.

Figure 1.3 Provincial/Territorial Law Societies and Courts in Canada

Law Society and Code of Conduct	Highest Court of First Instance
The Law Society of Alberta https://www.lawsociety.ab.ca • <i>Code of Conduct</i>	Court of Queen’s Bench https://albertacourts.ca
The Law Society of British Columbia https://www.lawsociety.bc.ca • <i>Code of Professional Conduct for British Columbia</i>	Supreme Court of British Columbia https://www.bccourts.ca
The Law Society of Manitoba https://www.lawsociety.mb.ca • <i>Code of Professional Conduct</i>	Court of Queen’s Bench for Manitoba http://www.manitobacourts.mb.ca
The Law Society of New Brunswick https://lawsociety-barreau.nb.ca/en • <i>Code of Professional Conduct</i>	Court of Queen’s Bench https://www.courtsnb-coursnb.ca
Law Society of Newfoundland & Labrador https://lsnl.ca • <i>Code of Professional Conduct</i>	The Supreme Court of Newfoundland and Labrador https://court.nl.ca/supreme
Law Society of the Northwest Territories https://www.lawsociety.nt.ca • <i>Code of Professional Conduct</i>	Supreme Court of the Northwest Territories https://www.nwtcourts.ca
Nova Scotia Barristers’ Society https://nsbs.org • <i>Code of Professional Conduct</i>	The Supreme Court https://www.courts.ns.ca
Law Society of Nunavut https://www.lawsociety.nu.ca • <i>The Canadian Bar Association Code of Professional Conduct</i>	Nunavut Court of Justice https://www.nunavutcourts.ca
The Law Society of Ontario https://lso.ca • <i>Rules of Professional Conduct</i> (Lawyers) • <i>Paralegal Rules of Conduct</i> (Licensed Paralegals)	Superior Court of Justice https://www.ontariocourts.ca/scj
The Law Society of Prince Edward Island http://lawsocietypei.ca • <i>Code of Professional Conduct</i>	Supreme Court of Prince Edward Island https://www.courts.pe.ca/supreme-court
Barreau du Québec https://www.barreau.qc.ca/en • <i>Code of Professional Conduct of Lawyers</i>	Superior Court of Quebec https://www.justice.gouv.qc.ca/en
The Law Society of Saskatchewan https://www.lawsociety.sk.ca • <i>Code of Professional Conduct</i>	Court of Queen’s Bench https://sasklawcourts.ca
The Law Society of Yukon https://lawsocietyyukon.com • <i>Code of Professional Conduct</i>	Supreme Court of Yukon https://www.yukoncourts.ca

Legal terminology Legal terms have legal meanings and require thorough knowledge for correct placement and usage. Here, for your amusement, are excerpts from law firm letters which reveal an embarrassing lack of language skills and legal terminology:

The thought of what her husband will do next is making my client all erotic and depressed.
(The word erotic should be erratic.)

He died undusted and without a shoe. Should read: He died intestate and without issue.
(**Intestate** means **without having made a will**; **issue** means **children**.)

Practice and procedure Work in the legal office consists almost entirely of **practice** (tasks routinely done) and **procedure** (tasks requiring specific legal steps). In practical terms, this means carrying a client file from start to finish. Typical practice and procedure tasks include: meeting with clients; scheduling appointments; opening client files; maintaining docket and reminder systems; drafting pleadings; preparing correspondence and accounts; researching legal questions and preparing memorandums of law; issuing and filing court documents; preparing incorporation documents; preparing wills; and preparing real estate documents, all of which are covered in this manual.

Substantive law Substantive law means the substance, or theory, of law. Substantive knowledge gives meaning to your work because it tells you why a particular task needs to be done. Lack of knowledge of substantive law results in a mechanical performance and limits the use of initiative and good judgment so necessary in legal work. If, for example, the law clerk/assistant understands why a statement of defence must be served and filed within the applicable time limit, the law clerk/assistant could ensure that the lawyer is alerted to the deadline and thus avoid the serious consequences which could ensue if the deadline were to be missed.

Confidentiality The very nature and business of law involves individuals who are on either the positive or the negative side of the law. Whatever the client's business, be it a minor civil matter, such as a dispute with a neighbour over the exact proximity of a mutual fence, or a serious criminal offence, such as rape or murder, it must be regarded at all times as privileged and confidential information. Discussions of clients' business outside of the law firm are an indefensible breach of duties and ethics. Law firms routinely have law clerks/assistants sign confidentiality agreements, Precedent 1.1, to this effect. Jeopardy to the client, the lawyer, or the law firm must never be chanced. Consider the case situation of a young law clerk/assistant who, in her enthusiasm, leaked to her friends the fact that a well-known celebrity would be visiting her law firm the following morning. Youthful eagerness could not be contained, and overnight, a throng of fans gathered at the law firm to catch a glimpse of their idol and, at the same time, embarrass our law clerk/assistant upon arrival at the office.

SOFT SKILLS – PROFESSIONALITY

In all law-related capacities, soft skills such as the ability to get along with people and to communicate effectively are personal qualities which almost always triumph over naked skill proficiencies. Ample are the theories of behavioural scientists such as McGregor, Maslow, and Herzberg about the need for understanding what motivates positive and negative human behaviour and how soft skills such as a positive attitude and the ability to communicate effectively are necessary for a successful legal career. We refer to these important soft skills as **professionalism** (professionalism and personality).

Positive attitude Attitude concerns itself with a physical behaviour as well as with a way of thinking and feeling. Whether in positive or negative terms, this state of body and mind ultimately reveals itself. Consider the following guidelines in evaluating your own attitude and understanding that of others:

- Know yourself and how others see you; assess objectively your personal strengths and weaknesses, your disposition, grooming, and attire.
- Understand what motivates a particular behaviour in others; consider the individual as a whole, reserve judgment, and empathize.
- Avoid impulsive speech or action. To regret what has been left unsaid or undone is to be still in control, but to grieve over that which has been said or done is to openly submit to lack of self-control.
- Admit to an error, apologize, and offer to rectify the problem. It takes more nobility to swallow pride than to wave it on a banner.
- Perceive merit in everyone and praise liberally but meaningfully.
- Use humour to soothe, delight, and relieve. A good sense of humour begins with the ability to laugh at oneself.
- Employ tact and talent; the difference is that talent has the natural strength of knowing what to do, whereas tact has the virtue of knowing how and when to do it.

Ability to communicate effectively Human interaction is not only unavoidable but also difficult because to be effective, it must be performed at various levels. Consider, for example, the variety of ways in which the same message would be delivered to a child, a friend, an acquaintance, a business associate, or an employer. In business, the levels of communication usually consist of superiors, subordinates, colleagues, business acquaintances, and business friends. Applying appropriate regard and discretion when communicating within the hierarchy of your workplace is key to effective communication. Following are guidelines for effective communication, both on and off the job:

- Listen attentively to a speaker instead of concerning yourself with what you intend to say next.
- Participate and share in the responsibility of effective communication. It takes at least two to communicate, and it might only sometimes be the other at fault.
- Take care to avoid misconstruing or distorting messages and meanings.
- Beware of the proverbial “grapevine.” It takes greater strength to dissuade gossip than to nourish it.
- Present a difference of opinion rationally and objectively.
- Attempt to resolve a personality conflict or, at least, to make a difficult situation tolerable. Not everyone with whom we meet or work becomes a close or intimate friend.
- Regard another’s statements without belligerence, without eagerness for personal victory, without contempt, and without any airs of superiority.

Legal TIP

The law forbids licensed paralegals to hold themselves out as lawyers.

LICENSED PARALEGALS

Licensed paralegals are legal professionals who are licensed and regulated by the Law Society of Ontario. Licensed paralegals may work with lawyer supervision in a law firm or without lawyer supervision in a business enterprise of their own. To become licensed, paralegals must complete a college paralegal course that is accredited by the Law Society; write a paralegal

licensing examination; be of good character, e.g. must not have been in any legal trouble or fired for cause; apply to the Law Society for a P1 (Paralegal) licence; and abide by the *Paralegal Rules of Conduct* which the Law Society prescribes. Licensed paralegals may provide legal services in a limited scope of practice: Small Claims Court, tribunals, provincial offences, and minor summary conviction offences. See how the following well-known case paved the way for the licensing of paralegals. It is the 1987 case between the Law Society of Upper Canada (now Law Society of Ontario) and Mr. Brian Lawrie and his paralegal firm POINTTS.

The Law Society of Upper Canada prosecuted Mr. Brian Lawrie and POINTTS (Provincial Offences Information and Traffic Ticket Service) for doing work that only lawyers are permitted to do. Mr. Brian Lawrie, a Toronto paralegal and former police constable, operated POINTTS, a business franchise. A lower court ruled against Mr. Lawrie. Mr. Lawrie then appealed to the Ontario Court of Appeal, and the Court of Appeal ruled that POINTTS may practise in such areas as minor traffic violations, landlord and tenant disputes, small claims, labour board hearings, and some summary convictions.



GETTING STARTED IN LEGAL OFFICE PROCEDURES

Welcome to the law firm of Michael, Eliad & Redford LLP. You will be working as a law clerk/assistant to Robert Bret Redford. You will find start-to-finish legal files, step-by-step guidance and completed precedents throughout this *Legal Office Procedures* textbook to help you gain thorough knowledge and understanding of the type of work and skills required for success on the job.

Working with precedents Much of the work in the law office is generated from **precedents**. Precedents are examples of previously completed legal documents. The rich selection of precedents in this *Legal Office Procedures* textbook is located at the end of each chapter and will not only assist you during your legal studies, but also serve as your trusty practical reference tool in your legal career.

This *Legal Office Procedures* textbook comes with a separate *Legal Office Procedures Workbook* that is full of hands-on, real-world start-to-finish interfacing files, tasks, and exercises to fully prepare you for success in the workplace.

To round out your legal skills, also available is a separate *Legal Office Transcription* book, containing real-world audio files, legal terminology, and grammar brush-up exercises, with cameo dictations by their Lordships Justice John A. Scollin of the Manitoba Court of Queen's Bench and Justice Thomas G. Zuber of the Ontario Superior Court of Justice.

CHAPTER SUMMARY



The law office is also referred to as a law firm. Many law firms operate as limited liability partnerships where lawyers are not liable for the negligent acts of other partners. The Law Society of Ontario regulates the legal profession, and all lawyers must become members of it in order to practise law.

There are many careers in the law office, including **law clerks** and **legal assistants** (also referred to as **legal administrative assistants**). Their duties are similar and often overlap, the main difference being that law clerks require more extensive knowledge of substantive law. Legal assistants and law clerks can work in all of the areas of law in which a supervising lawyer practises. **Paralegals** are licensed professionals who may work with or without lawyer-supervision and may run independent businesses to provide only those legal services that the law permits them to provide. For facility, this manual refers to law clerks, legal assistants, and lawyer-supervised paralegals, collectively, as **law clerks/assistants**. Law clerks/assistants must never give legal advice and must always keep client matters confidential.

Among the important skills which successful law clerks/assistants must possess are those relating to language mastery and effective communication as well as such personal attributes as a positive attitude, conscientiousness, flexibility, and a good sense of humour.

REVIEW QUESTIONS

1. What is the name of the law society which governs Ontario lawyers?
2. What is the difference between substantive law and procedural law?
3. What is a precedent?
4. What are your strongest personal and business skills?
5. Paralegals are medical workers who drive ambulances to scenes of emergency.
Yes___ No___

MICHAEL, ELIAD & REDFORD LLP

Name of Employee: _____

Position: Law Clerk/Legal Assistant/Paralegal

Date: _____

In consideration of my employment by Michael, Eliad & Redford LLP, a law firm (Firm), I agree with Michael, Eliad & Redford LLP as follows:

1. Definitions

(a) **Personal information** As used in this agreement, **personal information** means any information about an identifiable individual or that permits an individual to be identified. It includes information which is voluntarily provided by an individual. Personal information includes information to which I may have access in connection with my employment.

(b) **Proprietary information** As used in this agreement, **proprietary information** includes, by way of example and without limitation, trade secrets, software, data, and copyrightable materials, and financial data of the Firm's clients. Proprietary information includes information to which I may have access in connection with my employment.

(c) **Third party information** As used in this agreement, **third party information** means confidential personal and/or proprietary information I have received and/or may in the future receive from third parties. Third party information includes information to which I may have access in connection with my employment.

2. Confidentiality

I understand and agree that my employment creates a relationship of confidence and trust between me and the Firm with respect to (a) all personal information, (b) all proprietary information, and (c) all third party information, all of which is referred to in this agreement, collectively, as **confidential information**. **At all times, both during my employment with the Firm and after its termination, I will keep in confidence and trust all such confidential information and will not use or disclose any such confidential information except as may be necessary in the ordinary course of performing my duties in the Firm.** The restrictions set forth in this section 2 will not apply to information which is generally known now or in the future to the public, unless such knowledge results from an unauthorized disclosure by me, but this exception will not affect the application of any other provision of this agreement to such information in accordance with the terms of such provision.

3. Materials

All documents, laptops, hard drives, computers or other equipment, records, apparatus, equipment and other physical property, whether or not pertaining to personal information, proprietary information, and/or third party information, which are furnished to me by the Firm or are produced by me in connection with my employment will be and remain the sole property of the Firm. I will return to the Firm all such materials and property as and when requested by the Firm. In any event, I will return all such materials and property immediately upon termination of my employment for any reason. I will not take with me any such material or property or any copies thereof upon such termination.

4. Injunction

I agree that it would be difficult to measure any damages caused to the Firm which might result from any breach by me of the promises set forth in this agreement, and that in any event, money damages would be an inadequate remedy for any such breach. Accordingly, I agree that if I breach, or propose to breach, any portion of this agreement, the Firm shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Firm.

I understand that this agreement affects important rights. I have read it carefully and am satisfied that I understand it.

Accepted and agreed to by:

MICHAEL, ELIAD & REDFORD LLP

By: _____

Signature of Employee

