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# Federation of Ontario Law Associations

*Fall Plenary  
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Brookstreet Hotel  
Ottawa, Ontario.*

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# Transitioning Into a Practice

- **Who we are why we're here.**
  - **Nicole Truman, Fox Law**
  - **Kelly Anne Gerra, LSO**
  - **Ella Forbes-Chilibeck, Forbes-Chilibeck Employment Law**
  - **Nathan Higgins, EDH Law**
  - **Curtis Pineiro, Central East Representative, FOLA**

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# Lawyers getting "in" and lawyers getting "out" - how to make a connection?

- Per Kelly:
  - Exiting practice is a gradual process, not a sudden event – like landing a plane
  - **Requires planning and communication.**
  - Key steps: complete time-sensitive matters, transfer/return files, fulfill obligations, provide notification to clients, LSO, LAWPRO, Legal Aid etc., and render/collect final bills, return trust monies. Use LSO's Guide to Closing a Practice and Timeline Checklist.
  - **Contingency planning vs. succession planning**
  - Third-party resources: Retirement on Trial documentary, LAWPRO's retirement guide, Government of Canada retirement checklist
  - Lawyers over 65 can apply for a 90% fee reduction and maintain their license.
  - Options: surrender license or stay engaged through mentorship, consulting, or coaching (e.g., CAN).

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# Structure of the transaction

- Merging? LLP? Co-own a Pro Co?
- Taking over? Space sharing during overlap? Working in association?
- Per Kelly:
  - Ethical considerations include confidentiality, client notice and choice, conflict checks, transparent arrangements, withdrawal obligations, and updating LSO via LSOCconnects

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# Relationships

- Between the outgoing and the incoming lawyer
  - Will there be overlap, and if so, how long?
  - What will that relationship look like?
  - employer / employee, partnership, in association, contractor / "of counsel", etc.
- To maintain the **goodwill** of the practice, consider maximizing your use the limited overlap time is essential.
- Clarify what the expectations of the exiting person. Utilize the exiting practitioner to their maximum.
- Everything takes longer than you expect.
- Written agreement = very important.
- Per Kelly:
  - Marketing and advertising must reflect the true nature of the relationship (e.g., employee, contractor, “of counsel”).
  - Communications must be clear and not misleading.

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# Limiting and/or assigning liability

- Are you the new owner of the retiring lawyers files? Custodian? Curator?
- Physical storage required? Who pays for that?
- File retention period? When are files eventually disposed of?
- What if the files are damaged post-retirement? Do they need to be insured?
- File status on transition date: there will be closed files, active files and future files.
- Per Kelly:
  - Understand what you're acquiring—files, undertakings, responsibilities.
  - Ensure run-off insurance and conduct due diligence.
  - Review wills and consider renunciation if named executor/trustee.
  - Follow LAWPRO retention guidelines and obtain written acknowledgements for file

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# Employees

- Retention is important.
- “We’ve inherited staff that have been practicing law longer than I’ve been alive.”
- Possible Push back on new initiatives of new owners.
- Clients want to work with the personnel they know.
- Per Kelly:
  - Staff can create conflicts of interest—screening and training are essential.
  - Consider client relationships and staff retention during transitions.

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# Books and financial records

- New systems of bookkeeping?
- Inheriting paper?
- Per Kelly
  - Clear trust accounts before closing.
  - Maintain records per By-Law 9.
  - Use LSO's Practice Management Helpline for guidance.



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# What is the retiree receiving?

- **Need to define what the acquirer is receiving and what they are giving in exchange.**
  - No cash assumption of practice?
  - One-time payment?
  - Tail-fees?
  - Combo? Money down plus smaller tail-fees?
  - What about contingency files?
- Per Kelly:
  - Ethical issues arise in financial arrangements—avoid tying payments to specific
  - clients (triggers referral/fee-splitting rules).
  - Permitted: percentage of overall revenues.
  - Contingency files: governed by agreement; seller may be compensated for work done.

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# Corporation vs unincorporated practice.

- Purchasing shares vs. asset purchase (e.g. book of business, will vault, IT, etc.)

## **Taxes:**

- Might want to maximizing capital gains exemption.
- Negotiation ensues.
- May be more advantageous for a seller to receive their money as an employee over years, tail fees, vs. lump which has capital gains attached.
- Per Kelly:
  - Tax implications vary depending on how the deal is structured
  - Seek expert advice from tax lawyers or accountants to determine most advantageous approach
  - Consider having a separate will for your law practice – again, consult with an expert to ensure it is properly drafted

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# Practical Takeaways:

- Start planning early
- Use LSO/CPD resources
- Create a practice playbook to assist with transfer/sale to a successor licensee
- Consider phased retirement or mentorship roles or joining "CAN" = Coach and Advisor Network (CAN) run by the Law Society of Ontario
- Seek advice and talk to other lawyers and other professionals