

A leg up

How LAWPRO helps lawyers manage risk

James Morgan was wary.

A client for whom the Tillsonburg lawyer had previously done a small amount of work had retained Morgan to assist on the financing of his new business. The lender was an individual in the U.K.

Using a U.K. “lawyer,” Morgan’s client and the lender had already arranged all the necessary contracts. All they wanted Morgan to do was allow his trust account to be used as a conduit. The financing funds would be deposited into his trust account, and he would then disburse them.

“I was immediately suspicious because of an article I had read in *LAWPRO Magazine* about a similar situation,” says Morgan.

Email correspondence with the lender’s U.K. “lawyer” seemed legitimate, but “grievous spelling errors” in the emails further aroused Morgan’s suspicions.

When the U.K. “lawyer” sent a bank draft for \$61,300, LAWPRO warnings about counterfeit bank drafts sprang to mind. “I’d come to realize that you just can’t rely on a bank draft,” so he asked his bank to check it before depositing it.

Meanwhile, the U.K. “lawyer” sent a second bank draft for \$49,800.

Two days later, the U.K. “lawyer” instructed him to send all the money to a bank in Malaysia – rather than to Morgan’s client – and attempted to pressure Morgan to do so immediately. At this point, “bells were going off in my head,” says Morgan.

Then the bank notified him that it thought the first bank draft was counterfeit. (Subsequent investigation by the bank established that both bank drafts were indeed fraudulent.)

Morgan reported the matter to LAWPRO, the Law Society and the police, who are investigating. “Even though the fraudsters didn’t get any money, I wanted to help LAWPRO protect other lawyers.”

Both Morgan and the police believe that his client was an innocent dupe – “important to note,” says Morgan, “as a lawyer may not see the danger simply because he believes his client is acting honestly.”

Fraud alerts

Morgan’s experience, sad to say, is not unusual. LAWPRO fraud alerts helped to prevent lawyers from being defrauded of millions of dollars in 2009.

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James Morgan

Just before the Victoria Day holiday weekend, for example, we fired off a series of emails warning about a potential bad cheque fraud scam after a number of apparently related frauds came to our attention. Ultimately we determined that there were 18 separate fraud attempts with an average value of \$301,000 – a total of \$5.5 million in potential trust account shortfalls.

“About one-third of the lawyers who had been approached by the fake clients had figured out that it was a scam,” says Dan Pinnington, director of practicePRO. “Another one-third were suspicious – and our emails confirmed their suspicions. But one-third didn’t realize they were about to be defrauded until they saw our e-blasts.” Millions of dollars in trust account shortfalls were prevented when lawyers who heeded our warnings and asked their bogus “clients” a few probing questions stopped the fraudsters in their tracks.

In 2009, LAWPRO also published articles on how lawyers can avoid being victimized by fraud in three issues of *LAWPRO Magazine*. We created the downloadable Fraud Fact Sheet checklist (www.practicepro.ca/FraudInfoSheet), which summarizes the major types of fraud that target lawyers and the red flags that lawyers and law office staff should watch out for. And we maintain the LAWPRO fraud page (www.practicepro.ca/fraud), which contains extensive information on fraud prevention.

Administrative dismissal alert

Fraud is not the only area in which we help lawyers avoid claims by providing practical advice and assistance.

For example, an article by LAWPRO claims counsel Domenic Bellacicco in the July 2009 issue of *LAWPRO Magazine* addressed a situation that we see all too frequently when an action has been dismissed for delay by the registrar.

Many lawyers mistakenly think that a registrar's dismissal order can be easily set aside, Domenic noted. So, instead of calling LAWPRO, they bring a motion to set aside the registrar's order but are not successful in restoring the action because the motion materials are poorly drafted and the affidavit in support lacks crucial details.

On such a motion, the court "will have no difficulty in dismissing a motion for want of proper evidence," Domenic explained.

By reporting the matter late to LAWPRO, lawyers jeopardize the chance of a successful appeal. Because all relevant information is typically available prior to the motion, it is unlikely that fresh evidence can be introduced on appeal.

Lawyers should therefore call LAWPRO immediately upon learning that an action has been dismissed for delay, Domenic advised. We will help by reviewing the material for a motion to set aside the registrar's order and, if necessary, will retain counsel to prepare the motion record and argue the motion.

Domenic's timely article, "Administrative dismissal: Take it seriously and ask for (our) help," was a valuable eye-opener for many lawyers. "There was a flurry of activity right after the article appeared," says Domenic. "I must have got a dozen phone calls from lawyers saying 'I have a motion pending I think I should report.' We have also received reports of potential claims that either refer to the article or have a photocopy of the article attached."

practicePRO risk management activities

Our practicePRO risk management program works hard to inform lawyers about risk management, practice management and legal technology developments.

practicePRO Director Dan Pinnington made more than 40 presentations on risk management topics to law associations,

law firms and continuing legal education programs all over Ontario and elsewhere in North America in 2009.

Oakville sole practitioner Daniel Barichello attended one such presentation and found it "tremendously informative. I am using many of the technology suggestions in my practice with great success."

In September Dan spoke at the College of Law Practice Management's Futures Conference and Annual Meeting in Boulder, Colorado. In November, he was a plenary speaker at the Law Society of Manitoba's 2009 Isaac Pitblado Lectures on the future of law.

At the annual TitlePLUS Conference in Orillia and TitlePLUS road shows around the province, he gave "tech tip" presentations to real estate lawyers and their staff.

Dan made numerous lunchtime presentations at law firms on claims prevention. Each presentation included a profile of the firm's own claim statistics. (To book a presentation for your firm, email dan.pinnington@lawpro.ca.)

As editor-in-chief of the American Bar Association's *Law Practice* magazine, Dan not only raises LAWPRO's profile, but also is exposed to the latest trends in law practice management and technology and is able to tap into a wide range of resources, contacts and expertise. He is also the co-author (with Reid Trautz) of *The Busy Lawyer's Guide to Success: Essential Tips to Power Your Practice*, published by the ABA in 2009.

During 2009, practicePRO accredited 180 programs for the CLE Premium Credit, through which lawyers taking LAWPRO-approved CLE programs receive a \$50 per course credit on their insurance premium (to a maximum of \$100). The programs were attended by more than 18,500 lawyers.

In 2009, the practicePRO website recorded 88,636 unique visitors, up from 85,000 in 2008. They downloaded more than 146,000 practicePRO articles and resources, up from 135,000 the previous year. Articles from *LAWPRO Magazine* accounted for 57,000 of the downloads.

Top practicePRO downloads

RANKING	ARTICLE OR ITEM	DOWNLOADS
1	Sample Budget Spreadsheet	6,471
2	E-Discovery Reading List	4,673
3	Business Plan Outline (from the Managing the Finances of your Practice booklet)	3,944
4	Article from LAWPRO Magazine on The Dangers of Metadata	3,834
5	General Retainer Letter Precedent	2,992
6	Limitations Act Comparison Chart	2,884
7	LAWPRO Fraud Fact Sheet	2,470
8	Transition Rules Chart for New Limitations Act, 2002	2,250
9	BlackBerry 101	1,955
10	Directions for Enabling Security Features on Wireless Access Points	1,775

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