

- does not affect any insurance coverage or indemnity available despite any wording to the contrary in the contract of insurance or an act or law;
- shall not be taken into account in determining fault or liability in the matter; and
- is not admissible in any civil proceeding, administrative proceeding or arbitration as evidence of fault or liability in the matter.

Where the Act does not apply

As with all good legislation, there are situations in which the Act does not apply. **If the apology is given while testifying at a civil proceeding, including an out-of-court examination, or while testifying at an administrative proceeding or arbitration, then the apology is admissible.** No doubt the legislation was intended to encourage the early resolution of disputes

by providing the protection of the Act if the apology is given before reaching costly out-of-court examinations such as discovery, or matters escalate to an arbitration or trial.

The Act also does not affect the admissibility of evidence in a criminal proceeding, including a prosecution for perjury. Finally, the Act does not apply to proceedings under the *Provincial Offences Act* or to the use in a civil or administrative proceeding or arbitration of a conviction for a criminal or provincial offence.

It is probably fair to say that, like doctors, lawyers have been reluctant to apologize to their clients, as the statement could be interpreted as an admission of liability.

Insurance and practice issues

LAWPRO's policy of insurance does not specifically prohibit apologies or

expressions of sympathy or regret. It does, however, provide that an insured shall not voluntarily assume any liability. The Act assists lawyers in dealing with this issue and makes it easier for lawyers to apologize to their clients. We encourage you to explore this option in consultation with LAWPRO. Ultimately the legislation should help lawyers achieve the same goal as health care professionals of enhanced accountability and open communication between the lawyer and the client.

Apologizing is not something we traditionally think of as a dispute resolution mechanism. However, not too long ago mediation was a new concept that was met with a degree of skepticism. Mediation has proven to be an effective method of dispute resolution.

We encourage you to think of the *Apology Act* as another dispute resolution mechanism. In handling matters on behalf of your clients, reflect on whether you might be able to use this new legislation to shorten or perhaps avoid litigation. If you are on the receiving end of a solicitor's negligence claim, think about whether an apology is something that might assist in the resolution of the matter. Consult with your LAWPRO claims representative or defence counsel to formulate a strategy in this regard.

Instead of thinking of it as a blunt tool, an apology can be looked at as a subtle instrument that can have a big impact in resolving disputes. Take a chance and don't be afraid to start practising those key words: "I'm sorry."

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