

2003 insurance program: fitting the coverage pieces to meet your needs

Moving money in real time

TitlePLUS & virtual
conveyancing

Litigation: new processes,
new approaches

LAWPRO repairs

A piece of... Good news



Given the gloom that permeates the business news these days, it is heartening to be able to report some positive news for lawyers in this issue of LAWPRO magazine.

As is detailed on the following pages, our 2003 insurance program enhances the coverage we offer lawyers – while at the same time lowering the premium to levels not seen for almost a decade.

Base premiums for the coming year are reduced by \$200 to \$2,500 per lawyer; lawyers who take advantage of some basic options – such as the e-file discount, CLE premium credit and early lump sum payment discount – can reduce their 2003 premiums to \$2,200, while others who select options such as the part-time practice or restricted area of practice option could pay \$1,500 or less.

Our decision to expand the scope of coverage for the coming year speaks to our commitment to respond to your evolving needs – which in turn are driven by changes in the practice environment.

For example, you brought to our attention your concerns related to exposure for penalties that may be assessed against lawyers under the *Income Tax* and *Excise Tax Acts* and we responded with coverage to address that concern. To support the work of the Law Society in advancing access to justice, we enhanced the coverage available to lawyers who undertake certain *pro bono* work. Providing full insurance coverage for the estate of a lawyer for a grace period recognizes the practical realities of winding down a law practice on the death of a practising lawyer. As well, we will make additional changes in the insurance program

when the national mobility protocol is adopted by the Law Society – again reflecting our commitment to provide lawyers with an insurance program for the changing times.

And the good news does not end there. In this issue you'll find a story on how a new series of Web-based programs from TitlePLUS have been snapped up by lawyers eager to embrace the new world of electronic conveyancing. The Casebook feature examines how LAWPRO repairs matters, for the benefit of both the lawyer and the insurance program. And Boyd Balogh of Gowlings discusses how to turn the new *Rules of Professional Conduct*, which impose on you increased expectations to involve your client in litigation, into an asset for you and your practice.

Challenges surround us all these days. The 2003 program should not prove to be one of them.

Michelle L.M. Strom
President

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More for less: The 2003 insurance program provides lawyers with enhanced insurance coverage and a \$200 per lawyer reduction in the premium. Also included in this special section on the insurance program is a summary of the key elements of insurance coverage, and an illustration of how you can use optional insurance coverages to build the kind of coverage that meets the needs of your practice 2

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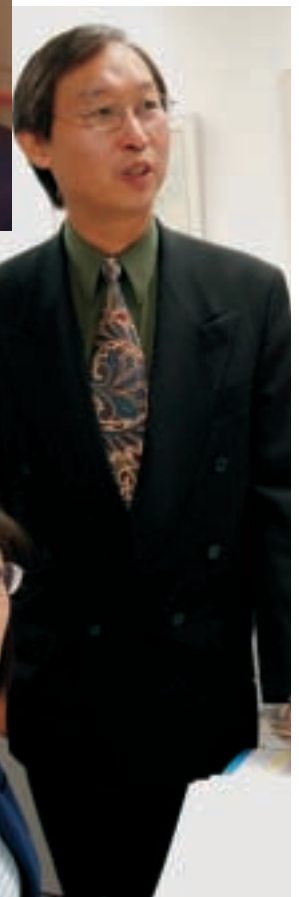
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2003 insurance program:

Enhanced insurance coverage, lower insurance premiums

Base premium reduced by \$200 to \$2,500 per lawyer

For the seventh consecutive year, the majority of lawyers across Ontario will pay less for their professional liability insurance.

Base premiums for 2003 will be \$2,500 per lawyer – \$200 less than in 2002, and significantly below the \$5,600 paid by lawyers in 1995, when LawPRO assumed responsibility for the administration of the liability insurance program.

Many lawyers will pay lower premiums still, depending on variables such as options selected, years in practice and practice areas. For example, part-time practitioners, those who restrict their practice to criminal and/or immigration law, and lawyers newly called to the bar could pay a premium of \$1,500 or less in 2003.

Premiums for other insurance coverages, transaction levies and discounts will remain the same as they were in 2002.

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Enhanced coverage for *pro bono* legal services

Effective January 1, 2003, changes will be made to the insurance program to encourage the provision of *pro bono* legal services.

The changes apply specifically to *pro bono* legal services provided by lawyers after January 1, 2003, through approved programs associated with Pro Bono Law Ontario, and will not include legal services beyond:

- (a) those rendered to low income persons in civil matters or in criminal matters for which there is no government obligation to provide counsel;
- (b) services that simplify the legal process for, or increase the availability and quality of legal services, to persons of limited means; and/or
- (c) those rendered to charitable, non-profit and public interest organizations with respect to matters or projects to address the needs of low-income and disadvantaged individuals.

PROGRAM CHANGES FOR EXEMPT LAWYERS

Lawyers who claim an exemption, and also provide approved *pro bono* legal services through an approved *pro bono* legal services program associated with Pro Bono Law Ontario, will have insurance coverage as follows:

- They will be provided with the standard run-off insurance coverage of \$250,000 per claim/in the aggregate for their approved *pro bono* legal services, even though the services are provided while exempt under the program; and
- They will NOT be required to pay any deductible amount for claims relating solely to such services.

PROGRAM CHANGES FOR LAWYERS WHO BUY THE STANDARD INSURANCE PROGRAM COVERAGE

Lawyers who purchase the standard insurance program coverage will qualify for the following program changes with respect to the approved *pro bono* legal services provided through an approved *pro bono* legal services program associated with Pro Bono Law Ontario:

- They will not be required to pay any deductible amount or claims history levy surcharge for claims relating solely to such services; and
- Those applying for the part-time practice option will not be required to consider any hours of professional time or past claims relating solely to these services in their application for this part-time practice option.

Defence cost protection against statutory penalties

Effective January 1, 2003, lawyers carrying the standard insurance coverage will have limited defence cost coverage for certain penalties levied under section 163.2 of the *Income Tax Act* or section 285.1 of the *Excise Tax Act*.

Policy coverage is being expanded to reimburse these lawyers for the first \$100,000 in investigation and defence costs which they incur in successfully defending a penalty assessed against them under either Act.

Although lawyers will not have to pay an additional premium for this expanded coverage, the coverage would be reduced by the deductible amount payable to LAWPRO; as well, the \$100,000 limit will be the total coverage limit available to all members of the same law firm for eligible penalties reported in the year when the services were provided and when the claim is first made.

In some cases, LAWPRO may enter into an agreement with the lawyer to fund the first \$100,000 in investigation and defence costs, as they are incurred.

Full Run-Off insurance coverage for lawyers' estates for 90 days

Recognizing that it takes time to settle matters after the death of a lawyer in practice, LAWPRO will provide a lawyer's estate with the full Run-Off Buy-Up limit coverage of \$1 million per claim/\$2 million in the aggregate for the first 90 days after the death of a lawyer carrying the standard insurance coverage. This coverage will be provided at no charge.

During the 90-day grace period, the estate can assess the ongoing liability of the deceased member's practice and opt to either revert to the basic Run-Off Coverage limit of \$250,000 per claim/in the aggregate, or apply to increase the Run-Off Coverage to either \$500,000 per claim/aggregate or the full \$1 million/\$2 million limits.

Exempt status of legal aid lawyers recognized

By-Law 16 of the *Law Society Act*, and the 2003 LAWPRO exemption form have been updated to reflect the exempt status of lawyers indirectly employed through Legal Aid Ontario (but who are not employees of Legal Aid Ontario).

Lawyers who are employed in community legal clinics, student legal aid services societies, and aboriginal legal services corporations, funded by Legal Aid Ontario, will be able to apply to exempt themselves from the payment of insurance premiums and ongoing coverage under the standard insurance program.

This new exemption formalizes a long-standing decision of Convocation to exempt this group of lawyers, recognizing that liability insurance was purchased and maintained for lawyers and others by the former Legal Aid Plan and the clinics.

PRO BONO WORK DOES NOT AFFECT EXEMPTION

Lawyers who qualify for this exemption but also provide *pro bono* legal services to non-profit organizations would continue to qualify for the exemption. However, where the lawyer otherwise engages in private practice, she or he would be considered to be providing services in private practice and would not qualify for the exemption and would have to pay the LAWPRO insurance premium, as required by the Law Society.

“Occasional practice” criteria amended

The criteria governing what constitutes “occasional practice” have been amended to allow a lawyer who is a member of the Law Society of Upper Canada but residing in another Canadian jurisdiction, to provide legal services in Ontario for a maximum of 10 matters over not more than a total of 20 days in the year.

Previously, occasional practice had been defined as “not more than 10 real estate transactions or not more than 80 hours for work usually billed on an hourly basis.”

This change brings the insurance program’s occasional practice exemption criteria in line with By-Law 33 of the *Law Society Act* concerning the activities of non-member lawyers in Ontario, and the Inter-Jurisdictional Practice Protocol, and ensures a greater

measure of equity among lawyers (Law Society members and non-members alike) who practise on an occasional basis in Ontario.

Mobility protocol will mean additional insurance program changes

Once the Law Society becomes a signatory to the National Agreement on Mobility, LAWPRO will modify the insurance program to ensure that it reflects the insurance coverage and defalcation provisions defined in the mobility protocol. Additional details will be provided in an upcoming issue of LAWPRO magazine.

For details on any of these programs, contact the LAWPRO Customer Service Department at 416-598-5899 or 1-800-410-1013 or service@lawpro.ca.

Information on filing for 2003



Application filing deadlines:

November 1, 2002: e-file deadline

E-file your 2003 insurance application by November 1, 2002, and you’ll receive a \$50 premium discount on your next year’s insurance premium. Last year, close to 70 per cent of lawyers opted to take advantage of this discount and completed their applications via the **File Online** option on our Web site – www.lawpro.ca.

November 8, 2002: filing deadline

To avoid paying a late filing surcharge of 30 per cent of the base premium, applications must be filed with LAWPRO by November 8, 2002. Applications can be filed in one of three ways: electronically, by fax or mail.

New in 2003: New filing option for smaller firms

Starting this year, lawyers who work in firms of five or more lawyers will be able to file their 2003 insurance applications on a firm basis – eliminating the need for each individual lawyer in these firms to file a separate application form. Previously, this option had been available only to firms of 10 or more lawyers.

Application packages explaining the firm filing option were mailed to managing partners in these law firms in early October. Included in the package were a Firm Summary Form, pre-populated with information on the insurance coverage and options selected by the firm the previous year, as well as individual lawyer applications.

Similar packages containing pre-populated application forms were mailed to sole practitioners and lawyers who practise in firms of less than five lawyers.

Pre-populating the applications and expanding the number of lawyers who can complete firm filings further streamlines the filing process for the majority of lawyers.

If you have not yet received your application/exemption package and are in private practice, you should immediately contact LAWPRO Customer Service at 416-598-5899 or 1-800-410-1013, or via e-mail at service@lawpro.ca.

Who must file an application?

- Any lawyer insured under the LAWPRO program in 2002 who intends to continue in private practice in 2003.
- Any lawyer who was exempt under the program in 2002 but intends to return to private practice in 2003.
- Any in-house counsel, government or education lawyer, or legal aid clinic lawyer who, in the course of employment or otherwise, provides legal services to third parties.
- Any lawyer who, although retired from active private practice, occasionally provides legal services.
- Any Law Society member who, although not resident in Ontario, engages in more than “occasional practice” in Ontario, as defined under the *Rules for Exemption Eligibility*.
- Any lawyer first coming into private practice in 2003 (including those called to the bar in September/October 2002).

2003 insurance materials incorporate personal information statement

As part of its preparations for new privacy legislation, LAWPRO has adapted its insurance materials to address the need to obtain consent for information gathered in relation to our optional insurance programs, as follows:

- Our new LAWPRO Personal Information Statement outlines how we will use and disclose information related to these optional programs. The Statement is included in the Program Guides accompanying the 2003 insurance application materials, mailed to you in early October. The full text also is available on our Web

site via a link in the Warranty & Signature section of your online application.

- The **Warranty & Signature** section of our 2003 insurance forms includes reference to this Personal Information Statement.
- Our new LAWPRO Privacy Code is available on our Web site at www.lawpro.ca/privacy or in hard copy from our Customer Service Department at 416-598-5899 or 1-800-410-1013, e-mail service@lawpro.ca. The Code describes how LAWPRO will exercise its commitment to the privacy of information related to its optional insurance programs.

E-file in minutes

WHAT YOU'LL NEED

Before you e-file, make sure you have the following at hand:

- your Law Society (LSUC) member number (check the mailing label on your 2003 insurance application package mailed to you in early October);
- your unique, confidential password.

ABOUT YOUR PASSWORD

- If you have completed any online LAWPRO filings in the past, the password you used will still be valid.
- If you have forgotten your password, you may be able to reconfirm it using the "Forgot your password" function on the LAWPRO Web site at www.lawpro.ca
- If you do not have a password you can complete our online password request form (a Customer Service representative will then contact you to establish your password), or you can call 416-598-5899 or 1-800-410-1013 during regular business hours and request a password. To minimize your wait time, we suggest you call and arrange your online filing password as soon as possible. DO NOT WAIT UNTIL OCTOBER 31st.

E-FILE IN 4 EASY STEPS

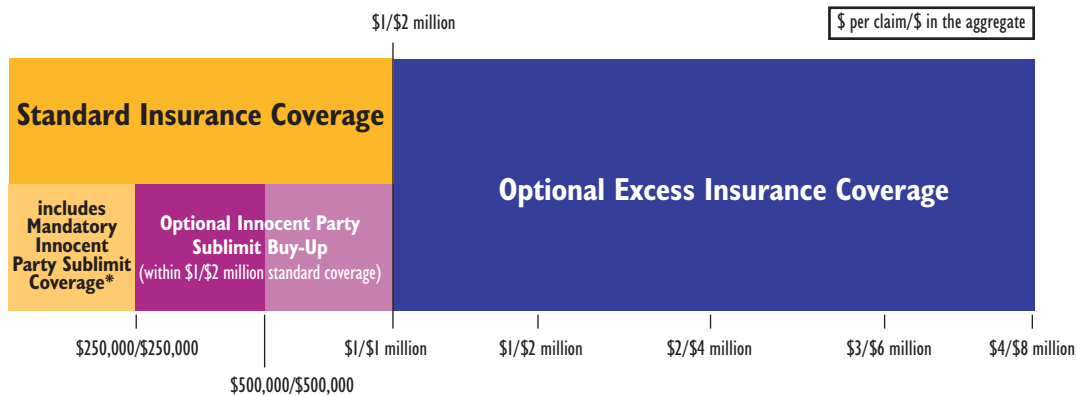
1. Go to the LAWPRO Web site at www.lawpro.ca and click on **File Online**.
2. You will be prompted to enter your Law Society member number (see your mailing label on your 2003 application package) and your unique, confidential password.
3. Select **2003 Professional Liability Insurance Application (renewals)** from the list of options. Your application form will appear, pre-populated with your information pulled from our database.
4. Follow the on-screen instructions for completing your application – in minutes! All of the information on the 2003 insurance program and options are available online.

RECEIVE YOUR \$50 PREMIUM DISCOUNT

- Complete the online filing by November 1, 2002, and you will receive a \$50 per lawyer discount on your 2003 insurance premium.

2003 insurance coverage for lawyers in private practice

Sole practitioners and lawyers in association or partnership



Standard insurance coverage

The base program

Eligibility: Required for all lawyers providing services in private practice.**

Coverage limit: \$1 million per claim/\$2 million in the aggregate (i.e. for all claims reported in 2003), applicable to claim expenses, indemnity payments and costs of repairs together.

Standard deductible: \$5,000 per claim, applicable to claim expenses, indemnity payments and costs of repairs together.

Base premium: \$2,500 per insured lawyer.

Mandatory Innocent Party Sublimit Coverage***

Eligibility: Required for all lawyers practising in association or partnership (including MDPs and LLPs), law corporations (with more than one lawyer) and sole practitioners practising with employed lawyers.

Coverage sublimits: \$250,000 per claim/in the aggregate, applicable to claim expenses, indemnity payments and costs of repairs together.

Premium: \$250 per lawyer.

Optional Insurance Coverages

Innocent Party Sublimit Buy-Up****

Eligibility: Optional for all lawyers practising in association or partnership (including MDPs and LLPs), law corporations (with more than one lawyer) and sole practitioners practising with employed lawyers.

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Optional Insurance Coverages (continued)

- Coverage sublimits & premiums:* Innocent Party Sublimit Coverage can be increased as follows:
- to \$500,000 per claim/aggregate for an additional \$150 per lawyer (\$400 total Innocent Party premium); or
 - to \$1 million per claim/aggregate for an additional \$249 per lawyer (\$499 total Innocent Party premium).

Optional Innocent Party Sublimit Coverage****

- Eligibility:* Optional for sole practitioners and lawyers practising alone in a law corporation. Provides protection for ongoing liability that sole practitioners can have in situations such as the following:
- if you've acted as back-up counsel or had others act as back-up counsel for you;
 - if you've taken a temporary leave of absence from your practice and have delegated your work to others;
 - if you've practised as a partner or associate in the past;
 - if your practice includes or once included employees;
 - if you've practised in any situation in which you could be seen as lending your name to others;
 - as an assurance to others if involved in electronic registration and escrow closings.

- Coverage sublimits:*
- LAWPRO offers Optional Innocent Party sublimits of:
 - \$250,00 per claim/aggregate;
 - \$500,000 per claim/aggregate;
 - \$1 million per claim/aggregate.

- Premiums:* Underwritten on an individual basis, based on a risk assessment of information provided in the Innocent Party Sublimit application.

Excess Insurance Coverage

- Eligibility:* Available to all lawyers in private practice, and to all lawyers with Run-Off Insurance Coverage.

- Coverage limits:* The following Excess limits**** are above the \$1 million per claim/\$2 million in the aggregate limits of the primary program. Coverage is provided on a FIRM basis (i.e. for all firm lawyers for services on behalf of the firm):
- \$1 million per claim/\$2 million in the aggregate;
 - \$2 million per claim/\$4 million in the aggregate;
 - \$3 million per claim/\$6 million in the aggregate;
 - \$4 million per claim/\$8 million in the aggregate.

- Premiums:* Underwritten on a firm basis, based on a risk assessment of information provided in the Excess Insurance application.

FOR INFORMATION

For information on any of these insurance options, or for application forms, please contact the LAWPRO Customer Service Department at 416-598-5899 or 1-800-410-1013 or via e-mail: service@lawpro.ca.

You can also find detailed information on the insurance program and your insurance options on the LAWPRO Web site – www.lawpro.ca.

* Optional for sole practitioners.

** Lawyers who are on temporary leave and qualify for exemption (c) are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program.

*** Coverage for dishonest, fraudulent, criminal or malicious acts or omissions.

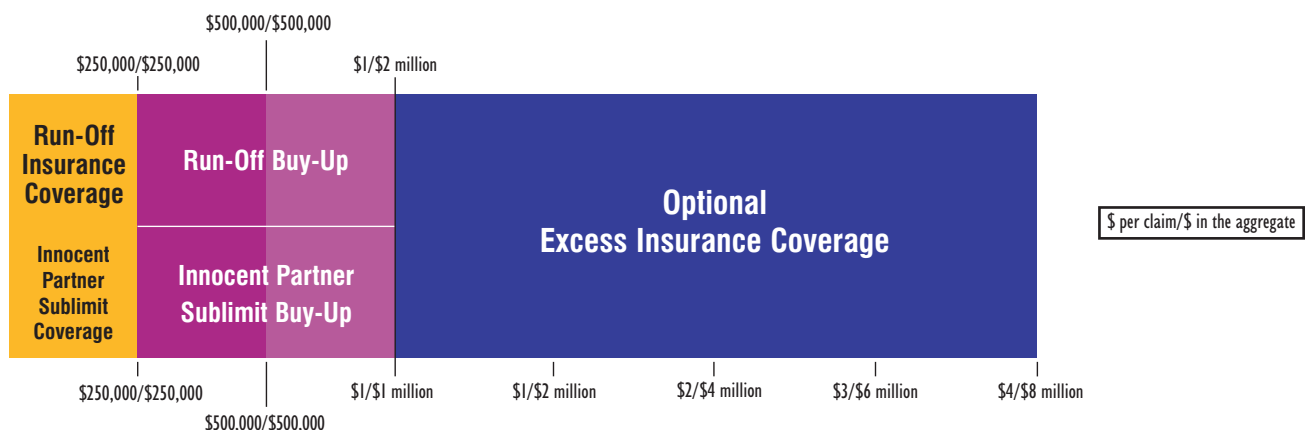
**** LAWPRO strongly recommends that lawyers buy up their optional coverage limits to the maximum offered, to avoid gaps in coverage.

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2003 insurance coverage for exempt lawyers



- In-house corporate counsel
- Government lawyers, educators and others not in active private practice
- Retired lawyers, judges and others no longer practising law
- Legal aid clinic lawyers (not directly employed by Legal Aid Ontario)



The standard Run-Off Coverage

- Eligibility:** Provided at no charge to all members of the Law Society who are not in active private practice who qualify for exemption* from payment of insurance premiums and levies.
- Coverage limits:** \$250,000 per claim/in the aggregate, not re-instated annually, subject to the following:
- applies to claims arising out of services provided while the lawyer was in private practice or otherwise maintained the full, ongoing practice coverage;
 - does not provide coverage for claims arising out of any services a lawyer provides while exempt from paying the insurance premium; the only exception to this is with respect to *pro bono* legal services provided through an approved *pro bono* legal services program associated with Pro Bono Law Ontario;
 - applies to claims expenses, indemnity payments and costs of repairs together.
 - includes a sublimit coverage of up to \$250,000 per claim/in the aggregate for Innocent Partner claims.
- Premium:** None.

Optional Insurance Coverages

Run-Off Coverage Buy-Up

Eligibility: Optional for lawyers with only the basic Run-Off Coverage who are concerned that claims now and in the future may exceed \$250,000 per claim/aggregate.

Coverage limits: Exempt lawyers can apply to increase Run-Off Coverage limits to:

- \$500,000 per claim/aggregate; or
- \$1 million per claim/\$2 million in the aggregate;

for terms ranging from two to five years.

Premiums: Underwritten on an individual basis, depending on the years practised, areas of law practised, the amount of time since the applicant was in private practice, and other risk-based factors.

Innocent Partner Sublimit Buy-Up

Eligibility: Optional for exempt lawyers who have applied to increase their Run-Off Coverage through Run-Off Coverage Buy-Up and who may be concerned about their innocent partner exposure.

Coverage sublimits Innocent Partner Sublimit Coverage can be increased as follows:

- & premiums:*
- to \$500,000 per claim/aggregate for an additional five per cent of the Run-Off Coverage Buy-Up premium; or
 - to \$1 million per claim/aggregate for an additional eight per cent of the Run-Off Coverage Buy-Up premium.

Excess Insurance Coverage

Eligibility: Available to all lawyers in private practice, and to all lawyers with Run-Off Insurance Coverage.

Coverage limits: The following Excess limits** are above the \$1 million per claim/\$2 million in the aggregate limits of the primary program. Coverage is provided on a FIRM basis (i.e. for all firm lawyers for services on behalf of the firm):

- \$1 million per claim/\$2 million in the aggregate;
- \$2 million per claim/\$4 million in the aggregate;
- \$3 million per claim/\$6 million in the aggregate;
- \$4 million per claim/\$8 million in the aggregate;

Premiums: Underwritten on a firm basis, based on a risk assessment of information provided in the Excess Insurance application.

* Lawyers who are on temporary leave and qualify for exemption (c) are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program.

** LAWPRO strongly recommends that lawyers buy up their optional coverage limits to the maximum offered, to avoid gaps in coverage.

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Moving money online

real time, real value



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New real time funds transfer system to complement e-reg™

Real estate practitioners can now complete another important aspect of their transactions – the transfer of closing funds – electronically, from their computer desktops.

LAWPRO and BMO Bank of Montreal have launched a real time funds transfer system that lets a purchaser's lawyer deliver closing funds for an electronic registration (e-reg™) transaction to the vendor's law firm electronically, real time, real value. The system, now available to lawyers across Ontario, was specifically designed to complement and streamline real estate transactions in the e-reg™ environment. It uses BMO's Directline® product as its technology platform.

Directline reduces the need for lawyers to physically meet each other or send closing funds by courier in escrow. Instead, the new technology solution – which is completely optional for lawyers working in the e-reg™ environment – ensures immediate, real value settlement of funds in real estate transactions. Using this PC-based system, lawyers can retrieve account information and perform financial transactions, including the transfer of funds from one BMO trust account to that of another lawyer also set up on the system, from their desktops, in real time.

An added advantage is that funds transferred through this program will be considered "cleared" funds in the selling lawyer's trust account as soon as a transfer is received; this eliminates the need for the vendor law firm to contact the bank to determine if and when the deposit has occurred and the form of the funds deposited, thus adding an important measure of security for vendor lawyers concerned about the type of funds provided by purchasers' lawyers in a transaction. As well, it reduces the chance that a

closing can be delayed because of delays in depositing or transferring funds in a timely manner.

To facilitate this initiative and address any risk management issues it raises, the Law Society amended its practice guideline regarding the payout of existing institutional mortgages in June 2002. According to Practice Guideline 5 – "Electronic Payment of Closing Proceeds and Discharge Funds" – in situations where the electronic real time cleared funds transfer capability is used, "it would be acceptable for the purchaser's solicitor to transfer the amount required to pay out an institutional mortgage directly to the vendor's solicitor's trust account." The purchaser's lawyer then would rely on the vendor's lawyer to obtain a mortgage discharge.


To access the system, which is available on an extended hours basis, six days a week, lawyers need only a user identification and password. Participating law firms must have trust accounts with BMO Bank of Montreal, and must have submitted required legal agreements to the Bank before they can use Directline real time transfers for their transactions. Copies of the forms are available on the LAWPRO Web site at www.lawpro.ca/news.

"As e-reg™ expands across Ontario, and lawyers undertake conveyancing that is more distant from where they practise, the ability to undertake remote, real time electronic transfer of closing proceeds becomes more critical," says TitlePLUS Vice-President Kathleen Waters, who represented LAWPRO on the project. "This system is a much-needed companion to e-reg™ that further frees up the lawyer to focus on providing advice and service to clients rather than have to wait in line at the registry office."

™ e-reg is a trademark of Teranet Inc.

® Directline is a registered trademark of the Bank of Montreal.

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The following are excerpts from a detailed question-and-answer discussion on electronic funds transfer (EFT) available on the LAWPRO Web site (www.lawpro.ca)

Q & A.

Electronic transfer of funds for e-reg™ closings

Why is LAWPRO involved in this issue?

Despite discussions at various times in the past, the lending community has not generally made available a solution that would allow for the remote, real time electronic transfer of closing proceeds between lawyers' trust accounts, as a companion to the e-reg™ workflow. As a result, lawyers have to (a) meet physically, thereby losing much of the convenience of e-reg™, or

(b) send closing proceeds by courier in escrow. The latter solution often will not work because of the distances between the law firms, and is not necessarily the most secure way of delivering the closing proceeds. The challenges will only increase as e-reg™ expands throughout Ontario, and lawyers undertake conveyancing more distant from their offices.

Why do both accounts have to be located at BMO Bank of Montreal?

While it is possible to transfer money electronically between different financial institutions, banking systems currently in operation do not generally undertake the settlement of the funds between institutions until nightfall. It is essential to e-reg™ that the transfer of funds occurs “real time, real value” directly between trust accounts, because the firm receiving the funds may need to transfer them immediately to another law firm for a purchase deal. That is why LAWPRO worked with BMO Bank of Montreal (the “Bank”) to provide a solution within a single institution.

If I open a Bank trust account for EFT purposes, do I have to use it for all transactions?

Any use of the system is completely optional. The program is intended to give law firms a way to move funds quickly over a distance and not necessarily to replace escrow closings undertaken by courier pursuant to the Document Registration Agreement or meeting at the Registry Office (or elsewhere) to exchange funds in paper form, if desired.

The Law Society of Upper Canada allows multiple mixed trust accounts pursuant to Sub-section 2(5) of By-Law 19.

As the purchaser’s lawyer, what type of funds can I put in the Account?

The funds must be deposited in a form that would, outside the real time transfer system, be immediately approved for withdrawal by you in certified form, with no hold placed on them by the Bank branch receiving the deposit. We assume this means (in most cases) certified cheques or bank drafts from recognized Canadian financial institutions.

Branch staff make the decision that the funds can be deposited into the Account without a “hold”, in accordance with normal Bank procedures and standards applicable to lawyers’ trust accounts. In other words, there is no difference in terms of this issue whether you operate electronically or with paper certified cheques.

What is my liability for the funds to the Bank?

The liability of the purchaser’s lawyer remains the same as any time a lawyer introduces funds into his/her trust account and immediately draws upon them for a certified cheque or bank draft.

As the vendor’s lawyer, how do I know that the funds are good?

Under the agreement between LAWPRO and the Bank, the funds

will be treated as “cleared” funds in the hands of the transferee within the Bank’s system.

Currently purchasers’ lawyers deposit money directly to my trust account, often at a different branch of my bank. What is different under this system?

The main difference is the status of the funds. Most vendors’ lawyers report that it is difficult to determine the type of funds deposited, and they are nervous about closing in case the funds were not certified. Sometimes the remote branch (where the deposit is made) will not provide information immediately to your home branch.

With the new system, you know that the funds will be treated by the Bank as “cleared” funds in your trust account and you can immediately forward them, if necessary.

What about the funds going to pay out the existing institutional mortgagee?

Normally the purchaser’s lawyer would provide a certified cheque made payable directly to the mortgagee which is being paid out, as assurance that those funds will actually be used to discharge the mortgage. The Law Society has changed its guideline on mortgage payouts to financial institutions. For e-reg™ transactions using this type of funds transfer program (that is, with real time, “cleared” funds transfer capability), it will be acceptable to pay the entire proceeds into the vendor’s lawyer’s trust account. This assumes that you are receiving an appropriate undertaking from the vendor’s lawyer regarding forwarding the monies to the applicable lender.¹ There is no recognition in the Law Society’s Practice Guideline No. 5 for the “direct deposit” method, where the purchaser’s lawyer deposits the money to the selling lawyer’s trust account at a remote branch of the selling lawyer’s bank.

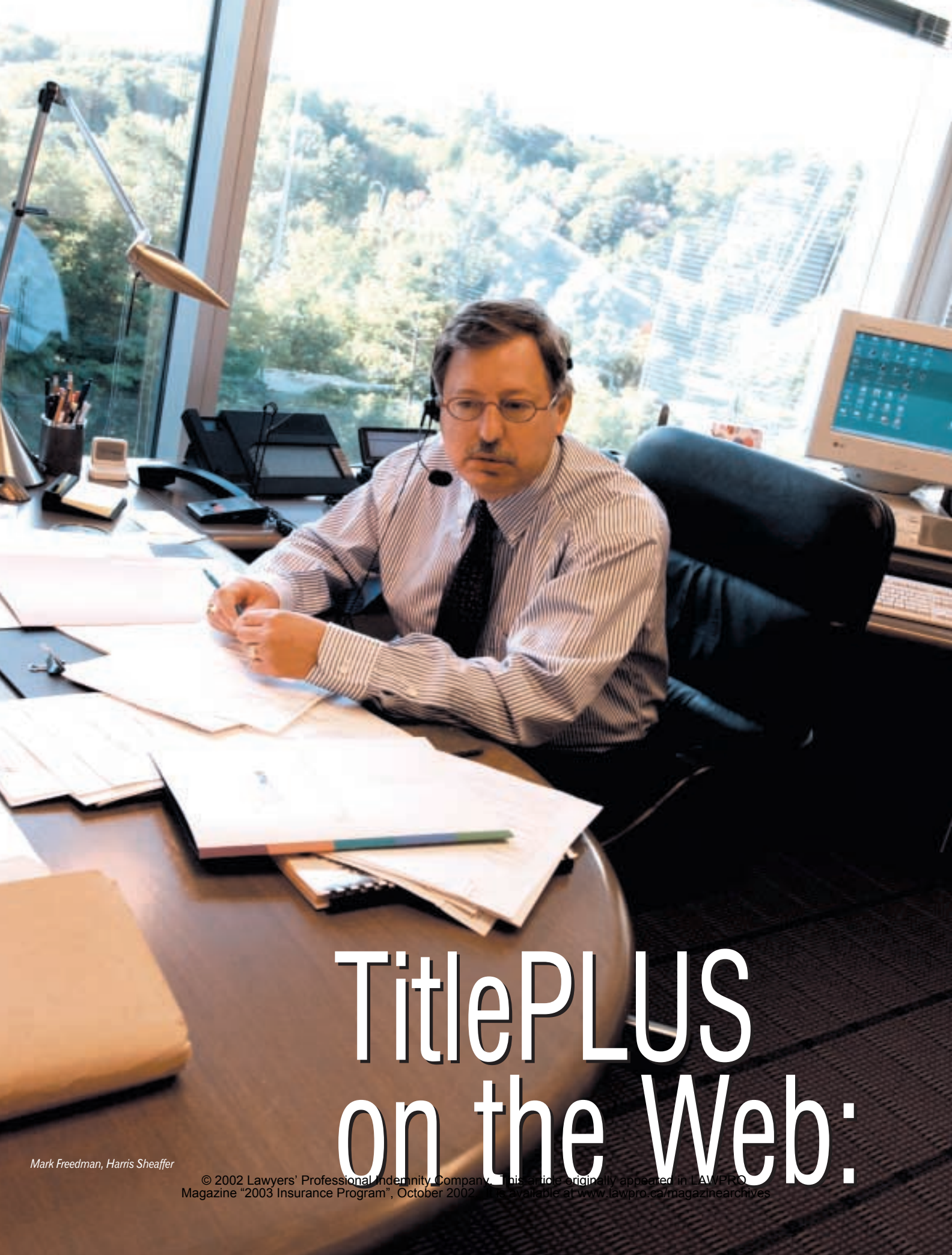
Why BMO Bank of Montreal?

Bank of Montreal is the financial institution for both the Law Society and LAWPRO. Its representatives worked with us to develop a solution, in terms of both technology and account provisions, that meet the requirements of the Law Society and LAWPRO.

By-Law 19’s requirements do not limit you to a BMO Bank of Montreal account, but LAWPRO is not aware of any other system currently meeting the requirements of the By-Law and providing the level of protection negotiated with BMO Bank of Montreal, as well as giving real time “account-to-account” transfer capability.

¹ For private mortgages, the mortgage discharge itself must comprise one of the documents to be registered under the DRA.

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TitlePLUS on the Web:

Mark Freedman, Harris Sheaffer

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Redefining the future of real estate practice

Five years ago, when TitlePLUS made its debut, title insurance was a hard sell and online conveyancing only a gleam in some programmers' eyes.

Less than a half decade later, many real estate lawyers not only see title insurance as fundamental to conveyancing, but also are embracing a fundamental change in the way they work. Where once they may have resisted the idea of working in an electronic environment, today they're clamouring for additional online services that are more comprehensive, faster and easier to access. And nowhere is that trend more evident than in the rapid rate at which real estate practices are incorporating the Web-based products and services offered by TitlePLUS.

In the 18 months since TitlePLUS launched its first Web products, more than 1,000 lawyers across Ontario have signed on with the family of products that fall under the LawyerDoneDeal umbrella – the Web “hub” for these new online products. NewHome@LawyerDoneDeal.com, GoodMortgage and LawyerMortgage.com are the initial Internet-based products designed to streamline and simplify closings for specific types of real estate transactions, and pave the way for the new world of virtual conveyancing.

Sammy Lee's busy real estate practice with Metcalfe Blaney & Burns LLP in Markham relies on all three products as the workhorses that let his office generate volume deals at minimal cost. He also views them as “strategic tools” that generate the core “bread-and-butter” real estate work that he can then leverage to generate more business for the corporate/commercial and tax sides of the law practice.

Centralized underwriting a NewHome strength

The NewHome program, for example, significantly reduces the legwork required on the part of Sammy's law clerk, Peter Cheung. The NewHome program links Peter into an online database, pre-populated with information on the various new home (subdivision and condominium) projects signed up with the program. Peter simply selects the specific project in which the firm's client is purchasing property or a unit, and has instant access to information such as the project's legal description, builder information, title data, etc. His online form is immediately pre-populated with the project specific information; all he has to do is enter the property specific and client information (name, actual address on which title is being taken, mortgage information and the like).

“We are at present running at full capacity, with a lot of high end, high-volume condominium work,” he explains. “We need tools that

let us generate volume at minimal cost: And we need to move forward, into the paperless office environment. That's the need that TitlePLUS has filled with products such as the NewHome program, and GoodMortgage.”

Equally important, he says, is the risk management that's fundamental to TitlePLUS. “As a lawyer, I am more inclined to spend that extra dollar – to do that extra search or requisition letter – to minimize risk for me and the client. But that is not an efficient way of doing business today. The only way to stay in the game is with title insurance – and with TitlePLUS which builds sound underwriting right into its products.”

Markham lawyer Shirley Yee too was quickly sold on the NewHome program, not only because it streamlines workflow, but also because of its open access. “We're a busy small office; it's not unusual for us to have multiple transactions on a condo building go through our office in a single day. NewHome makes that job easy – we can do a transaction in 15 or 20 minutes.”

Adds office manager Raymond Eng, “And anyone can access any of the information we need at any time, simultaneously if needed. That's not something that a desktop application can offer. NewHome really suits a small practice such as ours, where several people may need to look at the same file, for different reasons, at the same time.” And the fact that it is “very user friendly and easy to use” is only a bonus, adds Diana Ma, law clerk.

Because the underwriting is built right into the NewHome program, “we don't have to go to Teraview 30 times for title-related information”, says Shirley. “We don't have to do many of the searches that we once had to undertake; we don't have to worry about the lack of cooperation, or the costs, associated with dealing with municipalities. NewHome saves us time, and we save our clients significant costs in the process.”

But the major benefit, says Shirley, is to her bottom-line: “The pressures in real estate practice today are significant; the NewHome program makes it possible for us to process a transaction conveniently, efficiently, and allows us to be competitive.”

A benefit for vendors

The LawyerDoneDeal Web site is equally beneficial for vendor lawyers, such as Mark Freedman of Harris Sheaffer. His clients – builders in the greater Toronto area – save time and money through the capacity to upload volumes of documents, such as the Condominium Declaration, title advice statement and even site or condominium plans, directly into the database that purchaser's



lawyers then access. The purchaser's lawyer also has access to legal descriptions and builder information which further streamlines the TitlePLUS application.

Mark can also save his clients money by reducing the amount of time it takes his staff to process and collate the information needed by purchasers' lawyers: "If we were closing on a 240-unit condo, for example, it would take our staff five to six hours to get all of the paperwork copied, collated and couriered. With the NewHome program, it takes one person 15 minutes."

"This Web site – and the LawyerDoneDeal concept – is the future for conveyancing. And that future is electronic," says Mark, whose conviction in this concept prompted him to take a share in the partnership that is developing the larger LDD concept for the marketplace; he also is contributing his legal expertise to the development of the software that will make the virtual real estate practice a reality.

"We'll be working off a central hub where real estate lawyers can share information electronically and where full file management is at your fingertips. The next step for us is to recognize documents signed electronically, and then, as electronic funds transfer becomes more widespread, we will be working in an all electronic world."

The rollout of e-reg™ in Toronto this fall lets lawyers complete that aspect of the closing electronically. And the launch this fall of real time funds transfer by LawPRO and Bank of Montreal opens the door to enabling lawyers to undertake conveyancing in a virtual world – electronically, from their computer desktops.

GoodMortgage opens doors to next level of online conveyancing

Another stepping stone to that world is GoodMortgage, a comprehensive, Web-based program that provides lawyers with full file and document management for mortgage only/refinance transactions with certain financial institutions.

Working in this ASP (application service provider) environment, lawyers can access any of the bank documents they need to complete the mortgage transaction;

Shirley Yee (left) and Law Clerk Diana Ma



Sammy Lee, Metcalfe Blaney & Burns LLP

updates to schedules, pricing or other documentation are uploaded at the TitlePLUS end, ensuring lawyers always have access to the most up to date information. Once the client-specific information has been entered into the online system, the law firm can easily generate any of the documents needed to close a transaction; where e-reg™ is available, the transaction can be closed in the e-reg™ environment, with data from the GoodMortgage environment extracted automatically to pre-populate the required Teraview forms. (GoodMortgage is also a full-service package that provides the consumer-client with TitlePLUS coverage, legal fees and disbursements and any required document preparation for one inclusive price.)

“Working with the GoodMortgage program is a no-brainer,” says Jeannine Renaud, law clerk with Armeland & Associates in Windsor. “I can whip up the whole application in less than 15 minutes, do all of my documents and just put in my PIN

later. It’s such a time saver to be able to access the documents you need through the Web, and to have the program complete your documents for you, in the background, while you’re working. Really, it’s more like playing around on a computer than tiring work – and much faster.”

GoodMortgage also lets Peter Cheung better manage information related to clients and their transactions, eliminating the need to create weekly or monthly reports – again saving him time.

Combine GoodMortgage and LawyerMortgage.com (the Web-based program for mortgage-only transactions with financial institutions not participating in the GoodMortgage initiative) in a law practice and you’re laughing, says Jay Armeland, managing partner with Armeland & Associates. His staff have become so attuned to the TitlePLUS Web tools that they’d rebel against going back to the “old ways.”

“We’ve been able to significantly increase the volume of work we can handle in our firm, with the same amount of staff and at less time.”

For TitlePLUS, the GoodMortgage, LawyerMortgage.com and NewHome products are just the beginning. On the drawing board is a convergence of all the technologies and functionality that these three products offer into one mega-site from which lawyers can undertake all aspects of any kind of real estate transaction online. Access to information from financial institutions; the ability to move information to financial institutions; file management and document production; full integration with electronic services, such as e-reg™, and electronic funds transfer: That’s the promise that LawyerDoneDeal holds.

And this vision of a centralized transaction hub for the real estate lawyer is just around the corner.

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Boyd Balogh

Litigation practice:

new processes call for new approaches

Effective client communication – a perennial Achilles heel for lawyers – has taken on increased importance for lawyers generally, and litigators specifically.

The reasons are two-fold: First, as has been documented in LawPRO publications in the past, clients' expectations are changing. Today's client is more knowledgeable, more questioning and more inclined to be a participant rather than a spectator in moving a dispute forward.

Equally important are changes in the litigation process prompted by the trend to case-managed actions, mandatory mediation and the concomitant expectations of judges to actively involve the client in settlement conferences.

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Moreover, if you haven't dusted off your *Rules of Professional Conduct* in a while, you may be surprised that the *Rules* actively support this trend. As is detailed below, the *Rules of Professional Conduct* encourage client participation in all stages of the litigation process. And the *Rules* applied under case management are being carried over to other streams. Judges often want a client or his/her representative in attendance so they can properly address the strengths and weaknesses of a case, for the purpose of encouraging early settlement.

Applying the *Rules*

Case-managed actions/applications

Case-managed actions and applications are all Toronto Region civil actions and applications commenced on or after July 3, 2001. They also apply to Ottawa actions (with limited Simplified Procedure).¹

Client-based participation is evident in the following stages of the litigation:

(a) **Mandatory mediation**

Mandatory mediation is to be conducted 90 days after the filing of the first defence or notice of intent to defend the action (r. 24.1.09(1)). The mediation deadline may be extended by consent of all parties an additional 60 days (r. 24.1.09(3)).

Who is required to attend:

- (i) **the parties;**
- (ii) their lawyers; and
- (iii) any representative of any **insurer [read client] who may be liable to satisfy all or part of the judgment in the action or to indemnify or reimburse any party.**

(b) **Settlement conference**

In case-managed actions, the "settlement conference" has replaced the pre-trial conference. It is governed by r. 77.14.

The wording of the "attendance" rule is broad and **requires the attendance of all persons from whom the solicitor takes settlement instructions.**

(c) **Trial management conference**

The *Rules* do not expressly set out who is required to attend a trial management conference. The purpose of the Rule, generally stated, is to provide direction that will facilitate the "orderly and expeditious conduct of the trial."

This Rule implies a meeting among counsel to discuss trial logistics and accordingly would suggest that only counsel need attend. You should however, be mindful of the circumstance where opposing counsel may use this forum as an opportunity to advance settlement. A judge's authority under Rule 77.11(1) **would permit him or her to order a client's attendance at the**

trial management conference in order to review the parties' position on settlement.

(d) **Case management conferences**

Case management conferences may be convened at a master's or judge's option, or on the request of a party to the action. Rule 77.13(2) **contemplates the attendance of the client.**

(e) **Powers generally – Rule 77.1(1)(1) – The general authority of the case management judge or master**

Since July 1, 2001, all judges involved in Toronto action are "case management" judges. The authority of a case management judge or master is very broadly framed. **It allows him or her to order virtually anything in keeping with the purpose of r. 77, which is expressed in r. 77.02.** Essentially, r. 77.02 provides that a case management judge or master may do what they deem necessary to advance the purpose of case management, namely, to encourage early and fair settlement and bring proceedings "expeditiously to a just determination." This rule prevails, if in conflict with others. Often, a judge or master will rely on this rule as broad authority to "encourage" settlement, or to expedite the action.

2. Non case-managed actions

These are actions or applications started before July 3, 2001, and actions or applications to which case management does not apply. It also includes actions or applications started in a jurisdiction without case management.

(a) **Pre-trial conference**

Rule 50.01 allows a judge (on his or her initiative) or at the request of any party to the action or application to direct a pre-trial conference.

Counsel should be mindful of **the potential change in a pre-trial judge's view of the purpose of the pre-trial.** Even though the client is not obliged to attend under Rule 50.01, a judge may nevertheless insist on the client's presence.

3. Simplified Procedure

Simplified Procedure actions are not case-managed. They will not be subject to the general powers of the case management judge or case management master under Rule 77.11(1).

(a) **Pre-trial conference – Rule 76.10**

The Simplified Procedure (as amended, on January 1, 2002) now has express rules on who is obliged to attend at the pre-trial conference.

Rule 76.10(2) provides, expressly that a **"party and his or her lawyer"** are obliged to participate by personal attendance (or telephone or videoconference – if personal attendance is impracticable).

¹ Does not include the following: (i) family law actions; (ii) commercial list matters; (iii) estates proceedings; (iv) Rule 64 – Mortgage actions; (v) construction lien proceedings; (vi) bankruptcy and insolvency proceedings; (vii) class proceedings; and (viii) simplified rules proceedings.

The implications for practice

What does all of this mean for you? It means that now more than ever you need to pay attention to client communication as a tool to minimize your risk.

These changes mean it is more important than ever for you to consider your client – their needs, expectations, and understanding of the process. Your client is now your participant in the litigation process. She or he must know what to expect, what their role is, what your role is, and how the process will unfold. You need to report to your client, in advance, on any mandatory mediation, settlement conference or pre-trial conference. Your failure to do so could result in consequences such as an adjournment (at your or your client's expense) and/or a jeopardized client relationship.

Moreover, you need to carefully manage both their expectations and their participation, as an integral element of the process of moving to a resolution.

What to do? At the risk of preaching to the choir, here are a few simple steps that you can implement to ensure your client communication addresses the expectations of the litigation process today:

Always prepare a retainer letter

- The retainer letter must set-out the terms of your retainer and set-out in general terms the scope of your authority.
- If your retainer changes during the course of your relationship with your client, send out a follow-up letter highlighting the change in terms.

Prepare your client for the process

- Explain what lies ahead in the litigation process to your client; ensure she or he understands at what stages her/his active participation may be required.
- Confirm attendance dates with your client well in advance.
- Provide enough time in preparing any pre-attendance report (mandatory mediation or settlement conference) to allow your client to review your brief. They will be participating. Better to catch any errors or misunderstandings before they sit down at the table with the judge or mediator.
- Ensure you have communicated as thoroughly as possible the opposing party's position to your client, as one way to ensure expectations are realistic.

Get clear instructions from the client

- All contentious instructions that you receive should be confirmed in writing with your client.
- A memo to file is good, but for the truly contentious issues (i.e. when your client does not take your advice), write a letter

confirming your advice, your client's instructions, and the fact that they acknowledge that the instructions are contrary to your advice.

Organize all aspects of the offer to settle

- Know your client's concerns, and understand ahead of time what is important to the client to settle the matter. For example, your client may be looking for an apology when you are focused on damage amounts. Prepare your client for the larger range of settlement options that may be available during a hearing or mediation. Try to avoid last-minute surprises that could derail the process simply because the client has not been adequately prepared.
- Put in place a process to resolve potential disputes on the offer to settle. Sort out the details, discuss the implications of the various possible settlement options, and draft minutes of settlement in advance.
- Do not let that offer to settle sit on your desk. As soon as one comes in, forward a copy of it, even with the simplest of covering letters, to your client for their review and instructions.
- Always confirm your client's settlement instructions in writing. Send them a copy of the offer or acceptance for their approval. Follow-up with any complicated, technical or contentious points by phone call.

Make client communication an opportunity

Take advantage of the fact that you will have more contact and communication with your clients.

Remember, existing clients mean potential for future retainers, either through their own needs (as in the case of institutional clients) or through word of mouth. Why not take your current client matter and turn it into a client development initiative? A mandatory mediation or settlement conference provides an excellent venue to showcase your skills.

Boyd Balogh is an associate with Gowling Lafleur Henderson LLP.

To help you better understand and manage the dynamics of your interactions with clients, and how you can reduce your risk of a malpractice claim, practicePRO created the *managing the lawyer/client relationship* booklet. It is one in a series of booklets to help lawyers manage the risks associated with law practice. It is available at www.practicepro.ca/practice/lawyerclient.asp or you can call Customer Service at 416-598-5899 or 1-800-410-1013 or e-mail service@lawpro.ca.



Technology breakfast update



These breakfast presentations focus on legal technology, although the content and format will vary. Some sessions will feature product comparisons. Others will be practical discussions and demonstrations of specific products by actual users. Still others will review practical technology skills at a basic level.

Summaries and online versions of past breakfasts

For those who were unable to attend, written summaries and online versions of past breakfasts (along with handouts, if any) are available for download. Summaries of all breakfasts are available at www.practicepro.ca/techbreakfasts.

BAR-eX Communications Inc. has created online versions of the asterisked breakfasts(*). These allow you to hear the audio and see a screen capture of the actual breakfast presentation. They are available at www.bar-ex.com for the special introductory price \$29.95.

- Winning with Technology (April 26)
- Voice Recognition (May 24)
- Case Management Software Comparison: Amicus Attorney vs. TimeMatters (June 21)
- The 5 P's of PowerPoint Presentations (July 19)*
- Practical Power Tips for Excel (August 23)*
- Legal Research on the Web (September 27)*

Upcoming breakfasts

November 29 – E-brief Acrobatics with Adobe

E-briefs are the ultimate tool for presenting your case, its facts and the relevant law to a court. Glenn Smith of Lenczner Slaght Royce Smith Griffin will review what you need to know to create and present an e-brief in Adobe Acrobat.

January 17, 2003 – Case Management Software for Family Law Lawyers

In the deadline driven world of family law, case management software can help you do more. Come to this session by Carole Curtis to hear how she implemented and uses Amicus Attorney in her busy office.

February 21, 2003 – A Technology Security Primer for Law Firms

Locking the front door of your office is not enough protection in the world of computers and the Internet. Come to this session by Rocky Stefano of Echelon Systems, for a review of the things you should be doing to protect and secure your electronic information and data.

To register

All practicePRO Technology Breakfasts will be held at LawPRO's office, One Dundas Street West, Suite 2200, Toronto. Attendance is limited to 25 people. Cost of \$15 includes a continental style breakfast, which will be available starting at 7:45 am. Sessions start promptly at 8:00 am, and finish at 8:45 am. To register, please contact Nanette O'Connor at 416-596-4623 or 1-800-410-1013, or by e-mail at nanette.oconnor@lawpro.ca.

Surviving the e-mail onslaught

practice

PRO

E-mail has become an essential tool for lawyers and law office staff alike. It allows faster and easier communications between lawyers and their clients, and for many has become a preferred way of communicating. However, while communicating more efficiently via e-mail has led to a gain in productivity, there is no doubt that dealing with large numbers of e-mail messages is now causing losses in productivity. Although estimates vary, in round numbers approximately nine billion e-mails are sent daily in North America. That means that just over 100,000 people hit "Send" every second of every day. All those messages end up in someone's inbox.

E-mail will become even more common and vital to the practice of law as people become more connected to the Web, and as electronic filing becomes more widespread. This article reviews how you can use e-mail more effectively and efficiently.

Use proper netiquette

What is "netiquette"? It is simply etiquette in the electronic world of e-mail and the Web. Exercising good netiquette means you should do the following:

- **Use proper spelling and grammar:** Messages that have proper spelling and grammar are more professional and easier to read. Avoid using short-forms for words.
- **Exercise good manners and be polite:** Keep in mind that there is a real person on the other end that will receive and read the message you are sending. Be respectful and polite, and don't say anything you wouldn't say in person.
- **Count to ten before you hit "Send":** Every lawyer has dictated an overly aggressive letter in a moment of anger or frustration, only to tone it down later with the benefit of some time to cool off while the letter was being typed. The instantaneous nature of e-mail doesn't give you this built-in cooling off period. Be careful not to send an inappropriate message in a moment of anger.
- **Clearly describe the message contents in the "Subject" line:** A clear and concise description of the message in the "Subject" line helps ensure your message actually gets read.
- **Help people find the relevant parts:** E-mail makes it very easy to forward long messages or large attachments to others. To help the recipient of your e-mail quickly get to the key points, forward only the necessary parts of the original message, or identify where the relevant parts can be found in an attachment (eg. " See pages 3 and 45-48 of the attached document").
- **Don't use e-mail when it is inappropriate:** E-mail is not the same as a phone or a face-to-face conversation. At the top of the hierarchy of communications are face-to-face meetings, then phone calls, then voice mail, and lastly e-mail. Face-to-face meetings have the most impact. Not only can you hear and talk back to the other person, you also have the ability to see gestures and facial expressions etc. E-mail has the narrowest communications bandwidth – it is only words on a screen. Make sure the mode of communication you use fits the circumstance.
- **Clean up messages before you forward them:** Many e-mail programs have a feature that highlights or indents the original text of a forwarded message. This can be helpful in distinguishing between new comments and original text. However, it can make messages that have been forwarded many times unreadable. To avoid this problem, clean up all text in any message you forward.
- **Check before sending attachments to anyone:** Downloading large attachments can be time consuming. Although less of a concern now as more people have high-speed Internet connections, it is a common courtesy to ask someone if they want to receive a large attachment.
- **Use correct document extensions on all attachments:** Document extensions are the three letters at the end of a file name. For example, Word files have the .doc extension, and WordPerfect files have the .wpd extension. These extensions are important as they tell a computer what program should open the file. Including the proper extension on an attachment helps insure that it can be opened by the recipient.

Common e-mail don'ts

The following list reviews some of the most common e-mail "don'ts":

- **Don't "cc" people or use group mail unless it is absolutely necessary:** "cc", "bcc", "reply-to-all" and group addressing make it extraordinarily easy to send messages to large groups of people. You should use these addressing features sparingly, especially the "Everyone" group. Whenever you use

one of these addressing options, ask yourself, do all these people absolutely need to read this message?

- **Don't forward jokes, Spam or chain-mail messages:** They waste not only the recipient's time, but also valuable network and Internet capacity.
- **DON'T TYPE EVERYTHING IN CAPITALS:** In Web-speak this is the equivalent to shouting. You can occasionally use capitals to emphasize an important word or point.
- **Don't forward virus warnings!:** As 99.999999% of them are hoaxes, you are simply wasting your time, and the time of the people you are forwarding the warning to. Go to www.symantec.com/avcenter/hoax.html or a similar site to verify if a virus warning is legitimate.
- **As a general rule, don't reply to Spam:** Doing so confirms that there is a live body at your e-mail address, and this will likely result in even more Spam being sent to you. If you get Spam from a reputable company, it is safe to use the Spam opt-out option that is usually included in messages.

Avoid inbox overload

Don't use your inbox as a catch-all folder for everything you need to work on. Doing this almost guarantees that at some point you will miss something important. Read items once, and answer them immediately if necessary, delete them if possible, or move them to task or matter-specific folders. Consider setting up one or more temporary holding folders. For example, put messages that need to be dealt with in a "current" holding folder, and put wait-and-see messages that are not time sensitive in a "wait" folder. Putting all messages to or from a specific client into one folder makes it easier to review the messages relevant to just that client.

Most e-mail programs have a "Rules" feature. Rules can help you manage your Inbox by automatically moving incoming messages to various sub-folders based on specific criteria. You create Rules to meet your own needs by specifying your own criteria. They can be set to run automatically without your intervention. Rules are especially helpful if you are on an e-mail list, and in particular a high-volume list.

For example, if messages from a list you are on always have the text [LawInfo] in the subject line, you create a rule that checks the subject line of every incoming message, and automatically moves any message with this text into the appropriate folder. This removes them from your Inbox. You simply go to this folder whenever you want to review the messages from the list.

Remember that e-mails are lawyer/client communications

When it comes to e-mails, remember, they fall somewhere between phone calls and letters. On one hand, e-mail is like correspondence written on paper and probably should be kept. On the other hand, some e-mails are like phone message slips and are not important to keep (unless you ever need to confirm the date or time when a client called or left a message at your office). Use your own judgment. When in doubt take the cautious approach and keep the e-mail in question.

Consider having a system to print and file each e-mail in the proper client file, or create a system to store all e-mails electronically, which gives you the ability to retrieve them later – up to many years later, if necessary. Most case management products allow you to do this very easily. You may also consider as part of your closing procedure for a file, printing

up all the e-mail communications on the file and storing those with the closed file. If the electronic records are lost, the paper copies would be preserved.

E-mail confidentiality and encryption

The *Rules of Professional Conduct* specify that lawyers shall ensure that client confidentiality is maintained when electronic communication is used. The steps required include understanding how to minimize the risks of the disclosure, discovery or interception of confidential client information, as well as using technology and creating office management practices to maintain confidentiality.

The use of encryption software is not mandatory for e-mail communications, although it is something that should be discussed with any client with whom you intend to e-mail. However, when information is extraordinarily sensitive, a lawyer should use, and advise a client to use, encryption software to help maintain confidentiality.

Summary

E-mail is now an essential tool for lawyers. By using the techniques outlined above you should be able to use it more efficiently and effectively. Don't forget to take steps to increase the e-mail skills of your staff so that they can also make the most of this communications tool.

Dan Pinnington is Director of practicePRO, LAWPRO's risk and practice management initiative.



The most common malpractice error:

Failure to follow client's instructions

A review of the LawPRO claims data for the last 20 years shows that one error stands out above the rest, both in terms of frequency and cost: the failure to follow client's instructions.

Twenty-two percent of the claims we have handled since mid-1982 involved this error. The costs associated with resolving claims that involve this type of error also are significant. They represent 19.8 per cent of estimated and incurred costs for all claims over this period of time.

What is a failure to follow client's instructions? It can truly be a simple failure to follow the instructions of a client. However, on many of these matters it is unclear what instructions were given or not given by a client, and what steps were taken or not taken by the lawyer. In many of these types of claims, there are limited, or even no notes in the lawyer's file, and/or no letter to the client confirming what instructions were given, and what steps were taken. Often the client's recollection is different from the lawyer's recollection as to what was said or done; often too the client's recollection is more specific.

Consider, for example, a real estate deal. Most clients buy or sell only one or two properties in their lifetimes, whereas a real estate lawyer may act on thousands of real estate deals. It should be clear who will have the better recollection of the details on any specific real estate matter. These types of claims are difficult to defend because they come down to credibility, and the client's more specific evidence often wins out over the lawyer's more general recollection.

This most common and most costly error is also one of the easiest to prevent. How? Write it down.

Send something in writing to the client confirming what instructions were given, and what steps were taken or not taken further to those instructions. Your communication can be a letter, a fax, or even an e-mail. No matter what form it takes, this confirmation serves to confirm, in a contemporaneous manner, exactly what was said and done. Having such a confirmation can be of great assistance in the event of a malpractice claim.

As a backup, consider creating a detailed docket. For example, don't just docket "telephone call with client, 0.3 hrs." Add more details to the docket such as: "telephone call with client re don't bother writing to City Hall for a clarification of the interpretation of By-Law 345, client feels it is clear, and the deal must go through, 0.3 hrs."

Recognizing when you are dealing with something that should be written down is essential. The Online COACHING CENTRE module included in this issue will provide you with some instruction on this point. See page 25 for Module #20 from the **Powerful Communications** workshop: *Writing effectively by... knowing when to write it down.*

For more assistance on how and when to communicate with clients, consider reviewing the other Online COACHING CENTRE modules in the **Powerful Communications** workshop.

The Online COACHING CENTRE

Workshop: *Powerful communications*

Module: *#20 – Writing effectively by... knowing when to write it down*

Coaching

Superior communicators keep a written record of telephone conversations, face-to-face discussions, proceedings and meetings. There are four reasons for doing so.

1. Written notes, when distributed to interested participants, ensure a common understanding of what was discussed.
2. Written notes will confirm the details of who does what and when.
3. Written notes are a mechanism to provide a starting point for follow-through.
4. Written notes are a record that can be used to prove a point at a later time.

The optimum style is to take personal notes during the conversation, discussion, proceeding or meeting in a convenient manner.

- Some people use notepads. They tend to file individual pieces of paper in topic related files once the notes have been transcribed or acted on.
- Others use notebooks to keep a continuous tracking of their activities.
- Others use technology to take notes in an electronic form.

Whatever method you choose, the steps in writing it down are:

- Take raw notes during the event either in writing or electronically.
- Transcribe these, if necessary, to a more organized form for circulation or filing.
- Keep a file copy for future reference either as a hard copy or an electronic file.

Mentoring

Consider how each of the four reasons for taking, keeping, and filing written notes can be helpful to you.

- When would issuing a meeting report be helpful?
- Under what circumstances would you need to confirm

the details of who does what and when?

- Have you ever had an occasion where you wished you had kept written notes for use later?
- When and how could written notes be used as a mechanism for scheduling and starting projects?

online
COACHING CENTRE

practice
PRO

coachingcentre home about the coaching centre coaching menu tips/help feedback

What is the OCC?

The Online COACHING CENTRE (OCC) is LAWPRO's innovative online education tool. It lets you quickly and easily enhance a variety of "soft skills" that not only help you survive and thrive, but also help reduce malpractice claims.

The OCC is entirely Web-based, allowing lawyers across Ontario to use it at a time and place convenient to them. To access the OCC go to www.practicepro.ca/occ/.

OCC content is organized into six workshops, each focusing on a particular area:

- Getting Stress Hardy
- Powerful Communications
- Overcoming Procrastination
- Practice Management

- Business Development
- Emotional Intelligence

Each workshop contains 25 learning modules, each of which focuses on a particular aspect of the workshop topic and will take only 10-15 minutes to complete.

The module format is designed to encourage self-teaching and self-evaluation:

- a coaching section provides some general comments on the skill or topic in question;
- a mentoring section asks you some directed questions to help you understand how you can improve your skills or better handle the topic.

You are encouraged to save your answers so that you can review them at a later time.



Unlink the link

You may have noticed that whenever you copy or type a Web address or URL into a Word or WordPerfect document, it automatically gets turned into a hyperlink. Hyperlinks usually appear in blue underlined text.

Hyperlinks in word processing documents work the same way as links on Web pages. Clicking on a hyperlink will automatically open your Web browser to that Web address. They can be very helpful when you want to give someone easy access to a particular Web site.

But what if you DON'T want the Web address to be a hyperlink? Follow these simple steps. Immediately after the hyperlink is created (that is, when it turns blue and underlined), you should press Ctrl+Z, or Alt+Backspace. These are the "undo" shortcut keys. Pressing them will remove the hyperlink, but will leave the text of the Web address. Note that this trick only works immediately after the hyperlink is created.

If you want to remove an existing hyperlink in Word right click on it, select Hyperlink, then Edit Hyperlink. Next click on the Remove Hyperlink button in the lower left corner and select OK. The steps for removing a hyperlink in WordPerfect are similar.

Dan Pinnington is Director of practicePRO, LAWPRO's risk and practice management initiative.



Law Society discount on IBM products

To make computer products more accessible to its members, the Law Society of Upper Canada is participating in the IBM affinity program.

Offered online through the BAR-eX website, the program provides savings of up to 10% on selected IBM PC and eServer products and services.

Who is eligible?

Law Society of Upper Canada members, staff, Bar Admission Course students, staff at LawPro, staff at BAR-eX Communications Inc., staff in lawyers offices and family members of these groups are all now eligible for discounts.

Thanks to the program, members of any of these groups can receive up to 10% discounts on an exciting line-up of IBM PC products and services – including ThinkPad notebooks, desktops, IBM xSeries servers and a wide variety of accessories and upgrades – and can take advantage of special promotions.

How it works

To take advantage of discounts offered, you must first access the BAR-eX website at <http://www.bar-ex.com>.

Then click on the Law Society/IBM icon on the right-hand side of the page, read the brief introduction to the program and click on the IBM link. Once you enter the IBM page, type in "LSUC" as the user ID.

You can also call IBM directly at 1-888-315-7408. Mention that you are eligible for discounts through the Law Society of Upper Canada.



CLE Premium Credit

program roster expands



Lawyers will have many more opportunities to claim a LawPRO CLE Premium Credit in 2003, as the number of programs qualifying for this insurance premium credit is expected to more than double.

Launched in January 2002, the CLE Premium Credit program provides lawyers who participate in a qualifying CLE program (i.e. one that includes risk management content) with a \$50 insurance premium credit for each program taken, to a maximum credit of \$100 per lawyer. Working with CLE providers such as the Law Society, the Ontario Bar Association, the County and District Law Presidents' Association (CDLPA), the Carleton County Law Association, and The Advocates' Society, LawPRO identified 12 programs that qualified for the CLE credit this year.

LawPRO has approved an additional 11 programs for this fall, and many more are in development. For a full and current listing of qualifying programs, visit http://www.lawpro.ca/CLECredit/CLE_list.asp

More than 2,200 lawyers attended qualifying CLE Premium Credit programs in 2002, and an additional 950 lawyers qualified for the credit by completing three Online COACHING CENTRE (OCC) modules.

LawPRO introduced the CLE Premium Credit program in 2002 as part of its ongoing efforts to encourage lawyers to incorporate risk management strategies and tools into law practice as one way to help reduce claims. To qualify as a LawPRO CLE Premium Credit program, programs offered by CLE providers must include content that has a specific focus on risk management and claims prevention, and will include information that assists lawyers:

a. in appreciating the nature, cause and frequency of malpractice claims;

b. in understanding and assessing continuously what can go wrong (i.e. what the risks are);

c. in determining which risks demand the most attention; and

d. in implementing strategies to deal with and eliminate those risks.

Qualifying programs can be offered either in lecture/seminar formats, or can be video replays of qualifying programs, provided they are offered in a classroom setting with a knowledgeable moderator, and include a question-and-answer session. Lawyers who chair or speak at a qualifying program are eligible for the credit, provided they attended the entire session.

Lawyers can also apply for one \$50 credit by completing three modules of the practicePRO Online COACHING CENTRE, the self-coaching tool accessible on the Web at <http://www.practicepro.ca/occ/default.asp>.

Claiming the credit

Privacy concerns and logistics preclude LawPRO from being able to obtain attendance lists from CLE providers. Therefore, to claim a credit, you must complete the online CLE Declaration Form at http://www.lawpro.ca/CLECredit/CLE_Declaration.asp.

Credits for programs taken prior to September 15, 2002, will be applied to the 2003 insurance premium, for all lawyers who filed Declarations by this deadline. Credits for programs taken between September 16, 2002, and September 15, 2003, will be applied to the 2004 insurance premium. Unclaimed credits cannot be carried forward from one year to the next.

LAWPRO repairs

Everyone knows that LAWPRO defends lawyers who are sued for malpractice. Not everyone appreciates that LAWPRO also “repairs” errors or alleged errors made by our insureds, so that a malpractice claim never comes forward. These “repairs” are carried out in all practice areas. Some cases may reach the Supreme Court of Canada, others are never reported at all. Here is a sample of recent LAWPRO “repairs.”

1. The case

Somersall v. Friedman, [2002] S.C.J. No. 60, dismissing an appeal from a judgment of Ontario Court of Appeal, [2000] O.J. No. 401, allowing an appeal from a judgment of the Ontario Court (General Division) (1998), 40 O.R. (3d) 461.

The facts

The plaintiffs Somersall, on the advice of their solicitor, released the tortfeasor motorist Friedman from any claim in excess of his \$200,000 policy limits, in exchange for an admission of liability, and an advance payment of \$50,000. This was done without any notice to the plaintiffs' own insurer, Scottish & York Insurance. Scottish & York took the position that the plaintiffs were not entitled to recover under their underinsured motorist coverage because they were no longer “legally entitled to recover” from the tortfeasor an amount in excess of \$200,000, and because the plaintiffs had prejudiced their insurer's ability to recover its subrogated claim against the tortfeasor.

The judgment

Scottish & York was successful at first instance. The plaintiffs successful appeal to the Ontario Court of Appeal. Scottish & York unsuccessfully appealed to the Supreme Court of Canada.

The Court reasoned that the limits agreement with the tortfeasor did not block the action. It had no bearing on the right of the insured against the tortfeasor at the time of the accident, which was the relevant time for the determination of legal entitlement. It only rendered the plaintiffs unable to further their legal rights against the tortfeasor in the courts.

The plaintiffs did not interfere with the insurer's rights of subrogation to such an extent as to deprive it of a right it acquired in the contract. Only a clear and unambiguous obligation upon the insured to maintain a claim in tort and not to waive it in exchange for a payment can support an interpretation favourable to the insurer. Further, the insurer's right of subrogation did not arise until the insured has been fully indemnified. Here, the insurer's right of subrogation had not yet arisen, and in any event there was no evidence that the plaintiffs did not honestly and in good faith believe that it was prudent and wise to enter into the limits agreement. Absent any evidence of actual or probable loss, the insurers should not be allowed to raise an alleged breach of subrogation rights in order to bar a claim made in good faith by the insured.

2. The case

Re Raina and the Land Titles Assurance Fund, Unreported decision by Jean C.H. Lu, Deputy Director of Titles, released February 22, 2002.

The facts

Imposters and forgers have been a problem for the real estate bar over the past ten years. In this case, LAWPRO represented a defrauded lender before the Land Titles Assurance Fund, even though the lender's solicitor had done nothing wrong.

Ms. Raina purchased a property in Richmond Hill in April, 1999. She gave a charge to the Royal Bank of Canada. Six months later, unbeknownst to Raina, Emanuele Tesoro fraudulently transferred the title to the property to himself. He then fraudulently discharged the Royal Bank of Canada mortgage, and gave a charge to Ila Weiser and Midking Investments Limited for \$350,000. The solicitor who represented Tesoro and Weiser/Midking in the placement of that mortgage requested a photo ID from Tesoro, and received it. The Weiser/Midking charge was also fraudulently discharged in December 1999.

Two months later, Tesoro gave a charge to Equitable Trust Company in the amount of \$252,5000. Tesoro eventually went to prison, but none of the stolen money could be traced.

The decision

Ms. Raina sought relief from the Land Titles Assurance Fund, as did Weiser/Midking Investments. In a decision by the Deputy Director of Land Titles, Ms. Raina was awarded the sum of \$725,498.29, on the understanding that this money would be given to Ila Weiser/Midking Investments and Equitable Trust to discharge their mortgages. The Deputy Registrar ordered that title be rectified to show Ms. Raina as registered owner and to reinstate the Royal Bank charge. Raina and Weiser/Midking were awarded their costs.

3. The case

Doraty v. Dallas Homes and Costanzo, Unreported judgment of Charbonneau, J. (Ont.S.C.J.) released June 21, 2001, Court file 98-CV-7638 (Ottawa).

The facts

A solicitor discharged a mortgage by mistake. Dallas Homes took advantage of this mistake by quickly reselling the land to a purchaser without notice of the mortgagee's interest. The mortgagee therefore had no interest in the land, or any recourse against the new purchaser. LAWPRO paid out the innocent mortgagee, and then sued Dallas Homes.

The judgment

LAWPRO obtained judgment against both Dallas Homes and its owner Costanzo personally on the basis of unjust enrichment. Costanzo acted willfully and in bad faith, and his conduct was independently tortious.

4. The case

Value Village Stores Inc. v. Battlefield Square General Partner Inc. and Goodwill, the Amity Group, Court File No. 02-CV-227470 CM3, April 11, 2002.

The facts

The landlord of a shopping plaza entered into a lease with the anchor tenant, whose lease provided that the landlord would not permit the sale of second-hand clothing in the shopping centre. This has long been characterized as a "character" clause in a shopping centre lease. The anchor tenant sublet the premises to Value Village Stores, whose main business was the sale of second-hand clothing. The landlord consented to the sublease. Value Village did not request a non-competition agreement.

Subsequently, the landlord, Battlefield Square General Partner Inc., entered into an offer to lease for another store in the plaza with Goodwill, whose primary business was also the sale of second-hand clothing. The landlord's solicitor advised that there was no impediment to leasing to Goodwill. Value Village brought an application for an injunction to prevent the leasing to Goodwill on the basis that

the character clause was also a non-competition clause. LAWPRO argued the landlord's position.

The judgment

Backhouse, J. dismissed the application. In her opinion, this clause was intended to prevent a diminution of the reputation of the shopping centre. Value Village was attempting to turn a clause which has nothing to do with competition into a clause restricting the landlord's right to lease to a competing business. It would be inequitable to enforce this provision. Obviously, Value Village waived the character clause when it leased premises for a purpose contrary to the character clause. There is no reason why it should now be entitled to rely on the clause, the purpose of which ended with its own sub-lease.

5. The case

Ball v. Ball, [2001] O.J. No. 5196 (Ont.S.C.J.), affirmed [2002] O.J. No. 1772 (C.A.).

The facts

A wife's solicitor served an offer to settle matrimonial litigation on April 30, 2001. One of the terms of the agreement was that the parties would enter into a shareholders' agreement by December 31, 2001. The wife's solicitor neglected to include a term in the offer to the effect that the wife would continue to draw a \$75,000 annual salary from her husband's corporation. The husband accepted the offer on July 23, 2001. On July 26, the wife's solicitor wrote to the husband's solicitor, stating that the wife expected to continue to draw the salary. The husband rejected this contention. The husband moved for judgment on the offer to settle.

The judgment

Aston, J. dismissed the application. The wife's solicitor's failure to stipulate for the continuation of the salary was at

most a unilateral mistake. There was no evidence that the husband or his solicitor knew or should have known of this mistake.

Aston, J. did, however, hold that the execution of a shareholders' agreement was a true condition precedent to settlement. A shareholders' agreement was fundamentally important to the wife as part of a settlement of the matrimonial issues. Without such an agreement, enforcement of her entitlement under the settlement might become difficult or impossible. The husband submitted that the shareholders' agreement was "superfluous" to the terms of settlement because the subject matter of the agreement was outside of the pleadings and issues before the court. The Court disagreed with this contention. No final agreement has been reached until a shareholders' agreement was in place.

Before the condition precedent was met, and hence before any binding agreement, the wife effectively modified her offer to settle to include the additional provision of her ongoing salary. Since the husband was not prepared to accept that modification, there was no binding agreement.

The husband unsuccessfully appealed to the Court of Appeal. The Court agreed with the motions judge that the offer to settle and its acceptance, when viewed in the context of the negotiations between the parties, did not constitute a binding contract. The two documents merely outlined the parameters of future negotiation between the parties. It was therefore still open to the wife during the course of these negotiations to clarify her position on the issue of her salary. The husband never having agreed to this term and the shareholders' agreement never having been entered into, there was no settlement agreement to enforce.

Debra Rolph is LAWPRO's Director of Research.

Events calendar

2002-2003



The following is a listing of events at which LAWPRO representatives, including staff from TitlePLUS and practicePRO, have presented or will be presenting and/or participating.

2002

October 10

McMillan Binch

LawPRO, Your Policy, Claims and Risk Management – Dan Pinnington, practicePRO

Toronto

October 18

Pacific Legal Technology Conference

Favourite Technologies for the Small Firm and Case Management, Loss Prevention and Practice Management – Dan Pinnington, practicePRO

Vancouver

October 23

Hamilton Law Association 16th Annual Joint Insurance Seminar

How to Avoid Malpractice Claims – Robert Munroe, Ross & McBride

Hamilton

October 24-26

OTLA 2002 Fall Conference

How to Avoid Malpractice Claims on Brain Injury Matters – Robert Munroe, Ross & McBride

Toronto

October 24-26

Thunder Bay Law Association 10th Annual Fall CLE Event

Claims Statistics and Managing Stress – Nanette O'Connor, practicePRO
practicePRO & TitlePLUS exhibiting

Thunder Bay

November 1-2

Civil Litigation Updated 2002, County of Carleton Law Association

practicePRO exhibiting

Risk Management and Litigation Claims – Nanette O'Connor, practicePRO

Chateau Montebello, Quebec

November 7-8

New Lawyer Experience

Practice Management Panel: The Keys to Effective Client Communication and Time Management – Dan Pinnington, practicePRO

Meaningful Risk Management and Loss Prevention – Yvonne Diedrick and Cynthia Martin, LAWPRO

Law Society of Upper Canada, Toronto

November 8-9

Expanding Horizons: 18th Annual Directors' Forum, Credit Union Directors of Ontario

Mark Farrish, TitlePLUS
TitlePLUS exhibiting

Royal York, Toronto

November 13-14

3rd Annual LEGALTECH Toronto

Essential Utilities – Dan Pinnington, practicePRO

Disaster Prevention and Recovery: Would your firm survive? – Michelle Strom, LAWPRO

The 8-Minute Technology Expert – Kathleen Waters, TitlePLUS

practicePRO & TitlePLUS exhibiting

Metro Toronto Convention Centre, Toronto

November 20-21

Fifth Annual Estates and Trusts Forum

Recent Developments Relating to Solicitors' Negligence in Estate Matters – Ian M. Hull

Law Society of Upper Canada, Toronto

November 29

The Six Minute Insurance Primer for General Practitioners

Lawyers' Professional Indemnity Insurance and Damages Claims – Caron Wishart, LAWPRO

Law Society of Upper Canada, Toronto

November 29

Technology Breakfasts: E-brief *Acrobatics with Adobe* – Glenn Smith of Lenczner Slaght Royce Smith Griffin

LAWPRO, Toronto

November 29

CIMBL Conference,
TitlePLUS exhibiting

Toronto

2003

January 17

Technology Breakfast: Case Management Software for Family Law Lawyers – Carole Curtis, sole practitioner

LAWPRO, Toronto

February 21

Technology Breakfast: A Technology Security Primer for Law Firms – Rocky Stefano, Echelon Systems

LAWPRO, Toronto

For more information, on practicePRO events, contact Nanette O'Connor at 416-596-4623 or 1 800 410-1013, or by e-mail at nanette.oconnor@lawpro.ca.

For more information on TitlePLUS events, contact Marcia Silverman at 416-598-5882 or e-mail marcia.silverman@lawpro.ca.

October 31: Third quarter filing deadline

Real estate and civil litigation transaction levies and forms for the quarter ended September 30, 2002, are due and payable on October 31, 2002. All real estate and civil litigation lawyers must file a transaction levy form indicating the number of civil or real estate transactions undertaken for the period from July 1 to September 30, 2002. A filing must be made even if there were no transactions to report for this period.

Transaction levy filing forms are available on the LAWPRO Web site at www.lawpro.ca. To complete your transaction filings electronically, click on **File Online**; to access blank forms in PDF format, click on **Insurance Forms**.

TitlePLUS now available in Manitoba

The national rollout of TitlePLUS is gathering momentum: As of this fall, lawyers in Manitoba can secure TitlePLUS coverage for consumers who buy or refinance/mortgage property. Now in its fifth year, TitlePLUS

title insurance is being widely used by real estate lawyers in Ontario and has been available in Atlantic Canada since earlier this year.

Manitoba lawyers will be able to secure TitlePLUS coverage over the phone, or by completing a TitlePLUS application, available from the TitlePLUS Web site (www.titleplus.ca) or from TitlePLUS directly. TitlePLUS completes all of the necessary paperwork and provides the lawyer with a draft TitlePLUS policy and other materials to review with their client.

TitlePLUS earns international recognition

TitlePLUS Vice President Kathleen Waters has been appointed to the Indian Land Claims Committee of the American Land Title Association (ALTA), a national association for commercial title insurers in the United States. The appointment speaks to the profile that TitlePLUS has earned in the title insurance marketplace. Ms. Waters' also has expertise in the area of aboriginal title.

This fall, TitlePLUS also will be participating, for the first time, in the annual meeting of the North American Bar-Related

Title Insurers (NABRTI), to share its experience and expertise as a bar-related insurer with its North American counterparts.

LAWPRO sponsors LegalTech Toronto

November 13-14, 2002, are the dates for the third LegalTech Toronto conference, a major annual event intended to help the legal profession integrate technology into legal practice.

As well as sponsoring the show, LAWPRO is adding its expertise to the roster of speakers and conference organizers. President Michelle Strom will speak on disaster prevention and recovery, practicePRO Director Dan Pinnington is conference vice-chair and leader for the *Technology in Motion* track.

TitlePLUS vice-president Kathleen Waters will participate in a session on the use of technology by lawyers.

For a summary of the program topics and speakers for LegalTech see the next pages.

For more information, visit www.oba.org/cle_en/legaltech.asp or call 416-869-1047 or 1-800-668-8900 to register.

LegalTech Toronto Sessions Summary

Wednesday November 13, 2002

Keynote: Mark J. Freiman, Deputy Attorney General, Deputy Minister Responsible for Native Affairs

Litigation Stream	Best Practices Stream	Technology Stream
<p>L1: PERSUASIVE PRESENTATIONS ON A SHOESTRING BUDGET Roger G. Oatley, Oatley Vigmond Joseph M. Matthews, Colson Hicks Edison Colson & Matthews</p>	<p>BP1: COMMUNICATIONS TO THE MAX Douglas N. Deeth, Deeth Williams Wall LLP</p>	<p>T1: ACROBATICS WITH ADOBE Glenn A. Smith, Lenczner Slaght Royce Smith Griffin Martin Felsky, Commonwealth Legal Inc.</p>
<p>L2: THE ELECTRONIC COURTROOM: IT'S HERE NOW Bruce Olsen, Davis & Kuelthau, s.c. The Honourable Mr. Justice Russell G. Juriansz, Supreme Court of Justice</p>	<p>BP2: HOW DO I FIND WHAT I NEED IN THIS MESS? Hugh G. Laurence, Goodmans LLP Michael Kraft, Kraft, Kennedy & Lesser, Inc.</p>	<p>T2: GETTING THE CASE MANAGEMENT RELIGION Carole Curtis, Barrister & Solicitor Phyllis Carlyle, Regional Municipality of York</p>
<p>L3: TECHNOLOGY: VIEWS AND REVIEWS FROM THE BENCH The Honourable Mr. Justice Dennis R. O'Connor, Associate Chief Justice of Ontario, Court of Appeal for Ontario The Honourable Mr. Justice Colin L. Campbell, Superior Court of Justice The Honourable Mr. Justice B. Thomas Granger, Superior Court of Justice</p>	<p>BP3: COLLABORATING AND SHARING WORK PRODUCT Mara L. Nickerson, Osler, Hoskin & Harcourt LLP Margaret E. Grottenhaler, Stikeman Elliott</p>	<p>T3: THE INTERNET IS NOT A ONE-WAY STREET Bonnie E. Fish, Fogler Rubino LLP Milton W. Zwicker, Zwicker, Evans & Lewis LLP</p>
<p>L4: WINNING DISCOVERY TACTICS IN THE ELECTRONIC WORLD Susan B. Wortzman, Lerner & Associates LLP Joseph M. Matthews, Colson Hicks Edison Colson & Matthews</p>	<p>BP4: MANAGING INFORMATION IN THE ELECTRONIC AGE Margaret E. Grottenhaler, Stikeman Elliott Mara L. Nickerson, Osler, Hoskin & Harcourt LLP</p>	<p>T4: THE "8 MINUTE" TECHNOLOGY EXPERT Ian Jones, Teranet Kathleen Waters, TitlePLUS Mark D. Tamminga, Gowling Lafleur Henderson LLP Paul Harte, Paul Harte Professional Corporation David L. Masters, The Masters Law Firm, L.L.C.</p>

Thursday November 14, 2002

Keynote: Don Morrison, Chief Operating Officer of Research in Motion Limited

Litigation Stream	Best Practices Stream	Technology Stream
<p>L5: MYTH OR REALITY: THE PAPERLESS OFFICE AND THE ELECTRONIC TRIAL NOTEBOOK Bruce Olson, Davis & Kueithau, s.c. John A. McLeish, McLeish & Associates</p>	<p>BP5: PLAN TO SUCCEED Karim Jinnah, Animate Systems Inc. Michael Kraft, Kraft, Kennedy & Lesser, Inc.</p>	<p>T5: SECURITY AND PRIVACY: WHAT SHOULD LAW FIRMS BE DOING? Simon Chester, McMillan Binch Jeffrey M. Flax, Office of the Federal Public Defender (Denver)</p>
<p>L6: MODERN TOOLS FOR TRIAL LAWYERS: CASE STRATEGIZING AND OTHER SOFTWARE TRINKETS Laurence A. Pattillo, Torys LLP David L. Masters, The Masters Law Firm, L.L.C.</p>	<p>BP6: THE RIGHT STUFF: PROCUREMENT STRATEGIES Dave J. Bilinsky, The Law Society of British Columbia Karim Jinnah, Animate Systems Inc.</p>	<p>T6: ESSENTIAL UTILITIES FOR BEING AN EFFECTIVE LEGAL TECHNOLOGY USER Stephen Bird, Lanark, Leeds & Grenville Legal Clinic Daniel E. Pinnington, LAWPRO</p>
<p>L7: GETTING THE DROP ON YOUR OPPONENT: COMPUTER FORENSICS Glenn A. Smith, Lenczner Slaght Royce Smith Griffin Jeffrey M. Flax, Office of the Federal Public Defender Kristin M. Nimsger, Esq., Kroll Ontrack Inc.</p>	<p>BP7: DOING MORE WITH WHAT YOU'VE GOT: GETTING MORE VALUE FROM YOUR EXISTING TECHNOLOGY John Tsiofas, CardID Corporation Daniel E. Pinnington, LAWPRO</p>	<p>T7: CASE MANAGEMENT AND LARGE MATTER TECHNOLOGY CASE STUDY Paul Harte, Harte Barristers Mike Peerless, Siskind, Cromarty, Ivey & Dowler LLP</p>
<p>L8: HAVE LAPTOP, WILL TRAVEL: THE MOBILE TRIAL LAWYER David L. Masters, The Masters Law Firm, L.L.C. Domenic A. Crolla, Gowling Lafleur Henderson LLP</p>	<p>BP8: WHAT CLIENTS EXPECT FROM THEIR "E-LAWYER" Michael Erdle, Deeth Williams Wall LLP Kimberley A. McVittie, CIBC Andre Perey, Blake Cassels & Graydon LLP</p>	<p>T8: DISASTER PREVENTION AND RECOVERY – WOULD YOUR PRACTICE SURVIVE A SERIOUS INTERRUPTION? David J. Bilinsky, The Law Society of British Columbia Michelle L.M. Strom, LAWPRO</p>

For information visit www.oba.org/cle_en/legaltech.asp or call 416-869-1047 or 1-800-668-8900 to register



LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LAWPRO®)

President: Michelle Strom

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Editor: Dagmar Kanzler
dagmar.kanzler@lawpro.ca

Design & Production: Freeman Communications

Photography: Rick Chard

Tel: (416) 598-5800 or 1-800-410-1013
Fax: (416) 599-8341 or 1-800-286-7639
www.lawpro.ca

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