

# LAWPRO®



A publication to help lawyers

Volume 3, Issue 4 December 2004

## practising law in an e-world

The potential of extranets  
The power of Google  
Funds handling in an e-world  
Leading edge real estate practice  
PLUS:  
Is there a crook in the firm?  
When the police come knocking  
Insurance coverage for fraud

# All the best of the e-season!



'Tis the season to be thinking of gift giving and getting – and undoubtedly many of you will find your thoughts steering (or steered) towards the new electronic “toys” that swamp the advertisements and marketplace at this time of year. Computers, Personal Digital Assistants (PDAs), cellphones that do everything but the talking ...the range of electronic devices and the opportunities they present are immense. So it is only fitting that this winter issue of LawPRO Magazine has as its theme the subject of practising law in an “e-world.”

As the articles on the following pages illustrate, technology opens new doors. In his excellent article on extranets, Gowlings' Mark Tamminga explains how to harness the power of the Web to connect people and build communities – providing lawyers with a new tool to improve both client communication and service.

The Web is also the backbone of an innovative new e-tool launched this fall for the real estate bar: RealtiPLUSWeb provides lawyers with a one-stop platform from which to conduct all aspects of their conveyancing work – at a significant savings of time on each transaction, as one user points out.

But as with all things, the “e-world” offers a double-edged sword.

Our feature article on how to build a Google presence on the Web illustrates the fundamental power shift that this technology has launched: With a few simple keystrokes, your clients – and prospective clients – can learn more about you and your law practice than even you might know about. Take some time this holiday season to Google yourself – then use practicePRO Director Dan Pinnington's tips to create the kind of online marketable Web presence you want your practice to have for 2005.

The connectedness that is the e-world's strength comes at a price, as the articles on phishing and pop-ups illustrate. It takes time and effort – and sometimes money – to protect yourself and your law practice from the annoying and often malicious intrusions of pop-ups, spyware and malware. But as our Information Systems Director David Reid points out, we ignore the dangers of the Web at our peril: His tips for safeguarding your computer systems are also well worth a few hours of your holiday time.

In this issue we also revisit the issue of fraud: This summer's *The Many Faces of Fraud* edition of LawPRO Magazine has become a “best-seller”: Financial institutions, the land titles office, even competitor title insurers all are using the information in that issue to educate their staff about fraud. In this issue, we feature two articles that provide practical, hands-on advice on the subject. Susan Elliott's article outlines controls you can implement to minimize the likelihood of a fraudster on your staff; Ian Smith walks us through the steps to take if ever your firm is the subject of a search warrant. We thank both authors for their permission to excerpt from papers they delivered at the Law Society's fall CLE on *Fighting Real Estate Fraud*.

I'd also like to take this opportunity to thank you, our readers, for the positive feedback we receive regularly on this publication: We welcome your ideas and input. I wish each of you the best of the holiday season.

A handwritten signature in blue ink, appearing to read "Michelle L.M. Strom".

Michelle L.M. Strom  
President and CEO

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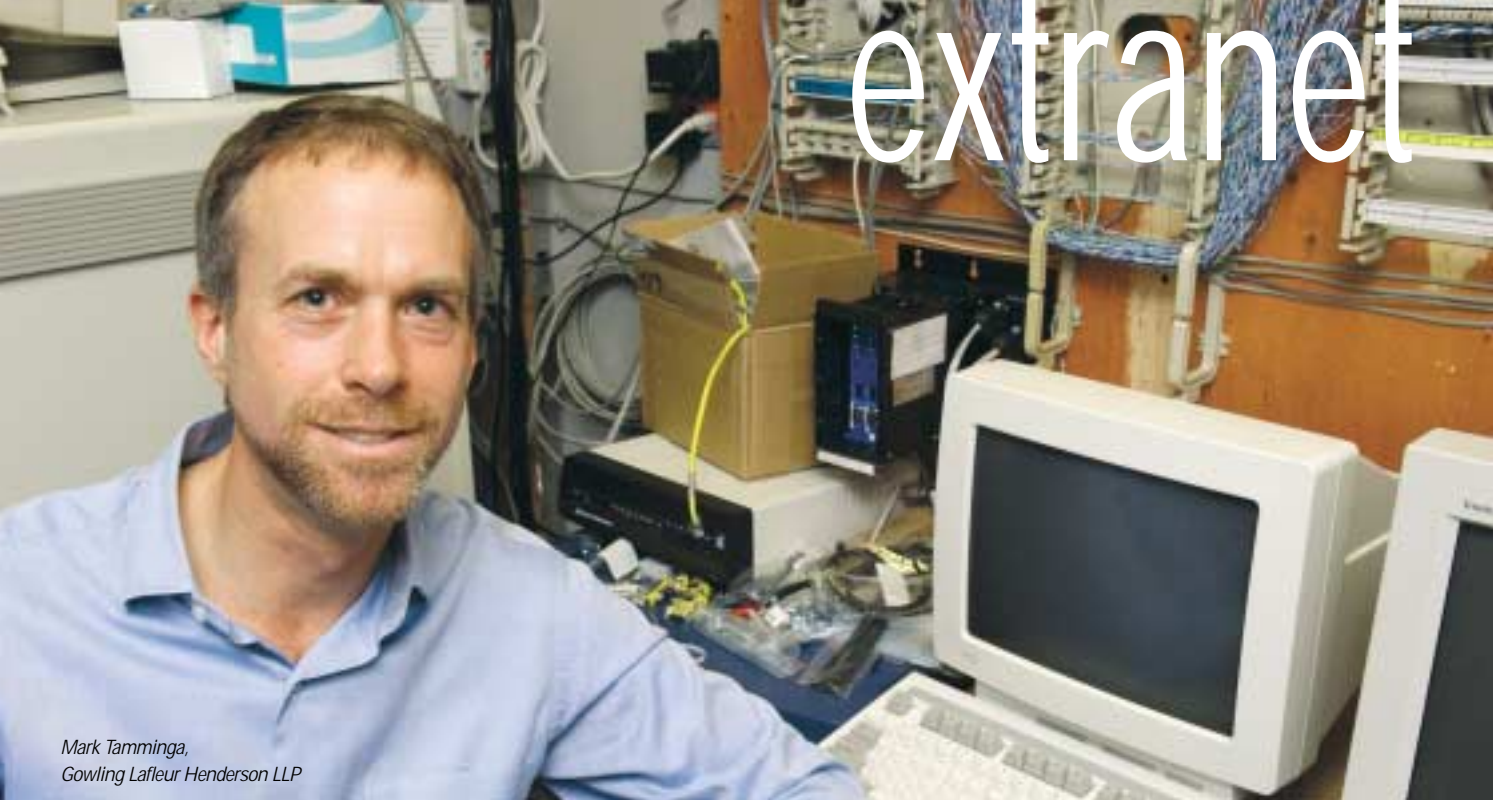
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# Tapping the potential of the

# extranet



Mark Tamminga,  
Gowling Lafleur Henderson LLP

## Improved client communication with less effort

There's something about new technologies that makes people give them awkward and contrived labels.

Extranets are no exception.

First, there was the *Internet*, a reasonable enough name for a wonderful basket of technologies. Then came *intranets* as a play on the Internet name. An intranet is like a small private Internet living within the confines of an organization. Employee manuals, access to accounting and a variety of similar internal matters are all now frequently entrusted to a company's intranet.

However, when early adapters began giving selected outsiders access to parts of their intranets and creating private online communications tools for visitors, customers and clients, some intranets stopped looking all that, well, *intra*. Inevitably, someone coined the word "extranet" to describe these new tools and techniques, and the name stuck.

Big deal. Just another addition to the opaque jargon of the computer world.

True, but if you dig into the concept a bit, there emerges a promising idea of real utility to law firms: the reduction or elimination of barriers between clients and lawyers, or in other words – the ability to communicate better with clients with much less effort. Where time is increasingly at a premium, it only makes sense for lawyers to learn a little something about what extranets can do for their practices.

## Extranets: the basics

So here's the first thing to understand. Extranets are not really a thing so much as they are a service – the service of creating novel and effective ways of communicating and sharing information with a client.

At its most basic an extranet is a means of networking two or more entities so they can securely share information. In some cases an extranet is simply an extension of a law firm's intranet to include a connection to a client. In other cases an extranet makes use of the public Internet combined with security features to create a new, more private, environment.

Extranets generally have the following features:

- *The use of internet technologies and standards.* These include the standardized techniques for transmitting and sharing information and the methods for encrypting and storing information, otherwise known as the Internet Protocol, or IP.
- *The use of Web browsers.* Users access extranet information using a Web browser such as Microsoft Internet Explorer, Netscape Navigator or, more recently, Mozilla's Firefox. Browser software uses relatively small amounts of memory and resources on a computer. The great thing about browsers

## A client service tool for BLG



When Borden Ladner Gervais first began providing extranet sites to clients several years ago, it used fairly simple technology to create portals where clients could access release documents. These days, the firm has become a leader in what Joel Alleyne, Chief Financial Officer and Chief Knowledge Officer calls the "mass customization" of client extranets. BLG now creates extranet sites that share a basic template and functionality; for the most part, they provide access to case documents, financial information, contacts within the firm and a vehicle for online discussion and collaboration.

According to Alleyne, it's now the clients who are asking for extranets as a means to improve access to information. "Collaboration is really what's innovative about extranets," he says. "It's not a broadcast forum as much as a two-way medium." Once the clients become familiar with the technology,

they realize what an effective tool it can be. In addition, because extranets are Web-based and have a familiar interface, they give the user a sense of familiarity.

The extranets built by BLG are managed by content management systems, allowing practice groups to control their own content. According to Alleyne, extranets are part of the firm's overall risk management strategy by improving client communication and documentation.

As BLG develops its expertise in this area, it is working toward developing even higher levels of personalization, interaction and security. "We are at the point where we can set them up for almost any client," says Alleyne. "You don't have to invest millions. Firms should approach extranets on the basis of: build, try, and prototype."

# Blakes' class action database



Bill Horton  
Blakes Cassels & Graydon

Blakes Cassels & Graydon has recently developed an extranet site with a very narrow focus for one of its clients, the Canadian Bankers Association (CBA). It is a class action database that resides on the CBA system and is accessible through any computer with Web access. While the site is password-protected and accessible only by CBA members and Blakes' staff, security is not a serious concern as all material in the database is publicly available. The benefit to the client is that the database is designed as a one-stop portal for CBA members to search legislation, case summaries and copies of pleadings in specific proceedings. The database is cross-referenced and completely searchable.

The database and software were developed in-house by Blakes over the course of 18 months. A team of about six or seven associates, partners, clerks and students provide content. The impetus for the database came from the lawyers at Blakes, who wanted to provide their client with a tool to help them in class action litigation. The database has been up for a few months now, and, despite some challenges, the firm has been able to achieve its vision. "It works well, but it is a work in progress," says Bill Horton, a partner at Blakes who has been overseeing the development of the database. "It's always going to take time for new users to become comfortable."

Horton found that developing the project involved a high level of resources and client support. He advises that will likely be the case for anyone building a database similar to the CBA's site. An ideal situation would be building a database in an emerging area: "Unless you start up a project in a fairly new field, it's going to be very resource heavy in getting it up. That's when you want to do it, not ten years into the legislation."

It's hard to overestimate the potential of the Internet, says Horton. Blakes looks at its new client database as giving clients one more tool to have at their disposal. "After all, you can never have too many tools," he says. "What you're basically doing is enhancing the quality of representation for the client."

is that an application written for a browser can be read on almost any computer without regard to operating system or manufacturer. That makes an application developed for a browser a snap to deploy. A browser on a user's machine is all the software he or she needs to take full advantage of the extranet application. No messy and confounding installation disks; fewer clogged hard drives.

- **Security.** By their very nature, extranets are embroiled in concerns about security. To protect the privacy of the information that is being transmitted, most extranets use either secure communication lines or proven security and encryption technologies that have been developed for the internet.
- **Central server/repository.** Extranets usually have a central server where documents or data reside. Members can access this information from any computer that has internet access.

While these are the broad attributes shared by most extranets, extranets vary dramatically in their design and implementation. They can be employed in a wide variety of environments and for very different purposes, such as:

- Sharing case information
- Sharing of case-related documents – many extranets contain document repositories that can be searched and viewed by both lawyer and client on-line
- Calendaring – key dates and scheduling of hearings and trials can be shared on-line
- Providing firm contact information
- Acting as a “work flow engine” for various suppliers
- Providing access to firm resources remotely
- Sharing time and expense information

## Is there a point? Why extranets matter

Extranets have a high risk/reward factor. A successfully implemented extranet can result in significant expansion in clientele and profitability for a law firm. An extranet that is poorly designed or badly executed can be an endless headache. The *failure* to implement or join an extranet can also have a negative impact on a law firm if it means that a more willing, entrepreneurial or adventurous competitor gains a significant advantage.

Let's look at some of reasons why extranets matter to lawyers:

### 1. Improved communications

The most common reason for building an extranet is improved communication between lawyer and client. An extranet can eliminate telephone tag, or worse, the failure of a lawyer to respond to calls and the delays involved with traditional correspondence. An extranet is available 24 hours a day; both lawyers and clients can update or review information whenever it is convenient for them to do so. This can greatly reduce the friction between lawyers and clients and make life easier for both.

From the client's perspective, an extranet can make the arduous task of monitoring and following up with a roster of law firms much easier. Many clients decry the deeply frustrating process of chasing law firms for status information on the matters assigned to them. Extranets liberate the status information (“where are you on the Bloggs matter?”) from the physical file (a memo on the correspondence spike confirming that discoveries are scheduled for next Friday) by making that information open to review by the client online at any time.

### 2. Client retention and integration

High on the list of law firm motives for participating in or creating an extranet is the desire to retain clients. Many law firms will create an extranet around a key client or practice area where they have a significant volume of work. To enhance and solidify the relationship, an extranet can build and reinforce deep links between the lawyer and client. Taken to the extreme, an extranet can make it hard to tell where the law firm ends and the client begins.

### 3. Client marketing

Extranets can attract new clients or gain additional business from existing clients. A law firm that builds an extranet can differentiate itself from those that don't. What you are saying to the client is: “Not only do we provide excellent legal services and advice, but we do so in a way that makes it much more convenient for you to use, consume and monitor those services”. And never underestimate the “wow” reaction that technology creates: The simple viewing of a computer screen with all of their file information available at a point and a click can seduce even the most cynical of clients.

### 4. Improved workflow management

Many legal matters involve a complex series of steps that must be completed in a specific order to get a file done properly. Some steps must be completed by the lawyer; other steps by the client or third parties. These steps can often be defined by a series of rules often referred to as the “workflow”. An extranet can be designed to incorporate and manage the workflow for handling a wide variety of legal matters. If properly designed, the workflow management built into an extranet can be a boon to all parties. Done poorly, it can become a rigid straightjacket that does not conform to the realities of legal practice. Flexibility must be an inherent part of the design.

### 5. Higher quality

Implementation of an extranet can significantly raise the level of quality control within an organization. Extranets can be built with real-time status reporting on the progress of matters. In other cases, information from the client's or law firm's core systems can be transferred automatically into the extranet, eliminating the error-prone task of transcribing information or re-keying data. It all adds up to better product.

### 6. Community building

Something quite interesting happens when a well-designed extranet gets properly implemented. In a very real sense, you have just built a new kind of community, a community where a shared set of values and purposes is given a new forum.

# Gowlings' eLitigation Solutions a litigation tool



*Daniel Teranishi, left; Pam Fontaine, right;  
Alan Butcher, front;  
Gowlings Laffeur Henderson LLP*

Gowlings has been creating client extranets in some form since 1989, when the firm developed an online database system to manage mortgage recovery portfolios for financial institutions that was updated daily through modems and phone lines. Since then, Gowlings has led the way in pioneering extranet technologies to both improve client access to documents and to facilitate online collaboration. Gowlings is now embarking on a new initiative, called eLitigation Solutions (eLS), that will standardize litigation technology across its seven Canadian offices.

This ambitious project will give lawyers in different jurisdictions access to the same cutting edge tools across the board. A central team worked with the Information Systems departments in all the offices to create a support program that encompasses case management, e-discovery, presentation

tools, collaboration, document management and extranet resources. ELS gives litigators across the country real-time access to extranet services, technology and support.

According to Alan Butcher, the Gowlings partner who manages eLS, the number of litigation cases that involve multiple jurisdictions has increased significantly in recent years. Using extranet technology allows lawyers and clients in different locations and time zones to access documents and exchange information 24 hours, seven days a week. As with most firms, Gowlings builds extranet sites according to client needs. These can range from a simple ftp site (file transfer protocol, allows uploading and downloading of files from the Internet), to sites for IP clients where they can check the status of their patents, to sophisticated sites with interactive Web interfaces. "Extranets give clients real control: they can find the information they want, when they want it. Providing these electronic tools is no longer optional, we have to provide this service. Requests for Proposals will ask exactly how we intend to leverage technology."

Butcher believes extranets can help manage risk by making clients more aware of what's going on, and creating a real partnership between the lawyer and client. "When you have an extranet where everything is available to both sides, you can track exactly what the client has provided, and what you have provided. Clients can come to you with their concerns before it's too late," says Butcher. "An informed client is less likely to file a claim."

According to Butcher, Gowlings is "getting to the point where the use of litigation technology tools is limited almost only by imagination." He believes small firms are in many ways well-positioned to use these technologies: They have fewer issues with networking and licensing, for example. "A law firm that doesn't have an IT department can get providers to host its sites. There are plenty of companies in the U.S. that can host extranets with full security; you just need to get on the Internet and surf around. It doesn't matter how big or small you are, you can find solutions. Just keep in mind what you want to achieve. It's a lot easier than you think."

The members of the extranet community normally include the client but can include other law firms, suppliers, government offices or the courts. Rather than each of these community members working through or around each other with the benefit of only partial or third hand instructions, they can all be brought into the same circle and work toward the common goal by the very structure of the extranet itself.

## 7. The client wants it so

Some clients mandate participation in an extranet as the cost of doing business with them. For this reason alone, it behooves the law firm to familiarize itself with the technology and to indicate a willingness to participate. Remarkably, many law firms, when confronted by a client who wants to introduce an extranet, will raise objections and complain loudly about the costs of doing so. These objections often ignore the benefits that can accrue to the client and pessimistically ignore potential savings and benefits to the law firm. All talk of savings and benefits aside, if a client wants an extranet, then a client will have an extranet. The law firm that drags its heels will quickly lose that client.

## Build or buy?

Extranets are still novel tools. So most law firms approach the world of extranets gingerly and do so primarily at the behest of clients. Increasingly, however, leading law firms are taking steps to get in front of these things and have begun considering whether to build or buy their own extranet applications.

If you or your firm are heading in this direction, the first task is to research whether there are existing extranets that meet your requirements. It may be that the vendor or service provider for an extranet could tailor an extranet to meet your needs. Here are some things to keep in mind as you go through your planning.

### Buy?

If there is an existing application that meets most of your requirements and it can be customized with a modest amount of effort, you will be hard pressed not to choose this option. Here is why buying is generally considered the most effective solution:

- An existing application may be far less expensive than designing your own. The vendor will likely have developed a series of extranets using tools that it has developed specifically for that purpose. It can license the application on a one-time or periodic charge. The vendor can spread the development costs over a greater number of users, meaning the cost is lower for each user.
- The vendor may host the solution on its Web servers so that you do not have to build and maintain the hardware/software infrastructure internally.
- Where an extranet is developed by a third party or on behalf of more than one law firm/one client, the features developed by or at the request of one company can benefit all users of the extranet.

- Law firms specialize in practicing law and, generally speaking, not developing software. So it may make most sense to work with an organization that specializes in extranet development and implementation.

### BUILD?

On the other hand, you may not find what you are looking for on the open market and so may have no choice but to construct your own tools. This has some real benefits:

- You can specify the application to precisely meet your needs. You can accommodate the wishes of the law firm and client and the solution can have a unique look and feel.
- You would have free reign over subsequent changes or modifications to meet the needs of users. You are not dependent on a third party's willingness to update the application.
- You have the ability to support the application internally, meaning you can determine the level of support and training required.
- You can show your client something proprietary that other law firms cannot offer.

And some real disadvantages:

- It's generally quite costly, even with the contemporary design tools that have gone a great distance to simplify the job.
- If you don't have the resources and expertise internally, you may have to hire them or contract with a third party to provide them.
- If you do not have existing Web servers you will have to invest in additional hardware and software.
- If you host it yourself, then you alone are responsible for all security issues and the risk of any breaches.
- It may also take a substantial amount of time to construct your own extranet from scratch. There is usually a considerable learning curve associated with creating an extranet. It takes time to assemble the hardware and resources. If you are doing a custom "design and build" it will take time to develop the Web pages and features and test them thoroughly. Usually, there is a pilot phase where users test and provide feedback. It may take months before the application is ready for full implementation.

Whether you build or buy, those firms that have taken an aggressive approach to extranet development and deployment are beginning to see some reward for their efforts. What is clear is that extranets are not a passing technological fancy. They matter and, increasingly, clients want them.

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*Note: This article was adopted from The Lawyer's Guide to Extranets, by Mark Tamminga & Doug Simpson. © 2003 by the American Bar Association. Reprinted by Permission.*

# GOOGLE

## have you Googled yourself lately?

When was the last time you Googled yourself? You may want to make it a monthly habit. Googling yourself is a good way to let you appreciate how the rest of the world sees you through the eyes of the World Wide Web.

For the uninitiated, you Google yourself by searching your own name on the Google search engine site.

- Go to [www.google.com](http://www.google.com).
- Enter your name in the search box, and then hit the Enter key. It is important to put double quotes around your name ("Dan Pinnington"). This forces Google to search for pages that include your exact name, as opposed to pages that contain both your first and surnames, but not together.
- Search the different variations of your name, for example, Dan and Daniel, as well as your full name with middle initial(s), and again with your middle name(s) in full.

### Why do you need to know how Google sees you?

Google is currently the world's most popular search engine. It is used by several hundred million people everyday to search more than eight billion Web pages. In among those millions are people looking for a lawyer. You can almost guarantee that every new client Googles you before he or she makes an appointment to see you. In all likelihood, even your current clients have Googled you, as have the other lawyers and staff at your own firm, and even your friends and neighbours.

Potential, new and current clients are going to judge you by what they find on the Web. Hopefully you are easy to find, and there is information that portrays you in a positive light. You also need to be aware if there is any information on the Web that reflects badly on you. If there is, you need to take corrective action to minimize any damage caused by it, and take steps to have any erroneous or dated information removed from the Web.

### Whom else should you Google?

Don't just Google yourself. Google your firm name as well. This is especially the case if your firm name has established its own identity and is commonly used and recognized. In the same way that you need a personal presence on the Web, your firm should also have a presence, ideally in the form of a Web site.

You should Google your clients as well. It never hurts to know more about your client, and it is quite likely you will find interesting facts or current news about them that you didn't know.

Lastly, Google your competitors. This can give you information about whom they are doing work for, how they are marketing themselves, and whom they are marketing themselves to. Odds are your competitors have Googled you.

### What did you find?

By default, Google presents its search results in groups of ten, with the first ten being the best "hits".

The best hits are the Web pages that Google has determined are most relevant to the search terms you entered. Relevance is determined by dozens of different factors, and is reviewed in more detail below.

Ideally your name will appear first, or in the very least, in the first 10 results, along with informative content. Why is this so important? Most people won't look much further than the second, third or maybe fourth page of results. Think about your surfing habits. How many groups of ten do you review before you try a different search?

The worst case scenario is that your name doesn't appear at all. Essentially you are "invisible" on the Web. This is a problem. More and more people are using the Web as their primary and first source of information. In a matter of minutes they can find far more about a lawyer than any yellow pages advertisement will tell them. Remember, many people aren't inclined to use a phone book anymore, or use it only if they can't find a number on the Web.

## How do you make it easier for Google to find you?

Obviously, having a strong presence on the Web is important. Unfortunately, like anything worthwhile and valuable, building a strong presence on the Web will take time and effort, and quite possibly, some money. There is no silver bullet. You must start with posting good content on both your firm site, and on other sites. Using various Search Engine Optimization techniques (see below), including using keywords and establishing links, can also help.

## A firm Web site

A firm Web site should be the cornerstone of your Web presence, and work as a complimentary part of your overall marketing strategy. You can establish a Web presence without a firm Web site, but it will not be as strong.

When building a good firm site, nothing is more important than the quality and quantity of the content that appears there. Practical and informative information will bring people to your site, keep them coming back, and will encourage them to tell others about your site.

Content demonstrates the intellect, skills and experience of the individuals within your firm. Identify the content that will help and impress current and potential clients in your area of practice. This can include copies of your articles, papers, presentations, and reported court decisions you acted on, as well as newsletters, bulletins, and links to content on other sites. With permission, you should include the text from articles or other items that have appeared in other online or written publications.

Don't forget to use links within your site to cross-market the other services you and your firm offer. Also consider including

content from other lawyers as this can help build your credentials, and lead to referrals.

## CONTENT ON A FIRM SITE

A detailed biographical page should appear on your site. Don't stop at mentioning your law school, year of call and affiliations – most lawyers include this information and by doing the same you aren't distinguishing yourself from them. Include content that will help clients evaluate if you can really help them.

For example, list details of your special skills and experience, the type of work you do, a list of existing clients (if they consent), and links to online articles (on your firm site and elsewhere). Make it easy for people to get in touch with you by including full contact info, including name, title, full mailing address, phone and fax numbers (with area code), and an e-mail address.

You should also include a current photo on your "bio" page. Allowing people to put a face to the name makes for a far more personal and credible connection than a page full of only text. Your dress and pose should suit the image that you want to project: Wear a nice suit against a neutral background for big corporate clients; something more business casual would be suitable for a general practice.

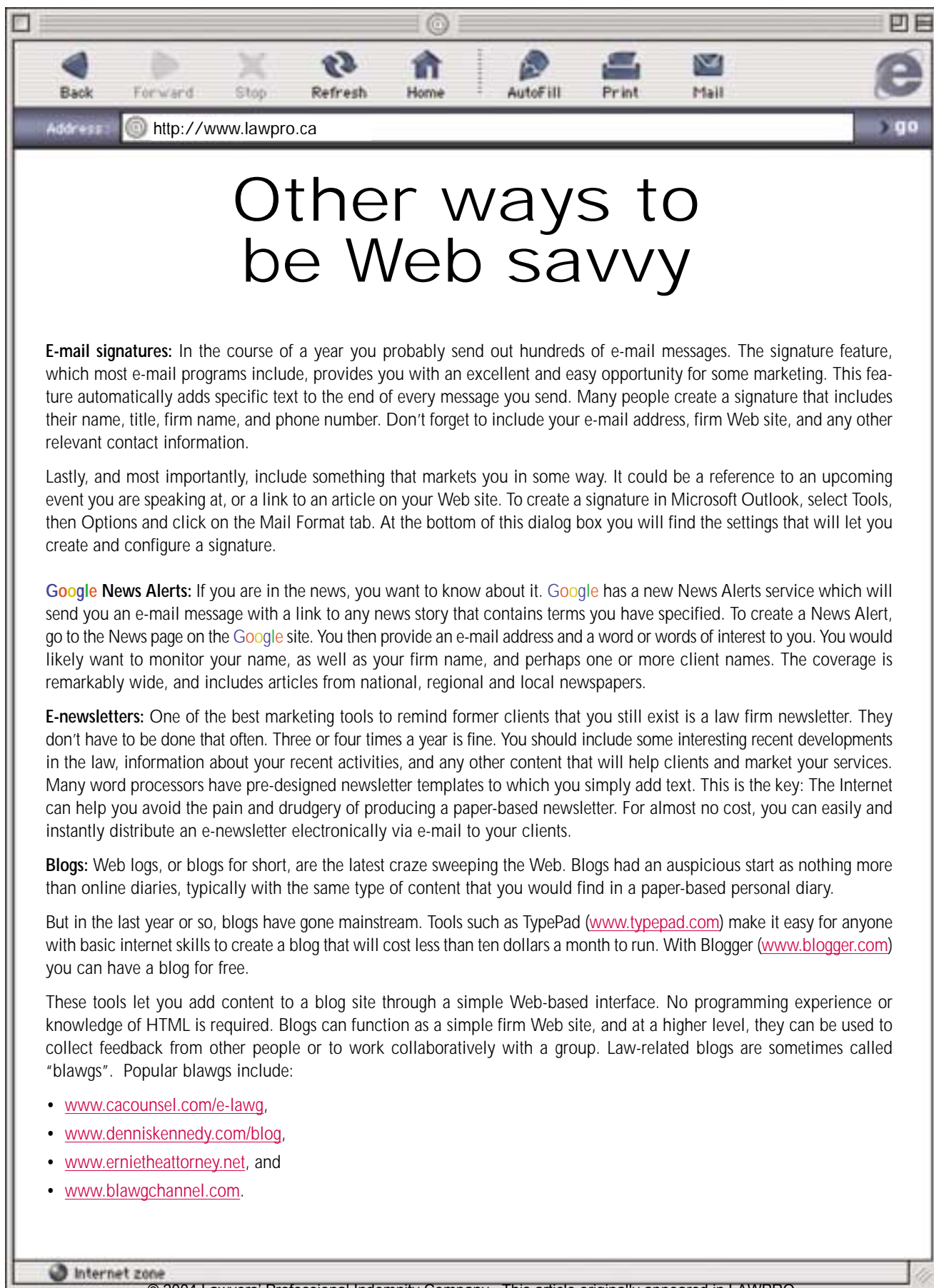
Ideally you want your bio page to appear in the top ten search results. People with less common names have a big advantage as they can rise to the top of search results with just a few online articles. Those with very common names will have to work much harder.

While content is king, a professional looking site is also critical. You can build your own Web site, but do so with caution. Remember that first impressions are strong and lasting ones, and a professionally designed site will stand out from one designed and built by the son or daughter of one of your partners.

Content and presentation will vary greatly from firm to firm. The content, look and feel of an elite corporate firm will be very different from a small general practice firm. Good sites always have a simple and obvious navigation system, and download reasonably quickly. Spelling and grammatical errors, broken links and "under construction" signs present a very poor image and should be avoided at all costs. Flash animations can be effective, but should be used in moderation, be short in length, and give viewers an obvious link to bypass them.

## MARKET YOUR SITE

Once you have a site up and running, you need to let people know about it. Make sure your Web address is in a prominent location on your letterhead and business cards. Include it in any other marketing materials you produce, including copies of papers or presentations that you give (and don't forget to add these to your site to increase the content there). If there is a new article of interest to clients on your site, mention it in correspondence you are sending to them.



# Other ways to be Web savvy

**E-mail signatures:** In the course of a year you probably send out hundreds of e-mail messages. The signature feature, which most e-mail programs include, provides you with an excellent and easy opportunity for some marketing. This feature automatically adds specific text to the end of every message you send. Many people create a signature that includes their name, title, firm name, and phone number. Don't forget to include your e-mail address, firm Web site, and any other relevant contact information.

Lastly, and most importantly, include something that markets you in some way. It could be a reference to an upcoming event you are speaking at, or a link to an article on your Web site. To create a signature in Microsoft Outlook, select Tools, then Options and click on the Mail Format tab. At the bottom of this dialog box you will find the settings that will let you create and configure a signature.

**Google News Alerts:** If you are in the news, you want to know about it. Google has a new News Alerts service which will send you an e-mail message with a link to any news story that contains terms you have specified. To create a News Alert, go to the News page on the Google site. You then provide an e-mail address and a word or words of interest to you. You would likely want to monitor your name, as well as your firm name, and perhaps one or more client names. The coverage is remarkably wide, and includes articles from national, regional and local newspapers.

**E-newsletters:** One of the best marketing tools to remind former clients that you still exist is a law firm newsletter. They don't have to be done that often. Three or four times a year is fine. You should include some interesting recent developments in the law, information about your recent activities, and any other content that will help clients and market your services. Many word processors have pre-designed newsletter templates to which you simply add text. This is the key: The Internet can help you avoid the pain and drudgery of producing a paper-based newsletter. For almost no cost, you can easily and instantly distribute an e-newsletter electronically via e-mail to your clients.

**Blogs:** Web logs, or blogs for short, are the latest craze sweeping the Web. Blogs had an auspicious start as nothing more than online diaries, typically with the same type of content that you would find in a paper-based personal diary.

But in the last year or so, blogs have gone mainstream. Tools such as TypePad ([www.typepad.com](http://www.typepad.com)) make it easy for anyone with basic internet skills to create a blog that will cost less than ten dollars a month to run. With Blogger ([www.blogger.com](http://www.blogger.com)) you can have a blog for free.

These tools let you add content to a blog site through a simple Web-based interface. No programming experience or knowledge of HTML is required. Blogs can function as a simple firm Web site, and at a higher level, they can be used to collect feedback from other people or to work collaboratively with a group. Law-related blogs are sometimes called "blawgs". Popular blawgs include:

- [www.cacounsel.com/e-lawg](http://www.cacounsel.com/e-lawg),
- [www.denniskennedy.com/blog](http://www.denniskennedy.com/blog),
- [www.erniethattorney.net](http://www.erniethattorney.net), and
- [www.blawgchannel.com](http://www.blawgchannel.com).

The importance of content can't be overstated. New and refreshed content will keep people coming back. You should also monitor your site with Web site tracking software. This software will tell you which content on your site is most popular, and what search terms people are using to find your site. This will help you identify the content and keywords which are drawing people to your site, and provide a better idea of what you should add to your site.

## Get content on other sites

Regardless of whether you have your own site or not, you should look for any and every opportunity to get your name and content published online. Consider sites that will make the strongest impression about your credentials to current and potential clients.

For example, having your name listed as a speaker at a Law Society CLE program or writing an article in an OBA or CBA Section newsletter builds your profile. Writing an article for an online industry or trade publication is also a good idea. In all cases, try to include a detailed byline that has your full contact information, some background information, and a link to your Web site.

## Search engine optimization

Putting up a firm Web site and posting content online (will help you build a presence on the Web) is just the start. You need to increase your Web presence by taking extra steps to improve your search engine rankings. Search engines are the primary way that Internet users find content on the Web. Search engine optimization (SEO) is the process of designing, creating and updating your Web site so that search engines will give it a higher search ranking. SEO has become more of a challenge as search engines now use complex algorithms to rank sites, and the factors that are considered and their weightings are closely guarded trade secrets. Two of the most important factors are keywords and link popularity.

The actual text on your site and in other online content is key in several ways. To draw people to that content, it needs to be of interest to the reader, and to communicate information in a way that markets you and your firm.

It is equally critical that your content includes appropriate "keywords." Keywords are the words and phrases that are specific to your law practice, and are the terms which people are most likely to search for when they are looking for you. If they already know you, this will include your name or your firm name. However, you also need to consider those that don't know you personally or by name. Try to anticipate the more generic vocabulary that this audience may use in terms of area of law, industry, geographic region, etc. For example, "Windsor family law lawyer" or "Niagara wills estates lawyer." Make sure you incorporate these terms in the first few paragraphs of each page, and in particular your main and bio pages, and in the detailed bylines of other online articles.

## LINK POPULARITY

Link popularity is currently the most important weighting factor for SEO. Link popularity refers to the number and quality of links that point to a site, and how often people click through to it.

The ability to link to other sites is one of the core functionalities of the Internet. A large number of links to a site is considered to be a good indication that the content of a site is of high quality. Larger sites with more links to and from them tend to rank higher.

Click-through popularity measures the extent to which users click visit and stay on a Web page located with Google. Google actually watches whether searchers come back to Google, and how long they stayed at a particular site. Sites that are popular in their own right, measured by the number of links and click-throughs to them, will rank higher in search engine results. By monitoring link popularity and click-throughs, Google is able to dynamically evaluate and rank pages for relevant and quality content on a minute-by-minute basis.

Therefore, you want your site to link to sites with high link popularity, and ideally have them link back to you. This will increase the link popularity of your site, which will in turn improve its search engine rankings. Posting your content on high popularity sites can also help, especially if that content also has links back to your site (remember that link to your firm site in your detailed byline).

Obviously, building Web sites and SEO are complex topics that require some technical expertise. Don't believe the promises of vastly improved rankings from submissions to 1000 search engines for \$29.95. If you want to take it to a higher level, consider hiring a consultant, and ideally one that is familiar with legal services. This may not be the same person who built your Web site. Ask for references, including a list of clients and the their designated search terms. You can also test promises of increased ranking by searching for the consultant's site. A high ranking goes a long way to proving they actually know what they are doing.

## Your marching orders

Personal and business clients are often technology savvy and Web literate. In a matter of minutes, they can find out everything they need to know to decide if they want to retain you, all without personally contacting you. To survive and compete, you and your firm need to establish a strong presence on the World Wide Web. This presence should include informative content that helps people find you, impresses them with your credentials and ultimately leads them to retain you. Get Googling.

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# What is LVTS v. ACSS

## & why should you care?

### Funds handling in an electronic environment

*Like many busy real estate lawyers, Leslie often had a number of stacked transactions closing on the same day, especially at month end. Inevitably, some clients were depending on the proceeds from their sale to help finance the purchase of a new home. And with electronic registration and electronic banking, multiple closings were significantly easier than in the past.*

*But this lawyer's ability to close a series of transactions on time came to a grinding halt recently: The bank was refusing to certify a cheque for a large purchase transaction closing later that day – because Leslie's trust account was in the red. After some scrambling, Leslie determined that a deposit made remotely by a purchaser's lawyer at another branch of Leslie's bank had been reversed in Leslie's trust account after it failed to clear – leaving the account with insufficient funds for the current, completely unrelated transaction.*

In our hypothetical scenario, Leslie has just learned the first lesson of closing in today's electronic real estate practice: Money you think is in your trust account is not necessarily money that's ready to leave your trust account. Like lawyers across the province, Leslie learned the hard way that it was time to rethink the money-related aspects of closing a real estate transaction.

## What is different today?

In the past, the lawyer acting for the purchaser would deliver to the vendor's lawyer (and to the lender's lawyer if there was a private mortgage to be discharged) one or more certified cheques or financial institution drafts, payable in accordance with written directions from the vendor. The parties would meet at a central location – usually the Land Registry Office – to physically exchange funds.

But the advent of electronic registration has created a need to find alternative ways to transfer funds: Without the need to meet personally to exchange and register documents, law offices are seeking alternate ways to transfer funds on closing. The electronic movement of funds for closing to the vendor lawyer's trust account, or direct deposit to a vendor lawyer's trust account at a remote branch of the same bank, are increasingly used as options for streamlining the closing process.

## What issues are raised by funds handling in an electronic environment?

At the heart of the issue is the need to be able to verify that funds have cleared or are likely to clear. Clearing of funds is the process of exchanging and reconciling payment items between financial institutions so that funds are transferred from one institution to another – and from someone else's trust account into your trust account – in a final fashion. In other words, has "real value" been received, in a final and irrevocable fashion?

Your ability as a lawyer to verify that you are dealing with cleared funds depends on several factors. First is the issue of the payment system in which the funds are handled: Is it the Large Value Transaction System (LVTS) or the Automated Clearing Settlement System (ACSS)?

If it is the latter – and in fact the majority of funds in Canada are cleared through this system – the lawyer faces a number of other issues. If funds were sent electronically or deposited to your account at a remote branch of the same bank, you may encounter problems verifying the form of funds deposited, and effectively end up taking the risk that the funds may not clear. If there is a shortfall in your trust account because the deposit is reversed and you have disbursed the funds you thought had cleared (or could reasonably have been expected to clear), you will be called on by your own financial institution to make good the shortfall.

Where a remote deposit to your trust account is at issue, your best protection is to determine that the funds deposited were in the form of a certified cheque or a bank draft. As discussed more fully below, even a certified cheque may not clear immediately. If it's a bank draft, you may be concerned about the financial strength and viability of the financial institution on which the funds were drawn. Having said that, in the past real estate practitioners routinely relied on the delivery of certified cheques

you are sure that the deposit to your trust account is in one of these forms, there is likely no appreciable difference in risk in comparison to closings in the past.

As well, although you may expect the funds to move quickly from account to account, financial institutions do not necessarily share this sense of urgency. In most instances funds may not be posted to your trust account until the next business day – and often even later if the other lawyer's financial institution is not one of the major national financial institutions or if a cheque is drawn on an account located in another region of the country.

## What is the difference between the LVTS and ACSS systems?

LVTS and ACSS are the two systems operated by the Canadian Payments Association (CPA) to manage the flow of funds within the financial community. The principal difference between the two is in the status of the funds from a "real value" perspective.

### FUNDS HANDLING IN LVTS

In LVTS, funds are treated as irrevocable – in other words, deposits to your credit that arrive via LVTS cannot be reversed and may thus be considered as an immediate delivery of "real value".<sup>2</sup>

All current Canadian dollar wire transfer payments are made through this system.<sup>3</sup> Although it is not restricted to large value transactions, as its name suggests the LVTS is primarily used for large transactions. In fact, although only about one percent of all *transaction volume* moves via the LVTS, it accounts for approximately 85 per cent of the *value* of funds moving through the Canadian payment system.<sup>4</sup> The average value of a LVTS transaction is in the \$8 million range. Those who use the LVTS may pay a fee based on a percentage of monies being transferred, but each financial institution ultimately sets its own pricing structure.

For most residential real estate lawyers, the LVTS is not normally considered a realistic option for the transfer of closing funds. The CPA takes the position that funds are transferred quickly and virtually instantaneously, meaning monies are credited to a recipient's account in a timely way. However, given the reported frequency of funds going "missing" (according to anecdotal evidence), wiring funds seems to bring its own unique difficulties for the lawyers involved. (Presumably the banking community would have a different perspective on this issue.)

It is also worth noting that under LVTS Rule 10, a payment received within three hours of the close of business of the branch may not be available until the start of business on the following day. This applies where an action needs to be taken by the branch to make the funds available to the payee.<sup>5</sup> The Canadian Bar Association has noted the following:

While the LVTS is designed to operate on a real-time basis, the actual time between giving the payment instruction by the sender and the receiving financial institution confirming that the payment has been received will vary, depending on a number of factors beyond the control of Counsel, and (to a large extent) also beyond the control of the staff of the financial institutions involved in making the transfer.<sup>6</sup>

## FUNDS HANDLING IN ACSS

The majority of payments – an average of 18 million or more transactions a day – are cleared through the ACSS system.<sup>7</sup> It is used for both paper-based payments (cheques) and electronic items, such as pre-authorized debits and direct deposits, that are not LVTS. Not surprisingly, ACSS accounts for 99 per cent of all daily transaction volumes handled by the CPA.

Cheques being cleared through ACSS can follow a circuitous route. Once deposited, a cheque is sent to a regional data centre that serves the financial institution at which the cheque was deposited. The cheque is then delivered to a data centre that acts on behalf of the financial institution on which the cheque was drawn or written, which determines if the cheque will be honored or returned.

In most cases, cheques (including those which are certified and bank drafts) are then cleared overnight, not becoming final and irrevocable until the next day at the earliest.<sup>8</sup> But those deposited very late in the day or through an Automatic Bank Machine (ABM) may not clear as quickly, while those deposited on the weekend do not clear until the next business day. Cheques drawn on an account in another region of the country take even longer to clear, as they may have to be sent by air or ground courier to a

regional data centre serving the financial institution on which then cheque was written, and then to the branch to determine if the cheque will be honored or returned.<sup>9</sup>

Electronic payments generally clear more quickly than cheques (usually the next business day). But when the payment first appears as a deposit in your trust account, it is not necessarily cleared. That is because not all electronic transfers are wires with LVTS protection.

In summary, regardless of whether the payment was by cheque or electronic transfer, ACSS payments – and that is the majority of payment transactions – are not cleared instantaneously, creating potential issues for lawyers who have a chain of closings to manage. Even though a credit has appeared in your bank account, if it was not received through an LVTS wire there is a possibility of reversal. That possibility is smaller if the original source of the funds was a certified cheque or bank draft (where a remote deposit was made) or if the transfer came from an account with additional assurances (such as contractual protection from a bank) standing behind it.<sup>10</sup>

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*Kathleen Waters is Vice-President, TitlePLUS.*

## What can lawyers do to gain assurance that they are dealing with cleared funds in their trust accounts?

1. To verify the form of funds deposited to your trust account, ask the purchaser's lawyer to fax a copy of the certified cheque or bank draft being deposited.
2. Ask your bank branch to contact the other branch and verify the form of the funds received. Verification that the deposit was in the form of a certified cheque or financial institution draft, for example, minimizes the risk that the funds will not clear.
3. In the case of remote deposits, ask your bank branch to manually intervene and have the funds posted to your

account immediately on receipt rather than have to wait for the deposit to appear overnight. Be aware that the bank is likely under no obligation to provide this service, even if you need to draw on these funds to close a purchase for your client.

4. Consider using the LVTS wire system, which gives "real value" assurance to the receiving lawyer. You may, however, need to work with your own and the purchaser's financial institution to ensure that the money will appear in your trust account quickly enough.

<sup>2</sup> In the Lang Michener Newsletter of Spring, 2003, Carl De Vuono and Melissa Li stated the following: "Since LVTS payments are final and irrevocable when they are made, the system offers certainty of settlement and real-time finality and irrevocability of payment". Furthermore, representatives of the Canadian Payments Association made the following statements in respect of LVTS on November 1, 2002: "(i) since the payment is an obligation of the sending institution, not the sending client, it does not matter if the sending client goes bankrupt, and (ii) with LVTS there are no possible overnight failure of financial institution issues (presumably because of the fact that the sending institution has to have sufficient value already posted to justify the dollar volume of transactions it is submitting)".

<sup>3</sup> In the Lang Michener Newsletter of Spring, 2003, Carl De Vuono and Melissa Li stated, "All Canadian current dollar wire transfer payments are made through this system [i.e. LVTS]".

<sup>4</sup> [http://www.cdnpay.ca/systems/lvts\\_overview.asp](http://www.cdnpay.ca/systems/lvts_overview.asp).

<sup>5</sup> [http://www.cdnpay.ca/rules/lvts\\_rule\\_10.asp](http://www.cdnpay.ca/rules/lvts_rule_10.asp).

<sup>6</sup> <http://www.cba.org/CBA/EPIIgram/January2003>.

<sup>7</sup> [http://www.cdnpay.ca/systems/acss\\_overview.asp](http://www.cdnpay.ca/systems/acss_overview.asp), and <http://www.cdnpay.ca/home/home.asp>.

<sup>8</sup> <http://www.cba.org/CBA/EPIIgram/January2003>.

<sup>9</sup> [http://www.cdnpay.ca/systems/acss\\_cheques.asp](http://www.cdnpay.ca/systems/acss_cheques.asp).

<sup>10</sup> For instance, the Bank of Montreal's *Practicing Law in an E-World* states: "The receiving lawyer should require the sending lawyer to provide assurance that the funds are cleared. This article originally appeared in *AWPRC Magazine* "Practicing Law in an E-World", December 2004. It is available at [www.lawpro.ca/magazinearchives](http://www.lawpro.ca/magazinearchives).



# Safeguarding certified cheques

Like all paperwork, certified cheques can and do go missing.

Unlike some other paperwork, the risks associated with a lost certified cheque – and the steps needed to rectify the problem – can be significant.

How can a certified cheque go astray? Carelessness is the usual culprit. The person charged with delivering the cheque to the payee or financial institution – and this can be anyone from a law firm employee to a courier to a conveyancer (in a real estate transaction situation) – simply misplaces the cheque. Banks too can lose certified cheques: The cheque can go missing within the bank, on its way to the bank's own mortgage department or in some other delivery process.

Whatever the cause, the risks are the same: A missing certified cheque is as good as money in the bank if it falls into the hands of the wrong individual: For example, if a rogue comes across the cheque, he or she could forge the endorsement of the payee or alter the name of the payee and obtain payment of the promised sum. Or the payee who claims not to have received the cheque is in fact acting fraudulently, with the intention of obtaining two certified cheques and presenting both cheques for payment.

Regardless of who lost the cheque, the only individual who can replace the missing cheque is the person who drew the cheque on his/her own bank. That person must attend at his/her bank, advise the bank that the cheque has gone missing, provide particulars of the cheque to the bank and execute an indemnity in the form required by the bank.

When a certified cheque goes missing, time is of the essence. It is imperative that the cheque be replaced

as soon as possible since the consequences of delays in replacing the cheque can be significant in terms of lost interest and/or other claims for damages.

The same circumstances apply to cases involving missing bank drafts since bank drafts are the bank's own undertaking to pay and the bank is liable to make payment to the payee. LAWPRO has seen instances where funds that are being distributed from an estate and sent via bank draft to beneficiaries overseas go missing and are untraceable.

## Risk management advice

LAWPRO recommends that lawyers and their staff exercise caution when it comes to handling certified cheques/bank drafts.

- In the case of certified cheques, law firms should obtain detailed receipts on delivery of the cheque(s) to the bank. These receipts should set out the particulars of the cheques such as the date, the amount, the cheque number and identity of the drawee bank, as well as the name of the payee. (A photocopy of the cheque acknowledged by bank stamp or signature is sufficient.)
- In the case of bank drafts, or certified cheques that are sent overseas, lawyers should, where possible, arrange for the funds to be wire transferred into the beneficiary's bank account. Where this is not possible, the cheque/bank draft should be sent by registered mail.

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*Ian Smyth is a LAWPRO Claims Examiner.*

# RealtiPLUSWeb

## leading edge technology in legal practice

*Ontario lawyers now have a tool that lets them reduce the time it takes to undertake real estate transactions by as much as 50 per cent: That tool is RealtyPLUSWeb – a fully integrated, Web-based, one-stop technology platform that brings the paperless office one step closer to reality for those doing real estate transactions.*

Launched late this summer by LawyerDoneDeal Corp. (LDD), RealtyPLUSWeb offers real estate lawyers many advantages over other real estate tools currently in use:

- **State of the art file management and document production:** RealtyPLUSWeb integrates all of the capabilities needed in a real estate practice into one program. Information entered into the system automatically pre-populates the many forms and documents used in a transaction. Online access to a variety of databases – including a database of updated real estate precedents – lets lawyers bring knowledge of the latest legal developments to each transaction. The program also generates a number of management reports, and enables users to track the status of each real estate transaction anywhere, anytime.
- **Complete integration and connectivity with online tools:** RealtyPLUSWeb lets lawyers import and export data from e-reg™ and POLARIS, making it easy to search, retrieve and upload data and documents which then are easily integrated into transaction-specific files and documents.

RealtyPLUSWeb also provides lawyers with online access to selected bank/lender documents (such as mortgage rates, instructions) and builders' closing packages. In addition, users enjoy access to a database of information on specific new

home or condominium projects, many of which may also be enrolled in the TitlePLUS New Home Program. This information – such as the project's legal description, builder information, title data, etc. – automatically pre-populates the RealtyPLUSWeb file, providing yet another level of integration that sets RealtyPLUSWeb apart.

RealtyPLUSWeb is also integrated with an application for optional title insurance. Lawyers who opt for the TitlePLUS insurance product, for example, will see their applications processed seamlessly without duplicate data entry.

- **ASP model:** Because it is developed on an application service provider (ASP) model, RealtyPLUSWeb eliminates the need for lawyers to install upgrades to real estate software on their office networks and work stations. The software that is backbone of RealtyPLUSWeb resides on LDD's servers, ensuring lawyers always have access to the latest technology and information without the associated software and maintenance issues. All communication between lawyers' computers and LDD is encrypted, to ensure the security of data is protected.

"With RealtyPLUSWeb, lawyers are poised to complete a real estate transaction electronically, from start to finish," says Maurizio Romanin, President of LDD, which developed RealtyPLUSWeb.

"In the competitive, price-sensitive world that is real estate practice, lawyers need to be as efficient and cost-effective as possible – while also able to capitalize on e-reg™ and the many other online services now available," he said. "We believe RealtiPLUSWeb meets this need: It puts the lawyer in control – as quarterback in the transaction – and helps ensure lawyers play a pivotal role in real estate conveyancing in Ontario."

This lawyer-centered orientation reflects TitlePLUS's own commitment to real estate lawyers and their practices, and is the principal reason behind the collaboration between LAWPRO

and LDD, says Kathleen Waters, Vice-President of TitlePLUS. "We are pleased to be the most integrated title insurer on the RealtiPLUSWeb system.

"Both LDD and TitlePLUS are committed to providing lawyers with tools that support the key role they must continue to play in real estate conveyancing if consumers are to continue to be properly protected and represented in real estate transactions – transactions which often are the most costly that they will undertake in their lifetimes."

## Consistency and efficiency: The RealtiPLUSWeb advantage



*Rob Robinson and law clerk Cheryl Twose*

For Owen Sound lawyer Rob Robinson and law clerk Cheryl Twose, RealtiPLUSWeb offers two distinct advantages over anything they've used in the past: Speed and simplicity ("Frankly, I think we would have struggled to deal with the volumes we've seen this summer if we did not have RealtiPLUSWeb"); and the peace of mind that comes from using a system that lets them confirm that they've crossed all 't's and dotted all 'i's in the transaction.

"RealtiPLUSWeb eliminates duplicate file information: It's compact, faster, more comprehensive, but with fewer screens and less work, and with a much friendlier user interface," says Twose, one of nine staff in the firm of Kirby, Robinson & Treslan. "I also like the built-in discipline of the imposed checklists. Even if I am not title insuring a deal, those checklists make me look at the off-title issues and title inquiries. They're an excellent tool."

The checklists, adds Robinson, provide a level of comfort about the soundness of a transaction. "We start from the full list and narrow it down to issues that apply to each particular transaction. That way we know that we have made the right inquiries." The integrated access to title insurance is another plus: "Even setting aside the extra protection that TitlePLUS provides, it just makes economic sense to use title insurance on just about every deal."

"RealtiPLUSWeb ensures there's consistency in the way we in our practice, and lawyers generally, practise real estate – as well as offering us a tool that streamlines our practices."

# Remote access a bonus



*Tom Rassos,  
Goldstein Rosen & Rassos LLP*

Although his staff is still familiarizing itself with the many features of RealtiPLUSWeb, the benefits of using RealtiPLUSWeb far outweigh any short-term inconveniences, says Toronto-based real estate practitioner Tom Rassos of Goldstein Rosen & Rassos LLP.

"Being able to access RealtiPLUSWeb from any computer is a big plus. If your computer goes down, you don't have to worry about losing access to the program – and to your ability to work. And because the Web-based version stores all data offsite, the strain on our backup system is less – which I hope will reduce hardware and software expenses," explains Rassos.

As well, being able to review files remotely – from home, for example – enables him to review files at a more relaxed pace, without the inevitable interruptions that come with a busy practice.

The program itself also offers numerous pluses: "With various builder deals, most fields are pre-populated, saving my staff time and reducing the chance of errors. Similarly, the fact that RealtiPLUSWeb integrates all software required to complete a standard deal – from Teraview® to TitlePLUS to word processing – is a bonus. And because I can see a listing of all of our transactions on a weekly basis, I can better plan my work week."

These many benefits more than offset the time it takes to learn all about RPWeb, he adds. "Our focus is on the long-term – and from that perspective, the benefits of RealtiPLUSWeb are very clear. Real estate conveyancing has changed dramatically. As lawyers, we can either be dragged into the future kicking and screaming, or we can embrace technology and enjoy the ride. With RealtiPLUSWeb, it looks like clear sailing to me!"

# RPWeb shaves 30 minutes off each transaction



*Randall Johns and Bobbi Brescacin*

Even though it was mid-summer and the middle of the busiest selling season; even though she had never used an online application before; even though she had to teach herself where things were on the various screens; after only one deal Bobbi Brescacin vowed she'd never use anything but RealtiPLUSWeb.

"I enter data once, instead of three times. All parts of the file are updated automatically. Every time I save on the system, I can see my computer connecting to TitlePLUS – and if I have missed something, I'm prompted to give that issue my attention. So by the time I come to print off the final closing documents, I know that everything I need on that file is there," says Brescacin, law clerk in Randall Johns's busy Thunder Bay practice.

Johns estimates that using RealtiPLUSWeb instead of another conveyancing program shaves about 30 minutes off each transaction – about three person days in the last four months

alone. "Frankly, RealtiPLUSWeb helped us cope with a busy summer," he says.

He's also impressed with the fact that he can import his own precedents, customize documents and generate everything on his firm's letterhead – with minimal effort. He singles out the presentation and detail in the documents generated – specifically in the closing letter and cash flow summary – for praise. "They're more comprehensive than what we might have done in the past – but an excellent way of improving the service that we now provide to clients." And the checklists that RPWeb automatically generates are a bonus: "They provide reassurance that we've done the deal the way it should be done."

Moreover, RPWeb is a "natural fit" now that e-reg has come to Thunder Bay, he adds. "Once other lawyers dip their toes in the water and see how easy it is to work online, they'll want to dive right into RealtiPLUSWeb. The timing is perfect."

# How to avoid being



phish

*If you've received an unexpected e-mail from a financial institution or online seller that you may have dealt with, inviting you to update your files, you may have been "phished."*

*Phishing is a term used to describe the action of assuming the identity of a legitimate organization, or Web site, using forged e-mail and/or Web pages. These e-mails and sites are used to trick users into submitting personal information, including passwords, credit card numbers, and bank account information – even social insurance numbers, in some cases. The e-mails and the sites involved are designed to appear official enough – incorporating company logos and "real" links to other parts of the legitimate site – to deceive people into submitting their personal information.*

While the practice has been around since the mid-nineties (when the term was first coined, as a reference that identity thieves on the Internet are luring people by "fishing" for passwords), it has become much higher profile over the last several months with a number of high profile organizations being "spoofed."

The risks are real. A Gartner Group study released in May 2004, showed at least 1.8 million consumers had been tricked into divulging personal information in phishing attacks, most within the past year. And dozens of additional scams have been launched throughout the Internet over the summer. Notable targets include eBay, Citibank, Suntrust Financial, and even Visa. One U.K. site documented more than 150 widespread and authentic-looking phishing scams from July to September 2004 alone.

In eBay's case, a variety of chillingly authentic-looking e-mails were sent out, requesting information to confirm online users' profiles and financial information. When

a link on the e-mail was clicked, however, the user was taken to a fraudster's site, where the information was gathered and used for fraudulent purposes. Because of the popularity and perceived trust that eBay enjoys, they've been a frequent target. Several Citibank e-mails were sent out over the summer, with [MailFrontier.com](http://MailFrontier.com) reporting that an estimated 40 per cent of recipients were taken in by the initial scam e-mail!

Even checking for an "SSL connection" – the little lock in your Internet browser indicating a secure connection – isn't a guarantee that you're safe. In some cases, fraudsters have registered a fake Web site that sounds authentic – in Visa's case, the site "[visasecurity.com](http://visasecurity.com)" was registered by a fraud artist, and the site collected information from users who had been "phished" for about 2-3 days before the site was abandoned. Site names such as "[www.ebays.com](http://www.ebays.com)" (note the extra "s") and [www.yahoo-billing.com](http://www.yahoo-billing.com) both sound legitimate, but both are fraudulent, and were used in recent scams.

## Tips to avoid being phished

### 1. Don't respond to requests for personal information via e-mail

Many companies have now adopted a policy that they will not use unprompted e-mails to request personal information updates. If you receive an e-mail requesting personal information and you are suspicious in any way, contact the originating company – by phone, using a number from a bill or statement (not from the e-mail!) – and check it out.

Red flags should be raised if:

- the e-mail contains spelling or grammatical errors
- the tone seems unprofessional or out of character with the actual organization
- the e-mail request is marked urgent or overly time-sensitive
- the e-mail message itself contains a form asking for personal or financial information

Remember that the sender or the reply-to e-mail address is not an indication of the validity of the e-mail either. These addresses can easily be spoofed to appear to come from legitimate sources when they do not.

### 2. Report incidents of actual or suspected abuse

If everyone is vigilant and contributes to helping police the issue, we all get the benefit of having phishing scams shut down promptly. Most responsible customer service desks will welcome reports of phishing scams targeting their organizations, and will provide more information and background to concerned consumers.

### 3. Avoid using links provided in e-mail messages

E-mail links can “appear” to take you to one site, but really direct you to another by hiding information in the e-mail message itself. You can reduce the risk by re-typing the name of the site in a new Web browser window. If possible, go to a trusted “home page” of the organization you’re dealing with, and move around the site from there. This is a particularly good approach to use if you receive an e-mail seeking your password or other credentials – use the actual site itself, not a link from the e-mail.

### 4. Check to make sure the Web site is secure

While some sophisticated scam artists will set up SSL security to their fake sites, using extra diligence in checking for site security will help you avoid getting caught by “casual” fraudsters.

Ensure that any Web site that is collecting personal information has an “https” entry at the beginning of its address as it appears in your browser (e.g., [https://www.lawpro.ca/file\\_online/login.asp](https://www.lawpro.ca/file_online/login.asp)), and ensure that you can see a closed padlock at the bottom of your browser screen. In Internet Explorer or Netscape, ensure that a small lock appears at the bottom of your screen to indicate a secure connection.

### 5. Be sure to audit your bank accounts and credit card statements

While many credit card companies are now taking the initiative to contact clients if large and/or out-of-country purchases are being made, it's a good idea to thoroughly review and double-check your statements to ensure that your accounts haven't been compromised.

### 6. Keep your software up to date

Some phishing scams are combined with the delivery of viruses or other malware – make sure to keep your computer system's operating system and software up-to-date with appropriate security patches, and ensure that your anti-virus, spyware and spyware software is current and running properly.

## What if you've been phished?

Unfortunately, despite taking precautions, people can still be taken in by these fraudulent e-mails. If you suspect that you've been caught, here are some tips on what to do next:

1. **Keep a copy of the fraudulent e-mail as a record.**
2. **Contact your credit card company or financial institution immediately**, and advise them of the situation. Depending on the nature of the situation, file a police report as well. Some police stations may be reluctant to take a report, but this could be an important step in case you need to make insurance recoveries later on.
3. **Cancel your accounts or change your password on any Web site that may be compromised.** Make sure you do this from a different browser or computer from the original system that was compromised. Also contact the Customer Service department – by phone – of any organization involved. Take names, dates, and times of all contacts.
4. **Change your password on your e-mail account.** You will likely want to consider setting up a new e-mail account altogether, and cancelling the old account. Don't be too quick to take this step, as you may need e-mail access to validate information.

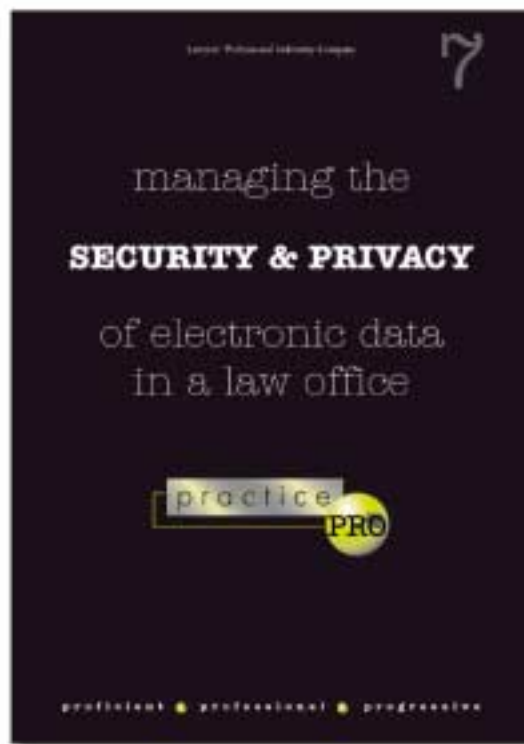
For more information on phishing, the following sites are recommended as good references: [www.antiphishing.org](http://www.antiphishing.org) and [www.millersmiles.co.uk](http://www.millersmiles.co.uk)

Be alert – To paraphrase a character in the film “Matchstick Men” – “Con artists don't steal things from you – you give things to them.”

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*David Reid is Director of Information Systems with LAWPRO.*

If you do nothing else –  
**the lucky 13**  
– things you must do



*(Ed note: The following is one of several checklists and tips available in **Managing the Security and Privacy of Electronic Data in a Law Office**, the seventh in a series of practice and risk management booklets from practicePRO. The booklet is now available in PDF format at [www.practicepro.ca/securitybooklet](http://www.practicepro.ca/securitybooklet). Copies will be mailed to all LawPRO insured lawyers in early 2005.*

From a best practices point of view, these thirteen steps are the minimum that you should take to protect the electronic data in your firm against the most common threats. Most can be completed very quickly, and at little or no cost.

- 1. Install latest updates to eliminate security vulnerabilities:** The networking functionality built into software that allows the Internet to operate can create security vulnerabilities that in turn can allow computers to be compromised by hackers. Microsoft products are particularly vulnerable. Protect yourself by installing the latest security patches and updates.
- 2. Make full and proper use of passwords:** We all have more passwords than we can remember, and as a result, we get lazy and use obvious ones, or don't use them at all. You must use passwords, and use them properly to keep your data safe.
- 3. Antivirus software is essential:** Every computer in every law office should have antivirus software on it, and this software needs to be frequently updated, at least weekly. Make sure you understand how to properly use and configure your antivirus software.
- 4. Avoid spyware and adware:** Once you had to worry only about viruses. Now there are several other malicious software threats that you need to be aware of, including some that will spy on you. Odds are they are already on your computer. You need to take steps to make sure no one is watching your surfing habits, or collecting personal information from your computer.
- 5. Install a firewall on your Internet connection:** When you are connected to the Internet, the Internet is connected to you. Information can flow freely both ways across your Internet connection. You need a firewall to act as a gatekeeper to prevent unauthorized access to your computers and network.
- 6. Be aware of and avoid the dangers of e-mail:** E-mail is an essential communications tool in most law offices – and one of the most dangerous. E-mail is one of the most common ways that viruses will enter your office, and can cause breaches of confidentiality and other problems. You and your staff must appreciate the dangers of e-mail, and know how to use it safely.
- 7. Beware the dangers of metadata:** Are you unwittingly sending confidential information to clients or opposing counsel? If you have e-mailed a Microsoft Word or Corel WordPerfect document to either, the answer to this question is likely yes, and you need to learn more about metadata.

- 8. Lockdown your data, wherever it is:** Electronic client data is everywhere, both inside your office (on servers and desktop computers), and even outside your office (in e-mails, on laptop computers, cell phones, and PDA's). People can access data across networks, and even across the Internet. You need to understand who has access to your data, and how to limit or prevent access to it.
- 9. Harden your wireless connections:** Connecting to the Internet with wireless technology is easy and seductive. However, if not configured properly, wireless can give hackers easy and unimpeded access to the data on your computer and network. Wireless users beware.
- 10. Learn how to safely surf the Web:** The Internet browser is another one of the more dangerous tools in your office. Even casual surfing on the Web can expose you to viruses and worms, and divulge personal data. You and your staff need to know how to safely surf the Web.
- 11. Change key default settings:** Every computer program and every piece of hardware has certain preset or default settings. These are necessary to make them operate out of the box. However, default settings are common knowledge, and hackers can use them to compromise a computer or network. You can make your systems much safer by changing some key default settings.
- 12. Implement a technology use policy:** Everyone using law office technology must understand basic do's and don'ts, and where the dangers are. Every law office should have a basic technology use policy that clearly informs all staff of what they can and can't do while using e-mail, surfing the Web, and using other law office systems.
- 13. Make a full backup of your data:** If your system is ever compromised, nothing will be more valuable to you and your practice than a full backup of your critical practice and client data.

Don't be tempted to skip or skimp on one or more of the suggested steps. Remember, your data is only as safe as the weakest link in your security plan. When you leave on vacation, you lock every door and window in your house. Leaving just one door or window open gives a thief easy and instant access. To make sure the security and privacy of your electronic information is properly protected, it is critical that you fully and properly implement all of the above steps. Working your way through the booklet *Managing the Security and Privacy of Electronic Data in a Law Office* will help you complete all the work necessary to protect the security and privacy of your data.



# The many faces of fraud

“continued”

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# Is there a crook in the firm?\*



*If you are a lawyer and you rely on another person for any aspect of processing your real estate files, you need to be aware of the ways in which you may be at risk of being a victim of fraud.<sup>1</sup> If you are support staff participating in the processing of real estate files, then you need to understand the ways in which you can play a part in detecting and preventing fraud. Law firms are just as vulnerable to employee theft and fraud as other kinds of businesses and fraud is just as likely to arise internally as externally. Given the nature of a real estate practice, the amount of money handled in the course of our files and the growing incidence of fraud based on real estate values and false identities, we all need to reassess our practices for vulnerabilities in our accounting, file processing and hiring/staffing policies.*



E. Susan Elliott, LSM

To determine if your law firm is vulnerable to fraud, consider reviewing both your hiring and supervisory practices, as well as your internal accounting controls and policies. These reviews apply equally to lawyers and support staff. In fact, all staff should be involved in understanding how fraud occurs and how to prevent it. After all, your staff is the most knowledgeable when it comes to the details of your practice and the habits of other staff.

### Hiring practices

In the United States it has been estimated by the Association of Certified Fraud Examiners that employee fraud accounts for over \$400 billion in losses each year, often by a trusted employee with no prior record. A recent Ernst & Young LLP study of fraud found that more than two-thirds of companies around the world report having been the victim of corporate crime. In the vast

majority of cases (85 per cent), employees were the perpetrators of serious incidents of fraud and within that group 55 per cent were employed in management roles.<sup>2</sup>

In a small law office, staff usually handle most aspects of the accounting, billing and payment cycle, as well as the receipt and processing of trust funds. It is therefore essential to conduct an interview for new staff that includes inquiries about past employment performance, credit reports and existence of a criminal record. There are a number of steps to take as part of the interview process if the employer wishes to obtain background information and perform checks of criminal records, credit or references provided by the applicant:

1. Have each job applicant sign a consent form for a background check, including a check for criminal records, past employment and education.
2. Take the time to perform a background check. Contact your local police to conduct a Police Records Check. Contact either of the two major credit agencies: Equifax Canada Inc. ([www.equifax.ca](http://www.equifax.ca)) or Trans Union of Canada ([www.tuc.ca](http://www.tuc.ca)) to request credit checks.
3. Comply with PIPEDA legislation and ensure you have consent to the release of personal information clearly stated or the recipient of the request will not fulfill it.
4. Remember the provisions of the *Canadian Human Rights Act* and the *Ontario Human Rights Code* concerning questions that can and cannot be asked of an applicant for employment, as well as the provisions of Rule 5 of the Rules of Professional Conduct.
5. Verify past employment.
6. Call the references.
7. Clearly state that any false or misleading statements or material omissions are grounds to terminate the hiring process or employment.
8. If employment begins before a background check is completed, state in writing that employment is conditional upon a satisfactory background report.

### Accounting controls

Basic fraud prevention begins with your accounting controls, particularly how you operate and reconcile your trust account. It is important to know and understand all the aspects of your bookkeeping and accounting system to minimize the opportunity for fraud. You must be an active participant in your firm's control process. While there is no absolutely foolproof prevention tool, following basic bookkeeping rules as set out in Law Society By-laws #18 and #19 will establish essential safeguards for your practice. It takes only minutes to review the rules and ensure your office follows them.

If you need assistance in understanding or implementing the required bookkeeping practices contact the Law Society Member Resource Centre at 416 -947-3315 or 1-800-668-7380 ext. 3315.

*Internal Control Self Assessment* by the Law Society of Upper Canada is an excellent guide to establishing good procedures and internal controls. A similarly useful list to follow is contained in the practicePRO booklet *Managing the Finances of Your Practice* available at [www.practicepro.ca/practice/Managing\\_Finances\\_booklet.pdf](http://www.practicepro.ca/practice/Managing_Finances_booklet.pdf).

## Electronic Land Registration

With the introduction of electronic registration of land title documents in Ontario and the use of the Teraview® software, a number of changes have taken place in the practice of law and in the accounting processes employed to implement online payment of title searches, writs of execution searches, registration fees and Land Transfer Taxes. To monitor and run your practice properly, it is important to understand the accounting requirements and the delegation of rules for electronic land registration, contained in Rule 5 of the Rules of Professional Conduct and Law Society By-law 19 (sections 8.1 – 8.4). Also please note that sharing a Teraview security diskette (the access key used to search title and create or sign documents) and its password is considered to be both unprofessional conduct and illegal activity.

The Joint Committee on the Electronic Registration of Title Documents established by the Ontario Bar Association and the Law Society of Upper Canada has prepared a report entitled *e-reg™: Making it Work for You, Procedures and Practice Standards for Electronic Real Estate Conveyancing*. The summary provides an outline of the electronic land registration workflow and address practice related matters. A digital copy is available, along with the electronic land registration Practice Guidelines, on the Law Society Web site at [www.lsuc.on.ca](http://www.lsuc.on.ca).

## How to protect your law practice from fraud

Take the following steps to establish processes and controls in your office then keep reviewing and updating them as our profession learns how to identify, detect and prevent fraud:

1. Set an example – act ethically and honestly in your practice. Don't set an example of failure to report income or putting personal expenses through your practice, because your staff might follow your lead.
2. Be an active participant in all aspects of your firm's file processing, particularly the receipt and expenditure of funds into both trust and general accounts. Understand the recording processes and do your own spot audits of files and accounting records.

3. Ask your staff to identify fraud risks and suggest ways to protect against them, such as separation of duties.
4. Develop sensible hiring policies and at a minimum check references and employment history.
5. Separate the processes of creating, posting, and reconciling cheques and receipts.
6. Keep computer passwords fresh, change them periodically on a random basis.
7. Consider having two signing authorities for cheques over a certain amount. Even if one of them is a staff person who is not a legal signing authority, their signature or initialing of a cheque to validate can increase security.
8. Reconcile your accounts in accordance with requirements, verifying source documents and original bank statements.
9. Do not let accounting records fall into arrears; keep them current daily.
10. Have a sensible cheque signing policy and stick to it; at a minimum do not sign blank cheques or ones with no payee.
11. Do not sign cheques when you are distracted or in a hurry.
12. Keep your Teraview security diskettes secure by following the requirements of the Law Society and your PSL terms and conditions.
13. Speak with your accountant and your banker about steps you can take to minimize risk and install better internal controls.
14. Use the resources available from the Law Society and LawPRO in person and online to develop sound internal controls.

Most importantly – pay attention! Ask questions. If something seems out of place or wrong then investigate it and don't stop until you are satisfied. Stay alert to the kinds of external frauds such as identity fraud and value flips, as well as the internal frauds such as false invoices, misaligned cheques and non-payment of mortgages, and think about how you will not fall victim to these schemes.

Finally, talk to your staff, your friends and your clients. Let them know you are vigilant about protecting their interests and your business, and that you have processes in place to address fraudulent activity.

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*Susan Elliott is principal in the law firm Good Elliott Hawkins LLP.*

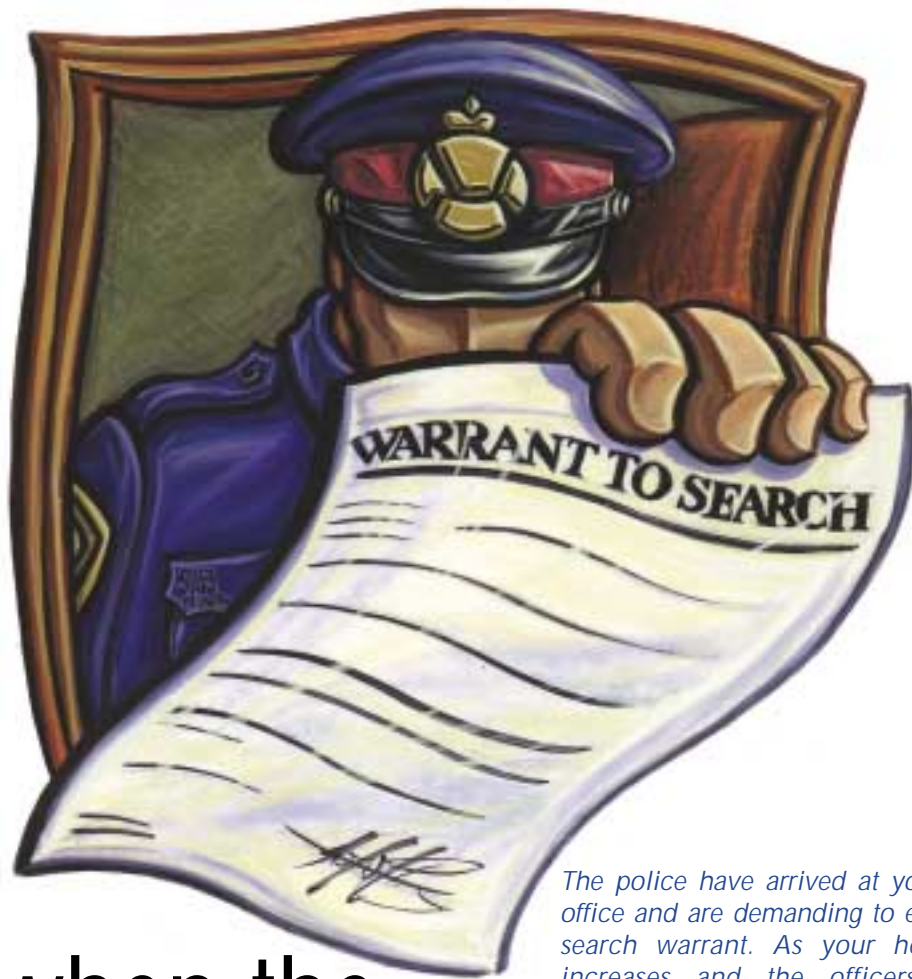
*This is the abbreviated version of Ms. Elliott's paper. The full version, including appendices, is available at [www.lawpro.ca/news](http://www.lawpro.ca/news).*

*Ms. Elliott gratefully acknowledges the research assistance of Naomi Zittell, Student-At-Law, LAWPRO – TitlePLUS Department, particularly in the section on hiring practices.*

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1 Many of the concepts discussed in this article originally appeared in LAWPRO Magazine, "Practicing Law in an E-World", December 2004. It is available at <http://www.lawpro.ca/magazinearchives>.

2 Read more about this study at <http://www.lawpro.ca/magazinearchives>.



*The police have arrived at your firm's office and are demanding to execute a search warrant. As your heart rate increases and the officers march through the office door, many questions about the rights and duties of both the police and you, the lawyer, will run through your head.*

# when the police come calling: the law office search

## The law

Fortunately, the law governing law office searches has recently been simplified so that most of the decisions that need to be made do not have to be made in the hectic period while the police are present. Now, most decisions can be deferred to a point after there has been time for reflection.

For many years, law office searches were governed by the common law. Then, in 1985, Parliament enacted a legislative scheme to replace the common law. In its most recent incarnation, that scheme is found in section 488.1 of the *Criminal Code*. Unfortunately, section 488.1 was found constitutionally wanting by the Supreme Court of Canada in *Lavallee, et al v. Canada*.<sup>1</sup> The Court struck down s.488.1 and imposed a new common law approach that was summarized in ten principles, numbers 4 to 8 of which follow:

4. Except when the warrant specifically authorizes the immediate examination, copying and seizure of an identified document, all documents in possession of a lawyer must be sealed before being examined or removed from the lawyer's possession.
5. Every effort must be made to contact the lawyer and the client at the time of the execution of the search warrant. Where the lawyer or the client cannot be contacted, a representative of the Bar should be allowed to oversee the sealing and seizure of documents.
6. The investigative officer executing the warrant should report to the Justice of the Peace the efforts made to contact all potential privilege holders, who should then be given a reasonable opportunity to assert a claim of privilege and, if that claim is contested, to have the issue judicially decided.
7. If notification of potential privilege holders is not possible, the lawyer who had custody of the documents seized, or another lawyer appointed either by the Law Society or by the court, should examine the documents to determine whether a claim of privilege should be asserted, and should be given a reasonable opportunity to do so.
8. The Attorney General may make submissions on the issue of privilege, but should not be permitted to inspect the documents beforehand. The prosecuting authority can only inspect the documents if and when it is determined by a judge that the documents are not privileged.

For present purposes, the most important of these principles is #4, which requires that all material taken from a law office be sealed *before* it is either examined or seized by the police, thereby relieving you from the need to assert privilege on the spot, and moving the resolution of that issue to a later date.

## Help!

However, there are still things to think about when the police arrive. For many lawyers, the search will be unexpected and traumatic. The combination of surprise, an exigent situation, and the fact that search and seizure law may be outside your

sphere of expertise, suggests that the thing to do first is to call for the assistance of a senior criminal law practitioner who can give advice about your rights and obligations.

In addition to ensuring that the police do not exceed their powers and that your clients' privileges are protected, you may also be concerned to determine whether you or your firm are otherwise involved in the criminal investigation, either as a target or as a victim of the alleged offence. If you are a target, better to have an independent lawyer act as the point of contact with the police. If you are a victim, an independent lawyer will allow you to avoid any conflict of interests with the client who is the subject of the search.

Moreover, as a practical matter, an independent criminal lawyer will be detached from the anxiety that may accompany the search of your office, will not be fazed by the presence of police officers, and may actually know the officers personally. His or her presence



will be a welcome buffer between you and the search and should assist in making the event go as smoothly as possible.

## The warrant

No law office search should be conducted without a warrant. Therefore, your first duty is to inspect the warrant. Make a copy of it. Ensure that it identifies your office as the place to be searched (it is not unheard of for the police to arrive at the wrong address!) and authorizes the search on the date that the police have attended. The warrant should also sufficiently identify both the offence under investigation and the client whose files are sought. Inspect the warrant for any deficiency that is obvious on its face. Finally, look for terms attached to the warrant for its execution.

## Co-operation

Although there are many potential deficiencies to any given warrant, and it may be wise to have the police note your objections “for the record,” unless the warrant is obviously and ridiculously deficient, it is generally good advice that you should co-operate with the police during their search. The lawyer who purports to stop the search on technical grounds runs the risk of being charged with obstruction and making a complicated situation even more difficult. There will be plenty of time later to make objections to the warrant or the manner of the search. In the meantime, co-operate and instruct your staff to do likewise. In this way, the search will be faster and less intrusive.

## Focusing the search

In *Lavalee*, the Court emphasized that every effort must be made to ensure that the encroachment on privilege that flows from a law office search be minimized. Fundamental to this principle is the idea that the police should seize no more evidence than is necessary or authorized by the warrant. You can ensure that this principle is honoured.

The warrant should identify what the police are looking for. It is the lawyer on the file who is best placed to assist them in finding that and no more. In consultation with the officer in charge, you and (if you've accepted my earlier advice) independent criminal counsel should be able to establish a protocol for the search that allows the relevant lawyer to gather the documents (both paper and electronic), to satisfy the officer that all relevant evidence has been collected, and to allow the police to seal the documents and leave. You or independent counsel should be present as the documents are being sealed in order to make an inventory and copies of what is seized, to ensure that the police are not examining the documents before they are sealed, and to ensure that the sealed packages are marked for future identification.

While there is no *duty* to assist the police, practically speaking, your assistance will minimize both encroachments on privilege and the disruption of your practice.

## Claiming privilege

While it is no longer strictly necessary to claim privilege during the search, it is still prudent to do so over everything seized. Ensure that the police have recorded that claim. If necessary, prepare it in writing while the search is ongoing so that the police can take it with them.

## Notifying the client

It is the client's privilege, not yours, and the client has a right to know that his or her privilege is at risk due to the search. While *Lavalee* put the duty to notify on the state, you should also take steps to alert your client so that he or she can decide whether to be present to assert privilege.

## Notifying the Law Society

Where the lawyer or client cannot be located, the Law Society may act as a surrogate for either or both them, and ensure that the search is carried out in compliance with the warrant's terms and the *Lavalee* principles. In these circumstances, if the police have not already done so, the Law Society should be alerted to the fact of the search and invited to attend.

## Don'ts

To state the obvious: Do *not* do anything that could be construed as an obstruction of the police. Do not remove, hide or shred documents, and do not instruct your staff to do so. Let the police find what they are looking for. Otherwise, you will *really* need criminal counsel.

## After the search

The most difficult steps can be left for later, when there has been time to reflect, to retain or refer the client to criminal counsel, to examine the seized documents, and to determine whether privilege should be asserted. It may be that counsel and the Crown can resolve questions of privilege. Failing that, privilege can be asserted and litigated.

There will also be opportunities to challenge the search. This is done either by way of *certiorari* to have the warrant quashed on jurisdictional grounds; or at trial under section 8 of the *Charter* (the right to be free from unreasonable search and seizure) in order to deem the fruits of the search inadmissible pursuant to section 24(2) of the *Charter*.

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*Ian Smith is a partner with Fenton, Smith Barristers in Toronto.*

*This is an abbreviated version of Mr Smith's paper. The full version is available at [www.lawpro.ca/news](http://www.lawpro.ca/news).*

# Is there coverage under LAWPRO's policy for fraud?



*Although the LAWPRO policy insuring the Law Society's insurance program excludes coverage for claims arising out of fraud-related activities, the policy does respond in many instances to claims with a fraud component.*

*Among the considerations in determining coverage is whether the lawyer purchased Innocent Party Coverage, whether the lawyer was a participant or complicit in the fraud, and how promptly the matter was reported as a claim or potential claim under the policy.*

Of course, as a liability insurance policy, the LAWPRO policy only protects you from the claims of others. No protection is provided for a loss of your own or that of your firm such as, for example, the theft of your firm assets. Other types of insurance are available for that type of exposure.

## What does the LAWPRO policy say about fraud?

Part III – Exclusions – specifically states that claims relating to or arising out of “any dishonest, fraudulent, criminal or malicious act or omission” of an insured lawyer are excluded from coverage.

## How then is there coverage for fraud-related claims?

By Endorsement No. 5 to the policy – *Innocent Party Coverage* – practising lawyers who purchase Innocent Party Coverage are protected against vicarious liability for the dishonest, fraudulent, criminal, or malicious acts or omissions of other lawyers; as well, clients are assured of protection against the dishonest, fraudulent, criminal, or malicious acts or omissions of their own lawyer.

Innocent Party protection, however, is provided on a **sublimit** basis under the program – generally in the

amount of \$250,000 per claim/aggregate. This means that the Innocent Party protection is provided within the overall policy limits of \$1 million per claim/\$2 million aggregate, and not in addition. As a result, fraud-related payments under the policy reduce the amount then available with which to pay claims under this sublimit as well as the overall policy limit.

Like the general policy limit, this sublimit applies to both claim expenses and indemnity payments together. Therefore, one claim with substantial defence costs could quickly erode the amount of funds available for indemnity.

### Does every lawyer carry Innocent Party Coverage?

Innocent Party protection is mandatory for many lawyers. Those practising in association or partnership (including general, MDP and LLP partnerships) or in a Law Corporation with more than one lawyer, as well as sole practitioners practising with employed lawyers, must purchase the minimum Innocent Party Coverage of \$250,000 per claim/aggregate.

### What if I feel the minimum \$250,000 level is not enough coverage?

You can also apply to increase your Innocent Party sublimit coverage to \$500,000 per claim/aggregate or \$1 million per claim/aggregate for a relatively small additional premium. LAWPRO strongly encourages lawyers and law firms to consider buying up their Innocent Party Coverage limits, and to thus close the gap between the \$250,000 Innocent Party Coverage limits and the \$1 million mark, at which their excess insurance (if secured) would kick in.

### Can I get Innocent Party insurance if I am a sole practitioner?

Innocent Party Coverage is also available as an optional coverage to sole practitioners. These lawyers must apply for this coverage, and will be underwritten on an individual basis, based on a risk assessment of information provided in their Innocent Party Sublimit Buy-Up application. Successful applicants can choose from three sublimit levels: \$250,000 per claim/in the aggregate; \$500,000 per claim/in the aggregate; or \$1 million per claim/in the aggregate.

### But what happens if a fraud is perpetrated because the lawyer is negligent?

If you are negligent in failing to detect a fraud of another, you are generally protected up to the full amount of the \$1 million per claim/\$2 million aggregate overall policy limit. This applies whether or not the individual perpetrating the fraud was a member of your law firm staff or whether the fraudster is a client, broker, real estate agent or some other party. Where, however, the fraud is committed by a lawyer in your firm, your protection is limited to the amount of Innocent Party protection in place.

### Why is it so important to report a claim or potential claim promptly?

You can jeopardize the amount of coverage available to you if you fail to report promptly. If LAWPRO misses an opportunity to recover funds simply because of your delay, LAWPRO will not indemnify you for that loss or portion of the loss which would have been recoverable.

**For more information on Innocent Party Coverage and options to increase the sublimits available under this coverage, visit our Web site at [www.lawpro.ca/insurance](http://www.lawpro.ca/insurance) or call our Customer Service Department at 416-598-5899 or 1-800-410-1013, email [service@lawpro.ca](mailto:service@lawpro.ca).**

# The Online COACHING CENTRE

Workshop: *getting stress hardy*  
 Module: *#21 Developing perseverance & tenacity by ...developing a positive attitude*

## Coaching

People with a positive attitude persevere better in the face of challenges. We've all known people like this, but often find that our own attitudes fluctuate from day to day.

How do we develop a consistent positive attitude? Abraham Lincoln once said, "It has been my observation that people are just about as happy as they make up their minds to be."

Here are a few things that we can do to "make up our minds" to have a positive attitude:

- *Change the way you look at problems in your life.*  
 Instead of focusing on the problem and why it upsets you, focus on finding the solutions.
- *Get rid of the negative belief that you're helpless.*  
 Invariably there are new ways that you haven't tried yet.
- *Don't let the past control your future.*  
 Focus instead on what you can do today and tomorrow.
- *Treat mistakes as necessary learning.*  
 Each one teaches you something that helps you move forward.
- *Believe in yourself.*  
 Take time to discover and build on your beliefs. A positive vision will help you get through many tough times.
- *Think about what you could do to help or give back to others.*  
 Helping others takes your mind off your own frustrations.

- *Give yourself a break!*

It takes time and persistence to change your attitude and your thinking. Get in the habit of giving yourself a mental "pat on the back" every time you succeed.

Much of this is about being adaptable. Interestingly, adaptability, is a trait that is very highly correlated with living a longer and more satisfying life.

## Mentoring

Think of a challenge or situation you're facing right now (i.e. a new job, a complicated case, dealing with teenage children). Using the ideas given above complete the chart below indicating your old thinking and your new thinking, with a positive attitude.

Thinking Style	Old Attitude	New Attitude
Do I focus on problems or solutions?		
Am I helpless?		
Does the past control me?		
Mistakes I am learning?		
I believe in myself?		
I give myself a break?		

## About 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. It is organized into six workshops, each of which contains approximately 25 learning modules, such as the one profiled on this page. Modules encourage self-teaching and self-evaluation; answers you provide when working in the modules should be saved for review at a later time.

To access the OCC, go to [www.practicepro.ca/occ](http://www.practicepro.ca/occ)

# Disarming pop-ups

practice

PRO



If you're annoyed by the pop-up windows that may appear while you're browsing Web pages on the Internet, you're not alone. In fact, pop-ups are so unpopular that the business of managing and blocking pop-up windows has emerged as another cottage industry in the computer world.

But pop-ups are more than annoying: They may also indicate that your computer has been infected with spyware. This article discusses some of the basics around pop-up windows and how to deal with blocking pop-ups themselves.

## What are pop-ups and why should I care?

Pop-up advertising windows evolved as a way of showing additional information about a Web page without taking you away from the original Web page entirely. Advertisers and others seized on this opportunity to sell or present special offers to Web users. According to Nielsen NetRatings, a Web advertising researcher, the use of pop-up advertising has tripled over the last two years.

At the same time, the use of pop-ups and other unsolicited advertising has also taken a darker turn. Some spyware now

can present pop-up solicitations – which are frequently of questionable or offensive nature – even after you've closed your Internet browser. Having this material appearing on your computer could be upsetting to your staff, and damaging to your reputation.

Intriguing legal implications have arisen from the some of the pop-up advertisers, particular in the United States. In a recent case, a software company was ordered to shut down its advertising, which appeared in the form of pop-ups messages. Ironically, the software being advertised was a pop-up blocker!

## Types of pop-ups

There are three basic types of pop-up windows:

1. *General browser pop-ups:* These can actually be useful and desirable. Many Web-based software applications rely on the use of pop-ups to present key instructions and information. Unfortunately, a great deal of Internet advertising is presented the same way.
2. *Windows Messenger Service pop-ups:* These often appears as grey banner ads with a "Messenger Service" line on

the title bar. While Windows Messenger Service has some applications in larger network environments, most users can and should disable this on their Windows 2000/XP/2003 computers.

3. *Spyware, adware, and other malware:* More recent and sophisticated pop-up advertising may be a symptom of having malicious software on your computer. These advertising pop-ups may offer offensive materials, and may even provide a means for unauthorized access to your computer and files.

## Blocking pop-ups

Different approaches work best for each of the three primary types of pop-ups.

### 1. BROWSER POP-UPS

A variety of free or modestly priced software is available for download to deal with the problem of pop-ups. For example, the "Google toolbar" (available at [toolbar.google.com](http://toolbar.google.com)) will prevent extra pop-up windows whenever you browse to a site. As well as being free and effective, the Google toolbar keeps count of the pop-ups it has blocked, and allows you to permit pop-up screens on a one-off basis simply by holding the <Ctrl> key when clicking on a link.

© 2004 Lawyers' Professional Indemnity Company. This article originally appeared in LAWPRO Magazine "Practicing Law in an E-World", December 2004. It is available at [www.lawpro.ca/magazinearchives](http://www.lawpro.ca/magazinearchives).



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## Deadline reminders

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Please note the following deadlines:

### Transaction filings:

- Real estate and civil litigation transaction levy surcharge payments for the final quarter of the year ending December 31, 2004, are due on January 31, 2005.
- Real estate and civil litigation transaction levy surcharge payments for the third quarter of the year ending September 30, 2004, were due on October 31, 2004.

### 2005 insurance application filings:

- The deadline for filing applications for the 2005 insurance program was November 5, 2004. Applications not yet filed and received by LAWPRO will now be subject to a surcharge equal to 30 per cent of the base premium.

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## Board member named to Order of Canada

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Vern Krishna, a member of the LAWPRO Board of Directors and past treasurer of the Law Society, was awarded both an Honorary Doctor of Laws (LL.D.) and the Order of Canada this fall. The awards recognize Professor Krishna's extensive contributions to the legal profession as both an educator and legal scholar, and the leadership role he has played in advancing the cause of justice.

While treasurer of the Law Society, Professor Krishna was instrumental in negotiating a national mobility agreement that enables lawyers to practise inter-provincially; he also contributed to reform of the bar admission process. He is also widely respected as one of Canada's leading tax scholars, and teaches tax law at the University of Ottawa.

Professor Krishna joins LAWPRO Board members George Anderson and Frederick Gorbet as recipients of the Order of Canada.

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## LAWPRO sponsors successful 2004 Technology for Lawyers Conference

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More than 250 lawyers and 30 legal technology vendors participated in this year's Technology for Lawyers 2004 Conference and Vendor Expo, sponsored in part by LAWPRO. The mid-November event was organized jointly by the Ontario Bar Association and the Law Society.

Among the hot topics were:

- **E-Discovery:** Litigators especially were interested in the evolution of American and Canadian law in this area. They were also looking for practical advice and checklists for dealing with e-discoveries, as well as a review of computer forensics, and some demonstrations of the tools for manipulating and presenting electronic evidence.
- **Practice management software:** Canadian lawyers are now recognizing that programs such as Amicus Attorney and TimeMatters are very powerful tools for putting an entire practice at your fingertips. The 109-page paper from the face-off session contains a detailed side-by-side comparison of these two products, including extensive screenshots, and is available at [www.practicepro.ca/tfl2004](http://www.practicepro.ca/tfl2004).
- **Using technology to work more efficiently,** more profitably and to avoid malpractice claims were recurring themes in several sessions. The hands-on teaching sessions in the Tech University and Better Faster Cheaper

track proved to be very popular with attendees.

LAWPRO Information Systems Director David Reid collaborated on a presentation on *Security in a Wired and Wireless World*, and practicePRO Director Dan Pinnington co-presented on how to produce more effective presentations. These presentations, as well as the 60 Tips presentation are available on the practicePRO Web site at [www.practicepro.ca/tfl2004](http://www.practicepro.ca/tfl2004)

practicePRO has limited quantities of the exhibitor promotional materials package that were distributed to all attendees. If you are interested in receiving this package, please contact practicePRO coordinator Susan Carter at 416-596-4623, 1-800-410-1013 or [susan.carter@lawpro.ca](mailto:susan.carter@lawpro.ca).

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## Major lenders sign on to TitlePLUS nationally

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Three major financial institutions – Bank of Montreal, HSBC Bank Canada and The Bank of Nova Scotia – have signed agreements with LAWPRO to accept TitlePLUS policies on a national basis. All three institutions have been accepting TitlePLUS policies on Ontario real estate transactions, but had been in discussions with LAWPRO on the details of a national agreement. The TitlePLUS program already had national agreements with TD Canada Trust, CIBC Mortgages Inc. and The Royal Bank of Canada.

These agreements enable lawyers in all jurisdictions to offer the TitlePLUS option to more of their clients and strengthen the ability of the TitlePLUS program to compete against other title insurers nationally. (Note: TitlePLUS insurance is presently not available in Quebec.)

# Events calendar

**2004** *The following is a listing of events at which LawPRO representatives, including staff from TitlePLUS and practicePRO, will be presenting and/or participating in the coming months.*



## 2004

December 8  
Gowlings

*Risk Management and Claims Prevention*

Dan Pinnington, practicePRO  
Gowlings Office, Ottawa

December 8  
Prudential/Sadie Moranis

*Real Estate Fraud*

Tim Clarke, LawPRO  
Toronto

December 9  
Essex County Law Association CLE

*Tips for Working Better, Faster and Cheaper*

Dan Pinnington, practicePRO  
Windsor Hilton Hotel, Windsor

December 17  
York Region Real Estate Board  
General Meeting

TitlePLUS exhibiting

## 2005

January 13  
9<sup>th</sup> Annual Intellectual Property Law –  
The Year in Review

*Claims Prevention for the IP Law  
Practitioner*

Dan Pinnington, practicePRO  
LSUC, Toronto

January 14  
9<sup>th</sup> Annual Intellectual Property Law –  
The Year in Review

*Claims Prevention for the IP Law  
Practitioner*

Dan Pinnington, practicePRO  
LSUC, Ottawa

January 19  
Winnipeg Real Estate Board  
TitlePLUS presenting  
Alberta

January 19  
Law Society of Upper Canada  
*Title and Off-Title Searching*

TitlePLUS sponsoring  
Toronto

January 21  
practicePRO Technology Breakfast  
*Practical Pointers for Powerful and  
Persuasive PowerPoint Presentations*

Dan Pinnington, LawPRO  
Simon Chester, Heenan Blaikie  
LawPRO, Toronto

January 27 – 29  
Western Provinces Conference  
TitlePLUS exhibiting  
Fairmont Hotel, Banff, Alberta

February 3 – 4  
OBA Institute 2005  
*Back to the Future*  
LawPRO/practicePRO/TitlePLUS sponsoring  
practicePRO/TitlePLUS exhibiting  
Metro Toronto Convention Centre-South,  
Toronto

February 25  
practicePRO Technology Breakfast  
*Managing The Security And Privacy Of  
Electronic Data In A Law Office*  
David Reid, LawPRO  
LawPRO, Toronto

March 30 – April 2  
ABA TechShow 2005  
*60 Tips in 60 Minutes*  
*Practice Management Software Faceoff*  
*Powerful and Persuasive PowerPoint  
Presentations*  
Dan Pinnington, practicePRO  
Chicago, IL

April 1  
practicePRO Technology Breakfast  
*Documents and Precedents – Big Firm  
Knowledge Management on a Small  
Firm Budget*  
Hugh G. Laurence, Barrister and Solicitor  
LawPRO, Toronto

For more information on practicePRO  
events, contact Susan Carter at 416-596-  
4623 or 1 800 410-1013, or e-mail  
[susan.carter@lawpro.ca](mailto:susan.carter@lawpro.ca).

For more information on TitlePLUS events,  
contact Marcia Brokenshire at 416-598-5882  
or e-mail [marcia.brokenshire@lawpro.ca](mailto:marcia.brokenshire@lawpro.ca).

### ABOUT PRACTICEPRO TECHNOLOGY BREAKFASTS

These presentations focus on legal technology; some sessions feature product comparisons; others are practical discussions and demonstrations of specific products by actual users; others review practical technology skills at a basic level.

Written summaries and online versions of past breakfasts, including handouts if available, are available for download at [www.practicepro.ca/techbreakfasts](http://www.practicepro.ca/techbreakfasts).

Online versions of some breakfasts are also available for only \$29.95 at the BAR-eX Communications Web site at [www.bar-ex.com](http://www.bar-ex.com). These online versions provide screen captures and audio of the actual presentation.

One example of a recent Technology breakfast:

*Quicklaw – Not Just for Caselaw Anymore!*

This session focused on how to get the most out of your Quicklaw service, including using current awareness sources, drill down indexes, textbooks and point-in-time statutes.



## LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LAWPRO®)

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