



DANGER SIGNS:

Five activities generally not covered by your LAWPRO policy

On occasion, lawyers have engaged in activities that have made them front-page news, subject to embarrassment and possibly lawsuits or discipline complaints. Not only can this kind of attention be bad for a lawyer's reputation, it can also damage or even destroy client relationships.

That's reason enough to be aware of and avoid activities that could lead to these types of outcomes. But there is another – equally if not more compelling – reason to avoid them: In some instances, it may be the law firm, not LAWPRO, that foots the bill when these activities lead to problems.

Remember that the LAWPRO policy provides coverage that is tailored to your role as a lawyer. The policy affords protection against claims for damages arising out of a claim, provided liability is the result of an error, omission or negligent act in the performance or failure to perform “professional services” for others (For the definition of the term “professional services” under the LAWPRO policy, please see page 13.)

What will or will not be covered can be very fact-specific; but generally you will be insured for the work you do with your lawyer hat on, and not insured for activities where no solicitor/client relationship exists and no legal advice or service is provided.

This article highlights some of the dangerous activities that can lead to problems that will likely not be covered under the LAWPRO policy.

⚠ Don't infringe copyrights or trademarks: The very foundation of the web is the ability to easily and broadly share information with others. When lawyers or law firms are posting information online they will sometimes include trademarks or information upon which others hold the copyright. With “cut and paste” it is easy and tempting to use large amounts of information from another

LAWPRO policy excerpts

Part V: Definitions

Under the LAWPRO policy “Professional Services” is defined as follows:

(y) “**PROFESSIONAL SERVICES** means the practice of the Law of Canada, its provinces and territories, and specifically, those services performed, or which ought to have been performed, by or on behalf of an INSURED in such INSURED’S capacity as a LAWYER or member of the law society of a RECIPROCATING JURISDICTION, subject to Part II Special Provision A; and shall include, without restricting the generality of the foregoing, those services for which the INSURED is responsible as a LAWYER arising out of such INSURED’S activity as a trustee, administrator, executor, arbitrator, mediator, patent or trademark agent.”

Part III Exclusions

The policy does not apply:

(e) “...to any CLAIM in any way relating to or arising out of INJURY to any person, or to mental anguish, shock, humiliation or sickness, disease or death of any person, or destruction or loss of any tangible property, including the loss of use thereof, unless as a direct consequence of the performance of PROFESSIONAL SERVICES;”

The word “INJURY” is defined in *Part V: Definitions* as follows:

“**INJURY** means bodily injury, false arrest, wrongful detention or imprisonment, *libel, slander, defamation of character*, invasion or violation of privacy, assault, battery, sexual misconduct, harassment, discrimination or wrongful dismissal.” (*emphasis added*)

source in a newsletter or in content for the web. Remember there are few, if any, scenarios where it can be argued that the use of trademarks or copyrighted information without permission was in some way professional services for a client. So, be especially careful to avoid the use of trademarked or copyrighted information unless you have consent, as this may result in expensive claims that are not covered by professional liability insurance.

2 Be careful what you say about others: The web’s informality makes it easy for the unwary to fall into saying something inappropriate about someone. Aggressive or nasty comments made in an unguarded moment or in the heat of a contentious matter can well result in a defamation claim. Making a nasty comment to the media, online or elsewhere, in the course of providing professional services for a client isn’t worth it. The circumstances in which the comments were made can determine whether the LAWPRO policy coverage is triggered as well as whether the policy exclusion addressing defamation of character applies (See sidebar for exclusion details). Often, no coverage is available for defamatory comments made about a non-client. If you want it, some protection for defamation type claims may be available through other forms of insurance offered by commercial markets. Consider speaking with your insurance broker about this.

3 Be wary of what others say in replies to your social media conversations and in comments on your blog: The defamatory comments of third-parties can also expose a lawyer to defamation law suits. Comments on blogs and social media tools allow total strangers to take part in very public conversations. Although a real benefit for sharing information, these conversations can have very negative consequences when someone posts something inaccurate or unpleasant – both of which can be judged in the

biased eye of the beholder. Carefully monitor (and consider moderating) the comments posted to your personal or firm blog and the replies to any conversations you have using social media tools. You want to avoid being sued due to (allegedly) defamatory comments that appear in conjunction with you or your firm.

4 Avoid the unauthorized practice of law (UPL): Lawyers need to appreciate that any content they post on the Internet can easily be accessed from anywhere in the world. Ontario lawyers practising law in other jurisdictions by providing legal services on the Internet should respect and uphold the law of the other jurisdiction, and not engage in the unauthorized practice of law. Clearly indicating the jurisdiction(s) in which you are licensed to practise in your online content and posts will help potential clients understand where you can and cannot practise. You want to avoid a negligence suit in a jurisdiction outside of Canada involving non-Canadian law.

5 Avoid online dangers: Social media sites and other online tools offer lawyers all sorts of interesting new ways to interact with people in both personal and work spheres. There are, however, some risks associated with using them. Some of these risks are obvious, some are not, and many won’t be covered by the LAWPRO policy. The “Social Media Pitfalls to Avoid” article in the December 2009 issue of LAWPRO Magazine (www.practicepro.ca/LawPROmag/SocialMediaPitfalls.pdf) highlights the risks – and how to avoid them. You might want to review that article if you have not already done so.

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