

Avoiding claims when serving clients on a budget



In today's difficult economic environment, it's not unusual for lawyers to find themselves dealing with requests for representation from clients of limited means, or clients who want to keep their legal fees at a minimum. The economic issues these types of requests raise is but one consideration: Access to justice – which has become a prominent issue in Ontario lately – also figures in the equation. For its part, LAWPRO is committed to helping lawyers understand how they can serve different types of clients' legal needs while also avoiding claims.



Instead of turning away clients with limited budgets, lawyers often consider ways of providing limited scope or non-traditional legal services. From a malpractice exposure perspective, lawyers should appreciate that providing limited services can create a set of risks different from those that arise in a matter handled without limitations on fees, and may present an increased risk for claims. Some alternative approaches fall completely outside the coverage provided by the LAWPRO policy.

The map on the next page gives an overview of the options lawyers might consider, highlights potential claims risks, and introduces some strategies and resources lawyers can use to protect themselves.

Can you lead your client through the woods without falling into a malpractice trap?



1. “Unbundled” or limited scope legal services

When providing “unbundled” or limited scope legal services, the lawyer works on some but not all of the legal issues the client needs help with.

- Do you have a written retainer (required under the *Rules of Professional Conduct*)?
- Does the retainer clearly identify the client?
- Is the scope of work clearly set out in the retainer?
- Have you taken steps to protect yourself from “scope-creep” on the retainer?
- Are you protected from a post-matter allegation that you were to do something for the client you didn’t?

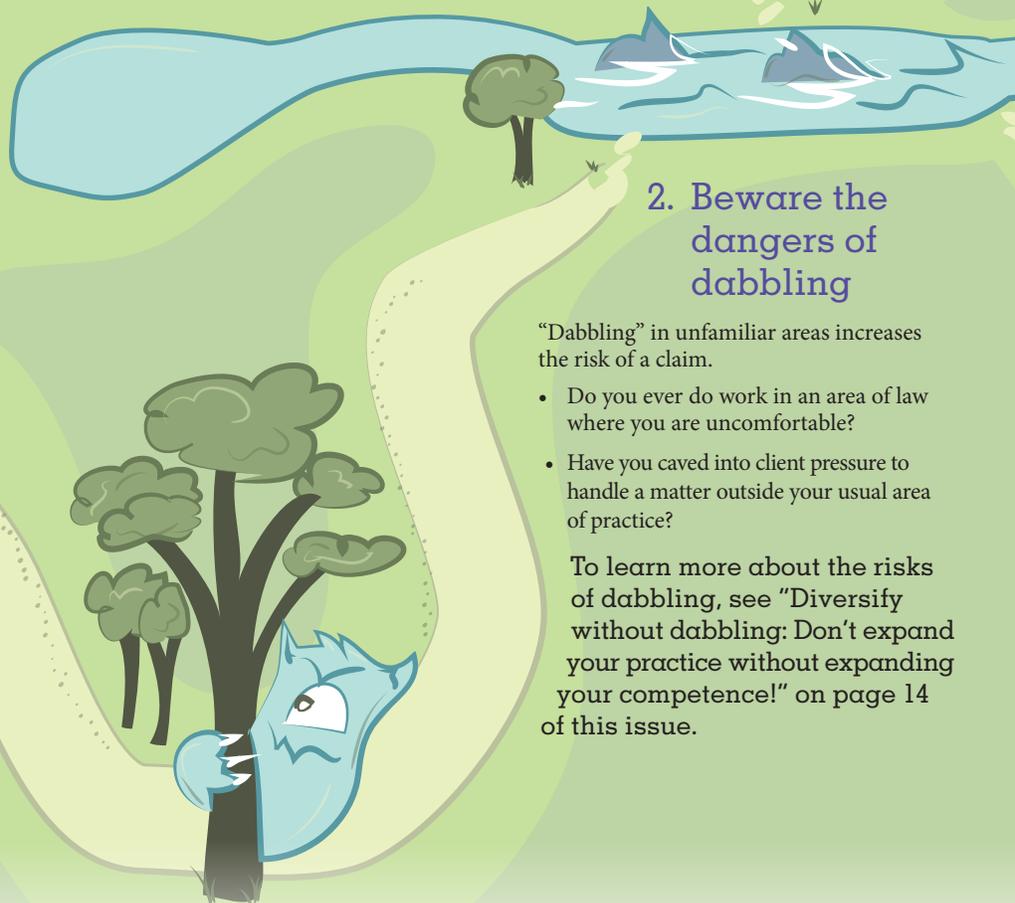
See articles “Unbundled legal services: Pitfalls to avoid” at www.practicepro.ca/unbundled

2. Beware the dangers of dabbling

“Dabbling” in unfamiliar areas increases the risk of a claim.

- Do you ever do work in an area of law where you are uncomfortable?
- Have you caved into client pressure to handle a matter outside your usual area of practice?

To learn more about the risks of dabbling, see “Diversify without dabbling: Don’t expand your practice without expanding your competence!” on page 14 of this issue.



3. Legal coaching/ghostwriting pleadings

Some lawyers assist clients by coaching them in advance of a self-represented appearance or by drafting pleadings without providing any related legal services.

- Have you considered whether undisclosed assistance violates the *Rules of Professional Conduct*?
- Have you documented the work and advice you provided to the client?
- Could you defend yourself if the client later alleged your advice prejudiced their case?

4. Independent legal advice (ILA)

Do you always send clients out for ILA where appropriate, even when they do not want to incur the extra expense? When you do ILA, do you:

- Get all appropriate background information?
- Engage the client in a full and frank discussion?
- Fully explain to the client the nature and consequences of the document(s) they are signing?
 - Ever decline to give ILA based on lack of disclosure?
 - Carefully document your advice when you advise a client not to sign?

Use our ILA checklist at www.practicepro.ca/ILAChecklist to ensure you address all necessary issues on an ILA consultation.

5. Could your online communications create a lawyer/client relationship?

Information provided online (or elsewhere) outside the context of a traditional lawyer-client relationship may be interpreted by the recipient as legal advice, and may lead to a claim.

- When you post information online, is it legal information or legal advice?
- Do you engage in conversations with people by answering questions, posting comments or chatting?
 - Do you have a disclaimer? Even if you do, it may not protect you.

See "Danger signs: Five activities generally not covered by your LAWPRO policy" at www.practicepro.ca/notcovered

6. DIY documents/products – Outside LAWPRO coverage?

The LAWPRO policy does not cover claims related to a lawyer's sale, marketing or distribution of products, which includes the sale of "do it yourself" wills, contracts or other documents outside a lawyer/client relationship.

- Does your firm sell or market DIY legal services?
- Do you have product liability insurance to cover those services?

See "Danger signs: Five activities generally not covered by your LAWPRO policy" at www.practicepro.ca/notcovered