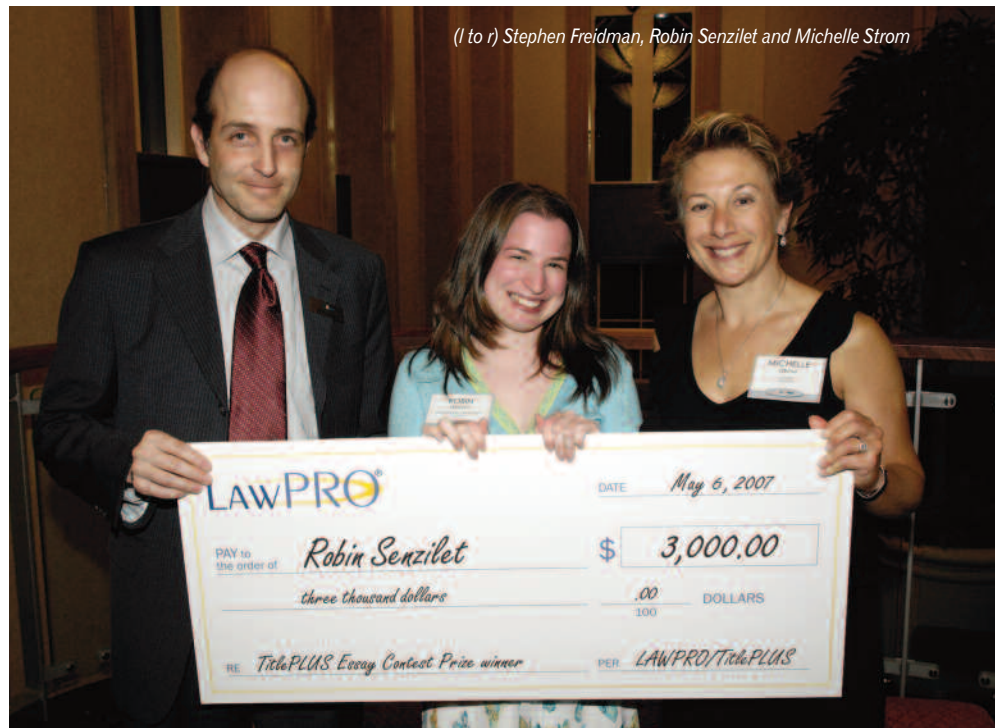


# Osgoode student wins inaugural TitlePLUS® Essay Prize

LAWPRO is pleased to announce that Robin Senzilet, a second-year student at Osgoode Hall Law School, is the first-ever winner of the TitlePLUS Essay Prize.

In her essay, "Mitigating Error in the Practice of Real Estate Law," Ms. Senzilet uses the theories of British psychologist James Reason – one of the world's leading experts on the subject of human error – as the framework for a discussion of the possible explanations for the high incidence of LAWPRO claims by real estate lawyers. She looks at his "person approach" and "systems approach" in determining causes of error, and discusses active and latent factors that can contribute to errors. She also applies Reason's theories to explore options to help lawyers prevent these errors in the future, including using available risk management resources provided by LAWPRO and other legal bodies and attending CLE courses.

Robin spent two months researching and writing her paper as part of the coursework for Adjunct Professor and Law Society Medal winner Reuben Rosenblatt's real estate course. She is a senior editor of the Osgoode Hall Law Journal and a member of Osgoode's Entertainment and Sports Law Association. Robin will be spending the summer working at the ministries of: the Attorney-General; Citizenship and Immigration; Culture and Tourism. On graduation, Robin will be articling at the



Ontario Superior Court of Justice. The multi-talented student has previously studied musical theatre, fine arts and humanities, and has performed in Anne of Green Gables at the Charlottetown Festival and in other summer stock productions.

Robin received the award at the TitlePLUS 10<sup>th</sup> anniversary conference in Niagara Falls. The award, including the cash prize of \$3,000, was presented by Michelle Strom, president & CEO of LAWPRO, and Stephen Freedman, legal counsel for TitlePLUS. "I feel very honoured that my essay was chosen,"

said Robin. "I was really excited to go to the conference. I enjoyed getting to meet people and hearing what they had to say, it was a great experience."

LAWPRO created the TitlePLUS Essay Prize to encourage and recognize outstanding legal scholarship in the practice of real estate law. Students from law schools across Canada (excluding Quebec) were invited to enter the essay contest. The entries, which had to address a current issue relevant to the practice of real estate law and be under 6,000 words in length, were judged by a panel of five judges appointed by LAWPRO.

## Summary of winning TitlePLUS essay prize entry

# “Mitigating error in the practice of real estate law”

Robin Sensilet uses the theory of James Reason, world renowned expert on human error and system failure, to form the framework for her discussion of the possible explanation for the relatively high rate of error on the part of real estate lawyers.

James Reason’s “person approach” focuses on the unsafe acts of people and views these unsafe acts as arising primarily from aberrant mental processes such as forgetfulness, inattention, poor motivation, carelessness, negligence and recklessness. Under this approach, it is the individual person who is considered solely responsible for the error that has occurred. One type of failure under the “person approach” occurs when people act without paying enough attention to what they are doing. Reason discovered that common errors may be the result of the human brain’s capacity to adapt. Humans cannot function without delegating some tasks to be carried out automatically by the brain; this creates the opportunities for the mind to go on “autopilot” and for errors to result.

Under Reason’s “system approach,” the focus is placed on the contextual factors that have contributed to the error made by the individual. Errors are seen as consequences rather than causes, whose origins lie not so much in perversity of human nature as in the ‘upstream’ systemic factors. Under the system

approach, the focus of error prevention is placed on changing the system as a whole, not simply the individual, as the errors are seen as the result of the convergence of multiple contributing factors.

Reason has developed a “Swiss cheese model” to illustrate the situation in which a series of events occur simultaneously that breach the defenses and safeguards that have been put into place to protect against error. The presence of a single “hole” in the system’s defences, in and of itself, doesn’t cause the error to occur. Errors occur only when holes in the many layers momentarily line up to permit a trajectory of accident opportunity.

Reason has argued that a hole in the system’s defences arises for one of two reasons: active failures or latent conditions; errors are almost always the result of a combination of the two.

Active failures are those failures that are attributed directly to the person performing the task. Legal examples include lapses, such as forgetting to give a client certain information; or slips, such as proceeding without the consent of the client. These active failures are often the result of latent conditions. Latent conditions include preconditions of either human or technological factors, such as poor management, unreasonable work hours, or unreliable equipment.

When active failures are combined with latent conditions the stage is set for possible error to occur.

Sensilet applies Reason’s framework to examine the most common types of errors that lead to malpractice claims in the area of real estate law. These include, communications errors, time management errors and failure to meet deadlines, errors due to lack of investigation, errors resulting from the delegation of tasks, and failure to keep current with the law.

Using Reason’s theory, Sensilet recognizes that efforts at reducing claims, such as instructive articles, online resources, CLE programs, and checklists, have likely played an integral role in reducing the risk of claims against members of the real estate bar.

Using Reason’s framework, the efforts made to help lawyers keep up to date, and remind and caution lawyers about pitfalls that exist that may lead to future malpractice claims, could be said to be defenses that are part of the “Swiss cheese model.” The stronger these defences are, the less likely it is that there will be “holes” in them, and the less likely it is that active failures and latent factors will work together to create an “error trajectory” through those defences, leading to errors and malpractice claims.

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*Carolyn Stanley is a student-at-law at LAWPRO.*