

The practicePRO program: looking back on what has and hasn't changed in the first 15 years

In 1997, LPIC, as LAWPRO was then known, was in its second year of operating the primary professional liability program for the Ontario bar. At that time, LPIC was working hard to build confidence in a new insurance program (and itself as the new insurer of the program) in the wake of the E&O fund deficit crisis of the mid-1990s. Efforts were being made to be more responsive to the needs of lawyers and to deliver on the promise of improved customer service. Malcolm Heins, then CEO of LPIC, felt that the company's claims management efforts should be complemented with a risk management initiative. This led to the creation of the practicePRO initiative.

Building a risk management program

Karen Bell, a partner at a leading national law firm, was brought in to consult on the project. All felt that a big picture approach should be used and pre-conceived notions about what a risk management program should look like were carefully avoided. The initial idea was that the initiative should be about more than just loss prevention for the insurance program. It was decided that it should also address the changing environment in which lawyers practise; that it should develop tools and resources to help lawyers adapt to the changes in the legal profession and the world around them; and that it should help lawyers adopt new ways of doing business. The ultimate goal was to help lawyers be more proactive in their claims prevention efforts and to encourage them to be equally proactive in making their practices more proficient and profitable. This is what was behind the “practice” and the “pro” in the practicePRO name.

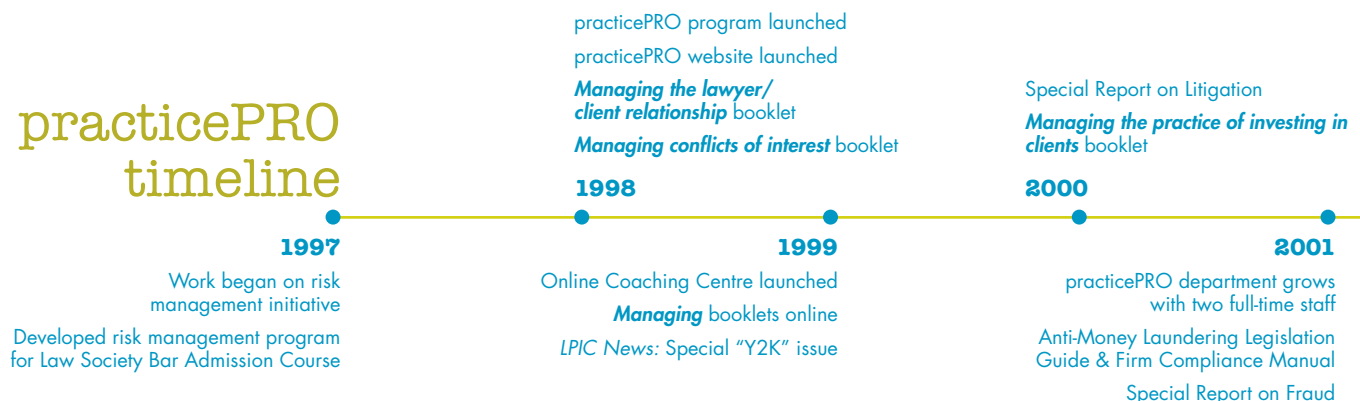
As a key starting point, it was important to study and understand where some lawyers were going wrong. This was critical not only for claims prevention, but also to understand which tools and resources lawyers needed to change how they approached the practice of law. This analysis involved an in-depth examination of LPIC's claims

statistics, as well as investigation of the operations of other established loss prevention programs that targeted malpractice by lawyers. The programs considered were the Attorney's Liability Insurance Society (ALAS), and the Professional Liability Fund run by the Oregon State Bar (which fund operates in the only U.S. state that requires lawyers to have malpractice insurance).

A great deal of work was done to mine LPIC's claims data to see if any trends could be observed. Factors that were considered included: the area of practice, what caused the claim, the number of years the lawyer had practised, the size of the firm, where the firm was located, the cost of the claim, etc. The analysis confirmed that the causes of claims were remarkably similar, right across Ontario, in all areas of law or practice types, and for firms of all sizes. And while some claims involved failing to know the law (which many lawyers still assume is the main cause of claims), the key finding was that many more claims were the result of “human” failings in lawyer/client communication (ranging from miscommunication, poor communication or no communication at all); time and file management mistakes (including missing deadlines or limitations and procrastination); and conflicts of interest (between current and/or past clients or involving lawyer self-interest). These insights were confirmed by research that Professor Neil Gold (former dean of law at the University of Windsor) undertook for LPIC.

Another important observation was that while lawyers could not change the environment in which they practised, they could control the circumstances – that is, how they practised. Thus, one of practicePRO's main jobs was going to be providing guidance and education to help lawyers be more client-focused. This served several of the key interests at hand, namely, preventing claims by helping lawyers take steps to better manage their practices and keep clients satisfied.

practicePRO timeline



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The practicePRO and TitlePLUS programs are provided by LAWPRO

The four pillars

Based on these assessments of why lawyers make mistakes, how such errors can be avoided, and the tools that could be useful to help lawyers avoid claims, the practicePRO program was launched in June of 1998. There were four founding pillars of practicePRO: information, practice aids, education and wellness & balance.

Information: Providing lawyers with information and insight was seen as key to helping them appreciate the changing practice climate; to understand how, where and why claims occur; to know where the risks are; and to know how to better manage these risks. The *LPIC News* – the company’s regular print publication at the time – started carrying a regular practicePRO section to help get the word out on these topics. A new practicePRO section was added to the LPIC website to make this information available electronically on this new-fangled thing called the “World Wide Web,” and shortly thereafter the practicePRO program got its own website. The practicePRO staff also worked with various law associations across the province and hit the road – attending as many of their gatherings as possible – to raise awareness of the risks and of the resources it was making available.

Creating information and getting it to lawyers has remained a core practicePRO focus over the years. *LPIC News*, a fairly simple newsletter, morphed into the full-featured *LAWPRO Magazine*. More recently, *LAWPRO* started publishing webzines – electronic publications that target selected areas of practice or focus on specific risks or issues that drive claims. Traffic to the *LAWPRO* and practicePRO website has grown year after year (See “practicePRO by the numbers: Website traffic”), and the AvoidAClaim blog has become a recognized site for information on claims prevention, and in particular preventing frauds due to bad cheque scams. See “practicePRO by the numbers: AvoidAClaim blog traffic.” The practicePRO program has recently become active on social media with regular posts to Twitter, LinkedIn and Facebook.

Practice aids: From the data analysis and research, four top areas of claims were identified: poor lawyer/client communication, conflicts of interest, failure to know or apply law, and missed deadlines/procrastination. Work was done to create tools and resources to help lawyers address these issues. One response was the “managing” series



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of booklets: First one on lawyer-client communication, and then a second on conflicts situations. A third managing booklet on the dangers of investing in clients followed. A checklist for properly giving independent legal advice was the first of many checklists that the practicePRO department would publish in coming years.

Practice aids continue to be a key part of practicePRO’s efforts. Five more managing booklets have been published, each addressing specific areas of risk. The practicePRO website has come to include a wealth of practice resources for lawyers, including various checklists, precedent retainer letters/agreements, limitations period tables, articles on law office technology, a firm budget and a business plan and much more. The practicePRO 15th anniversary pullout in the centrefold of this magazine lists the best and most popular practice aids and other resources from the last 15 years.

Education: In its early years, the practicePRO program worked to make information about professional development opportunities for lawyers more widely available (remember that continuing education – or CLE as it was then called – was not mandatory as it is today). practicePRO staff also participated in presentations to new lawyers at the Bar Admissions course. At one point, students in Bar Ads had a full day of programming on *LAWPRO* insurance information and risk management content.

The practicePRO department recognized the value of ongoing education from the start. With the launch of the Online Coaching Centre Credit (later the *LAWPRO* Risk Management Credit) in 2002, the program started ongoing efforts to encourage lawyer participation in CLE or continuing professional development (CPD) programs.

CLE premium credit launched

Technology Roadshow and Technology Breakfasts introduced

LAWPRO Magazine: “Focus on Mentoring”

Managing a mentoring relationship booklet

LAWPRO Magazine: “Practice Interruptions”

Managing practice interruptions booklet

2002

2003

LAWPRO Magazine: “Building for Success”

Managing the finances of your practice booklet

LAWPRO Magazine: “Helping your Practice Soar”

LAWPRO Magazine: “Client Communication”

LAWPRO Magazine: “Fraud”

LAWPRO Magazine: “Practising in an e-world”

Managing the security and privacy of electronic data in a law office booklet

Limitations Act comparison chart

2004

2005

LAWPRO Magazine: “Family Law”

LAWPRO Magazine: “Electronic Discovery”

Mini version of Limitations Act comparison chart

LAWPRO Magazine: “Professional Services”

Managing a professional services firm booklet

LAWPRO Magazine: “Work & Wellness”

2006

2007

Lending Library launched

LAWPRO Magazine: “Elder Law”

LAWPRO Magazine: “Making your Mark”

The Online Coaching Centre was itself a very innovative offering, being one of the first online education programs offered to lawyers.

The Online Coaching Centre Credit became the CLE Premium Credit, then the CPD Premium Credit, and most recently the LAWPRO Risk Management Credit: Education remains a cornerstone of the practicePRO program. practicePRO staff administer the Risk Management Premium Credit and this facilitates getting content and LAWPRO speakers participating at CPD programs, where they present on a wide range of subjects, and most particularly risk management and claims prevention. As can be seen in “practicePRO by the numbers: LAWPRO Risk Management Credit approvals and attendees,” this credit helps get the risk management message to thousands of lawyers.

Wellness & Balance: Law is a stressful profession, and it is intuitive that there is a link between lawyer stress and physical and mental health crises and malpractice claims. As a result, practicePRO has always been committed to encouraging lawyers to keep up their mental and physical wellbeing. Through the practicePRO program, LAWPRO has supported lawyer wellness initiatives over the years, most recently, the Law Society’s new Member Assistance Program. The practicePRO website has a Wellness page that makes available

numerous links to agencies and self-assessment tools that can assist lawyers with problems like depression and drug and alcohol addiction.

Some things haven’t changed 15 years on

In 15 years the scope and reach of the practicePRO initiative and the resources it offers have grown tremendously. The timeline adjacent to this article highlights practicePRO’s main events and publications over the last 15 years. The program has become an internationally recognized risk management program and has had many successes and triumphs over the years. However, many of the same problems that were present in 1998 and drove the creation of the practicePRO initiative continue to result in claims today. Indeed, many of the resources created in earlier years remain relevant today.

Beyond the core communication and time management topics, LAWPRO through the practicePRO program has helped educate lawyers on many other relevant and important topics over the years, including: disaster planning; mentoring; file retention; e-discovery; social media, and practice finances. We have also responded to significant new risks as they emerged from time to time, most recently real estate fraud, administrative dismissals and bad cheque frauds.

Clearly, the claims prevention message is getting through to some lawyers, but it seems others are not getting the message, or if they are, they are not acting on it. LAWPRO is seeing claim numbers going up, and the costs of resolving those claims are increasing too. Based on current projections more than 2,600 new claims will be reported to LAWPRO in 2013 and resolving those claims will cost approximately \$100 million.

So there is still much work to be done. practicePRO staff need to work hard to reach more lawyers. Those lawyers need to better recognize the dangers and change their attitudes and risky behaviors. The practicePRO program will continue to play an important role in promulgating good practices to the lawyers of Ontario. The next article, “The Evolving Face of Risk management: practicePRO the next 15 years” discusses how risks and risk management have evolved at LAWPRO and where they will go in the future. ■

Tim Lemieux is practicePRO co-ordinator at LAWPRO.

practicePRO by numbers:			
practicePRO website traffic			
Total annual visits to practicepro.ca	2003	2012	
Unique visitors	38,188	323,070	
Average visits per day	20,611	113,311	
Resources downloaded from practicepro.ca	104	1,120	
	47,344	322,855	
LAWPRO Risk Management Credit approvals and attendees			
CPD (CLE) programs approved for LAWPRO Risk Management Credit	2003	2012	
Attendees at LAWPRO-approved CPD (CLE) programs	12	213	
	2,237	53,000	
AvoidAclaim blog traffic*			
Visitors/day (*2013 numbers as of Sept, 2013)	2011	2013	
	300	650	
	2009	2013	
Subscribers	114	730	

