



the next 10 years

Dan Pinnington joined LawPRO as director of the practicePRO program in early 2001. As well as building on initiatives described in the previous article, he expanded its reach. practicePRO is now one of the leading risk and practice management initiatives in North America. In this interview, Dan reflects on the last seven years of practicePRO.

Has practicePRO helped attune the profession to risk management and claims prevention?

I think so. On an almost monthly basis we get calls and e-mails from lawyers telling us how a recent article or CLE presentation prompted them to do something differently on a matter with the result that they avoided a claim. In the last few months several lawyers have told us that they had avoided being duped by fraudsters after recognizing "red flags" on a matter involving some of the common fraud scenarios highlighted in our recent publications.

Where has practicePRO made its biggest impact?

I would identify two places. First, the LawPRO CLE Premium Credit which has changed the face of CLE in Ontario by making claims prevention content an explicit part of the majority of CLE programs. For the 2008 insurance year, more than 14,300 lawyers qualified for the credit by attending one or more of the 116 CLE LawPRO-approved programs. Our numbers for 2009 and are even higher: more than 150 approved programs so far. Non-profit CLE providers are now asking to have their programs approved for the credit. And CLE attendees are saying that they liked that risk management and practice management content was included in CLE programs.

Secondly, I think the huge collection of resources that practicePRO has created for the profession has made a mark. These range from the articles in LawPRO Magazine to all the checklists, precedents and papers that are available online. Judging from the number of downloads – more than 145,000 in 2007 and 81,000 by the end of June this year – they are clearly popular with the profession (see centre section insert for a listing of the most

popular practicePRO downloads). It is a compliment to practicePRO that many of the resources we have created have been adapted and reproduced for use in other provinces, the U.S. and many other countries around the world.

What advice would you give to lawyers to help them avoid a claim?

As is highlighted in more detail in the article on the biggest claims risks (see page 17), in most areas of the law lawyer/client communication problems are the number one cause of claims, followed closely by deadline and time management issues.

So, while knowing substantive law is important, from a claims prevention point of view you get more for your risk management efforts by focusing on improving client communications and focusing on getting things done on time. With this in mind, my top tips for avoiding a malpractice claim are as follows:

1. **Start out on the right foot with a written retainer:** The retainer letter or agreement is your terms of engagement. It should clearly identify who the client is and what you are retained to do.
2. **Get the money up front:** At the time you are retained, get a retainer that is sufficient to cover all initial work that needs to be done on the matter. Replenish retainer funds *before* they are exhausted (set up your accounting system to monitor and remind you when the amount in trust is getting low). Stop working on the file if the retainer is not replenished – working on credit greatly increases the likelihood you will not get paid for your work. Of course, you can and should do pro bono work, but only when you choose to do it.

3. **Control client expectations at all times:** Clearly and accurately communicate to your clients the available courses of action and possible outcomes; all the implications of any decisions; how long things will take; and the expected fees and disbursements.
4. **Document everything (almost):** It is just not practical to document everything on every matter, but you should document as much as you can in some contemporaneous manner. Letters are fine, but e-mails, detailed time entries, and marginal notes on documents can be equally effective. In particular, you want to record advice or instructions that involve significant issues or outcomes, and major client instructions or decisions. Documenting things is especially important when you are dealing with difficult or emotional clients. Memorialized communications help confirm what was said or done for the client in the event you ever need or want to look back to explain why or what work was done, to justify an account, or to defend yourself on a malpractice claim.
5. **Meet or beat deadlines:** Set realistic deadlines when it comes to completing tasks and/or delivering things to clients. Under-promising and over-delivering (i.e. earlier than promised) on work for clients will make them very happy. Don't leave things to the very last minute as unexpected events beyond your control (blackouts, snowstorms, taxi got lost on way to file documents) will prevent things from happening as required. Giving yourself an extra day or two by setting your deadline before the real deadline can be a lifesaver.
6. **Don't do any of the things that most annoy clients:** These are all the things that would equally annoy you. They include not returning calls or e-mails, long periods of inactivity, surprising a client with bad news or a large account.
7. **Don't handle a matter with which you are uncomfortable:** If you are unsure or hesitant about handling the matter for any reason (e.g. unfamiliar with the area of law, a potential conflict exists, matter for a relative or friend, demanding or difficult client), get appropriate help or refer it to another lawyer.
8. **Don't wait until after the file is closed to ask how you did:** Ask clients for feedback as the matter progresses, at milestones or when interim accounts are rendered. Talk to major clients at least once a year, and do this off the clock!
9. **What goes around comes around:** Your reputation will precede you. Be civil all of the time, to your client, the counsel and client on the other side, judges and court staff.
10. **Send interim and final reporting letters:** They should confirm what work was done, and the successes obtained for the client. For example: *For example: Retainer terminated, futures steps, and so on.*
11. **Don't sue for fees:** This almost guarantees a counter-claim alleging negligence.
12. **Document everything (almost):** Read #4 again – it is the best way to avoid a claim.

Doing all these things will ensure you have happy clients, and remember, happy clients don't tend to sue their lawyers.

What upcoming trends do you see affecting lawyers?

I think Dave Bilinsky's article (see page 21) does a great job of reviewing the key trends and issues lawyers need to be aware of. And further, the sidebar and supplemental papers to those articles provide lawyers with direction on the things they need to do to respond to these challenges and exploit the opportunities that they present.

In the shorter term, it is very clear that we are in an economic downturn. This means client finances will be squeezed, and doubtless those financial pressures will in turn be felt by lawyers. Also, as is highlighted in other articles in this issue of LawPRO Magazine (see pages two to eight), we have recently seen a significant increase in both the count and cost of fraud-related claims. It has moved beyond the real estate bar and now litigators and transactional lawyers are being targeted. This is a trend we are concerned about and will continue to monitor closely.

And as much as there are huge changes ahead, I think looking back is helpful to remind us that, at its core, the impetus behind the practicePRO message remains very relevant today. Our claims statistics still clearly indicate that, from a claims prevention point of view, lawyer/client communication and basic deadline and time management are the most common causes of claims. It is clear that practicePRO is more relevant than ever.

What do you see practicePRO doing over the next 10 years?

We intend to continue growing practicePRO and will offer even more tools and resources to help Ontario lawyers avoid malpractice claims and grow successful practices.

We just launched a new website which makes the practicePRO tools and resources more accessible (see the center section of this magazine). There will shortly be a practicePRO blog focusing on risk management and law practice management issues.

We will continue to be innovative, and in a broader context we will be keeping up with changing times by working to have more direct interaction and collaboration with Ontario lawyers through the use of various Web 2.0 tools.

The feedback, questions and suggestions I get directly from Ontario lawyers provide insights on what lawyers need help on. We also plan to survey the profession to give us deeper insights into the issues that lawyers are struggling with, and where they want or need help. This will drive the tools and resources that we will create in the future.

In some practice areas the malpractice issues and types of errors we see are quite different, so we are digging deeper into claims statistics to help customize the risk management information we provide to lawyers in different areas of the law. It is an exciting time as a lot has been accomplished, but there is still much work to be done.