

company he purported to work for. It is a legitimate company, but does not do the type of work that Stevens described. I wrote to the company to confirm whether Stevens worked there. As it turns out, surprise-surprise, Stevens does not work for that company. And strangely enough, I never heard from Stevens again."

What protected this lawyer was not simply that he was alert to the issue, but that he took several steps to ensure that he was dealing with a legitimate person. In addition, he wrote back to the potential client before accepting the retainer, and requested certain information.

"Thank you for your e-mail below. We do not undertake this type of work on a contingency basis. If you would like to retain our services, we will require a CAN \$10,000 retainer. In addition to the retainer we will need:

- 1) the names of all parties involved in the transaction/dispute so we can undertake a conflict check;
- 2) all documents relating to the sale, including correspondence, bills of lading, receipts, invoices, proof of payment, etc.;

- 3) a telephone discussion to obtain full particulars of the potential claim;
- 4) a director's resolution from (the firm) confirming (the firm) agrees to retain our services and will undertake to pay our account.

Lastly, please advise how you obtained my name and reference. Thank you."

LAWPRO has been publishing fraud alerts since 2004, but methods of committing fraud continue to evolve. There is no simple answer to protecting your clients, your firm and yourself.

But as these lawyers have demonstrated, by being alert it is possible to avoid being the victim of a fraud. Continue to educate yourself and your staff. The more people in your firm who are alive to the unusual elements in a transaction, and who are willing to ask the next question, the better positioned you and your firm are to avoid being a victim of fraud.

Not all claims are covered

The LAWPRO policy is an errors and omissions policy and protects lawyers in the event that they have made an error in the course of providing professional services for clients. It provides coverage for claims for damages, provided that the liability of the lawyer is the result of an error, omission or negligent act in the performance of or the failure to perform professional services.

Not all claims made against lawyers are covered under the policy. If, for example, a client fell on a mat in your office and broke an ankle and subsequently sued you for damages, the LAWPRO policy would not respond. Part III (e) of the policy specifically excludes claims for this type of injury. Similarly, claims for fees and claims arising out of business ventures are among other exclusions listed in Part III of the policy.

Coverage for claims involving counterfeit bank drafts and certified cheques are not specifically insured or excluded from coverage under the Law Society insurance program policy with LAWPRO.

Under a professional liability insurance policy, LAWPRO looks to the circumstances of the claim reported to determine whether the necessary elements are there for coverage to apply, and then ensures that there is nothing within the policy that may serve to restrict or exclude coverage.

For example, this means ensuring that, under the principle insuring agreement under the program policy (Part I "Coverage

A. DAMAGES"), the claim;

- arises out of the performance of Professional Services for others,
- that the insured's liability is the result of an error, omission or negligent act,
- that Damages arise out of the Claim.

Presuming the special provisions (dealing with territory and policy period) and general conditions of the policy are met, and no exclusions apply, coverage then would be provided.

In situations in which a lawyer has suffered a shortfall in a trust account because of reliance on a counterfeit instrument, claims are likely to arise once the true nature of the instrument has become known and the instrument is declined.

To the extent that a shortfall is experienced by the lawyer's clients to whom professional services had been or were intended to be provided, coverage is generally available. To the extent that a shortfall rests between the lawyer and his/her bank, no coverage is generally available in the absence of any Professional Service having been provided to the bank.

It is very important therefore that you are alive to any potential fraud. If you have not educated your staff, please ensure that they are familiar with the indicia of fraud and that they come to you with any concerns, no matter how minor. Your trust account is the key to a successful practice.