

LAWPRO®

Special Issue: 2009 in review



Claims are up:
How, why and what to do about it
TitlePLUS:
Building for the long haul



PLUS

On guard: Cheque scams more audacious
Practice tip: Charitable bequests done right
Casebook: Absolute privilege?



You can make a difference



controlling claims costs a shared challenge

At this time of year your firm would normally be receiving a copy of the LawPRO annual report in the mail.

This year we're doing something different.

On the following pages you'll find a detailed update on LawPRO operations that focuses on information and issues that directly affect you: What is happening to claims and why. How you can help keep claims in check using the many resources, programs and services we provide. How and why LawPRO represents the interests of lawyers in public, government and legal circles. Our goal in this special year-in-review report is to help you better understand your insurance program and the company that supports it.

Of course, the LawPRO annual report continues to be available on our website (www.lawpro.ca/annualreports).

As this year in review details, 2009 was a difficult year on many fronts: A claims portfolio that continues to grow, a weaker economy, announcement of the new harmonized sales tax (HST), and new regulatory and compliance requirements were but some of the issues on our plate.

But, as the saying goes, there's always more to a story than meets the eye.

Our total claims expense in 2009 came in at about \$108 million – a sobering number. But as is explained on the following pages, included in this total is close to \$18 million in one-time charges for the HST and the decrease in the discount rate. Stripped of those unusual charges, claims costs of about \$91 million for all LawPRO business lines are certainly higher than in recent memory, but close to our budgeted claims costs for the year of \$90 million.

And we are working on many fronts to keep those costs in line. As explained on pages 4 to 7, we're seeing more claims that are difficult and costly, and often end up in litigation. So we've reorganized our claims team to dedicate two senior internal counsel who can work in a very focused way with outside counsel to resolve these claims as cost-effectively as possible. New underwriting measures will, we hope, help rein in TitlePLUS claims costs, especially in the area of building-compliance claims. More on that on pages 17 to 19.

We're also trying to help lawyers better understand how they can help avoid claims altogether. New electronic communication and a new practicePRO *Avoid a Claim* blog let us get law practice and claims avoidance tips, articles and "heads-up" alerts into lawyers' offices in a more timely way. We're planning to bring our claims prevention message to more lawyers in more venues: In 2009, for

example we presented at more than 40 firms, conferences and seminars, and through our Continuing Legal Education (CLE) credit program delivered risk management content indirectly to more than 18,000 lawyers at 180 CLE programs.

The economic woes of the past 18 months also left their mark. Because we require our investment managers to take a conservative, prudent approach, a significant portion of our investments are in low-risk bonds at relatively low rates of return. As investments mature, they are re-invested at current – even lower – rates. The result: Investment yields – an important factor in helping offset the need for premium increases – are inevitably lower than earlier in the decade.

Despite that, our investment portfolio actually fared better than a quick look at results would indicate. A decision of our Investment Committee to move a portion of our investments to a new manager required us to trigger a previously unrealized loss of \$9 million. This decision has proved to be the right one: Overall, LawPRO's investments have appreciated to be \$13 million over cost as at the end of 2009.

These investment gains had an important bottom-line impact. LawPRO ended the year with an excellent result of \$7.2 million in comprehensive income – an important measure of the company's worth and viability. Shareholders' equity in the company grew by that \$7.2 million to \$141 million; the company now has assets of more than \$529.7 million compared to \$487.3 a year earlier and continues to meet or exceed the Minimum Capital Test benchmark set by our regulators. These solid financial benchmarks recently helped LawPRO earn its 10th consecutive A (Excellent) rating from A. M. Best Company.

In LawPRO's 15th year of operating the primary professional liability program for The Law Society of Upper Canada, all of us at LawPRO are very proud of the insurance work we do, plus all our related efforts to support excellence in Canadian legal practice. Certainly LawPRO's fundamentals are strong. But in 2009 they were put to the test and we expect 2010 to come with more than its fair share of challenges – the pressure on premiums being most concerning. I encourage each of you to take the time to review this special report and consider how you can help reduce your own potential exposure to claims.


Kathleen A. Waters
President & CEO

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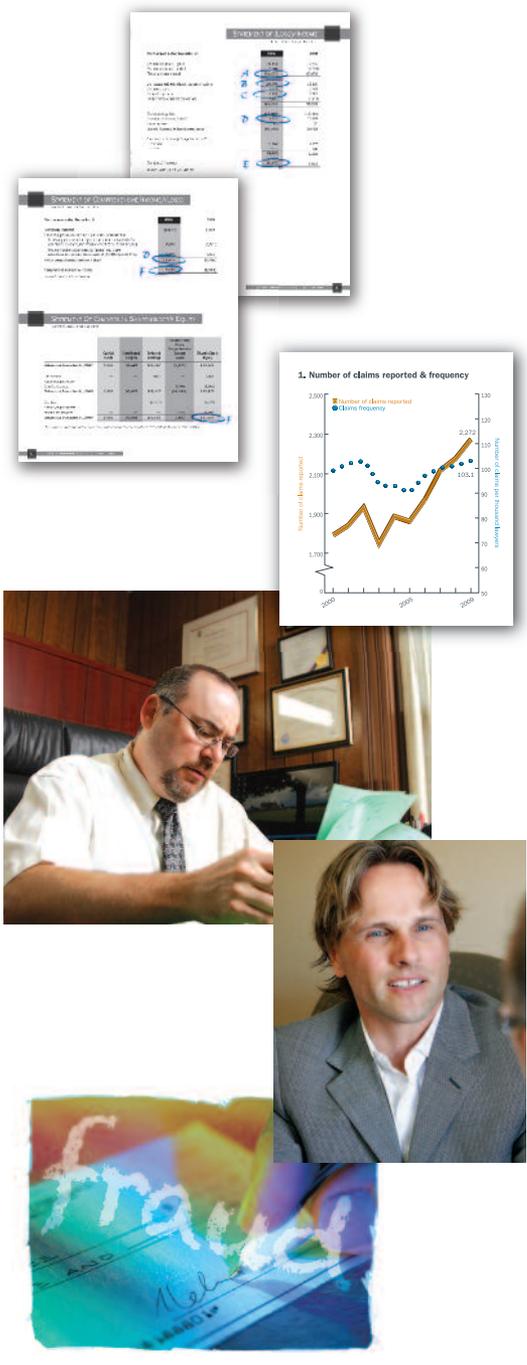
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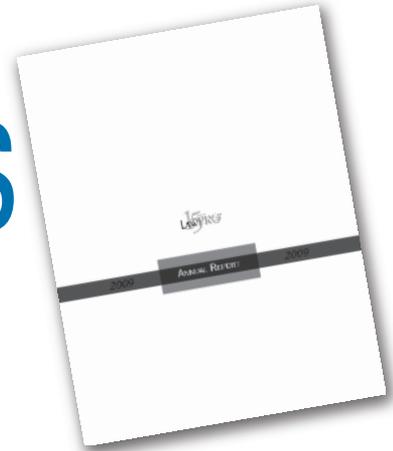
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2009 Annual Report highlights

Financial results explained



A – Net premiums: \$101.4 million

Net LAWPRO revenues in 2009 stood at about \$101.4 million, about \$16 million higher than in 2008 for two principal reasons:

- A small increase in the number of insured lawyers and a \$150/lawyer increase in the base premium to \$2,450 in 2009;
- A special transfer from an E&O/premium stabilization fund to cover the additional claims costs that the introduction of the Harmonized Sales Tax (HST) represents (see Net claims below for further explanation).

Revenue from transaction levies was down by about \$2 million to just under \$18 million, the result of a stagnant real estate market and the widespread use of title insurance (title-insured transactions generally are not subject to a real estate transaction levy surcharge).

Unstable real estate markets of late 2008 and 2009 also kept title insurers' premium revenues below earlier record levels, but the TitlePLUS program posted a small \$300,000 increase in revenues, driven in part by strong sales outside Ontario.

B – Net claims: \$108.7 million

Claims costs in 2009 were up significantly compared to 2008 for several reasons:

1. Resolving prior years' claims is costing us more – not less – than we had expected, in both the E&O and TitlePLUS programs.
2. In the E&O program, more claims were reported in 2009 than in any year since 1995 and the cost of resolving those claims is estimated at a more than \$85 million.
3. In 2009 we took two unusual "hits" to the claims bottom line:
 - a. Accounting rules require that we recognize in our 2009 financial statements the impact the HST will have on our unresolved claims. LAWPRO has had to estimate the legal costs on our unresolved claims files – which at year end stood at about \$384 million – and increase our claims costs by the additional eight per cent that HST will add to our legal fee and other consulting costs when it is enacted on July 1, 2010. This alone added \$10.7 million to our claims costs for 2009.
 - b. The other factor affecting claims costs is what is known as the discount rate or the time value of money. The funds we have set aside to pay our outstanding claims are invested in conservative investments – which on renewal pay less when it comes to rate of return than when they were first

invested, two or three years ago. Each quarter LAWPRO's actuaries calculate how much money our investments are earning and how much money we will need to be able to pay off those outstanding claims some time in the future. If interest rates are low, we likely need to set aside more money simply because the lower investment rates are, the more money we will need to be able to pay off those claims. In 2009, the decrease in the discount rate added \$7 million in additional expense to our claims costs.

C – General expenses: \$15.4 million

The cost to operate the company was not only lower in 2009 than in 2008 by \$400,000, but also lower than budget – the result of strong internal controls and a concerted effort by our employees to control costs where possible.

D – Investment income: \$11.9 million

In mid-2009, LAWPRO's Investment Committee made a bold move – to transfer management of a portion of LAWPRO's investments to a new investment manager – a move that required the company to realize a loss of about \$9 million in the investment portfolio. This loss is reflected in lower investment income of \$11.9 million in 2009, compared to \$20.7 the previous year.

Under new management and with a new strategy, LAWPRO's total investment portfolio rebounded strongly in the second half of the year, posting total (after tax) gains of about \$13.7 million. These gains have not been "realized" – in other words, the market value of the investments has gone up but as the investments have not been cashed in, the gains (a) do not show up in our investment income line, and (b) do not form part of the net income.

LAWPRO ended 2009 with its managers exceeding their benchmarks for the year by 4.6 per cent (the benchmark was 3 per cent and LAWPRO total fund performance, net of fees, was 7.6 per cent).

E – Net (loss) income

As a result of two unusual developments – the \$7 million in additional claims liabilities resulting from a decrease in the discount rate (see B above) and the \$9 million loss in investment income (see D), the program reported a net loss of \$6.5 million in 2009.

F – Comprehensive income: \$7.2 million

The investment gains noted in D above show up in an important financial yardstick: a company's comprehensive income, which is an important measure of the company's worth and stability.

LAWPRO's comprehensive income at the end of 2009 stood at \$7.2 million – the result of strong gains in its investment portfolio.

This positive result also shows up in another important measure – the equity that our shareholder has in the company. This figure increased by \$7.2 million to \$141.1 million at year end – tangible proof of the viability and financial strength of the investment that Ontario lawyers have in LAWPRO.

Key benchmarks

As a result of these solid financial results, LAWPRO continues to meet or exceed the Minimum Capital Test benchmark set by our regulators: In fact, our MCT at the end of 2009 stood at 206 per cent – well above our target of 175 per cent and the FSCO minimum target of 150 per cent. This MCT level allows LAWPRO to absorb a degree of financial adversity.

However, to maintain its Minimum Capital Test (which requires LAWPRO to have a proportionate amount of capital beyond what is needed to pay the year's claims), LAWPRO needs to add about \$5 to \$7 million to its equity every year. In other words, as each year's claims are added to our claims liabilities* our capital also has to grow by the relevant proportionate amount.

There are two ways to do this – by having net income on the income statement, or other comprehensive income through unrealized gains. It is very difficult to predict the latter. Therefore, it is important that in most years, LAWPRO budget to expect a net income in the millions of dollars.

* As of the end of 2009, the cost of current and previous year claims that are not yet resolved was up 10 per cent to \$384 million from \$349 million in 2008.

STATEMENT OF (LOSS)/INCOME		
Stated in thousands of Canadian dollars		
For the year ended December 31	2009	2008
Premiums earned – gross	107,453	90,739
Premiums earned – ceded	(5,960)	(5,683)
Net premiums earned	101,493	85,056
Net claims and adjustment expenses (note 4)	108,686	81,880
Premium taxes	3,225	2,724
General expenses	15,434	15,809
Reinsurance commissions earned	(3,252)	(4,913)
	124,093	95,500
Underwriting loss	(22,600)	(10,444)
Investment income (note 2)	11,873	20,658
Other income	83	31
(Loss) / Income before income taxes	(10,644)	10,245
Income tax (recovery) / expense (note 7)		
Current	(3,268)	2,877
Future	(899)	343
	(4,167)	3,220
Net (loss) / income	(6,477)	7,025

STATEMENT OF COMPREHENSIVE INCOME/(LOSS)		
Stated in thousands of Canadian dollars		
For the year ended December 31	2009	2008
Net (loss) / income	(6,477)	7,025
Other comprehensive income / (loss), net of income tax:		
Net changes in unrealized gains and losses on available for sale financial assets, net of taxes of (\$3,256) (2008: \$3,815)	6,669	(7,574)
Reclassification adjustment for (gains) and losses included in net income, net of taxes of (\$3,446) (2008: \$701)	6,096	(1,392)
Other comprehensive income / (loss)	13,665	(8,966)
Comprehensive income / (loss)	7,188	(1,941)

STATEMENT OF CHANGES IN SHAREHOLDER'S EQUITY					
Stated in thousands of Canadian dollars					
	Capital stock	Contributed Surplus	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Shareholder's Equity
Balance at December 31, 2007	5,000	30,645	101,392	(1,217)	135,820
Net income	—	—	7,025	—	7,025
Other comprehensive loss for the year	—	—	—	(8,966)	(8,966)
Balance at December 31, 2008	5,000	30,645	108,417	(10,183)	133,879
Net loss	—	—	(6,477)	—	(6,477)
Other comprehensive income for the year	—	—	—	13,665	13,665
Balance at December 31, 2009	5,000	30,645	101,940	3,482	141,067

The aggregate of retained earnings and accumulated other comprehensive income (loss) as at December 31, 2009 is \$105,422 (December 31, 2008 – \$98,234).

E&O claims

The trend is up



The claims team:

(seated, left to right): Jerzy Adamowicz, Karen Granofsky, Lorne Shelson, Yvonne Diedrick, Domenic Bellacicco, Debra Rolph.

(standing, left to right): Doug Scott, Jennifer Ip, Cynthia Martin, Mitch Goldberg, Ian Smyth, Yvonne Bernstein, Dale Herceg, Dalia Fudim, Jack Daiter, Lisa MacLean, Deborah Petch, Rosanne Manson, Tim Clarke, Anna Reggio.

Absent: Nadia Dalimonte, JJ Earle

In fall 2009 LAWPRO prepared a mid-year status update on claims for lawyers. The reason? No matter how we sliced and diced the numbers, they were headed in the wrong direction – up. And we needed lawyers to be aware of this trend not only because it affects premiums but also because lawyers can help to bring claims numbers and costs down to more acceptable levels.

Are claims still going up?

Six months later, this mid-year “heads up” has proven to be well-founded. On virtually all measures, claims numbers and costs at the end of 2009 are at levels we have not seen in more than a decade.

1. LAWYERS ARE REPORTING MORE CLAIMS (GRAPH 1 – PAGE 5)

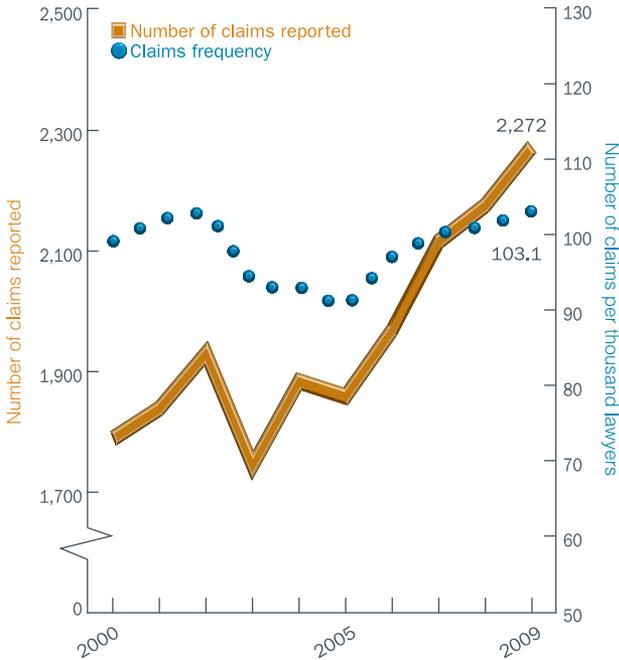
In 2009, lawyers reported 2,272 claims – more than at any point since 1995, the year LAWPRO assumed management of the Law Society insurance program. For a fourth straight year, claims reported topped the 2,000 mark after hovering in the 1,800 and 1,900 range for the first part of this decade. As well, claims frequency – the number of claims reported per thousand lawyers – is up to 103.1 in 2009 from a low of 90 in 2005. In other words,

LAWPRO today sees 13 more claims for every thousand lawyers in practice than we did five years ago.

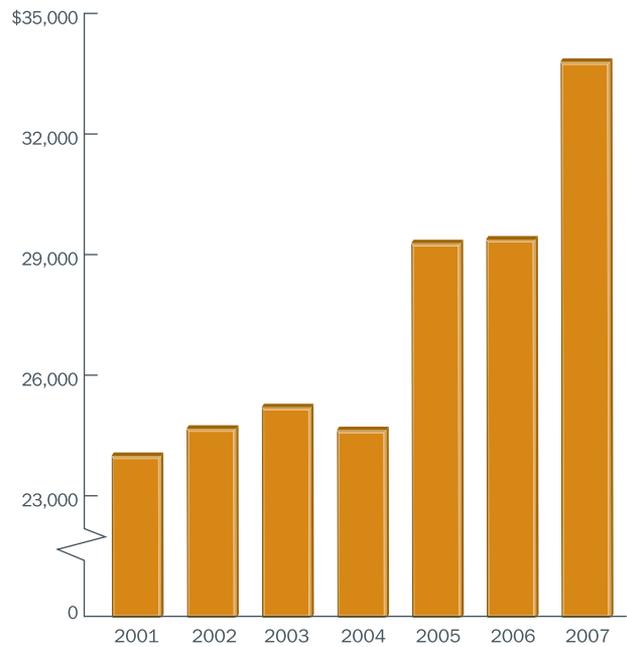
2. CLAIMS ARE MORE EXPENSIVE (GRAPH 2 & 3 – PAGE 5)

As graph 2 shows, claims costs have entered a new era in which annual claims costs are projected to be in the \$85 million range. As recently as last summer, we were warning that claims costs could be in the \$75 million range for 2009. Claim reports made in the second half of the year, resolutions to some complex and costly files, and analysis of past years’ trends contributed to a significant increase in 2007 costs and an upwards revision of projected claims costs for both 2008 and 2009.

1. Number of claims reported & frequency

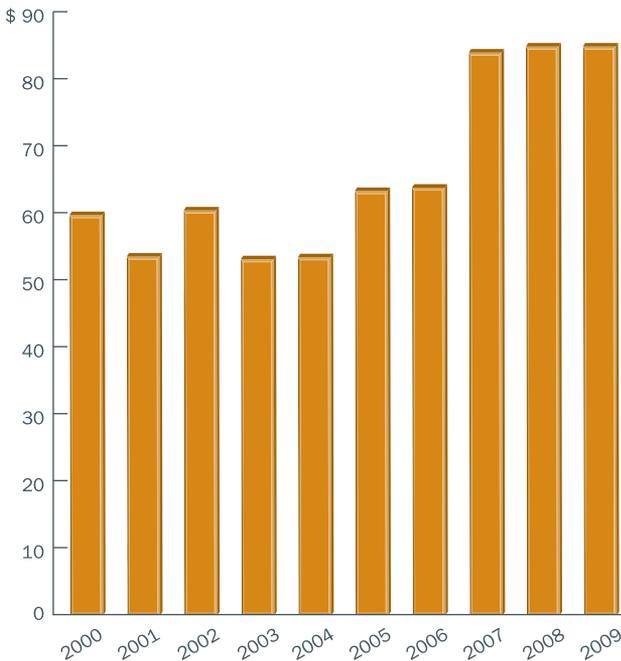


3. Average cost per claim at 30 months after end of year in which claim was reported*



* 2007 numbers are as at February 28, 2010 – 26 months after the end of 2007.

2. Case incurred claims costs* (in \$millions)



* For 2000 to 2007, costs include claims paid plus reserves assigned to unresolved claims for each fund year, but exclude costs for general program administration and applicable taxes.

For 2008 and 2009, costs reflect management projections based on claim reports as of February 2010. More than 30 per cent of claims reported in 2008 and 50 per cent of claims reported in 2009 are still unresolved.

What this means is that claims costs, on average, are up more than 30 per cent for the last three years of this decade. Between 2000 and 2004, the average cost of claims reported annually stood at about \$56 million a year; that number jumped to \$65 million for

the 2005-2006 period, and now has jumped another \$20 million to about \$85 million annually for the 2007-2009 period.

Another way to look at claims costs is claims severity – or the cost per claim file. That number jumped from a low of \$24,000 in 2001 to close to \$34,000 in 2007 – a 41 per cent increase. Based on a projection of \$85 million in claims costs incurred and 2,272 claims reported, claims severity for 2009 (after the investigation is finished on those claims) is expected to be up another \$3,000, to about \$37,400 per claim.

3. CLAIMS ARE MORE COMPLEX (GRAPH 4 – PAGE 6)

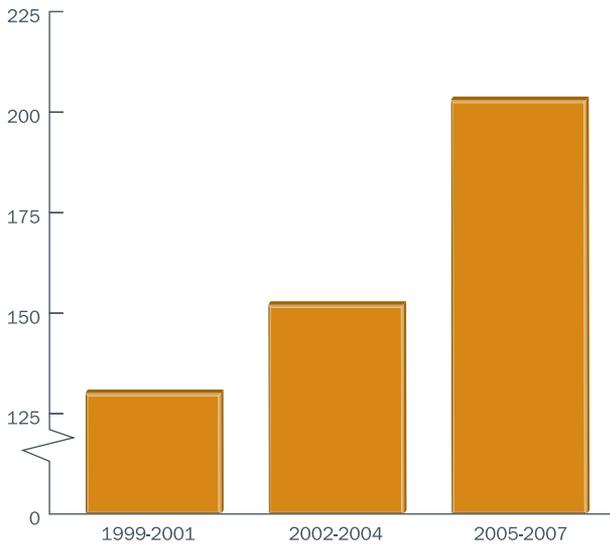
One indication of the increasing complexity of claims is the number of large claims that cost the program \$100,000 or more to resolve. That number too has been steadily increasing: At the beginning of this decade, we saw on average 130 claims per year that cost us \$100,000 or more to resolve; in the 2005 to 2007 period, that number had jumped to more than 200 claims a year that top the \$100,000 mark.

Why is this happening?

A number of explanations for this significant increase in claims numbers and costs are possible:

- Many of the files lawyers handle are increasingly complex, a reflection of the more complex nature of business and law practice today.
- Expectations of lawyers' work is on the increase, the result of better-educated clients who have access to more information – perhaps thanks to the Internet.

4. Number of claims reported each year with a value greater than \$100,000*



* As at February 28, 2010

- Clients have become more litigious, prompted perhaps by media and the example set by clients in the United States.

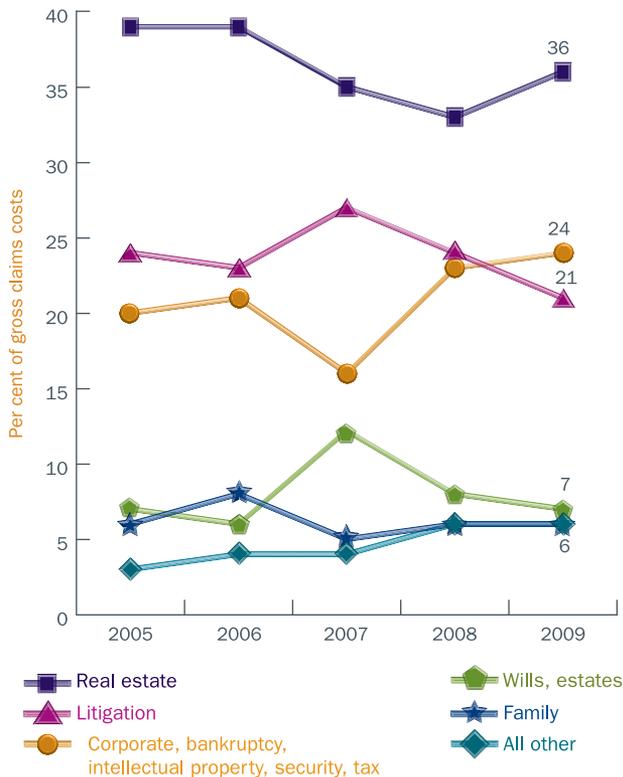
Is one area of practice more prone to claims than others? (GRAPH 5)

Generally, when we look at the number of claims reported, the mix of malpractice claims is roughly in proportion to the amount of work done in all areas of law in which lawyers practise.

On the cost side, the area of practice that consistently leads the pack in number of claims and accounts for one-third or more of claims costs is real estate practice. (This is excluding title-insured claims).

Over the last five years, real estate claims have accounted for, on average, 36 per cent of annual claims costs incurred. Litigation practice and corporate work (including security, tax and bankruptcy practice) rank second and third, with corporate work accounting for about 24 per cent of costs incurred, and litigation for about 21 per cent. As graph 5 shows, costs for real estate, corporate, and wills and estates claims have all generally trended upwards over the five-year period.

5. Distribution of claims by area of practice



What does this mean for insurance premiums?

In our special report on claims of September 2009, we pointed out that claims costs account for more than 85 per cent of LAWPRO's annual budget. Rising claims costs therefore have a major and immediate effect on our bottom line.

As graph 2 makes clear, where once claims costs incurred for the year stood at about \$65 million, we now live in an era in which costs of \$85 million a year are possible. Each \$10 million increase in claims costs means we need to increase premiums by an additional \$500 – unless we have revenues from other sources to help offset this need to increase premiums.

In the past, we have benefited from both strong investment income and the ability to tap into a premium stabilization fund – a fund that enabled us to maintain relatively stable premiums for many years.

But investment returns have not fared as well in 2009 as in previous years, especially as fixed income securities are renewed at lower interest rates in today's markets. Overall premium revenues have been largely flat or have even declined; for example, in 2009, transaction and claims history levy revenues fell to \$17.9 million from \$20.3 million a year earlier – the result largely of a sluggish real estate market and widespread use of title insurance in real estate transactions. And the funds available to help stabilize premiums are depleted.

This widening gap between costs and revenues prompted us to increase premiums by \$500 per lawyer for the 2010 primary insurance program. Current trends, which see claims costs continue to rise, will put further pressure on our ability to keep premiums at current levels.

Principled claims management

Unlike many malpractice insurers who automatically defend and deny, we take a more objective view of things. If there is liability on the part of the lawyer, we will work to resolve that claim as expeditiously and cost-effectively as possible. Our goal is to minimize the emotional and monetary costs – to both you and the program.

If the matter has no merit we vigorously defend the insured, all the way to the Supreme Court where appropriate; we will also defend lawyers in the interests of the bar if a matter is likely to set a precedent. Finally, we will not make economic settlements in these situations.

The 2009 results speak for themselves. We were successful on seven of eight matters at trial, all 10 matters that went to appeal and 11 of 14 applications for summary judgement. As well, lawyers with claims tell us that our claims management services exceed their needs and expectations. In response to a survey, those with closed files responded as follows:

- 96 per cent said that they were satisfied with how LAWPRO handled the claim;
- 86 per cent said they would have the defence counsel firm represent them again; and
- 84 per cent said LAWPRO received good value for defence monies spent.

What is LAWPRO doing about this?

There is only so much that LAWPRO, as your malpractice insurer, can do to address the issues of more claims and rising claims costs.

CLAIMS MANAGEMENT

On the claims management side, we are working on several fronts to continue to resolve claims as cost-effectively as possible.

We continue to stick to our principled claims management philosophy – a strategy that continues to generate successes for lawyers, as is detailed in the accompanying article, “Principled claims management.”

If notified in time, we will also step in to help lawyers repair a situation – thus minimizing costs or helping prevent an escalation of events that could lead to a claim. Some examples are documented in the accompanying article “The Kenora gambit” on page 8.

As well, we have recently completed a reorganization of the claims team that will place costly, difficult claims that are in litigation in the hands of senior internal counsel whose time is dedicated to such files. Our two new litigation directors will work in a very focused fashion with outside counsel to resolve the growing portfolio of difficult litigation in the most cost-effective way possible.

RISK MANAGEMENT

Based on our ongoing analysis of what is happening in the claims portfolio, we are also expanding our efforts to help lawyers avoid claims in the first place. For example, to complement the risk management focus of our *LAWPRO Magazine*, we have launched bimonthly electronic newsletters that get information on evolving risk issues, practice tips to avoid claims and insurance program-related information into lawyers' hands more quickly. We have also launched a practicePRO *Avoid A Claim* blog to provide lawyers with tips and insights into practice issues as they develop.

Last year we delivered more than 40 presentations on risk management-related topics to various law associations, law firms and CLE programs. We will be stepping up this program of presentations focused on claims prevention and will be producing a number of new resources that address the types of problems we are seeing based on our analysis of claims losses and trends.

But the lion's share of responsibility for bringing claims under control rests with the practising bar.

What can an individual lawyer do about this?

Lawyers actually have more control over preventing malpractice claims than they may believe: That's because the single biggest underlying reason for claims is also among the easiest to prevent.

Across all practice areas and firm sizes, lawyer-client communication-related errors – at about 34 per cent of claims – are the biggest single cause of malpractice claims. In other words, of the projected \$85 million it could cost to resolve 2009 claims, almost \$29 million are the result of communication issues.

Included in this category are failing to follow a client's instructions, failing to obtain the client's consent or keep the client adequately informed, or simply put, poor communications (such as not explaining fees or disbursements or clarifying who is responsible for doing what during or after the matter).

Yet these errors are easy to prevent with some simple procedures. Control client expectations from the outset. Make a point of communicating with clients at all stages of the matter. Create a paper trail that documents instructions and advice and confirms what work was done each step of the way.

Time management issues, such as failing to know or ascertain a deadline (leading to limitations period claims) or poor calendaring account for less than 20 per cent of claims losses over the last decade. Only 14 per cent of claims are the result of a failure to know or apply the law.

E&O claims

The Kenora gambit

Why it pays to know Ontario has two time zones ...and other repair stories

■ *Ontario has two time zones.*

Veteran Claims Counsel Doug Scott was able to exploit that fact to help one of our insureds “repair” a problem and avoid a claim.

Late one afternoon, Doug took a call from a frantic Toronto area lawyer who explained that a limitation period to sue on a business contract was expiring that day and the court office was now closed.

His clients knew about the limitation period, but had told the lawyer weeks earlier that they were not going to sue and were going to file for bankruptcy. Then, the day before, they had rushed into his office to tell him that they had changed their minds. They were not going to file for bankruptcy after all, and they wanted him to sue. The lawyer had prepared a draft statement of claim, but had not yet filed it.

Knowing that Kenora (near the Manitoba border) is one hour behind the rest of Ontario, Doug told the lawyer to immediately contact a law firm in Kenora, hire it as his agent, dictate over the phone a Notice of Action, and have that notice issued in Kenora before the court office closed.

The plan worked perfectly. The lawyer found a Kenora law firm to help him and was able to have the Notice of Action issued before the limitation period expired.

This is but one example of the kind of low-profile repair work that we do all the time to help lawyers avoid claims – and their clients avoid losses.

■ *In another case*, our insured acted for a client on an amalgamation of several corporations. One of the corporations had no assets but had provided a \$1.6 million guarantee of debts owing by a now bankrupt company to a Mr. H.

Because the newly amalgamated corporation had significant assets, H saw an opportunity to recover on the guarantee and sued the corporation.

LAWPRO's counsel brought a successful application on behalf of the amalgamated corporation for rectification of the articles of amalgamation – essentially dissolving the amalgamation *nunc pro tunc*.

The Court of Appeal dismissed H's appeal from the application decision and awarded \$55,450 in costs to the corporation/LAWPRO. Thus the client suffered no damages and the claim against our insured was repaired. (We have not yet been advised whether H will seek leave to appeal to the Supreme Court of Canada.)

■ *Practical advice from Claims Counsel Domenic Bellacicco* recently helped an insured to do a self-repair and have the administrative dismissal of his action set aside, thereby avoiding a claim.

The insured had reported to us very late that his action had been dismissed by the registrar for delay. It was Friday, and the motion to set aside the registrar's order was scheduled for the following Monday. The motion had already been adjourned several times.

In its motion materials, the defence argued that the delay had caused it significant prejudice because, inter alia, it could not locate a witness.

Domenic provided the insured with two helpful cases that LAWPRO counsel had recently argued.

He also suggested that the insured use the Internet over the weekend to try to track down the witness – an idea that had not occurred to the insured. The insured did so – and found her. She had a new telephone number, but her address was still the same.

The defence had obviously not tried very hard to find the witness. This undermined the prejudice argument, and the dismissal order was set aside.

■ *On another occasion*, a visibly distraught insured showed up at LAWPRO at 8:30 on a Monday morning in his robes and with a stack of briefs. He was scheduled to respond to a motion in the Court of Appeal at 10 a.m. The night before he had realized that he should have brought a cross-motion, which he had failed to do. Now he did not feel up to appearing before the Court of Appeal because he was too nervous and upset. Moreover, he had not yet had a chance to talk to his client. He wanted another lawyer to appear on his behalf.

Domenic told the insured that he needed to discuss this error – and potential malpractice claim – with his client and advise the client to seek independent legal advice. He also needed to make a written report to LAWPRO.

Domenic advised the insured to ask the court for an adjournment to give him time to talk to his client and submit the report. Since the Court of Appeal was effectively the court of last resort, the panel would not force him to proceed in the circumstances.

Calmed down, the insured went off to court and came back an hour later with the adjournment endorsement, having personally paid the modest costs thrown away. He was then able to file the cross-motion.

LAWPRO goes to bat for lawyers – in many different ways

It's a fact of life that lawyers get sued. If these suits arise from the practice of law, LAWPRO defends these practitioners pursuant to the defence obligations in the insurance policy. However, LAWPRO also helps lawyers in ways which go beyond its strict contractual obligations. LAWPRO has taken a variety of proactive measures to prevent claims against its insureds.

Going to bat in the courts

PREVENTING TWO LAWSUITS, WHILE RESTORING AN INSURED'S REPUTATION

LAWPRO is especially proud of *Butty v. Butty*,¹ where we not only prevented what might have been a very nasty claim against the insured, but also helped to restore the lawyer's reputation and prevented a possible claim against a second lawyer.

Our insured acted for the husband in matrimonial litigation. One of the issues was whether the wife was bound by their marriage contract. A second solicitor had acted for the husband with respect to that contract. The contract purported to exclude from equalization one parcel of land, consisting of 151 acres.

The insured arranged for an appraisal of the property. The appraiser discovered that in fact there were two parcels separated by a strip of land owned by Ontario Hydro. The insured provided the wife's counsel with a copy of the appraisal. Neither the insured nor the wife's counsel believed that the existence of two parcels, as opposed to one parcel, made any real difference to the parties.

The trial judge found that the insured misled the court as well as counsel for the wife about the fact that the parcel was actually two parcels. The marriage contract was set aside, based on the alleged non-disclosure concerning the parcel(s). The trial judge made very disparaging remarks about the insured, the husband, and the husband's previous solicitor. The court invited the wife to seek an order that costs be awarded against the insured personally.

At this point, the insured put LAWPRO on notice. LAWPRO successfully sought intervenor status on the husband's appeal. His appeal was successful. The Court of Appeal stated that the insured had done nothing wrong and expressed regret for the trial judge's unwarranted criticism. Not only was the possibility of a claim against our insured eliminated, a separate claim against the solicitor who prepared the husband's marriage contract was precluded as well.

TAKING ADVANTAGE OF CHANGES IN THE LAW

In *Zwaigenbaum v. Scher*,² LAWPRO took advantage of the "new" summary judgment rule to have the action against our insured summarily dismissed as statute-barred.

Our insured acted for the plaintiff in an unsuccessful appeal of a family matter. That appeal was dismissed on November 6, 2006. The insured's retainer was terminated one week later. The claim against him was issued on January 5, 2009.

Justice Pitt observed that throughout 2006, the plaintiff sent many letters to our insured, voicing complaints identical to those made in her statement of claim: that the insured was late filing material, failed to file relevant material, failed to keep her informed, provided her with misleading information, failed to follow her instructions, and failed to properly prepare for the appeal.

The plaintiff alleged that she did not discover her claims until she received a copy of the Law Society of Upper Canada's review of our insured's professional conduct, in May 2008. Justice Pitt held that no new material facts arose from the Law Society's review.

The plaintiff knew or ought to have known all of the material facts giving rise to her claims when she terminated our insured's retainer on November 13, 2006, or at the latest, when he notified her that he had stopped acting for her, on or about November 29, 2006.

Going to bat via repair – and preventing a claim from happening

LAWPRO "repair" work is less high profile – and not always as well known except among those who benefit from it.

Usually these efforts involve correcting errors made in the course of civil litigation. For instance, in *Clements v. Greenlaw*,³ LAWPRO's counsel persuaded the Divisional Court to set aside a master's

order dismissing the plaintiff's action at a status hearing. This spring, LAWPRO counsel will argue on appeal from the Divisional Court in *Vearella v. Khan*,⁴ which will further clarify "misnomer" in the context of the *Limitations Act, 2002*.

But repair work is not limited to civil litigation. LAWPRO counsel was able to salvage a construction lien action in *Sunrise Greenhouse Manufacturing v. J.C. Fresh Farms*.⁵

Rule 2 of the *Rules of Civil Procedure* was used to cure the irregular way in which the plaintiff set its action down for trial under s. 37 of the *Construction Lien Act*. The difficulty was that in addition to suing the defendants moving to dismiss the action, the plaintiff had sued two additional defendants, but had never noted them in default. The plaintiff set its action down for trial without serving the "extra" defendants with a trial record, thereby failing to comply with rule 48.03 of the *Rules of Civil Procedure*. The moving defendants argued that the plaintiff had failed to properly set the construction lien action down for trial within two years of the commencement of the action, as required by s. 37, and the lien action must therefore be dismissed

The court refused to dismiss the action. The plaintiff never intended to proceed to judgment against the two "extra" defendants. The court waived strict compliance with rule 48.03.

In 2009, LAWPRO was able to rectify two wills. In *Nugent v. Lang*,⁶ Harris J. granted rectification of a will, deleting the words "Twenty-five thousand dollars", and moving commas and decimal points so that "\$25,000" read as "\$2,500." These typographical errors were only discovered on the death of the client, and the lawyer had failed to notice these errors.

In rectifying the will, Justice Harris relied on *Balaz v. Balaz*.⁷ In that case, Justice D. M. Brown granted rectification of the will by deleting powers granted to the estate trustees which could have tainted the spousal trust which Balaz wished to establish in favour of her husband.

The solicitor who prepared the will gave uncontradicted evidence that the client had intended that her will create a spousal trust that would meet the requirements of the *Income Tax Act*. Through inadvertence, the solicitor included language in the section of the will dealing with the trustees' powers that could taint the spousal trust. This language was included without the knowledge or approval of the client. The language was a mistake, and was deleted so that the will conformed to the testatrix's wishes. The beneficiaries under the will, and the minister of National Revenue, consented to the order that the will be rectified.

Conclusion

While most LAWPRO files relate to the defence of actions brought against our insureds, LAWPRO has been proactive in matters which did not fall squarely within the defence provisions of the LAWPRO policy. LAWPRO launched strategic interventions in third-party litigation, has taken advantage of changes in the law, and has involved itself extensively in "repair" applications on behalf of insureds who have committed errors.

Debra Rolph is director of research at LAWPRO.

¹ 2009 ONCA 852

² 2010 ONSC 559 (ON.S.C.)

³ 2009 CanLII 33028 (ON S.C.D.C.)

⁴ 2009 CarswellOnt 5658 (Div.Ct.)

⁵ Unreported judgment, Court File No.: Os-Cv-S010 (Windsor), Released June 17, 2009

⁶ 2009 CanLII 22604 (ON.S.C.)

⁷ 2009 CanLII 17973 (ON.S.C.)

A leg up

How LAWPRO helps lawyers manage risk

James Morgan was wary.

A client for whom the Tillsonburg lawyer had previously done a small amount of work had retained Morgan to assist on the financing of his new business. The lender was an individual in the U.K.

Using a U.K. “lawyer,” Morgan’s client and the lender had already arranged all the necessary contracts. All they wanted Morgan to do was allow his trust account to be used as a conduit. The financing funds would be deposited into his trust account, and he would then disburse them.

“I was immediately suspicious because of an article I had read in *LAWPRO Magazine* about a similar situation,” says Morgan.

Email correspondence with the lender’s U.K. “lawyer” seemed legitimate, but “grievous spelling errors” in the emails further aroused Morgan’s suspicions.

When the U.K. “lawyer” sent a bank draft for \$61,300, LAWPRO warnings about counterfeit bank drafts sprang to mind. “I’d come to realize that you just can’t rely on a bank draft,” so he asked his bank to check it before depositing it.

Meanwhile, the U.K. “lawyer” sent a second bank draft for \$49,800.

Two days later, the U.K. “lawyer” instructed him to send all the money to a bank in Malaysia – rather than to Morgan’s client – and attempted to pressure Morgan to do so immediately. At this point, “bells were going off in my head,” says Morgan.

Then the bank notified him that it thought the first bank draft was counterfeit. (Subsequent investigation by the bank established that both bank drafts were indeed fraudulent.)

Morgan reported the matter to LAWPRO, the Law Society and the police, who are investigating. “Even though the fraudsters didn’t get any money, I wanted to help LAWPRO protect other lawyers.”

Both Morgan and the police believe that his client was an innocent dupe – “important to note,” says Morgan, “as a lawyer may not see the danger simply because he believes his client is acting honestly.”

Fraud alerts

Morgan’s experience, sad to say, is not unusual. LAWPRO fraud alerts helped to prevent lawyers from being defrauded of millions of dollars in 2009.



James Morgan

Just before the Victoria Day holiday weekend, for example, we fired off a series of emails warning about a potential bad cheque fraud scam after a number of apparently related frauds came to our attention. Ultimately we determined that there were 18 separate fraud attempts with an average value of \$301,000 – a total of \$5.5 million in potential trust account shortfalls.

“About one-third of the lawyers who had been approached by the fake clients had figured out that it was a scam,” says Dan Pinnington, director of practicePRO. “Another one-third were suspicious – and our emails confirmed their suspicions. But one-third didn’t realize they were about to be defrauded until they saw our e-blasts.” Millions of dollars in trust account shortfalls were prevented when lawyers who heeded our warnings and asked their bogus “clients” a few probing questions stopped the fraudsters in their tracks.

In 2009, LAWPRO also published articles on how lawyers can avoid being victimized by fraud in three issues of *LAWPRO Magazine*. We created the downloadable Fraud Fact Sheet checklist (www.practicepro.ca/FraudInfoSheet), which summarizes the major types of fraud that target lawyers and the red flags that lawyers and law office staff should watch out for. And we maintain the LAWPRO fraud page (www.practicepro.ca/fraud), which contains extensive information on fraud prevention.

Administrative dismissal alert

Fraud is not the only area in which we help lawyers avoid claims by providing practical advice and assistance.

For example, an article by LAWPRO claims counsel Domenic Bellacicco in the July 2009 issue of *LAWPRO Magazine* addressed a situation that we see all too frequently when an action has been dismissed for delay by the registrar.

Many lawyers mistakenly think that a registrar's dismissal order can be easily set aside, Domenic noted. So, instead of calling LAWPRO, they bring a motion to set aside the registrar's order but are not successful in restoring the action because the motion materials are poorly drafted and the affidavit in support lacks crucial details.

On such a motion, the court "will have no difficulty in dismissing a motion for want of proper evidence," Domenic explained.

By reporting the matter late to LAWPRO, lawyers jeopardize the chance of a successful appeal. Because all relevant information is typically available prior to the motion, it is unlikely that fresh evidence can be introduced on appeal.

Lawyers should therefore call LAWPRO immediately upon learning that an action has been dismissed for delay, Domenic advised. We will help by reviewing the material for a motion to set aside the registrar's order and, if necessary, will retain counsel to prepare the motion record and argue the motion.

Domenic's timely article, "Administrative dismissal: Take it seriously and ask for (our) help," was a valuable eye-opener for many lawyers. "There was a flurry of activity right after the article appeared," says Domenic. "I must have got a dozen phone calls from lawyers saying 'I have a motion pending I think I should report.' We have also received reports of potential claims that either refer to the article or have a photocopy of the article attached."

practicePRO risk management activities

Our practicePRO risk management program works hard to inform lawyers about risk management, practice management and legal technology developments.

practicePRO Director Dan Pinnington made more than 40 presentations on risk management topics to law associations,

law firms and continuing legal education programs all over Ontario and elsewhere in North America in 2009.

Oakville sole practitioner Daniel Barichello attended one such presentation and found it "tremendously informative. I am using many of the technology suggestions in my practice with great success."

In September Dan spoke at the College of Law Practice Management's Futures Conference and Annual Meeting in Boulder, Colorado. In November, he was a plenary speaker at the Law Society of Manitoba's 2009 Isaac Pitblado Lectures on the future of law.

At the annual TitlePLUS Conference in Orillia and TitlePLUS road shows around the province, he gave "tech tip" presentations to real estate lawyers and their staff.

Dan made numerous lunchtime presentations at law firms on claims prevention. Each presentation included a profile of the firm's own claim statistics. (To book a presentation for your firm, email dan.pinnington@lawpro.ca.)

As editor-in-chief of the American Bar Association's *Law Practice* magazine, Dan not only raises LAWPRO's profile, but also is exposed to the latest trends in law practice management and technology and is able to tap into a wide range of resources, contacts and expertise. He is also the co-author (with Reid Trautz) of *The Busy Lawyer's Guide to Success: Essential Tips to Power Your Practice*, published by the ABA in 2009.

During 2009, practicePRO accredited 180 programs for the CLE Premium Credit, through which lawyers taking LAWPRO-approved CLE programs receive a \$50 per course credit on their insurance premium (to a maximum of \$100). The programs were attended by more than 18,500 lawyers.

In 2009, the practicePRO website recorded 88,636 unique visitors, up from 85,000 in 2008. They downloaded more than 146,000 practicePRO articles and resources, up from 135,000 the previous year. Articles from *LAWPRO Magazine* accounted for 57,000 of the downloads.

Top practicePRO downloads

RANKING	ARTICLE OR ITEM	DOWNLOADS
1	Sample Budget Spreadsheet	6,471
2	E-Discovery Reading List	4,673
3	Business Plan Outline (from the Managing the Finances of your Practice booklet)	3,944
4	Article from LAWPRO Magazine on The Dangers of Metadata	3,834
5	General Retainer Letter Precedent	2,992
6	Limitations Act Comparison Chart	2,884
7	LAWPRO Fraud Fact Sheet	2,470
8	Transition Rules Chart for New Limitations Act, 2002	2,250
9	BlackBerry 101	1,955
10	Directions for Enabling Security Features on Wireless Access Points	1,775

Access these documents via the Top Downloads link at www.practicepro.ca.

Staying current

Helping lawyers adapt

Change is said to be the one constant in life. At LAWPRO, we strive to anticipate and adapt to change – and to help lawyers do likewise.

Adapting the insurance program

LAWPRO continually updates the insurance program to meet changing circumstances. Here are some changes we made in 2009.

MOBILITY WITH QUEBEC

The Barreau du Québec is now authorized to grant special Canadian legal advisor (CLA) permits to members of other Canadian law societies, as full members of the Barreau with restricted practice status. In February 2010, Convocation authorized The Law Society of Upper Canada to sign the Federation of Law Societies of Canada's Québec Mobility Agreement and to make the appropriate by-law amendments to implement that agreement.

Anticipating this development, we adapted the insurance program so that once the mobility agreement between the Barreau and the Law Society is fully implemented, it will cover Ontario's practising insured lawyers for their services as CLAs.

LAWYER MISAPPROPRIATION DURING MOBILITY

To satisfy new requirements under the National Mobility Agreement designed to better protect clients and others, we adapted the standard insurance program to provide limited coverage for misappropriation by Ontario's practising insured lawyers when exercising their temporary mobility rights in another Canadian jurisdiction.

LOCUMS

The Law Society recently adopted a recommendation to support practice locums, which enable lawyers to take time away from their practices by arranging for other lawyers to provide legal services to their clients in the interim. We revised our program materials to offer guidance on the insurance issues that lawyers

and law firms should consider if hiring or acting as a locum. The policy wording now specifically refers to locum work to ensure that lawyers fully understand the basis on which they are insured for their locum work.

OVERDRAFT PROTECTION

During the last couple of years we've seen many counterfeit certified cheque and bank draft frauds that target lawyers.

LAWPRO has provided protection to lawyers who inadvertently paid out trust funds of legitimate clients to fraudsters before discovering that the certified cheque or bank draft received from the fraudsters and deposited in their trust account is counterfeit.

But if the shortfall in the trust account was between the lawyer and the bank only (i.e., no legitimate client funds were taken, or the amount of funds disbursed exceeded that belonging to legitimate clients), LAWPRO took the position under previous insurance policies that there was no coverage.

To improve the protection available to lawyers, we began in 2010 to provide lawyers with some overdraft protection for this exposure, as part of the standard program. Several "best practice" coverage requirements must have been met for this coverage to apply.

Some lawyers felt that these coverage requirements were impractical for residential real estate transactions.

But coverage enhancements potentially increase claims costs, which are generally passed on to insureds through increased premiums. The "best practice" limitations moderate the risk to which the insurance program is exposed and encourage lawyers to actively manage this risk exposure themselves.

We recognize that it may be challenging for the residential real estate bar at times to meet the coverage criteria for the overdraft protection. Residential purchase and sale transactions often have severe time constraints imposed by the clients, their real estate agents and/or their lenders. No one wants to pay (or lose) interest on funds for even one day longer than necessary.

Tailoring coverage to practice

One of the hallmarks of the LawPRO insurance program is its flexibility. Lawyers have many options to tailor their insurance coverage to their specific needs, often with the added benefit of reducing the actual premium payable to less than the base premium level. As indicated on this chart, the number of lawyers taking advantage of these options continues to increase.

Coverage option	Feature	No. of lawyers participating (as of Jan. 31, 2009)	No. of lawyers participating (as of Jan. 31, 2010)
New call discount	10-40% base premium discount for those called 1-4 years	3,502	3,592
Part-time practice	40% base premium discount for eligible lawyers	1,465	1,442
Restricted area of practice option	40% base premium discount for immigration/criminal law practitioners	1,230	1,320
Innocent Party Buy-Up	Increase in Innocent Party sublimits up to as much as \$1 million per claim/\$1 million aggregate	3,155 (based on \$249/lawyer)	3,193 (based on \$249/lawyer)
Run-Off Buy-Up	Increase limits for past services from \$250,000 per claim/aggregate up to as much as \$1 million per claim/ \$2 million aggregate	760	772
Optional LawPRO Excess Insurance	Add additional layer of protection of up to \$9 million above primary limits of \$1 million per claim/\$2 million in the aggregate	3,724 lawyers (1,422 firms)	3,767 lawyers (1,443 firms)
Real Estate Practice Coverage	Required for all lawyers practising real estate law. Sublimit coverage of \$250,00 per claim/\$1 million aggregate	7,102	7,093

We are working with lawyers to help them reshape their practices to come within the coverage or implement other ways of reducing their risk or avoiding exposure altogether. We have met with the Real Property Section Executive of the Ontario Bar Association. We've had an initial discussion with the Canadian Bankers Association to try to find ways to reduce lawyers' exposure to counterfeit certified cheques and bank drafts.

Helping lawyers adapt to changing times

LawPRO helps lawyers adapt to changing times by providing practical information on technological developments and practice trends.

The December 2009 "social media" issue of [LawPRO Magazine](#), for example, featured a guide to the many social media tools available, interviews with lawyers from diverse practice settings who use social media, a primer on how to use social media as marketing and networking tools, and a discussion of social media pitfalls to avoid.

But LawPRO also leads by example. We walk the tech talk.

In 2009, we introduced three new electronic newsletters:

- LawPRO Webzine serves as the electronic version of LawPRO Magazine, bringing to your desktop the most current risk and practice information from practicePRO.

- LawPRO Insurance News is used to communicate information about filing deadlines and the insurance program.
- LawPRO Alert is used for urgent messages, such as warnings about imminent deadlines or fraud schemes that have just come to our attention.

The e-newsletters enable us to communicate time-sensitive information to you in a cost-effective way – for a fraction of the cost of producing and mailing a reminder letter or a printed magazine. Our average "read" and click-through rates exceed industry norms.

Through the Avoid A Claim blog (www.avoidclaim.com), launched in November 2009, LawPRO links lawyers to the latest in claims avoidance and law practice management information. Avoid A Claim fraud updates have been picked up by other bloggers across Canada and the U.S. As well, practicePRO director Dan Pinnington is also a frequent contributor to SLAW.ca, an award-winning legal blog.

LawPRO is also on Twitter (twitter.com/lawpro). More than 200 "followers" are among the first to learn about breaking risk management-related information and interesting new articles that we've spotted.

Excess success

For lawyers like Kimberly Whaley, the need for excess insurance is a no-brainer. "It's an added safety and security measure that gives me peace of mind – for not all that much cost."

The managing lawyer of Whaley Estate Litigation, a boutique law firm based in Toronto, Whaley has insisted on having excess coverage at every firm at which she has worked. "You never know what kind of estate and what kind of exposure you're going to be dealing with. Over the years I have seen enough examples of solicitors' negligence in drafting, so I know how often errors are made and how costly they can be." She decided to place the firm's excess coverage with LAWPRO for 2010 because she feels LAWPRO knows the business of law: "They specialize in small to mid-size firms for their Excess program and their claims department is staffed by lawyers," she says.

LAWPRO's Excess Insurance program is designed to help law firms just like Whaley Estate Litigation, a three-person firm based in Toronto.

Now in its 13th year, LAWPRO's Excess program provides coverage limits of up to \$9 million per claim/in the aggregate over and above the \$1million per claim/\$2 million aggregate coverage provided by the standard insurance program. LAWPRO's Excess program targets specifically small and medium-sized firms (of up to 50 lawyers). Many are firms that had not previously considered excess but which, as a result of LAWPRO's educational efforts, had reassessed their potential exposure to claims above the standard program policy limits.



For 2010, 61 new firms signed on with LAWPRO's Excess program, 86 per cent of which had not previously carried any excess insurance. And despite a modest 6.5 per cent increase in the Excess premium, 96 per cent of those who had insured with LAWPRO in 2009 decided to do so again for 2010.

As a result, the number of firms protected with LAWPRO's Excess coverage continues to grow. The number of firms is up to 1,443 in 2010 from 1,432 in 2009, and the number of lawyers insured under LAWPRO Excess is now at 3,767 compared to 3,731 in 2009. LAWPRO's Excess program now insures, on average, 15 per cent of lawyers employed in firms of 50 or fewer lawyers.

EXCESS CLAIMS

To date, the company has not paid any indemnity amount under its Excess program, a reflection of LAWPRO's ability to carefully manage costs within the insurance program's primary limits. Prudent underwriting and solid claims management have helped ensure that our Excess program is a profitable line of business for LAWPRO.

TitlePLUS[®] program:



The TitlePLUS national sales group:

(left to right) Nicky Kokologianakis, Brian Gordon, Shawna Ramsay, Mark Farrish, Chris March, Tim Anningson, Marilyn Nelson and Ray Leclair.

Building for the long haul

The decision to use TitlePLUS insurance almost exclusively was a no-brainer. As soon as I heard about its existence, the order went out to my staff to make the switch. It may not be the easiest to use initially, but why would you not support a product that was designed by lawyers, to be used by lawyers to protect us in real estate?

Richard Olschewski

Olschewski Feuer Davie, Winnipeg MB

"It all boils down to service and cost. The TitlePLUS team has always provided the service we needed – whether it's ease of ordering policies online, especially when closings are happening quickly or maintaining that personal touch with our office and staff. And from a price perspective, we've often found that TitlePLUS insurance costs less – so the cost savings are there for our clients as well."

Elias Metlej

Blois Nickerson & Bryson, Halifax N.S.

Metlej and Olschewski are two of the reasons that the TitlePLUS program posted solid gains in markets that today offer the greatest growth potential — eastern and western Canada where title insurance is only now making major inroads. In fact,

Olschewski Feuer Davie was the top TitlePLUS subscriber firm in 2009 – the first time a firm outside Ontario has earned those honours. The result: TitlePLUS policy sales outside Ontario posted record 90 per cent growth and exceeded projections for the year.

Despite these bright spots, 2009 was a difficult year for the TitlePLUS program, as it was for all title insurers. Most reported reduced gross written premiums in both 2008 and 2009 (in comparison to the boom year of 2007). Although policy sales are not back to record levels of 2007, the TitlePLUS program posted a small \$300,000 increase in gross written premiums in 2009 when compared to 2008.

Subscribers such as Metlej and Olschewski contributed to a six per cent increase in the TitlePLUS subscriber base, to more than 4,600 lawyers and about 100 Quebec notaries. About 760 lenders across Canada used TitlePLUS policies in 2009.

These results indicate that our vision of real estate practice continues to gain traction: The higher level of legal expertise and professionalism we expect from both our users and our TitlePLUS staff sets us apart from other providers and continues to win over lawyers and notaries.

TitlePLUS Vice President Ray Leclair points out that “in the kind of tight real estate markets that we saw in much of Canada last year, any kind of growth is a positive sign. Certainly we’re disappointed that we lost a bit of ground in terms of our share of the purchase market nationally – despite the great results we saw in regions outside Ontario.

“But rather than dwell on what we could not change – the volatile real estate market – we continued to build for the long haul, as the number of subscribers and lenders shows.”

A mainstay of TitlePLUS marketing strategy continues to be the personal touch. In 2009, the team of TitlePLUS consultants called on more than 2,300 firms that were not already consistently using the TitlePLUS program, encouraging them to get on board. They also visited more than 1,200 firms to help law clerks and lawyers

make better use of the online TitlePLUS system through training and technology demos. TitlePLUS staff also showcased the system and the unique advantages of the TitlePLUS program to about 100 groups of law firms, lenders and realtors, and participated at more than 200 conferences, trade shows and other events for lawyer, Quebec notary, lender and real estate professional groups.



Richard Olschewski

This strategy to focus on building the subscriber base, and encouraging low-volume users to make TitlePLUS coverage a mainstay of their real estate practices, is yielding results. Early results for 2010 show that TitlePLUS policy volumes are growing, even exceeding forecasts in some regions and product lines. “We’ve got a strong subscriber base on which to continue to build the program as real estate markets rebound and consumer confidence in the economic recovery takes hold,” says Ray.

TitlePLUS® claims:

Reining in compliance costs

An integral part of building the TitlePLUS program for the long haul is expert claims handling that helps resolve claims such as the following experienced by some TitlePLUS policyholders.

Claim A

Shortly after closing, the buyer brought in a contractor to do some work on his new home. The contractor immediately noticed

a number of deficiencies; subsequent investigation revealed that considerable work had been done to the home without a building

permit – and in fact the home was not safe to live in. The TitlePLUS program paid out just under \$200,000 to help complete the needed repairs – with the required permits and inspections.

Claim B

Shortly after taking possession, the buyers noticed a steady leak in the addition to the home they had bought. Investigation revealed that no permit had been issued for the addition. These TitlePLUS policyholders settled for just over \$110,000 – the estimated cost to properly address the building deficiency.

For consumers such as those profiled above, a TitlePLUS policy is the best investment they have ever made.

For them, the coverage provided by their TitlePLUS policy came to the rescue when the unexpected threatened to derail their dreams and provided exactly what it promised: Protection against unknown or undetectable issues that affect their ownership of the home.

For their lawyers, that protection brings with it the peace of mind that comes from knowing they have done right by their clients.

But providing that protection comes at a cost: As graph 6 shows, both the numbers of claims reported and the costs of those claims are rising steadily. That's due in part to the fact that thousands more homeowners each year have TitlePLUS protection.

But our claims analysis also shows that one expensive area of claims – building compliance-related issues – is significantly affecting the program. Between 2000 and 2009, policyholders reported more than 700 compliance-related claims, which we estimate will cost the program about \$11 million. So although only 22 per cent of TitlePLUS claims by count arise from this area of coverage, building compliance claims account for about 44 per cent of claims costs. Addressing compliance-related issues, such as lack of building permits, outstanding work orders or non-compliance with building codes, is often a costly proposition: Costs of \$100,000 or more are not unusual.

Majority of claims cost less than \$10,000

Concerning as these numbers are, the fact remains that more than 90 per cent of TitlePLUS claims are resolved for less than \$10,000, with the average indemnity payment being about \$4,200. An important measure of the program's success – and specifically of the TitlePLUS team's solid underwriting and claims management expertise — is our claims paid ratio (ratio of claims paid to premiums collected) which, over the history of the TitlePLUS program, stands at 37 per cent.

The legal expertise and experience of the TitlePLUS team is again being put to the test. In 2009, vigilant analysis of risk profiles resulted in a decision to decline 40 subscriber applicants; as well, the underwriting team declined to issue

TitlePLUS policies on 19 transactions suspected for fraud or grow house activity.

The TitlePLUS underwriting team is now working on ways to better detect building compliance risks before a policy is approved. As well, the claims team is focusing additional efforts on recovery initiatives where a past property owner should be bearing responsibility for the problem, as well as on salvage opportunities.

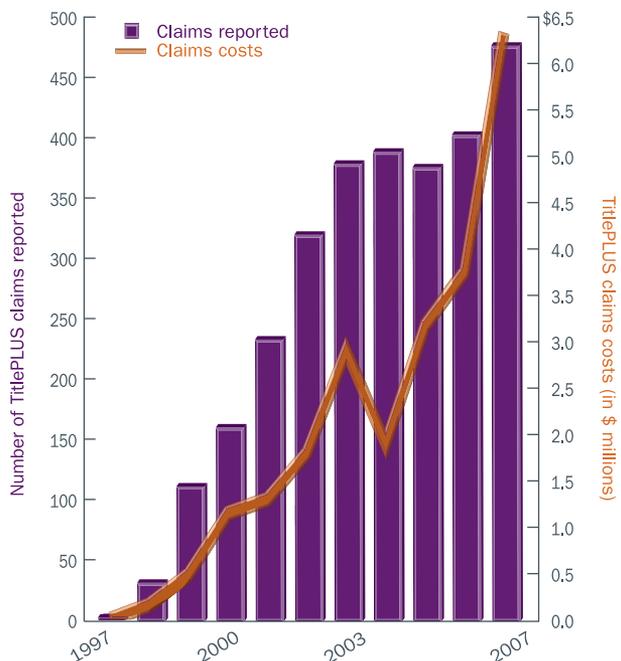
The result, acknowledges TitlePLUS VP Ray Leclair, will be more stringent underwriting measures that, he says, will be in the long-term best interests of the bar.

"We're trying to help lawyers identify issues earlier in the transaction – so that neither they nor their clients end up with problems after closing.

"If we, through our expertise, can identify trouble spots and help lawyers address these problems, we accomplish several things. We reinforce the extra value that a TitlePLUS lawyer brings to the transaction – because the lawyer raised an issue that is or could become a major problem for the client. And we help consumers reduce the risk of having to deal with a claim – especially a major building compliance claim which makes the house unsafe to live in, or means a desired addition has to be torn down.

"Of course, not even the best underwriting can help identify all trouble spots – and that's why lawyers need to continue recommending the comprehensive protection a TitlePLUS policy offers."

6. TitlePLUS claims



As at February 28, 2010

In the public eye

There's a lot more to LAWPRO than claims and title insurance. We also endeavour to ensure that the needs and interests of lawyers are well represented in many forums – from consumer to CLE provider to government.

A positive impression

Educating consumers

In 2009, LAWPRO's TitlePLUS program continued its campaign, launched more than three years ago, to educate the public about the critical role of lawyers in real estate transactions.

Two media pitches – one on buying a home pre-construction and one on legal dimensions of running a home-based business – generated coverage in major newspapers and websites (including *The Globe and Mail*, the globeandmail.com and the *Winnipeg Free Press*) that reached 2.4 million consumers.

A separate series of articles appeared in 55 different newspapers and websites across Canada with an audience of more than seven million consumers. Most included a reference to the Real Simple Real Estate Guide™ (available on www.titleplus.ca), an online resource that includes checklists, financial calculators and information on the role of real estate lawyers. Topics included how to refinance to fund a renovation, how to protect your deal, power-of-sale purchases and buying from an estate.

A media campaign to help build awareness of the TitlePLUS program in Quebec resulted in coverage in French language print and broadcast media and websites. (For more details on this program see page 27.)

Getting lawyers heard

LAWPRO continued its campaign to represent lawyers' concerns on consumer protection and legislative and regulatory issues (such as the planned introduction of a harmonized sales tax) with decision-makers at Queen's Park in 2009. The overall goal: To establish LAWPRO as a source of expert information and advice that key government ministries will turn to when seeking feedback and guidance on planned policy changes.

To that end, members of our Executive met with key staff at the Financial Services Commission of Ontario, the Ministry of Government Services, the Ministry of the Attorney General and the Ministry of Finance, and attended numerous functions at which we had an opportunity to continue building our profile.

As a supporter of the Ontario Legislature Internship Program, LAWPRO also hosted an information session for the program's interns at which President & CEO Kathleen Waters reviewed LAWPRO's mandate and functions, and talked at length about what we are doing to help prevent real estate fraud.

Working in tandem with the Law Society, LAWPRO made vigorous but unsuccessful efforts in 2009 to obtain transitional relief regarding the implementation of Ontario's harmonized sales tax.

We get involved

The expertise and experience resident in LAWPRO is put to work on more than just claims management. LAWPRO employees are proactive organizers and participants in many associations and on numerous task forces, committees, conferences, and seminars. The goal: To ensure we share our knowledge about what causes claims and how to prevent claims from happening.

For example, in 2009 we contributed to three important groups developing resources to assist the legal profession:

- We continued to be heavily involved in the work of the Canadian Bar Association Task Force on Conflicts of Interest (www.cba.org/conflicts), as task force chair Scott Jolliffe, national managing partner at Gowlings points out.

“Apart from his contribution to all of the background discussions and deliberations of the Task Force, Dan Pinnington was instrumental in collecting, editing and writing the various precedents, checklists and other documents in the Toolkit the CBA Task Force on Conflicts released as part of its report. The Toolkit is a fantastic collection of resources that will help lawyers avoid conflicts of interest.”

- LAWPRO's submission to the Law Society's Professional Development & Competence Committee provided indirect empirical evidence that attendance at continuing legal education programs can reduce malpractice risks and costs. For example, an analysis of LAWPRO claims data indicates that lawyers who have claimed one or more LAWPRO CLE Credits since the Credit was launched in 2002 have a lower average cost per claim compared to those who have never claimed a credit: \$27,876 vs. \$32,248.
- Throughout 2009 LAWPRO worked on helping the Law Society develop a file retention and destruction guide and a model law firm file retention policy, drawing on our unparalleled claims-handling experience.

The volunteer work of our staff for many Canadian and Ontario legal associations not only brings our expertise and insight to the table, but also ensures we have our finger on the pulse of what's top of mind in the legal community.

For example, TitlePLUS Vice-President Ray Leclair is chair of the CBA's National Real Property Section. Focused on better communication, Ray has instituted monthly conference calls with all the provincial real property section chairs, so that they can share information about what's happening in each province and what each provincial section is doing.

“This way, we don't have to reinvent the wheel,” he says. “Issues often develop in one jurisdiction and then move on to the others. We can build on what someone in another province has already done in response.”

In the process, Ray – and LAWPRO – “benefit from learning what's going on across the country.” In turn, he is able to use his position to help spread the word on “how much LAWPRO does for lawyers – how we always promote the role of the real estate lawyer in the transaction.”

Claims Counsel Specialist Cynthia Martin is currently a member-at-large of the OBA's Insurance Law section executive, and a member of the Insurance Award of Excellence sub-committee. Her extensive insurance defence practice experience enables her to be a resource to the section, and her first-hand knowledge of the insurance bar enables her to find the right speakers for conference topics. Her OBA involvement in turn supports her work at LAWPRO, where she handles a wide variety of files with a concentration on personal injury and litigation.

As a member of the executive of the OBA's Trust and Estates section, Claims Counsel Deborah Petch brings a LAWPRO perspective to its meetings. She also sits on two section committees: Continuing Legal Education and Zoomer Liaison. Because Deborah's claims portfolio includes a significant number of wills and estates files, her OBA activity is a valuable complement to her work at LAWPRO.

practicePRO Director Dan Pinnington is the co-chair of the Annual Solo and Small Firms Conference and Expo, a joint Law Society/OBA effort that focuses on new technology and best practices for sole and small firm practitioners. He also sits on the executive of OBA Law Practice Management and Solo, Small Firm and General Practice sections, is a member of the OBA's main CLE committee and will co-chair the CBA's annual Canadian Legal Conference and Expo in 2010.

All benefit from his extensive knowledge of legal technology, law practice management and risk management issues, and from the resources and contacts he brings to bear as editor-in-chief of the American Bar Association's Law Practice magazine. Dan in turn benefits from keeping in touch with a network of practitioners “in the trenches” and hearing first-hand their issues and concerns.

In addition to their organizational and committee work, LAWPRO staff frequently speak at continuing legal education seminars.

For example, Litigation Director and Claims Counsel Yvonne Bernstein spoke on family law risk management topics at several continuing legal education programs in 2009. This not only benefits the profession by, as she says, “giving lawyers information so that they can avoid the claims that might otherwise trip them up,” but also helps Yvonne stay current – important to her job at LAWPRO, since she handles a significant number of family law claims. “If you really want to learn something, teach it to someone else.”

Keep your guard up!



More sophisticated cheque scams targeting lawyers

LAWPRO continues to get daily emails and phone calls from Ontario lawyers who find themselves the targets of attempted frauds. Attempted frauds involving debt collections are the most common. Family lawyers especially are the targets of bogus spousal support collection matters.

Although they are not as frequent as they were in 2007 and 2008, attempts at real estate fraud are still very much alive. Specifically, we are seeing more identity thefts now, as flip frauds are harder in a slower market when property values are not rising.

The problem is not isolated to Ontario. Large numbers of attempted bad cheque frauds – and some successful ones too – are occurring in other provinces and across the U.S.

While many of the fraud attempts are sloppy and obvious, some are getting more polished and sophisticated. To help lawyers better recognize the red flags of a problem deal, this article highlights some of the changes in fraudsters' tactics and steps you can take to avoid being duped.

Recent fraud attempts

LAWPRO has seen several attempts at frauds in the last few months in which the amount involved was relatively small and

thus appeared to be more reasonable and realistic. For example, \$150,000 on a spousal collection matter looks more reasonable or typical compared to \$850,000.

In one series of attempted frauds we have heard about in Oklahoma, the fraudster went so far as to appear to come from a trusted referral source. He contacted a real estate agent and asked for the name of several lawyers in a particular community. The name of the referral source was mentioned in the initial call or email to the lawyer.

In Ontario we have seen three instances in which fraudsters have forged multiple cheques written on law firm trust or general accounts (either from scratch or on cheque stock). Although we are not familiar with all of the circumstances in which these various cheques were tendered, one has to presume that the fraudsters intended to benefit from the fact that a cheque written on a law firm account might receive less scrutiny than one coming from an unknown entity. In one of these attempts, several counterfeit cheques were created in an apparent attempt to take funds from the general account of a law firm's holding company.

Lawyers who have been duped or almost duped frequently tell us how smooth and determined the fraudster was. See an example of this in the "Please deposit my bogus cheque so I can give the money to an orphanage" sidebar.

Steps to avoid being duped

There are several lessons to be learned from the fraud attempts that LawPRO is seeing. Follow these steps to avoid being duped:

- Make sure you are familiar with the common types of bad cheque and real estate frauds that target lawyers, and the red flags that can help you spot the fraudulent matters.
- Educate your staff on the common types of bad cheque and real estate frauds and their associated red flags. We have seen cases where junior lawyers, support staff or law office accounting staff have prevented frauds because they spotted red flags that the lawyer did not see.
- Religiously follow the client identification and verification steps required by the know-your-client rules.
- Carefully check and cross-verify client identification, especially if there are any questions about where the client is or if there is no apparent connection to Ontario. Some of the initial contact emails now provide background that appears to establish a connection to Ontario.
- Initial contacts from the fraudster may not be via an impersonal and badly worded email. We have seen initial contacts by phone and even contacts in person where the fraudster visited the lawyer's office multiple times.
- Carefully gather relevant background facts and information to confirm that the matter is a legitimate one, especially if the information provided by the fraudster is incomplete or inconsistent. If things don't add up, ask more questions and dig deeper.
- Carefully look at the labelling and sender's address on the package or envelope that the cheque was delivered in. Handwritten addresses are common, and it often appears that the packages were sent from a location that has no connection to the people involved in the matter.
- Be cautious and check the validity of certified cheques or bank drafts deposited into your trust account. Ideally, try to have funds deposited in your account by a wire through the Large Volume Transfer System (LVTS).

Never let your client directly deposit a cheque or bank draft into your account. Cross-check bank and payor information (spelling of name, address, account and transit numbers, phone numbers) on independent sources (e.g., a bank or payor website).

Take the cheque or draft to your bank to see if they can verify it. If you think you are dealing with an inexperienced teller, ask for a more senior person to look at it. Try calling the branch that holds the account the cheque was written on (and don't use the phone number or address on the cheque as that will just put you in touch with the fraudster – get it from the bank or financial institution's website). Call the payor named on the

cheque to see if he or she actually made the payment (and get contact info from an independent source – not off the cheque), especially if the payor doesn't look connected to the matter (e.g., from the example in the sidebar, an insurance brokerage making a spousal support arrears payment).

- Never be in a rush to disburse funds from your trust account – especially if your client is really pushing to get the funds quickly.
- If you want the benefit of LawPRO's enhanced protection for counterfeit certified cheques and counterfeit bank drafts, keep in mind the following conditions and limitations:
 - You must have waited at least eight business days following deposit of the instrument into your trust account before disbursing funds as instructed; or you must have received confirmation from either your financial institution or the drawee financial institution that the drawee financial institution has verified the validity of the instrument. As well, this confirmation must be documented in writing (whether by you or the financial institution) before payment instructions are given.
 - The drawee financial institution indicated on the counterfeit certified cheque or counterfeit bank draft must be a Canadian financial institution, and the instrument must have been inspected and deposited by you, or a partner or employee of yours.
- Always remember, if it looks too good to be true, it probably is.

The bottom line: If things don't add up – ask more questions and don't let the client bully you into making a payment on matter that is a real or apparent fraud.

Do I reply if I am not sure the matter is legitimate?

Most lawyers will not send a reply to any email requests for services that is obviously a fraud attempt. However, when the email looks suspicious, but could be legitimate, more caution is required. In this case, most lawyers will send a reply asking for identification and more background information. They will also indicate that they will require a retainer before they will do any work on the matter. Where the matter is a fraud the further identification and information provided will be incomplete or there will be inconsistencies. And be careful: a common reply to a request for a retainer is a promise of payment when the payment comes through, and it just happens to show up a day or two later.

Fraud prevention resources

Use the free fraud prevention resources on the practicePRO Fraud Page (www.practicepro.ca/fraud) to help the lawyers and staff in your firm avoid being duped, in particular the following:

Please deposit my bogus cheque so I can give the money to an orphanage

This example, from an Ontario lawyer targeted in March 2010, shows the tenacity and audacity of a fraudster.

The lawyer was initially contacted by phone (not email) by a woman who wanted to retain him for help with collecting support from her ex-husband further to a collaborative family law agreement they had signed. For the initial identification she provided an Illinois driver's licence (a scanned copy sent by email) that looked legitimate. The client also provided a copy of the agreement. Things looked normal at this point, although there was no apparent connection with Ontario (the two lawyers named in the agreement did not appear in the Law Society member directory). This made the lawyer hesitate, and he asked for further identification so as to verify the identity and location of the woman. At this point the story changed a fair bit. The woman indicated she was actually on assignment in Japan and, you guessed it, her ex-husband was willing to make an immediate payment.

At the time the story changed, there was still no apparent rationale for the ex-husband to be making a payment through an Ontario lawyer's office. This prompted the lawyer to ask some more pointed questions in calls with the woman to get some more background. The woman always had a quick and somewhat reasonable answer to the lawyer's questions, but all the answers fell short of being entirely satisfactory.

Next, without any warning or indication it was coming, the lawyer received by registered mail (in an envelope that had hand-written addresses on it) an uncertified cheque for \$198,280. It appeared to be from an insurance brokerage and was written on a Brampton branch of BMO. The cheque looked totally legitimate to the lawyer. The head teller at the lawyer's bank (not BMO) told him that the cheque appeared to be fine. The lawyer then called the insurance brokerage. A cross-check of the cheque number confirmed that it was a real cheque that had been issued to someone else for \$280.

The woman called just after the lawyer got the cheque (Good timing!!) and told him to take his fees from the cheque after it had been deposited. The woman now asked that the remaining funds be wired to an account in China. Her reason was simple – she explained that she had already pledged the funds to a charity there.

At this point the lawyer advised the woman that he would not be acting on the matter, as it was clearly a fraud and that he was returning the cheque to the real issuer. This did not deter her. The woman called back again and pushed hard for the lawyer to cash the cheque – and the explanation got more urgent – please pay up as I have pledged money to an orphanage and they need it to finish a building. The lawyer again confirmed he would take no further steps on the matter.

- Download our Fraud Fact Sheet and give it to the lawyers and staff in your office. It lists the common types of bad cheque and real estate frauds and the red flags that will help you spot a fraudulent matter.
- Listen to the archived LAWPRO webinar presentation on what frauds look like and how to avoid them. Access the [MP3 \(audio\) file](http://www.cmcgc.com/DEMO/OBA/09GEN0526T.mp3) at <http://www.cmcgc.com/DEMO/OBA/09GEN0526T.mp3> and the [program PowerPoint and materials](http://www.oba.org/en/pdf/09GEN0526T.pdf) at <http://www.oba.org/en/pdf/09GEN0526T.pdf>

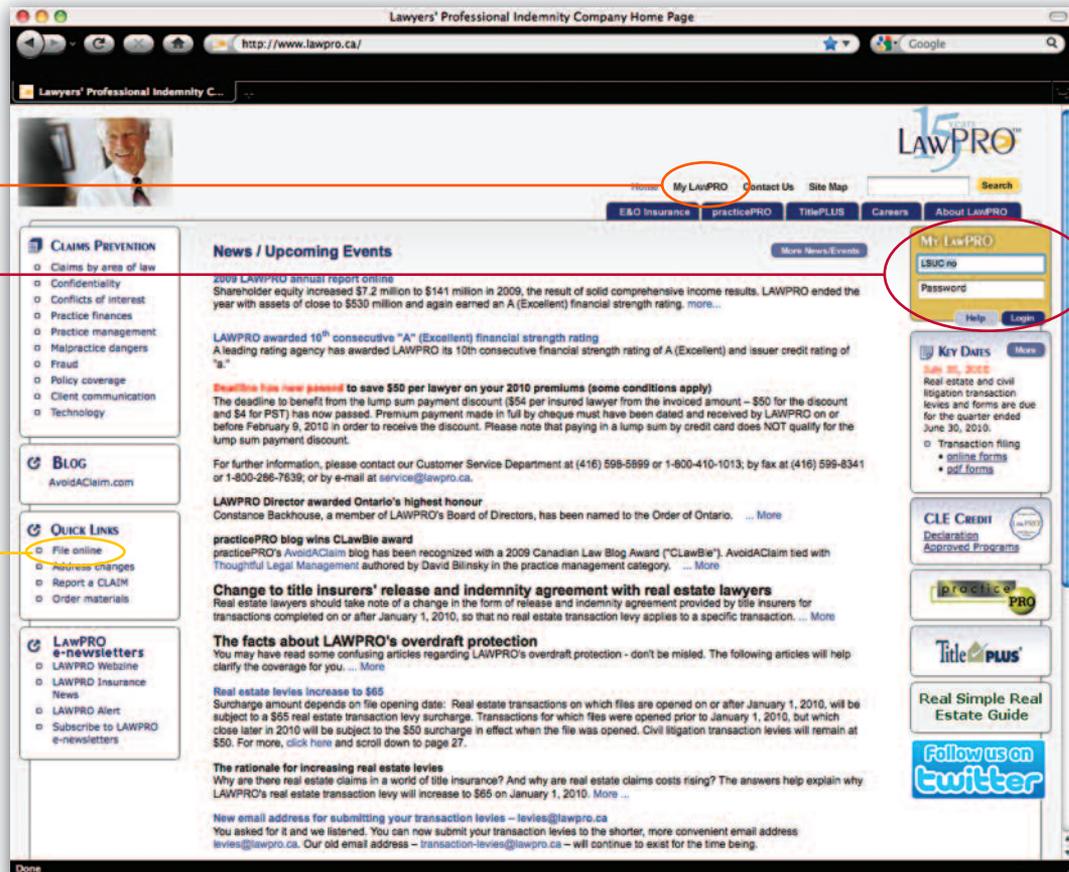
Lastly, call LAWPRO if you suspect you have completed or are acting on a matter that appears as if it might be a fraud. Claims staff can talk you through the common fraud scenarios they are seeing to help you spot red flags and ask the appropriate questions of your client to determine if the matter is legitimate. And, if you have been duped, they can help you take appropriate steps to respond and deal with the matter.

Dan Pinnington is director of practicePRO, LAWPRO's risk and practice management program. He can be reached at dan.pinnington@lawpro.ca.

New access to LAWPRO Excess

Online Excess policy information available in MY LAWPRO

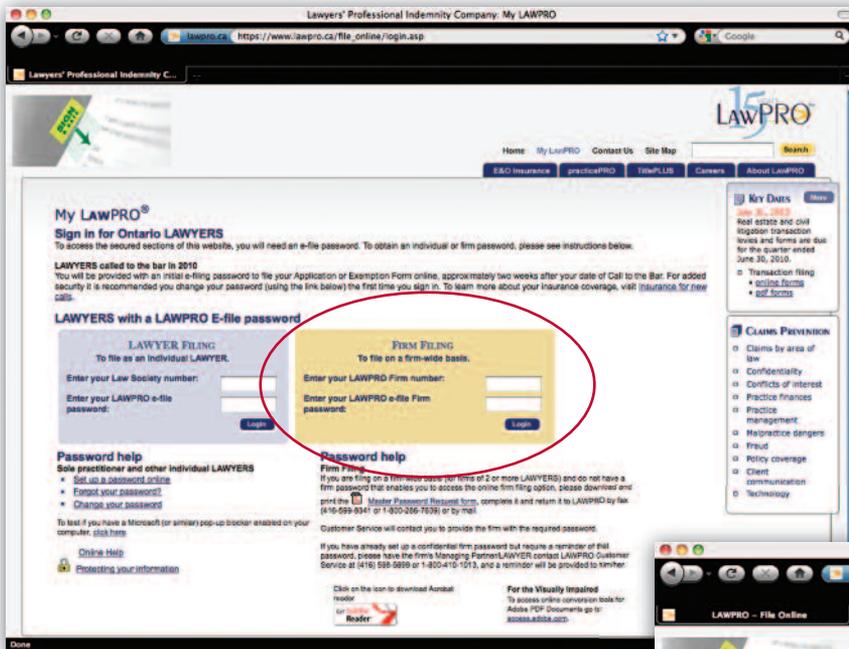
Law firms that have purchased or renewed excess professional liability insurance coverage from LAWPRO in 2010 can now find everything related to their excess policy in one convenient location under **MY LAWPRO** on the LAWPRO website. To access the new Excess Policy Documents tab, follow these easy steps:



Step 1:

To access the **MY LAWPRO** section, you must first sign in to the secure part of the LAWPRO website using your your LAWPRO Firm number and LAWPRO e-file Firm password. You have three options to sign in:

- Sign in using the **MY LAWPRO** sign-in box, which you will find on every page; OR
- Select **MY LAWPRO** in the top navigation bar to access the sign-in page; OR
- Select **File Online** in the **Quick Links** box on the home page to access the sign-in page.

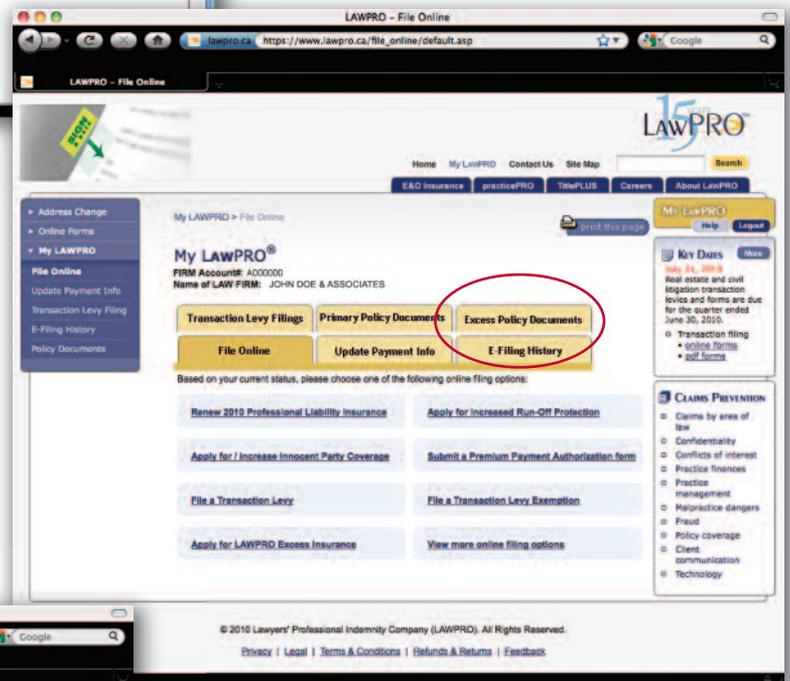


Step 2:

Sign in using your LAWPRO Firm number and LAWPRO e-file Firm password. If you do not remember your firm's password (or your firm does not have one) follow the online instructions to set up a firm password or be reminded of your firm's password.

Step 3:

If your firm has purchased or renewed LAWPRO Excess Liability Insurance in 2010, the new Excess Policy Documents tab now appears on the list of online services on the firm's **MY LAWPRO** page. Select the Excess Policy Documents tab.



Step 4:

From the Excess Policy Documents tab, you can access all the documents related to your 2010 Excess Policy, such as your 2010 Excess Policy Invoice & Declaration and the 2010 Excess Professional Liability Policy.

Your 2010 Excess Policy Declaration page is available in PDF format and can be printed to be used as Proof of LAWPRO Excess coverage.

You can request a change in your coverage limits using the Request for Change form or submit or amend payment instructions using the Premium Payment Authorization form.

Also on this new page: Excess Liability Insurance FAQs and a booklet to help you assess your need for additional insurance protection, as well as the Innocent Party Sublimit By-Up Application Form.



Ordering a TitlePLUS commercial policy just got easier

A streamlined application process. A new order form that saves you phone time. New charts that tell you upfront our usual search and due diligence requirements for different property types and transactions.

It's now faster and easier to order a TitlePLUS® commercial policy – just one reason why sales of these policies are on the rise.

TitlePLUS title insurance is available for commercial properties with purchase prices and mortgage amounts of up to \$2 million.

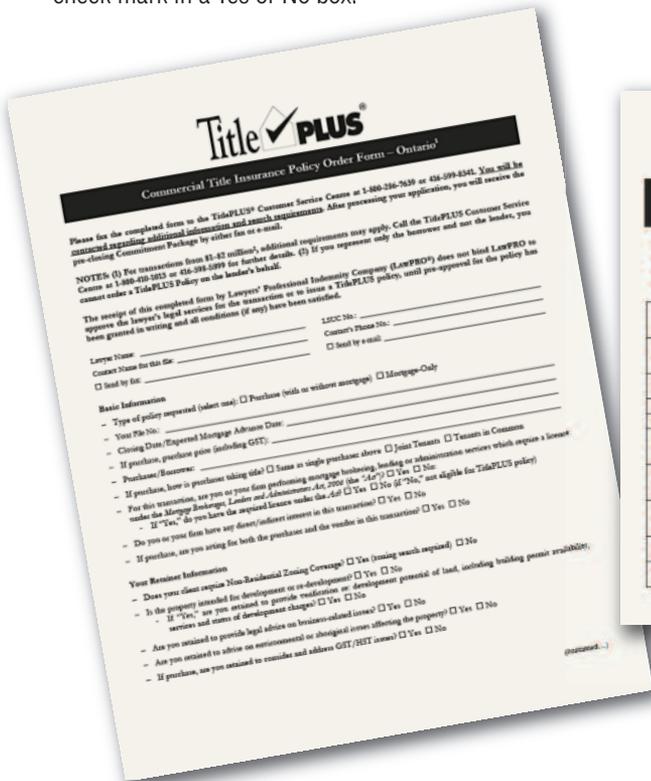
Although you can still order a commercial policy entirely over the phone, you can now speed up the process by using our new Commercial Title Insurance Policy Order Form, available online at www.titleplus.ca/Lawyers/News.

Its simple question-and-answer format enables you to quickly and efficiently provide much of the information needed by our TitlePLUS Underwriting Group. Many questions require only a check mark in a Yes or No box.

Five new charts, which are available on the titleplus.ca website, let you see at a glance our usual search and due diligence requirements for purchase and/or mortgage transactions for the following property types:

- commercial condominiums;
- properties containing stores, restaurants and/or offices, with or without one to four residential dwelling units;
- multi-unit residential properties containing five or more dwelling units;
- industrial properties; and
- vacant land intended for commercial purposes.

The search requirements in each chart are tailored to the type of transaction and property involved. For example, for a property containing stores and/or offices with or without one to four residential units, you usually will not be required to do searches for building department work orders when applying for a policy insuring a mortgage for up to 80 per cent of the property value (up to \$1 million).



	Mortgage-Only 80% of value or less, up to \$1 million	Mortgage-Only over 80% of value, up to \$1 million	Purchase up to \$1 million	Purchase or Mortgage-Only, \$1-\$2 million
Title (including deleted instruments and, where part lot, abutting lands)	Back to later of registered mortgage being replaced as last written	Back to later of registered mortgage being replaced as last written	Yes	Yes
Executions on vendor and/or where mortgage, on borrower and guarantor	Yes	Yes	Yes	Yes
Realty taxes and local improvements	No	Yes	Yes	Yes
Municipal water and sewage	No	No	Yes	Yes
Building department work order search; for new buildings, confirmation of permission to occupy accepted as an alternative	No	Yes	Yes	Yes
Electrical compliance and work orders; for new buildings, confirmation of permission to occupy accepted as an alternative	No	Yes	Yes	Yes
Fire compliance and work orders; for new buildings, confirmation of permission to occupy accepted as an alternative	No	Yes	Yes	Yes
Zoning, if zoning coverage to be provided in Non-Residential Endorsement	Yes	Yes	Yes	Yes
Corporate status on corporate vendor and/or borrower	Yes	Yes	Yes	Yes

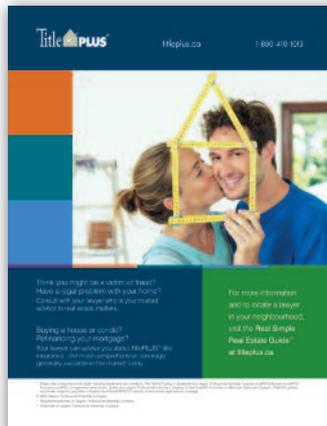
Of course, each property is unique and may involve risks other than those addressed by the requirements in the charts. Other searches or due diligence may therefore be required for specific transactions.

A TitlePLUS commercial policy provides the most comprehensive protection available in the market today. Your clients receive all the benefits of TitlePLUS protection, including title, fraud, and survey coverage, plus coverage for the legal services that you provide in the real estate deal. (TitlePLUS policies issued with respect to properties in Quebec and OwnerEXPRESS® policies do not include legal services coverage.)

Fax the completed form to us, and we will contact you to finalize the search and due diligence requirements for your deal. When we have processed your application, we'll send you the pre-closing Commitment Package by either fax or email.

TitlePLUS spreads the word

Consumer awareness campaign reaches 10 million



No matter what you plan to do – buy, remortgage, run a home-based business or pick up a “power of sale “deal” – your real estate lawyer can help make sure that plan succeeds. That’s the consistent message that millions of consumers are learning courtesy of the TitlePLUS consumer awareness campaign, now in its fourth year.

Launched in 2006, the campaign has two elements:

- a proactive media relations campaign centered around specific media pitches that highlight how working with a lawyer helps the consumer in the transaction; and
- a series of pre-written articles (matte stories) on specific aspects of home buying, refinancing and working with a lawyer that are made available free of charge through a national distribution service to publications and websites across Canada.

In 2009, two media pitches – one on how the economic downturn could affect buyers of pre-construction units, another on the importance of obtaining legal advice for home-based businesses –

reached an estimated 2.4 million consumers across Canada.

A separate series of six matte stories on issues such as buying from an estate, refinancing to take advantage of the home renovation tax credit, issues to watch out for in power-of-sale purchases, how to refinance to fund a renovation, and how to protect the transaction were picked more than 80 times by publications websites, reaching an audience of about seven million.

The public awareness campaign also drives traffic to the [Real Simple Real Estate Guide](#) on the [TitlePLUS website](#) (www.titleplus.ca). The online guide provides information on title insurance and the importance of a real estate lawyer, as well as checklists, calculators to help consumers work through the financial aspects of the transaction, and other online tools and resources.



Essential smartphone apps for lawyers

It seems like only yesterday that lawyers who frequently travelled outside their offices were beginning to appreciate how much of an essential tool a cellphone could be. And now, smartphones allow lawyers to do just about everything they already do on their laptop or desktop computers.

The BlackBerry is currently the most popular smartphone for lawyers, although it is facing stiff competition from the iPhone. However, the Android and PalmPre are also viable options and offer apps that are not available on their more popular brethren.

Out of the box, most smartphones include powerful email, contact and calendaring functionality. But there are thousands of other available smartphone apps, including a broad selection of lawyer-specific apps that can help with productivity and just about everything else lawyers might want to do while away from their desk.

Some of the apps are available in versions that will run on different types of smartphones; others are only available for a single type. The following is a list of my favourite smartphone apps available as noted for the BlackBerry (BB), iPhone (iP), Android (And) and/or Palm Pre (Pre):

E-mail apps

- **Gmail** (BB, iP, And, Pre): The Gmail smartphone app is simple to use and gives you full access to your Gmail account, including all your contacts and attachments. (Free: mail.google.com)
- **Xobni** (BB): Xobni is a popular MS Outlook plugin that is now available for the BB. It gives you a completely different view of your contacts list by ranking them by the frequency that e-mail, SMS or call them. For an additional subscription fee, you can also synchronize the mobile app with your Outlook Xobni contacts. (\$9.99 for non-synchronization version or \$6.99

one time plus \$3.99 per month for synchronization: www.xobni.com)

Lawyer tools

- **Documents To Go** (BB, iP, And, Pre): On top of letting you view PDF files, this app makes your BlackBerry a mini computer by allowing you to view, edit and create Microsoft Word, Excel and PowerPoint files. While possible, it is just not practical to create long documents on tiny screens and keyboards, but it can be a lifesaver if you need to make minor edits. The newest Blackberry version has a file synchronization feature that lets you move documents from your computer onto and off of your Blackberry. (\$49.99 www.dataviz.com)
- **Scan2PDF** (iP, And): Take a picture of a document or photo and have it converted to a PDF file via the web. Not for confidential documents, but a great way to grab a copy of something you find. (\$14.99 www.burrotech.com)
- **RememberTheMilk** (BB, iP, And): Never forget anything again with this amazing free online to-do list that can be updated and accessed from the web or your smartphone. Get reminders by email, SMS or umpteen other ways and share your to-do lists with others (Free: www.rememberthemilk.com)
- **Timr** (BB, iP, And): Nice little online time tracking and driving log application. The app connects to your online account where you can set up multiple users, multiple clients with multiple "projects" or files and multiple tasks. When you "start" an event on your phone, the system starts tracking your time and mileage until you stop it. You can edit the information afterwards. (Free to \$215 for enterprise version: www.timr.com)

Maps and mobile apps

- **Google Maps and Google Latitude** (BB, iP, And): Google Maps is better than the BlackBerry Maps app and helps you find your locations, get directions, see traffic and use your smartphone like a GPS. And if you install and enable Latitude, you can track a smartphone user online. Where is that darn associate? (Free: www.google.com/mobile/maps/)
- **Opera Browsers** (BB, iP, And, Pre): The BB browser is slow, clunky and often doesn't render sites properly. Opera is one of the more popular alternatives. (Free: www.opera.com)
- **Dial2Do** (BB, iP, And, Pre): Not really a phone app per se, but you do use your phone! Set up an account and then call Dial2Do. The service allows you to dictate a short message which is transcribed and sent to email contacts, Twitter, rememberthemilk and Google calendar. (Free Dial2Do reminders only, or \$39.00/year or \$3.99/month for the full service: www.dial2do.com)
- **Skype** (iP): Make free or very cheap calls on your iPhone using VOIP (voice over Internet protocol). It is particularly useful when you are traveling internationally and have Wi-Fi access as you can talk to any user on Skype for free to landlines for pennies per minute. This is also currently available on Blackberries on the U.S. Verizon network – hopefully it will come to Canada soon. (Free: iTunes)
- **FedEx Mobile** (BB, iP, And, Pre): Do you need to create a shipping label while you are away from your desk or out of the office? How about find the nearest FedEx Office? With FedEx Mobile, it's all just a click away! The FedEx Mobile website can be accessed at mobile.fedex.com on your mobile browser. There is a FedEx app for iPhone users only. (Free: iTunes)



- **UPS Mobile** (BB, iP, And, Pre): Track your courier packages even when you are moving around as much as they are. (Free: www.ups.com/mobile)
- **Poynt** (BB) A neat little local search app that, based on your location, provides a directory search of local businesses and people, a list of restaurants with links to reviews, and movie listings and reviews. Poynt information is available for Canada, the U.S. (Free: www.poynt.com).
- **Cortado Flight Mode** (BB): Get your BlackBerry ready for take-off with just one click. Turn this app on and it downloads all message texts that have not yet been completely retrieved, and then turns off all your wireless connections. This puts all your e-mails in their full length at your disposal during flight so you can effectively use the time to work. After landing, the deactivated connections are just as easily re-established. (www.cortado.com, \$2.99)
- **Viigo** (BB): Bring the world to your BlackBerry. If information is out there on the Web, Viigo will collect and download it to your BlackBerry. The list goes on and on: Weather, sports, business & finance, local interest, shopping, social networks, entertainment, flights & travel, audio & podcasts and so on. (Free: www.viigo.com)

Social networking apps

- **Facebook** (BB, iP, And, Pre): The Facebook mobile website isn't too bad, but the Facebook app is much better and is a must for anyone who needs to keep up with all their Facebook friends. (Free: www.facebook.com/mobile)
- **OpenBeak**, formerly **TwitterBerry** (BB) and **UberTwitter** (BB): For BlackBerry users, both are decent tools for keeping up with tweets and sending a few of your own. UberTwitter has many more features, but will only download a handful of tweets at time. OpenBeak is simpler, but will download all tweets since the last update allowing you to read them on a subway or airplane. (Both are free: <http://orangatame.com/products/openbeak> and www.ubertwitter.com)
- **Twitterific** (iP): While there are actually many Twitter apps for the iPhone, Twitterific is the most popular because it has a simple-to-use interface and advanced functions for power users. (\$14.95: www.iconfactory.com)
- **Twidroid** (And): The best Android app for posting tweets, following your groups and accessing Twitter. (Free and Pro \$4.99: www.twidroid.com).
- **Vlingo** (BB, iP, And, Pre): Instantly send a text or email message, call a friend, search the Web, update your Facebook or Twitter status, create a "note to self" and more by speaking to your smartphone. Vlingo Everywhere, a new feature of Vlingo 4.0, lets you use your voice to add text anywhere you'd normally type, including instant messaging, calendar entry, adding contacts, getting directions and more. It also recently added a "Safereader" function that reads incoming emails to you. Great if you are waiting for a particular email while you are driving. (Free for basic and \$9.99 for more advanced features: www.vlingo.com)

Utility and hardware apps

- **AppBoxPro** (iP): An amazing multi-function app that includes a currency converter, date calculator, translator (text), tip calculator, international holiday calendar, unit converter, battery life meter, and 10 more functions. I wish it would run on my BlackBerry. (\$0.99: iTunes)
- **Dragon Dictation** (BB, iP). The magic of Dragon comes to your smartphone. Dictate some text and Dragon will transcribe it into an email message, tweet or other text field. Accuracy is surprisingly good and errors are easy to correct. (Free: www.dragonmobileapps.com)
- **Smrtguard** (BB, And): Ever misplace your phone? Smrtguard tracks the location of your phone and allows you to locate your phone online, send an audio ping that will make your phone ring and lock it remotely – all in the free version. The pay version will additionally allow you to back up and to wipe data from your phone remotely. (Free and \$44.99 a year for pay version: www.smrtguard.com)
- **Berryweather** (BB): In addition to the standard current conditions and forecasts, it allows you to see weather info from multiple locations, set up custom radar maps and create a "homepage" that will display current weather conditions. (Free and \$6.99 for more features: www.bellshare.com)
- **CarFinder** (BB, iP): Yes, because sometimes you just can't remember where you parked the car. (Free for BB: \$0.99 for the iP at www.neosistec.com)

Avoiding confusion (and claims) when making charitable bequests

Many wills include one or more bequests to charitable or religious institutions. In spite of the testator's good intentions, these bequests often lead to claims when there is confusion over which institution was to receive the bequest. These mistakes often come to light only when the estate is being distributed – and they can lead to costly and time-consuming litigation when charities fight over the bequest.

Many of the claims reported in this area could be avoided if lawyers took steps to confirm that the information given by the testator is correct when the will is being drafted.

Often testators will give the lawyer a name for the charity that is outright wrong or doesn't include an indication of its corporate status. For example, the client

says "Niagara Cat Shelter" but the real name is "Niagara Falls Cat Shelter Inc."

In other situations there is ambiguity about which institution was to receive the bequest. For example, a legacy to "the ALS Society" is unclear. Does the testator intend that the bequest go to the provincial association or the national body?

Similarly, a bequest to St. John's Church can be quite confusing if there is more than one church with the same name in the region. There can also be confusion if the church or charity no longer exists. For this reason, including an address and phone number in the will can be helpful.

It is imperative that lawyers taking instructions for a will ensure that the beneficiary of the bequest exists and that

the beneficiary is referred to by its full legal name in the will. Go beyond the name of the charity and ask for an address and phone number. Cross-check the information provided to make sure the charity the testator intends the bequest to go to is properly named. There are a multitude of resources available to confirm the names and addresses of charitable entities. Many charities have websites, and most are referenced in various government and non-government directories.

Taking the time to check the proper name of an entity and confirming that information with the testator can avoid a potential negligence claim in the future.

Pauline Sheps is claims counsel specialist with LAWPRO.

Common real estate pitfalls to avoid

Condominium parking and lockers: Handle with care

Your client buys a condo with two parking spaces and a locker. Usually the parking spaces and locker are separate units with their own PINs. When you're looking at the draft transfer and mortgage, make sure they include all the PINs, unit and level numbers.

Our claims experience has shown that it's easy to overlook the omission of these units from a document. Once a purchase closes, or a mortgage goes into default, it may be hard to get a correcting transfer or mortgage for the missing units.

The same principle applies when a non-condominium property has more than one

PIN. Make sure the draft transfer or mortgage includes the PINs and legal descriptions of everything your client expects to obtain. If the property is shown on a plan, this can easily be double-checked when reviewing the plan with your client.

Purchasing real property: What does your client have in mind?

Many clients buy properties with the intention of building on them, or changing the use. For instance, a house with a large back yard may seem ideal for a swimming pool or garage, but sewers or other utility easements make it impossible. Or the zoning may not permit a home-based business or multiple dwelling units.

When clients bring you agreements of purchase and sale, ask what they want to do with the property. Otherwise, they may never tell you, only to find out later that they can't do what they expected – and blame you for not warning them sooner. Once you know their intentions, you can put a condition in the agreement or, if it's already signed, explain their options. They may want you to do a zoning search, or get title insurance with a future use endorsement. Get their instructions in writing. That way, there are no surprises after closing – for them or you.

Lisa Weinstein is director, national underwriting policy for the TitlePLUS program.

Lawyers' Guide to Buying, Selling, Merging and Closing a Law Practice

Edited by: Sarina A. Butler & Richard G. Paszkiet. Published 2008. 203 pages

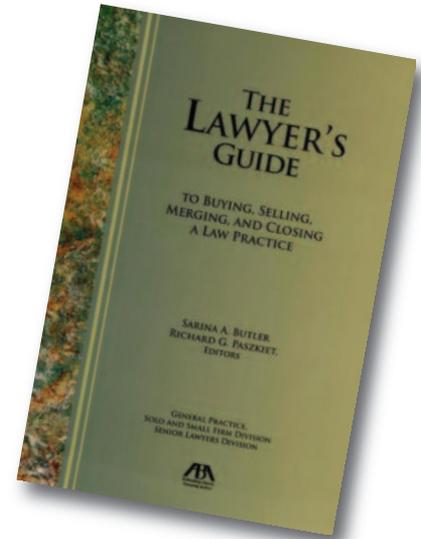
Ontario lawyers considering closing or selling their practices will be familiar with The Law Society of Upper Canada's *Guide to Closing Your Practice*. It thoroughly examines the many tasks required to wind up a practice and the obligations of lawyers to ensure that their (soon to be former) clients' interests are safeguarded in the process. The checklists and precedents cover all aspects of the process, such as financial matters, disposing of files and contacting clients.

For those about to engage in closing or selling their practice (or maybe just starting to consider the idea) the practicePRO Lending Library's *The Lawyer's Guide to Buying, Selling, Merging, and Closing a Law Practice* works as a great supplement to the Law Society's Guide. It is edited by Sarina A. Butler and Richard G. Paszkiet of the American Bar Association (ABA) and features a number of authors noted for their expertise in law practice management.

Although the book is written for an American audience and deals with ABA rules and state laws for closing and selling practices, there is still much in here for Ontario lawyers to consider. How do issues of client confidentiality and

potential conflicts of interest affect selling a practice? If a practice is being closed due to death or disability of a lawyer, have steps been taken in advance to ensure that clients will continue to have adequate representation? Can old files be destroyed? And what steps should be taken to help staff deal with the transition to either a new owner or being laid off? The authors repeatedly make the point that closing and selling a law practice involves much more work and potential complications than, for instance, closing a dental or accounting practice. If all of this is being left to your executor or another lawyer, are they adequately prepared?

Of particular interest is the discussion of the valuation of a law practice. What is the value of your practice? On the one hand, it's the real property, the computer equipment, the cash and the furniture. And then there is the "goodwill" built up over the years: the relationships with your clients, banks, accountants, and staff. Lawyers closing their practices need only think about the former, but those hoping to sell their practice will find this section (which includes a valuation checklist) quite useful.



In addition to the valuation checklist, the appendices contain other checklists and sample letters that would make good supplements to *The Law Society Guide*, such as a law office list of contacts, an expense checklist, a sample implied consent-to-destruction letter, and a sample "office closing" letter.

Both the *Law Society Guide* and this book drive home one very important point: closing a practice is a huge undertaking and should be planned for well in advance. If you've found yourself starting to think about life after practising, now is the time to give these two publications a read. You'll thank yourself (or your executors will!) later.

Tim Lemieux is practicePRO co-ordinator at LAWPRO.

The practicePRO Lending Library has more than 100 books on a wide variety of law practice management topics. Ontario lawyers can borrow books in person or via e-mail. A full catalogue of books is available online (www.practicepro.ca/lendinglibrary). Books can be borrowed for three weeks. LAWPRO ships loaned books to you at our expense, and you return books to us at your expense.

We have books on these topics

- Billing & Financial Management
- Law firm management & administration
- Marketing & client relations
- Law office technology
- Career issues
- Wellness & balance issues
- Solo and small firm issues

Is the defence of absolute privilege available for communications in advance of litigation?

A lawyer acting in a judicial proceeding on a party's behalf enjoys absolute immunity from defamation claims.

For example, representations made by counsel to the court, and evidence filed with the court, are absolutely privileged.¹ Pleadings are absolutely privileged, at least insofar as they are used in the ordinary course of the administration of justice.² Facts prepared by counsel and filed with the court are also absolutely privileged.³

A New York attorney who provided Ontario solicitors with a copy of a RICO complaint pending against the plaintiffs in New York was also entitled to avail himself of the protection of absolute privilege. The Ontario solicitors had requested a copy of the complaint for use in the Ontario litigation.⁴

The law in Ontario is less clear about the circumstances in which absolute privilege is available to parties and their lawyers with respect to communications made in advance of the commencement of litigation. Absolute privilege was held to attach to a draft statement of claim forwarded to a party: *Dingwall v. Lax*.⁵ The court held that this pre-litigation communication was so "intimately connected to a judicial proceeding the institution of which was being seriously considered" that it was an acceptable extension of absolute privilege.

However, in *Moseley-Williams v. Hansler Industries Ltd.*,⁶ Cullity J. suggested that a party did not enjoy absolute immunity when it instructed counsel to forward a letter to the plaintiff and others warning them that they were engaged in improper sales activity and advising them that if they did not immediately desist in this conduct

the defendant would pursue such legal rights as it deemed appropriate, including the recovery of damages and injunctive relief. The court concluded that this was no more "than a contemplation of the possibility of litigation without any definite, or conditional decision to embark on this course."

Professor Raymond E. Brown, one of Canada's foremost authorities on defamation law, disagrees with this approach. In his view, the warning given in *Moseley-Williams* was the kind of warning that always precedes litigation, and should be treated as contemplating litigation even if the decision to litigate is not included in the warning. To require express language to that effect is to favour form over substance. While counsel was not joined as a defendant in this action, the position of the client and counsel is the same.

In Professor Brown's opinion, whatever abuses there may be in insulating the various participants from an action for defamation for statements made in advance of the litigation can be minimized by insuring the good faith and seriousness of counsel and parties in commencing a lawsuit, the relevance of the communication to the prospective litigation, and the fact that only the technicality of filing the statement of claim separates the absolute as against the qualified immunity afforded counsel, client and prospective witnesses.⁷

From a defendant's perspective, the protection of absolute privilege is greatly preferable to that of qualified privilege. Where a defendant solicitor can show that his or her communication was made on an occasion of absolute privilege, the

plaintiff's action will be summarily dismissed. A defence of qualified privilege requires a factual inquiry into the presence or absence of malice.

*1522491 Ontario Inc. v. Stewart, Esten Professional Corporation*⁸ illustrates this point.

The Divisional Court allowed Stewart, Esten's appeal from the decision of Justice Pitt, who refused to strike out the plaintiff's defamation action against the firm. It argued that the communication forming the basis for the defamation claim was absolutely privileged. The Divisional Court agreed. Where a communication is made on an occasion of absolute privilege, the alleged impropriety of the solicitor's motives are irrelevant and cannot be the subject of inquiry.

The facts of the case were that two real estate developers were engaged in a dispute about a parcel of land. Stewart, Esten acted for one of them. The plaintiff in the action was the other developer.

The alleged defamatory communications were contained in a letter and a draft statement of claim attached to it. The letter was addressed to a town planner, who later that day swore an affidavit that Stewart, Esten used to obtain a certificate of pending litigation against the disputed land. The statement of claim was issued the following day.

Justice Pitt refused to strike out the statement of claim against Stewart, Esten pursuant to Rule 21. Pitt J. held that the closeness in time of the communication with the issuance of the statement of claim and the identity of the person as an important witness who that day swore an



affidavit used in connection with the action were not, by themselves, dispositive of the issue of absolute privilege. He wrote that a communication made prior to the issuance of the statement of claim that contained gratuitously defamatory material that was clearly irrelevant to the issues in the lawsuit might not attract protection grounded on absolute privilege. Nor is absolute protection afforded to a communication, the objective of which was to induce or facilitate perjured or merely factually false testimony.

Justice Ferrier, who wrote the judgment of the Divisional Court, held that Justice Pitt erred in law in focussing on the nature of Stewart, Esten's conduct, rather than the occasion on which the conduct occurred. If the statements were made on an occasion of absolute privilege, the solicitor's motives are irrelevant and cannot be the subject of inquiry. Several circumstances or factors may support a finding that the occasion upon which the communication was made was one of absolute privilege.

They are:

- (i) Steps have been taken to prepare for litigation when the communication was delivered: *Moseley-Williams v. Hansler Industries Ltd.*, [2004] O.J. No. 5253, para. 44;
- (ii) The decision to litigate has already been made: *Moseley-Williams*, para 44;
- (iii) The defendant commenced legal action shortly after the publication of the alleged libelous statements: *Moseley-Williams*, para. 44; *G.W.E. Consulting Group v. Schwartz* (1990) 66 D.L.R. (4th) 348 (Ont.H.C.) at para 35;
- (iv) The defamatory statements were made for the purpose of obtaining evidence: *Moseley-Williams*, supra, at paras 43-44; *G.W.E.*, supra, at para 33;
- (v) The communications were made in the course of a solicitor's investigation of a client's case with a view to litigation, and were directed to a limited audience from whom the solicitor anticipates obtaining relevant or potentially relevant information: *Moseley-Williams*,

supra, at para. 48; *G.W.E. supra*, at para 33; *Dingwall, supra*, at para 26; *Fuss v. Fidelity Electronics of Canada*, [1996] O.J. No. 161 (Ont.Ct.Gen.Div.), per *MacKinnon J.* at para 7; *Lubarevich v. Nurgitz*, [1996] O.J. No. 1457 (Ont.Ct.Gen.Div.), per G.D. Lane J. at para 22.

Justice Ferrier found that all five factors applied in this case. The occasion was therefore one of absolute privilege. The alleged impropriety of the solicitors' motives was therefore irrelevant and could not be the subject of judicial inquiry.

While the Stewart, Esten case does not resolve the difference of opinion between Justice Cullity and Professor Brown, it does illustrate the protection absolute privilege affords to litigation counsel, where counsel can bring themselves within its ambit.

Debra Rolph is director of research at LAWPRO.

¹ *Admassu v. Macri*, 2010 ONCA 99

² *Dooley v. C.N. Weber Ltd.* (1994), 19 O.R. (3d) 779 (Ont. Ct. Gen. Div.) See *Hill v. Church of Scientology*, (1994) 18 O.R. (3d) 385 (C.A.), wherein the Court of Appeal refused to extend privilege to a solicitor who read out to reporters motions material which had not yet been filed with the court.

³ *Web Offset Publications v. Vickery*, (1999) 40 O.R. (3d) 527 (Ont. Div. Ct.)

⁴ *Web Offset Publications v. Vickery* (1999) 43 O.R. (3d) 802 (C.A.)

⁵ (1988) 63 O.R. (2d) 336.

⁶ [2004] O.J. No. 5253, 2004 Carswell Ont. 5827 (S.C.J.), affirmed on other grounds (2005), 2005 CarswellOnt.991, at para. 46

⁷ *The Law of Defamation in Canada – Second Edition* – looseleaf at 12-152.

⁸ 2010 ONSC 727 (CanLII), reversing the decision of Pitt, J., 2008 CanLII 63198 (On.S.C.). Leave to Appeal to the Divisional Court was granted by Karakatsanis J., 2009 CanLII 15656 (ON S.C. Div.Ct.),

Trends in lawyer wellness in Ontario in 2009

The Ontario Lawyers Assistance Program



Ontario Lawyers' Assistance Program

The Ontario Lawyers Assistance Program (OLAP) is a confidential, 24-hour peer support and counselling program that assists lawyers, law students and their immediate families with issues of stress, burnout, addictions and mental wellness concerns.

Last year, 1,400 callers accessed OLAP. The program was used by approximately 55 per cent women and 45 per cent men. At the end of 2009, there were 994 ongoing open cases, with 314 cases referred to and active in counselling. The areas of assistance are work, addiction, relationship, family and situational issues. This includes alcohol and drug addiction, work conflict and desire to change careers, the need for family or marriage counselling, eldercare and childcare issues, and health problems. Any issue is dealt with by referral to counselling and/or with peer support. About 60 per cent of callers come from the sole practitioner and small firm category. This is understandable, as that constituency does not have employee assistance services available, as they are too expensive to fund privately. OLAP is the employee assistance program for the profession even if a firm has a private plan. OLAP is available to all 34,000 lawyers in Ontario along with law students and their immediate families.

Most calls come from the Greater Toronto Area as, proportionately, most lawyers practise in the GTA. However, the rest of the province calls OLAP consistent with the population in those regions. It is important to note to the profession that the OLAP peer support and counselling network extends across the province. While OLAP may not have a peer support lawyer in a specific area (volunteers across the province are always welcome), the counselling service provides counsellors to deal with issues in the community of the caller. If the city or town is too small for a caller to feel comfortable seeing someone in that community, or if a caller may feel

more comfortable going to another accessible place to see a counsellor, OLAP will arrange that.

The program is confidential and this concept and promise is enshrined in the Commentary to Rule 6.01(3) of the *Rules of Professional Conduct*. This is the cornerstone of being able to offer assistance to the profession without the fear that a call may trigger a report to the Law Society or LAWPRO.

Peer support has been mentioned earlier. OLAP peers are lawyers who have faced personal challenges and offer their experience along with a non-judgmental ear to provide ongoing support on a face-to-face or telephone basis. Peer support volunteers give you the chance to talk to another lawyer who knows the lawyer culture, the stresses of law and the personal impact of trying to live a balanced life.

Similarly, OLAP has three case managers. All three are lawyers who understand lawyers because they have all practised law and know how the legal profession thinks and works. Our clinical staff consists of two social workers who have achieved the education level of masters of social work. The volunteer executive director is a retired lawyer who writes and speaks about his experiences and efforts to live a balanced life.

The Legal Profession Assistance Conference reports that lawyers have three times higher rates of alcohol and addiction and mental wellness issues than the general population. It is believed that lawyers have a suicide rate of two to three times higher than the population rate. Among law students, studies have shown that, on entry to law school, the general population rate for depression is the same for law students at about 10 per cent. After year one, it climbs to 20 per cent and after year two, it soars to 40 per cent! This is why OLAP is so vital to our law schools.

Crisis intervention, problem-solving and early loss prevention

OLAP is being proactive in providing assistance to the profession. Our hands-on support includes the following face-to-face meetings:

Women's Work and Wellness Group luncheon meetings

– Quarterly luncheons conducted in conjunction with the Women's Law Association of Ontario focus on issues relevant to women. Some past topics are "Shining the Light on Mental Illness," "Financial Fitness" and "Building Your Best Law Career." For more details, to get on the mailing list and to register, please contact **Jill Keaney** at 1-877-576-6227.

The Lawyers' Group – On the first and third Wednesday of every month from 5:30 p.m. to 7:00 p.m., lawyers who want and need contact with and support of other lawyers meet at the Ontario Bar Association offices at 20 Toronto Street, Toronto.

12-Step Group: Lawyers Helping Lawyers

– This in no way replaces AA meetings, but does offer an additional "safe place" and the fellowship of other lawyers in recovery for alcohol and drugs. Meetings take place on Monday evenings at 7:30 p.m. at Bellwoods Health Services, 1020 McNicoll Avenue, Toronto.

Short-term counselling services are provided **free of charge** by a nationally-certified employee assistance company. The theory is that brief counselling of four to six sessions can help an individual identify and work on a problem. (OLAP provides long-term counselling after allotted sessions have been accessed where possible.) OLAP is a 24-hour accessible program in that after-hours calls go to the counselling centre for intake by qualified counsellors when OLAP case managers cannot directly take a call.

Counselling services are available for the following issues:

Stress, emotional problems (including anger, anxiety and depression), workplace issues (including conflict and job loss), career counselling, physical and sexual abuse, addictions (drugs, alcohol, gambling, smoking), family problems (including parenting, child and adolescent), marital problems, relationship issues, bereavement and loss, harassment, aging parent concerns, single parenting, trauma, grief and crisis, medical/health issues, sleep disorders, fatigue, chronic pain.

The Health and Wellness Program looks at nutrition support services for weight loss/gain, eating routines and lifestyle changes along with smoking cessation and an online stress management tool measuring job disengagement, personal and social difficulties, work-life conflict, job overload, physical and intellectual stress.

In **Nutrition Matters**, a professional registered dietician will assess your eating

habits, identify dietary concerns and deal with issues such as lowering cholesterol levels, reducing blood pressure, regulating diabetes, preventing heart disease and preventing osteoporosis.

HomeCare Access links you to a network of qualified, on-call healthcare and home care professionals who will deal with post-operative, postpartum or palliative care options, care for loved ones affected by stroke, Alzheimer's disease, and rehabilitation services.

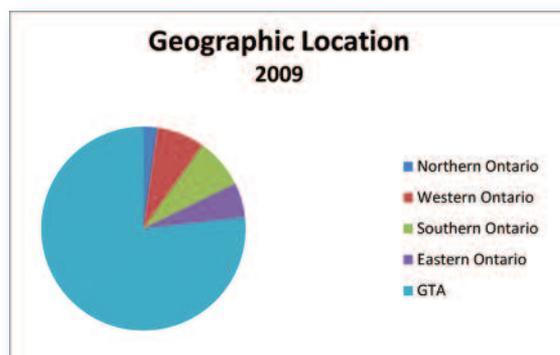
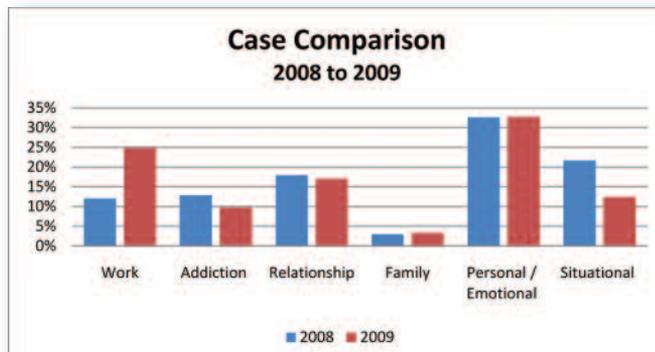
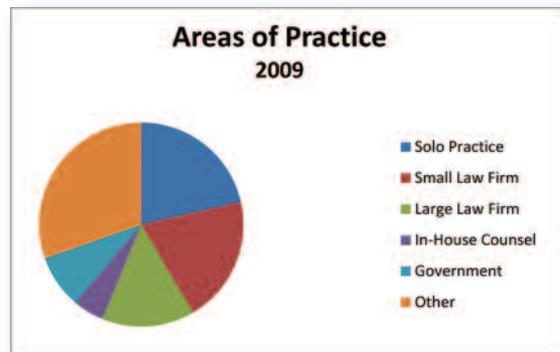
Family Support Services deals with finding a daycare, how to deal with caregiving emergencies and looking after older relatives. **Family Matters' Dependant Care Consultants** are specialists in assessing, identifying and locating caregiving services that include parenting classes, daycare centres and after-school programs, adoption, rehabilitation and home support programs and palliative care.

Legal Support Services gives you a referral to qualified lawyers for legal advice

on a variety of issues such as family law, criminal law and bankruptcy.

Financial Support Services helps you address personal and family-related concerns that are associated with financial issues. These counsellors can put you in touch with skilled financial advisors to help you take action and address specific financial issues such as credit/debt management, bankruptcy and early retirement.

The OLAP board is made up of representatives of the legal community in Ontario – lawyers in recovery, the Law Society of Upper Canada, LAWPRO, the Ontario Bar Association, the Women's Law Association of Ontario, the County and District Presidents' Association, the Criminal Lawyers' Association, the Advocates' Society and the Judicial Counselling Program. Only statistical information is shared, and the identity of all callers is private.



OLAP contacts

1-877-576-6227 or in Toronto: 905-238-1740

Program Manager: **Leota Embleton**, MSW, IACAD leota@olap.ca
 Clinician: **Judy Grout**, MSW judy@olap.ca
 Case Managers: **Doron Gold**, BA, LLB doron@olap.ca
Terri Wilkinson, BA, LLB, RN terri@olap.ca
Jill Fenaughty, BA, MA, LLB jill@olap.ca
 Office Manager: **Jill Keaney** jill.keaney@olap.ca

Volunteer Executive Director:
John Starzynski, LLB 1-877-584-6227 john@olap.ca

www.olap.ca



Key dates

April 30: Real estate and civil litigation transaction levies for the quarter that ended on March 31 were due on April 30, 2010.

April 30: Exemption forms from lawyers who are not practising civil litigation or real estate and who want to exempt themselves from quarterly filings were also due on April 30.

July 31: Real estate and civil litigation transaction levies and forms for the quarter that ends on June 30 are due on July 31, 2010.

Sept. 15: File your CLE Declaration by this date to qualify for the \$50 premium discount for each LAWPRO-approved CLE program (to a maximum of \$100) completed by this date.

Oct. 31: Real estate and civil litigation transaction levies and forms are due for the quarter that ends September 30, 2010.

AvoidAClaim blog: Sign up to find out first!

practicePRO has ventured into the blogosphere.

In the AvoidAClaim blog (www.avoidclaim.com), practicePRO Director Dan Pinnington provides risk management, claims prevention and law practice management information to help lawyers avoid legal malpractice claims and build thriving law practices.

Keep yourself and your staff up to-date with the latest information and tips on how to reduce the chances that you'll have to report a claim: Visit the blog and subscribe to updates by RSS feed or email.

The AvoidAClaim blog was recognized with a 2009 Canadian Law Blog Award

("CLawBie") in the practice management category.

Annual report now on LAWPRO website

LAWPRO's 2009 Annual Report is available on the LAWPRO website (http://lawpro.ca/annual_reports).

The report features detailed management discussion and analysis and expanded financial statements that include additional disclosures consistent with recent amendments to the International Financial Reporting Standards (IFRS).

LAWPRO awarded 10th consecutive A (Excellent) financial strength rating

A leading rating agency has awarded LAWPRO its 10th consecutive financial strength rating of A (Excellent) and issuer credit rating of "a."

LAWPRO's favourable operating performance, adequate capitalization, consistent net investment income and access to additional capital sources held by the Law Society in its Errors and Omissions Fund are among the factors contributing to this favourable rating.

The A.M. Best Company also revised its "outlook" for LAWPRO to negative from stable, pointing to unfavourable claims development and deterioration in the company's combined ratio.

According to LAWPRO, two developments significantly affected these results in 2009: a one-time revaluation of existing reserves by \$10.7 million to reflect the anticipated impact of the implementation of a harmonized sales tax in Ontario, effective

July 1, 2010; and a significant decrease in the discount rate, resulting in a \$7 million increase in claims liabilities.

Also contributing to the company's net loss is a decision to transfer management of its surplus portfolio to a new investment manager mid-year; that move required that it realize a loss in its investment portfolio of about \$9 million. By year-end, that portfolio posted an increase in unrealized gains of \$13.7 million, which contributed to comprehensive income of \$7.2 million for 2009.

Solo and Small Firm Conference and Expo materials online

Conference materials and an archived webcast of the May 14 Solo and Small Firm Conference are available from the Law Society's Continuing Legal Education department (<http://ecom.lsuc.on.ca/cle/>).

The 5th Annual Conference and Expo, a joint presentation of The Law Society of Upper Canada and the Ontario Bar Association, featured top presenters on technology and law practice management issues.

Topics included disaster and succession planning, human resources, running a virtual law office, social media and networking, and running a paperless office.

practicePRO Director Daniel Pinnington and Donna Neff of Neff Law Office Professional Corporation, the conference co-chairs, took part in a "60 tips in 60 minutes" panel that shared practical tips on how to do things better, faster, and cheaper – covering topics such as software and hardware, Internet tips and tricks, and marketing.

Pinnington also gave presentations on time and email management, and on Word, Excel and PowerPoint tips and tricks.

continued on page 37

Insurance premiums and HST

The pending July 1 implementation of a harmonized sales tax (HST) in Ontario has lawyers wondering what is and is not subject to HST.

Base insurance premium

Insurance premiums themselves are not subject to federal sales tax, as they are considered an exempt supply under the relevant legislation. Therefore LawPRO does not currently charge GST on its insurance premiums, and come July 1, 2010, **will not be charging HST on insurance premiums**. This means that any existing payment arrangements lawyers may have made for payment of premiums by instalments will not be affected by the HST.

However, lawyers do pay the eight per cent provincial sales tax (PST) on insurance premiums; as the Ontario government has not indicated that it intends to repeal this section of its tax law, we expect that insurance premiums will continue to be subject to PST.

Transaction levies

Similarly, the implementation of the HST will not affect the real estate or civil litigation levies when they are paid to LawPRO, as these are insurance premiums that DO NOT attract sales tax.

However, when the same levies are disbursed to clients, they do attract sales tax, as per federal regulation. So effective July 1, 2010, the \$65 real estate transaction levy, which currently is subject to only five per cent federal GST will be subject to the full 13 per cent (\$8.45) of HST which, like the GST, lawyers will remit directly to the Canada Revenue Agency. Similarly, the \$50 civil litigation transaction levy, when disbursed to the client, will be subject to the 13 per cent HST (\$6.50).

More information

LawPRO's detailed FAQ on the HST will be available on our website by the end of May. Watch for our email bulletin, *Insurance News* for further details.

As well, the Law Society will be putting on a seminar explaining the implications of the HST for lawyers – *HST – The Ontario Harmonized Sales Tax and Your Practice* on Wednesday June 23, 2010, from 12 noon to 1:30 p.m. Watch the [Law Society website](#) (www.lsuc.on.ca) for registration details.



Events calendar

Upcoming events

June 9

The New Guide to File Retention and File Destruction

The Law Society of Upper Canada
Dan Pinnington presenting
Teleseminar

June 18–19

Lawpact: Strategic Planning for Law Practice Management

Dan Pinnington presenting
Hyatt Regency Hotel, Toronto

August 15–17

Canadian Bar Association's Canadian Legal Conference & Expo

Dan Pinnington co-chair and presenting
TitlePLUS sponsoring
Sheraton on the Falls, Niagara Falls

September 16

Oakville, Milton and District Real Estate Board's Halton Symposium and Trade Show

TitlePLUS exhibiting
Oakville Convention Centre

September 30 – October 1

The Thunder Bay Law Association Fall Conference

TitlePLUS sponsoring
Victoria Inn, Thunder Bay

Recent events

May 27–28

Institute of Law Clerks of Ontario Annual Conference
TitlePLUS exhibited
Fairmont Le Chateau Frontenac, Quebec City

May 28

The Advocates' Society Spring Symposium
practicePRO sponsored & exhibited
The Carlu, College Park, Toronto

May 14

LSUC/OBA 5th Annual Solo and Small Firms Conference and Expo
Dan Pinnington co-chaired and presented
Osgoode Hall, Toronto

May 12

Ontario Bar Association's Commercial Leasing 2010: The "Must Know" Update
TitlePLUS sponsored
OBA Conference Centre, Toronto

May 10

CBA Nova Scotia "Real Estate For Legal Assistants" Conference
TitlePLUS exhibited
Casino Nova Scotia, Halifax

For more information on practicePRO events, contact practicePRO at 416-598-5863 or 1-800-410-1013 or e-mail dan.pinnington@lawpro.ca.

For more information on TitlePLUS events, contact Marcia Brokenshire at 416-598-5882 or e-mail marcia.brokenshire@lawpro.ca.



Risk management
www.practicepro.ca



Additional professional
liability insurance



Title insurance
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