Failure to know or apply the law



Only 6 per cent of malpractice errors

Although knowing black-letter law is important, in most areas of practice a law-related mistake is not your greatest risk of a malpractice claim. A review of 20 years of LawPRO claims data, covering all practice areas, shows that only six per cent of claims involve a failure to know or apply the law. This surprises most lawyers, who expect this type of error to be among the most common that lawyers make. In fact, it is only the sixth most common error.

There are always the exceptions. For example, in the area of family law, law-related mistakes are actually the most common error, representing about twenty percent of claims. This is likely attributable to the very complex nature of family law legislation, and to the complex issues that are often involved in a family matter.

But for most lawyers, the risk of a claim lies elsewhere. What are your greatest risks? The five most common malpractice errors all involve client communication and basic practice management issues.

The most common error is failure to follow client's instructions, which accounts for almost 23 per cent of errors. On these matters it is often unclear as to what instructions were given, or not given, by a client, and what steps were, or were not, taken by the lawyer. The client's recollection of what was said or done is often different from that of the lawyer; the lawyer's file often contains limited, or no documentation confirming instructions and what steps were taken. For more on this subject, see LawPRO Magazine Volume 1 Issue 3 at www.lawpro.ca/lawPRO/2002lawPRO Mag.asp

The second biggest cause of claims is procrastination. It accounts for just over 15 per cent of the errors that occurred. The predominance of this cause is not a surprise to most lawyers.

The next three most common types of errors are conflict of interest, failure to calendar, and poor communication with client, respectively at approximately nine, eight and seven per cent.

The good news is that the five most common malpractice claims are all easily preventable. Client communication is the key. Be proactive in your efforts to communicate with your clients. At the time of retainer make sure they understand the terms of the retainer, and the process, procedure and timing for the matter you are to handle for them. Make sure you keep the client informed at all stages as the matter proceeds. In your file, carefully document client communications and instructions.

Basic practice management is also essential. Make sure you keep an up-to-date calendar, manage your time and priorities, and systematically check for conflicts. Case management software can help you with these tasks.

LawPRO provides a number of tools and resources to help you address these very needs:

The Online COACHING CENTRE:
 The OCC's modules in the powerful communications and practice management workshops (www.practicepro.ca) assist you in developing your client communications and practice management skills. Building rapport with the people you deal with, in particular with clients, is key to developing a strong,

open and trusting relationship. The OCC's Module #9 (see page 30) from the powerful communications workshop: Speaking effectively by...building rapport provides some specific instruction on this point.

- Managing the lawyer/client relationship booklet: To help you better understand and manage the dynamics of your interactions with clients, and how you can reduce your risk of a malpractice claim, practicePRO created the managing the lawyer/client relationship booklet. It is one in a series of booklets to help lawyers manage the risks associated with law practice. Copies are available at www.practice-pro.ca/practice/lawyerclient.asp or you can call Customer Service at 416-598-5899 or 1-800-410-1013 or e-mail service@lawpro.ca.
- · CLE Premium Credit Program: LAWPRO believes it is critical for its members to incorporate risk management strategies into their practices, and that the use of risk management tools and strategies will help reduce claims. To encourage participation in CLE programs that include risk management content, LawPRO offers a \$50 Premium Credit (to a maximum of \$100) for each CLE qualifying program you attend. The credit will be applied to your 2004 insurance premium. LawPRO is working closely with the main CLE providers to create programs that qualify for the LawPRO Premium Credit. Look for programs that have the Approved for CLE Credit logo. A list of approved programs is available at www.law pro.ca/clecredit/CLE list.asp

