

LAWPRO

magazine

2016 | Student Issue 4

special
student edition

Moving into practice

Common
practice pitfalls

What firms are
looking for?

Lessons I learned
while articling



What is LAWPRO®

And why should I care

Lawyers' Professional Indemnity Company (LAWPRO), is the Ontario insurance company chosen by the Law Society of Upper Canada to provide the professional indemnity insurance that the Law Society has deemed mandatory for Ontario lawyers in private practice.

The insurance coverage provided by LAWPRO supports the interests of consumers of legal services who may have a legitimate malpractice claim against a lawyer and are hoping there will be funds available to provide a settlement or to satisfy a judgment. It also helps to protect lawyers from the potentially catastrophic financial consequences of professional malpractice claims.

In the pages of this magazine, you will learn more not only about professional indemnity insurance and about LAWPRO, but also about the practicePRO program, LAWPRO's claims prevention program. The practicePRO team creates and maintains a wide range of practice management resources for lawyers at all stages of practice. For details see LAWPRO's best claims prevention tools at page 11 inside.

Besides professional indemnity insurance, LAWPRO also offers title insurance via its TitlePLUS® program. Title insurance is a product designed to protect property purchasers, owners, and mortgage lenders against losses associated with title problems.



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LAWPRO insurance
TitlePLUS Home Buying Guide – Canada



LAWPRO
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Isn't LAWPRO just a branch of the Law Society?

While LAWPRO is owned by the Law Society of Upper Canada, it is an independently operated company governed by the same industry regulation that applies to other insurance companies. To meet its claims obligations, LAWPRO funds itself by matching premiums to risks and by making investments. While the insurance program renewal is considered each year by the Law Society, the company is governed by its own board of directors and executive, and is required to operate according to established insurance principles.

Will I need to pay for professional indemnity insurance if I work in government or as in-house counsel?

Certain categories of lawyers are exempt from the requirement to carry mandatory insurance coverage. In general, government lawyers, in-house lawyers, legal academics who don't practise law and lawyers who have retired or withdrawn from practice (or who never practised) are exempt, unless they provide professional legal services to parties other than their employers. In addition, there is an exemption available for lawyers who do some types of *pro bono* work. Once you have been called to the bar, you will receive more information about these exemptions.

How can I have a say about the mandatory insurance program?

The LAWPRO mandatory insurance program for each year is reviewed at the fall convocation of the Law Society. Benchers are given an opportunity to learn about the program, and ultimately to accept the offer for the following year. LAWPRO's Report to Convocation is posted at lsuc.on.ca at that time. Of course, we are interested in receiving your comments, questions and concerns, at any time of the year.

What can I do, once I'm in practice, to avoid malpractice claims?

LAWPRO has many years of experience receiving and defending claims. Our claims counsel and analysts have developed a detailed understanding of the factors and circumstances that tend to result in claims. For example, did you know that new lawyers generally have a LOWER rate of claims than do lawyers with eight or ten years' service? Or that problems with lawyer-client communications are the single largest source of claims? Visit our websites (lawpro.ca and practicepro.ca) for information on the most common pitfalls in each practice area and tips about how to prevent claims in your practice.

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Student Edition

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LAWPRO
magazine



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LAWPRO Magazine and LAWPRO Magazine's Student Edition are published by Lawyers' Professional Indemnity Company (LAWPRO) to update practitioners about LAWPRO's activities and insurance programs, and to provide practical advice on ways lawyers can minimize their exposure to malpractice claims. The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.

The comments in this publication are intended as a general description of the insurance and services available to qualified customers through LAWPRO. Your policy is the contract that specifically and fully describes your coverage and nothing stated here revises or amends the policy.

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Job market scoop:

What do law firms look for?

Law students – like all students – are prone to anxiety about their career prospects. High-profile news about the employment challenges faced by new grads and changes in the articling requirements for Ontario have combined to create a climate of worry.

But worrying about trends and generalizations can obscure the fact that the employment relationship is, in essence, an interpersonal relationship. Each successful employer/employee match happens because an individual firm takes a chance on an individual lawyer for reasons that are not only unique, but also personal, and sometimes instinctive.

We spoke with law firms across the province about their recruitment strategies, priorities, and philosophies. What emerged from that discussion was the realization that there is considerable variety in the factors that inspire a firm to make an offer to a particular candidate.

Considering the limitless variety of law school graduates, we figure that's good news. Read the profiles that follow to see what some Ontario firms are looking for. Chances are, someone out there is looking for YOU.



Stephanie Willson

Chief Professional Resources Officer –
McCarthy Tétrault LLP
Toronto

On recruitment

Whether we're hiring a law student – which is the primary source of new lawyers for firms such as ours – or an associate or a new partner, we look at what we call “buckets” of skills that help us determine if that individual will

be a successful lawyer with McCarthy Tétrault. Depending on the level we're recruiting for, what we look for in each of those buckets will differ.

For example, with law students, who often have less work and life experience than candidates at other levels, our focus is on those qualities that you cannot train for. So we have a bucket of skills that fall into the “legal acumen” category: evidence of sound judgment, strong analytical skills, a demonstrated genuine interest in the areas in which our firm practises.

Similarly, we're keenly aware that we are in the business of serving clients, so we have another bucket of skills around “service orientation” – such as demonstrated good interpersonal skills, the ability to work as part of a team, good communication skills and the like.

These skills I have mentioned for the most part are hard to teach, so we need to focus on them in evaluating candidates before we hire them!

On retention

A large firm such as ours needs a focused, deliberate talent management strategy that responds to the fact that we have different people with very different needs. We've built a framework for helping us retain top talent that we've trademarked: McCarthy Tétrault Advance. It's a platform for talent development that has eight components such as coaching, work and opportunity allocation, compensation and recognition, and capability development. At any time, we have various initiatives underway nationally in each area.





Sean Dewart

Partner – Dewart Gleason LLP
Toronto

On recruitment

It is hard to put my finger on the single most important attribute we look for when we hire. There are a handful of “must haves,” such as a good legal mind, a strong work ethic and a personality that facilitates effective communications with clients, opposing counsel, witnesses and judges. To be a good litigation lawyer, you must be able to read people, and make it easy for them to read you. You must also be willing to learn, which means being highly inquisitive, if not perversely curious. The most effective advocates make the fewest assumptions and ask the most questions. There is nothing more irritating than a know-it-all who jumps to conclusions and sees every file as a chance to show off his or her abilities.

If I had to pick out the most important criteria we look for when we hire, they would be integrity and fearlessness. The most important thing our clients buy from us is our reputation. If opposing counsel and judges can't be certain that they can trust us, we are useless to our clients. We need to be certain that any lawyer we hire will not compromise the firm's reputation in this regard. Fearlessness is the other side of the same coin and no less important.

On retention

Retaining good lawyers has not proven to be as much of a challenge as finding them in the first place. The key is to make their practices stimulating. We try to find a balance between training, and handing off as much responsibility as possible. It's far more interesting for lawyers to work on a file, or some part of a file, where they have primary responsibility and feel that they are answerable to the client and the court.



Sean Dewart & Tim Gleason

marks in law school doesn't mean you have what it takes to be a great lawyer. Client satisfaction is the ultimate litmus test.

Passion because the legal profession is now more than ever a very stressful and unforgiving calling that has lost many of the professional perks that would otherwise temper the bad days. The reality is if you don't love what you do the drudgery will eventually bury you and you will end up resenting the profession and us.

Integrity because trust and civility are more important today than ever in law practice. We try to take a team approach on many matters. Trusting those who take carriage of a file when you are away is essential. We need to know that each of us is representing the firm with complete integrity, honesty, and civility. We are very fortunate in the north that the local bar has always and continues to share this view.

On retention

For a firm such as ours – a smaller, more local firm that is located outside a large major centre – though you sometimes fall upon a star looking to relocate, the reality is that we have to develop top talent internally. So we try to find bright young lawyers who are a good fit and work with them. We take our juniors and incorporate them into files right from the start: they share in the responsibilities, but also in the learning, the rewards and the credit. That willingness to share and work as a team has proven to be very effective and has developed their talents early and kept them engaged. We see students and new associates as the freshest legal minds we have... we are excited to work with and learn from them and draw on their energy and creativity.



Claude Lacroix

Partner – Lacroix Forest LLP
Sudbury

On recruitment

Brains. Passion. Integrity.
It's not one but the complete package.



Claude Lacroix & Andree Maryse Lacroix

Brains because the practice of law is not what it used to be. Clients are sophisticated and expect the same high standard no matter what the task. There is no room for cutting corners or sub-standard work product. That means you need to be able to understand what's expected of you – and deliver. Just because you had the best



Glen McCann

Partner – Sullivan Mahoney LLP
St. Catharines

On recruitment

As a firm located outside a major centre, we find there is no better indicator as to whether a lawyer will prove to be a good fit for the long term than his or her ties to the community. Toronto and Ottawa have obvious attractions to a variety of people from across the province. While we believe that there are many good lifestyle reasons for someone to want to practise in Niagara, we find that people who come and stay tend to be those who have a history here. Obviously there are exceptions but that is our general observation.



On retention

Make them a part of the team. Involve them in interesting work and make sure they understand their value (to the firm). Help them to take the long view. We sometimes forget that life as a young associate trying to build a practice is challenging; they need to understand the rewards that are there in the long term. It is always a little dispiriting to see someone pursue an option for a quicker buck when you feel they are making a mistake. Make sure that they feel that they belong and that belonging is a good thing. ■

Lessons I learned while articling



In past issues of the student edition of *LAWPRO Magazine*, we've asked our articling students to reflect on what they wished they'd learned in law school. This time around, students Margaux Malkina and Noam Uri offered a slightly different perspective: they talked about some of the new insights that articling has brought them.

Sometimes, there is no answer

When completing a legal research assignment in law school, it's safe to assume that the questions have answers that the professor is hoping you'll find. Noam discovered that the same can't necessarily be said about work assigned to articling students. When completing a research assignment for a *LAWPRO* lawyer, she found herself in the position of having to report that the research query simply hadn't yet been conclusively addressed by the courts.

Learning to know where to end one's research is an important articling lesson, agrees Margaux. She recommends checking in with your articling principal when you feel you've reached a dead end. Knowing when "no answer" is the answer is the kind of skill that comes with experience.

Be open-minded about what interests you

Because getting an articling job or LPP position that matches precisely with your practice area aspirations is nearly impossible, "you need to stay open to discovering new interests, and new areas of law that may appeal to you," says Noam. Articling provides opportunities for exposure to areas of practice that you might not have considered, and to discover new interests and skills that you never knew you had.

Time management is critical

The workload in law school may be heavy, but how you prioritize assignments, for better or for worse, is up to you. "During articling,"

says Margaux, “time management gets more complicated. You may be assigned work by several different lawyers, none of whom are aware of the other demands on your time.” Having the support of an articling principal who sees the whole picture can help, but you will still be expected to work on different projects with different levels of priority at the same time. “It can be tempting,” adds Noam, “to try to work with as many people as possible, but you need to be sure that you don’t go overboard. Reserve enough time to complete all the work you are assigned.”

Another challenge that is different about articling is that the time you spend on tasks is not just your own time – it’s also the clients’, and it may be billed to them. While in law school you might be motivated to invest as much time as you have available to get the best mark you can, articling requires you to begin to think about how to produce high-quality work while keeping value for money in mind.

There’s a first time for everything

“If I could go back and do law school again,” says Margaux, “I’d look for more opportunities to learn practical skills.” Noam agrees. “Your first attempt at tasks – for example, drafting a contract – is bound to

take significant time. Getting that experience in law school instead of during articling can offer an advantage.” That said, there are some skills, like dealing with real clients, which can only be learned in a work environment. Articling involves a wide range of “firsts” when it comes to skill development. Seeking out law school courses that emphasize practical skills can help minimize articling stress.

Learning doesn’t end when school does

Above all, both students agree that articling really drives home the realization that many of the skills a lawyer needs will be learned on the job. “You realize, when you article, that the law changes really fast, and that you can’t always expect to know everything.” There is a reason for the cliché that the most important skill that law school teaches is how to think like a lawyer. Both the substantive law itself and the way the law is practised are in constant evolution. *All* lawyers, not just articling students, should learn to be comfortable with lifelong learning. The prospect of more learning might seem discouraging if you’ve just finished law school, but it’s also reassuring to realize that no matter how confident and competent they might seem, the lawyers you’ll be working with in articling and beyond are learning right along with you. ■



Want to know more? Plug in to helpful resources from LAWPRO

We at LAWPRO hope you enjoy this issue of the student edition of *LAWPRO Magazine*.

Did you know that *LAWPRO Magazine* is published several times a year? Each issue contains practical information that can help you establish a well-managed practice and avoid claims. If you’d like to subscribe (it’s FREE for law students and articling students!) send a request by email (communications@lawpro.ca).

Remember – practicepro.ca/newlawyers is a web page devoted specifically to the concerns of lawyers new to practice.

If you have any questions, comments or suggestions, we’d love to hear from you.

Connect with LAWPRO:    

Resolve to get your law practice off to the best possible start!



Professional liability claims can take the wind out of the sails of anyone's legal career, but can be especially demoralizing for a new lawyer. Your best chance at avoiding claims is to develop great working habits right from the start. Here are some practice 'resolutions' that you may want to consider. Want more? Read the whole resolutions feature on the practicePRO.ca website (find it at practicepro.ca/Resolutions).

Want to avoid the most common claims in your particular area of law? Try these resolutions...

...to avoid litigation claims

- I will talk to my clients more often and not rely on email so much.
- I will make sure to have written confirmation of instructions and advice.
- I will enter target dates a few days early to avoid last minute complications.
- I will maintain current knowledge of administration dismissal rules (see the Rule 48 Transition Toolkit at practicepro.ca/rule48).
- I will create more detailed time dockets.
- I will review my file before closing it to make sure every task is accounted for.

...to avoid corporate-commercial claims

- I will not dabble in areas outside my expertise.
- I will follow the firm's conflict checking system and take action on conflicts.
- I will take the time to catch all the details and do the job right.

...to avoid real estate claims

- I will ensure I meet with my clients in person at least once.
- I will remember that the lender is also my client in most residential transactions.
- I will make sure I take my instructions from the person with the true interest at risk in the transaction.
- I will document my conversations with and instructions from the client.
- I will not give my electronic registration password to my clerks or anyone else.

...to avoid family law claims

- I will make better use of reporting letters and checklists. (Check out LAWPRO's *Domestic Contracts Matter Toolkit* at practicepro.ca/FamilyToolkit).
- I will be aware of the limitations of my legal knowledge.
- I will proactively direct and control client expectations.
- I will learn to say "no" and not take on a potentially difficult client.

...to avoid wills and estates claims

- I will ask probing questions when meeting with a client to prepare a will.
- I will not act for family members or friends.
- I will confirm as best I can the capacity of the testator and watch for undue influence.
- I will take the time to compare the drafted will with my notes.
- I will review the completed will with my client.

...to avoid criminal law claims

- I will take the time to ensure the client understands my recommendations.
- I will discuss with the client the potential consequences of pleading guilty (and document it).
- I will promptly notify LAWPRO of any appeals based on "ineffective assistance of counsel."
- I will meet with my client in my office whenever possible.



I will download the claims fact sheet for my area of practice from practicepro.ca/factsheets

Want to run an efficient and successful (and hopefully claims-free) practice? Try these resolutions...

...for better case management

- I will complete a conflicts check before opening a file.
- I will open a file for every matter I handle (doing “off-books” work not only bypasses firm administrative procedures and checks, it often leads to short-cuts and mistakes).
- I will use a tickler system for limitations periods and time-sensitive tasks.
- I will have signed retainer agreements or engagement letters in all my files.
- I will send a final reporting letter at the end of every retainer.
- I will not handle matters I am uncomfortable with, because dabblers are more likely to face a malpractice claim.

...to avoid doing things that annoy clients the most

- I will promptly return phone calls and reply to emails.
- I won't make clients wait in reception.
- I will deliver on promises of performance.
- I will be prepared for client meetings.
- I will keep my clients informed during long periods of inactivity.
- I will not send large bills without warning or explanation.
- I will apologize if I fall down on the level of service my clients deserve.

...for stress relief, wellness and balance

- I will take a real lunch break.
- I will read a good book.
- I will get help if I need it.
- I will make time for exercise.
- I will go outside to improve my mental health.

...to better set and control client expectations

- I will carefully explain how the matter will proceed.
- I will avoid legal jargon when explaining things to my clients.
- I will give the client a realistic indication of how long the matter will take.
- I will provide the client with a full picture of all costs and disbursements.
- I will clearly explain to the client all possible outcomes or results.
- I will answer all my clients' questions to their satisfaction, and will confirm my advice in writing.
- I will immediately highlight for clients any unexpected changes that arise.

...to better document files

- I will document all important instructions, advice, conversations, and decisions in my files.
- I will be especially careful to document situations where my client wanted me to follow a course of action that I did not recommend or that could have possible negative outcomes.
- I will also be extra careful to document my files for difficult or emotional clients.
- I will get signed directions for major decisions on a matter.
- I will use written offers to settle.
- I will not document nasty or embarrassing views of my client or other parties.
- I will keep draft versions of documents in the file.
- I will keep a copy of the final version in the file.

...to capture more time, avoid fee disputes (and make more money)

- I will get a sufficient retainer at the start of a matter.
- I will ask clients to replenish the retainer before it runs out.
- I will bill my matters regularly, and stop work if I am not paid (subject to getting off the record where appropriate).
- I will use electronic timesheets and enter my own time as I complete tasks throughout the day, using standard billing codes and including explanatory details.
- I will record every minute I spend on a file, and make necessary adjustments later.
- I will docket all my administrative and other non-billable time.
- I will review detailed time and billing reports for my practice.
- I will use the reports in my accounting software to monitor retainer amounts, Work in Progress (WIP) hours and outstanding accounts.
- I will keep in mind that suing for fees may trigger an allegation of negligence.

...to improve my skills with the help of LAWPRO and practicePRO resources

- I will visit the *LAWPRO Magazine* Archives page (practicePRO.ca/MagazineArchives).
- I will visit the topical listing page (practicePRO.ca/TopicListing).
- I will borrow a book from the practicePRO Lending Library (practicePRO.ca/lendinglibrary).
- I will regularly use practicePRO checklists and precedents (practicePRO.ca/checklists).
- I will check the AvoidAClaim.com blog to confirm my fraud suspicions. ■

Dan Pinnington is Vice President, Claims Prevention & Stakeholder Relations, and Tim Lemieux is Claims Prevention & Stakeholder Relations Co-ordinator at LAWPRO.

Sample interview questions

Prepare in advance to increase your chances of a successful interview. How would you answer these questions?

Background questions:

- Tell me a little about yourself. What made you decide on law school?
- What do you hope to get out of a legal career?
- What do you know about [our firm]?
- How do you think [our firm] can help you achieve your career goals?
- If you took out a full-page ad in the newspaper and had to describe yourself in only three words, what would those words be?

Independence/sense of self/judgment:

- Describe what success means to you.
- Do you think of yourself as a risk-taker, or someone who plays it safe?
- How would you describe your standards of performance?
- Describe a (recent) situation in which you had to quickly establish your credibility and gain the confidence of others. What did you do?
- What do you think has contributed most to your success so far?
- What are some of the things (weaknesses) you are still working on in yourself?
- Describe a time when you had to take on something very new or different and you had little or no guidance and support in doing so. How did you handle it?
- A senior partner left an assignment for you before leaving on vacation. Now, you can't reach him/her and don't understand the assignment. What do you do?

Conscientiousness/work ethic:

- Describe a situation in which you had to work under pressure. How did you handle it?
- Do you anticipate problems effectively or just react to them?
- Tell me about a time when you went beyond the call of duty or delivered results beyond what was expected. Why did you do that?
- How would you clarify an unclear assignment?
- What kind of work environment are you most comfortable in (structured/unstructured)?
- Tell me about a time when you were assigned an unwelcome task. What did you do?
- Have you ever made an error in judgment that you had to address with your employer? How did you handle it?
- What part of your current workload do you find most challenging?
- What distinguishes you as a candidate?

Motivation/initiative:

- Would you describe yourself as a self-starter? If so, why?
- Would people describe you as a competitive person?
- Describe two things that motivate you at work.
- Give me an example of something you've done that demonstrates initiative and willingness to work.
- What kinds of responsibilities are important to you in your work?

Achievement/accomplishments:

- What work or personal accomplishments are you most proud of?
- What accomplishments gave you the most satisfaction?
- Have you ever accomplished something you did not think you could? How did you do it?
- Give me an example of how you have shown initiative.
- What is the most challenging thing you have ever done?
- What would you consider to be a stimulating work environment?
- Describe a significant risk you took to accomplish a task.

Interpersonal skills/communication:

- Describe a (recent) experience when you worked in a team environment. What was your role?
- Describe a situation where you had to give constructive criticism to another person. How did you go about this?
- Can you describe a situation where you worked for a difficult boss? What happened and how did you handle it?
- Have you ever had to resolve a conflict with a co-worker? How did you resolve it?

Organization:

- Describe your study habits.
- How do you manage your time/organize your workload?
- Describe a situation in which you've faced competing priorities. How did you handle it?
- How do you plan to achieve your career goals?
- Tell me about a time when you organized a project/completed a job where the directions were vague.
- When you are under a lot of stress, what is your typical reaction?



Student to lawyer: 20 tips for a smooth transition

This is an abridged version of the *LAWPRO* article: “20 tips for a successful transition” – a guide for law students through the transition from student life to legal practice. See practicepro.ca/20tips for the full article.

- 1 Honestly assess your strengths and preferences to identify what makes sense for you in terms of the type of firm and area of law you want to practice.
- 2 Consider all the options: big firm, small firm, solo practice, government, in-house. Don't just pursue the opportunities everyone else is pursuing – reflect on what is the best fit for you.
- 3 Create and prioritize a list of your options (from your most desired choices, to alternatives you'd accept).
- 4 Identify what makes you unique and use that to sell yourself. See “Job market scoop: What do law firms look for?” at page 2.
- 5 Consider if you have what it takes to be a sole practitioner. Take our self-assessment quiz on page 10 to help you decide.
- 6 Be prepared to work within the realities of articling, the Law Practice Program (LPP) and the job market. Strive to be both positive and realistic.
- 7 Be prepared to deal with uncertainty. You can't control all the factors that influence your career path; but you can commit to making the best decisions possible under the circumstances.
- 8 Be ready to adapt to changing circumstances and external factors. Your vision of the kind of practice that's right for you will likely evolve as you gain experience. Be flexible and open to opportunities.
- 9 Prepare your resume and the supporting information you will use to sell yourself in interviews. Consider including writing samples and references – with appropriate permission.
- 10 Contact potential employers in the order in which you have prioritized your options. Research employers online – or even better: network with friends and family to learn about opportunities.
- 11 Don't have an existing network of contacts? Begin building one! A good first step is to polish your social media presence. Visit practicepro.ca for our article “The essential LinkedIn Dos and Don'ts for law students.”
- 12 Make a good impression at a job interview by preparing answers to the probing open-ended questions you're most likely to be asked. (See our list of sample questions at practicepro.ca/20tips).
- 13 Once you have a job, get delegated tasks done right by understanding parameters and deadlines and asking for feedback.
- 14 Good client communication is essential. See the Fall 2011 edition of *LAWPRO Magazine* for useful articles about communication.
- 15 Find a mentor who can help you improve your skills. There are mentoring programs available from the Law Society (lsuc.on.ca), the Ontario Bar Association (oba.org) and the Advocates' Society (advocates.ca).
- 16 Make time for ongoing marketing and client development efforts. For marketing tips go to practicepro.ca/20tips, to see the original “Student to lawyer: 20 tips for a successful transition.”
- 17 Be nice! The legal world is very small – you will meet the same people over and over again – and your reputation will get around.
- 18 Have a life outside of law to help deal with the stresses of the job. While at school, you can find help for serious stress from on-campus providers; and once you become a member of the Law Society, you can contact Homewood Health to access confidential member assistance services.
- 19 Take care of yourself physically and mentally to avoid burnout. See articling student Alexandra Kozlov's article “Stress management for law students (from a recent grad!)” on page 23 for some tips about how to cope with typical student stressors.
- 20 Trust your instincts, think long-term and be prepared for unexpected turns in your career. ■

Do you have what it takes to be a sole practitioner?

One-third of the more than 25,500 lawyers in private practice in Ontario are sole practitioners. As a solo, it's great to have the freedom that comes with being your own boss, but you also have full responsibility for all aspects of the operation of your law practice. Do you have what it takes to be a sole practitioner? See the self-assessment quiz to answer that question.

The chart helps identify your strengths and weaknesses and gives you a better idea of whether you're cut out for solo or small firm practice.

Ask yourself whether you possess some or all of the skills listed below. Rate your skills by circling the appropriate number, using a scale of 1-5, with 1 as low, and 5 as high.

Skills	Rating
Getting clients <ul style="list-style-type: none"> projecting confidence in your skills networking client service follow-up asking for referrals identifying client needs tracking competitors 	1 2 3 4 5 <small>LOW</small> <small>HIGH</small>
Marketing <ul style="list-style-type: none"> advertising/promotion/public relations annual marketing plans marketing strategies pricing 	1 2 3 4 5 <small>LOW</small> <small>HIGH</small>
Financial planning <ul style="list-style-type: none"> cash flow planning bank relationships management of credit lines monthly financial statements 	1 2 3 4 5 <small>LOW</small> <small>HIGH</small>
Accounting <ul style="list-style-type: none"> bookkeeping monthly profit and loss statements/balance sheets quarterly/annual tax preparation billing, payables, receivables 	1 2 3 4 5 <small>LOW</small> <small>HIGH</small>
Administrative <ul style="list-style-type: none"> scheduling payroll handling benefits administration 	1 2 3 4 5 <small>LOW</small> <small>HIGH</small>
Personnel management <ul style="list-style-type: none"> hiring employees motivating employees general management skills firing employees 	1 2 3 4 5 <small>LOW</small> <small>HIGH</small>
Personal business skills <ul style="list-style-type: none"> oral presentation skills computer skills fax, email experience written communication skills word processing skills organizational skills 	1 2 3 4 5 <small>LOW</small> <small>HIGH</small>
Intangibles <ul style="list-style-type: none"> ability to work long and hard family support ability to work alone ability to manage risk and stress ability to deal with failure ability to work with and manage others 	1 2 3 4 5 <small>LOW</small> <small>HIGH</small>

How did you do?

TOTAL _____

- If your total is less than 20 points, you should reconsider whether owning a business is the right step for you
- If your total is between 20 and 25, you're on the verge of being ready, but you may be wise to spend some time strengthening some of your weaker areas
- If your total is above 25, you're ready to start a sole practice now



LAWPRO's best claims prevention tools and resources

Nobody wants to deal with a malpractice claim – but 4 out of 5 Ontario lawyers will have at least one claim made against them in their careers. When a claim occurs, it is nice for the lawyer and client to have the LAWPRO insurance program in place, especially when claims arise out of honest mistakes or for reasons beyond the lawyer's control. However, the majority of claims are preventable.

LAWPRO sees the same errors time and time again. Lawyer/client communications problems are the most common cause of claims for law firms of every size and in almost every area of practice. Missed deadlines and procrastination are the second largest cause of claims. Inadequate investigation or discovery of fact is the third largest cause of claims.

Over the last 17 years, the practicePRO program has produced a large collection of tools and resources aimed at helping lawyers avoid claims. This brochure has LAWPRO's best claims prevention content. We strongly encourage all Ontario lawyers to review and use these tools and resources in their practices.

For an electronic version of this brochure with links to these resources, visit practicepro.ca/topresources



The top 15 things you can do to avoid a malpractice claim

Many claims are preventable, often with very little effort. The following is a list of the top 15 proactive steps you can take to avoid a malpractice claim:

1 Start out on the right foot with a formal file opening procedure and a written retainer: With every new client you should go through a standard file opening procedure that includes client/matter screening and a conflicts check. If you are going to act you should prepare a retainer letter or agreement that sets the key terms of engagement for the matter. It should clearly identify who the client is and what you are retained to do, and in particular, any limitations on the scope of the retainer. Consider including a provision that describes your firm's policy on disbursing money from your trust account, in order to protect yourself against counterfeit cheque fraud: Put the client on notice that you reserve the right to hold funds for a specific time period or until you are sure they have "cleared."

2 Don't dabble or handle a matter you are uncomfortable with: If you are unsure or hesitant about handling the matter for any reason, get appropriate help or refer it to another lawyer. Send the matter away if you are unfamiliar with the area of law, a real or potential conflict exists, the matter is for a relative or friend and you are not able to be objective, or the client is very demanding and difficult.

3 Get the money up front at every stage of a matter: At the time you are retained, get a retainer that is sufficient to cover all work that needs to be done at the initial stage of the matter. Replenish retainer funds before they are exhausted and at the start of each stage of a matter or file. Configure your accounting system to remind you when the

amount in trust is getting low relative to the WIP on the file or when the accounts have not been paid within 30 days. Stop work if the retainer is not replenished or accounts are not paid on a timely basis. Working on credit with a growing A/R greatly increases the likelihood you will not get paid and the potential for a malpractice claim (see #13). (This is especially important for plaintiff litigation, where you could find yourself in the middle of a malpractice claim due to an administrative dismissal of the action. If the retainer is not replenished, get off the record in a timely fashion.)

4 Control client expectations with good communications at all times: Clearly and accurately communicate to your clients the available courses of action and

possible outcomes, all the implications of any decisions or actions, how long things will take, and the expected fees and disbursements. Immediately advise them if changed circumstances affect any aspect of your initial advice to them.

5 Document (almost) everything: It is just not practical to document everything on every matter, but strive to document as much as you can in some contemporaneous manner. Formal letters are fine, but emails, detailed time entries or marginal notes on documents can be equally effective. In particular, record advice or instructions that involve significant issues or outcomes, as well as major client instructions or decisions (especially with respect to settlements). Documentation takes on a greater importance when dealing with difficult or emotional clients. Memorialized communications are invaluable to confirm what was said to, or done for, the client in the event of a malpractice claim. Make sure nasty or embarrassing comments never appear in your client files or records.

6 Meet or beat deadlines: Set realistic deadlines for completing tasks and/or delivering documents or advice to clients. Under-promising and over-delivering (i.e., earlier than promised) on work for clients will make them very happy. Don't leave work to the very last minute as unexpected events beyond your control may intervene and lead to missed deadlines (e.g., blackouts, snow storms or a sick staff member). Give yourself a margin of safety by setting deadlines a day or two early.

7 Delegate but supervise: Delegation is an essential part of running a practice, but make sure there is appropriate supervision and review of junior lawyer or staff work. Never allow others to use your Teraview® key and password.

8 Dig deeper to get all required information and ask questions if things don't add up: Lawyers in many areas of practice are not taking the time to get all the information they need to give proper and complete advice to their clients. (For example, identifying all assets and liabilities on a will or family law matter; getting details of injuries on a tort claim, etc.) You must dig deeper, spot relevant issues and ask all appropriate questions of a client, especially if there is something on a matter that doesn't quite make sense.

9 Do not allow yourself to become a pawn: Do not allow loyalty to a client, pressure by a client, greed, or other motivations get in the way of your professional duties and ethics. Do not cut corners, cover up irregularities, or forgo investigative steps at the urging of a client. Doing any of these things will come back to haunt you.

10 Don't do any of the things that most annoy clients: These are all the things that would equally annoy you. They include not returning phone calls or emails, long periods of inactivity, and surprising a client with bad news or a large account. If you have certain standards or practices that govern your client communications, such as phone calls will be

returned within 48 hours (not same day), describe them in the initial retainer letter (See #1).

11 Don't wait until after the file is closed to ask how you did: Ask clients for feedback as the matter progresses, at milestones, or when interim accounts are rendered. Proactively address any concerns or issues the client raises.

12 Send interim and final reporting letters: At milestones, confirm to the client the work that was done and the results or outcomes, good and bad. Be sure to note any follow-up tasks that are the responsibility of you or the client. In the final reporting letter be clear that your retainer is concluded.

13 Think VERY carefully before suing for fees: Suing for fees almost guarantees a counter-claim alleging negligence, even if there are no grounds for the allegation.

14 What goes around comes around: Your reputation will precede you. Be civil at all times to: your client, judges, court staff, and the counsel and client on the other side.

15 Communicate and document (almost) everything: Read #4 and #5 again – controlling client expectations with good communications is the best way to avoid a claim, and having some documentation of those communications is one of the best ways to defend a malpractice claim.

Top technology articles and resources

Technology has become an essential part of practising law. These tips, articles and papers, available at practicepro.ca, will help you use technology to become more effective and efficient. They will also help you avoid some of the dangers inherent in the use of technology in a law practice setting.

- 1 [LawPRO Magazine – December 2013: Cybercrime and law firms](#)
- 2 [Keeping your passwords strong and secure](#)
- 3 [Don't take the bait on a spear phishing attack](#)
- 4 [10 Tips to managing your inbox](#)
- 5 [Danger: When a hacker emails you instructions in the name of your client](#)
- 6 [Fifteen tips for preventing identity theft and online fraud](#)
- 7 [Technology and stress: Good tool, bad tool](#)
- 8 [Docketing dos and don'ts](#)
- 9 [Technology in trying times: How and why you should use technology in your practice](#)
- 10 [Is Facebook secretly sharing what you're reading and watching?](#)
- 11 [Be smart about spam: Use white listing so you don't miss key messages](#)
- 12 [Danger signs: Five activities not covered by your LawPRO policy](#)
- 13 [Social media pitfalls to avoid](#)
- 14 [Essential dos and don'ts for LinkedIn users](#)
- 15 [Employee departure checklist](#)



15 of our most practical and helpful checklists, precedents and resources

We have a large collection of checklists, precedents and other resources that give you practical and helpful direction on steps you can take to reduce the risk of a claim. Here are 15 of our most helpful and practical claims prevention tools:

1 Retainer agreement precedents:

One of the best ways to reduce the risk of a claim is a retainer agreement that clearly identifies the client and the scope of work to be done. We have a variety of retainer agreement precedents for different types of matters which you can adapt for your practice.

2 Client administrative information and billing information letter precedents:

These helpful letters tell a client everything they need to know about dealing with you and your staff and how legal fees will be dealt with.

3 The Canadian Bar Association's Conflicts of Interest Toolkit:

A great collection of practical checklists and precedents that will help you recognize and avoid conflict of interest claims.

4 Post-matter Client Service Survey:

What did your clients think of your service? Use this post-matter client service survey to find out.

5 Independent legal advice (ILA) checklist:

A hasty \$150 ILA consult can easily lead to a claim and a \$5,000 deductible. Use this ILA checklist to make sure you cover all the bases when giving independent legal advice.

6 Domestic Contract Matter Toolkit:

This toolkit helps lawyers systematically consider and discuss all relevant information at the initial interview and signing of a domestic contract. It includes an intake form, an intake checklist, a post-meeting client assignment form, and a review and signing checklist.

7 Commercial Transaction Checklist:

This checklist contains a series of questions lawyers should ask themselves to help ensure that the commercial documents they are drafting correctly reflect the client's instructions and expected results. It helps ensure that your communication with the client has been thorough, too.

8 Fraud Fact Sheet:

This pamphlet describes the bad cheque and real estate frauds that most commonly target lawyers and lists the "red flags" that can indicate that an otherwise legitimate looking matter is actually a fraud. Share this with your staff too!

9 Rule 48 Transition Toolkit:

On January 1, 2017 files commenced before January 1, 2012 that are not yet set down for trial will be automatically dismissed unless there is an order otherwise or the plaintiff is under disability. Move your files along and comply with the requirements of the new Rule 48.14 with help from this toolkit.

10 Managing a mentoring relationship booklet:

Practical advice on how mentors and mentees can build mentoring relationships that are productive and successful.

11 Managing a better professional services firm booklet:

Loads of advice on how you can improve client communication and service at your firm.

12 Managing the finances of your practice booklet:

Details of the steps you can take to better manage and improve the finances of your practice.

13 Business plan outline:

Looking to grow your practice or to borrow some money from the bank? This business plan outline will help you set some long-term goals for the finances, management and marketing of your practice.

14 Sample budget spreadsheet:

This detailed 12 month budget spreadsheet will help give you detailed insights into your practice revenues and expenses.

15 Limited Scope Representation Resources:

These resources will help you understand some of the risks inherent in providing limited scope legal services, and how you can reduce your exposure to a claim when working for a client on an unbundled basis.

lawpro.ca

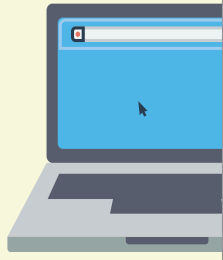
Everything you need to know about LAWPRO's insurance program

practicepro.ca

Practical resources, precedents and checklists for risk management, claims prevention and law practice management

AvoidAClaim.com

Daily updates on practice advice, claims prevention and alerts to the latest frauds



Practice advice for avoiding claims: 15 articles we wish lawyers would read

Below are the 15 claims-prevention articles we most wish lawyers would read. Many of these articles appeared in past issues of *LAWPRO Magazine* or one of our webzines. You can find these and other past articles online in the *LAWPRO Magazine* archives. They are fully searchable and are listed chronologically and by topic.

1 New Year's resolutions for a healthier law practice and a new you: If you are going to read one article this is it – 15 pages of practical tips for reducing risk and avoiding claims and stress.

2 Is anyone listening? It's easy to prevent communication breakdowns: This article describes specific communication pitfalls and how to avoid them in many areas of practice.

3 Lets get talking: A look at communication breakdowns: Lawyers don't always communicate as well as they could. Read this article to improve your communications skills.

4 Inadequate investigation/discovery now #1 cause of claims: Lawyers in many areas of law are not taking the time to get all the information they need to give proper and complete advice to their clients. Read this article to learn how to dig deeper, spot relevant issues and ask all appropriate questions of a client.

5 Avoiding administrative dismissals: Rule 48 Transition Toolkit provides advice and tools lawyers and law firms can use to lessen the risk of a claim under the new rule.

6 Litigation claims trends: errors & insights: This article examines the most common civil litigation-related errors that LAWPRO sees, and the steps you can take to reduce the likelihood of a litigation claim.

7 Self-represented litigants: A survival guide: Having a self-represented litigant on the other side of a matter can be very frustrating for you and your client. This article will help lessen those frustrations.

8 Real estate claims trends: A detailed review of where and why real estate claims happen – and what can be done to avoid them.

9 Six things I hate to read in a real estate claim file: LAWPRO President & CEO Kathleen Waters runs through the unfortunate explanations we see on all too many real estate claims files.

10 Unbundled legal services: Pitfalls to avoid: "Unbundled" or limited scope legal services are here to stay; but providing these services creates risks that must be managed. Read this article to understand and avoid those risks.

11 Landmines for lawyers when drafting wills: LAWPRO claims counsel Pauline Sheps outlines some of the areas of greatest malpractice danger for wills practitioners.

12 Diversify without dabbling: Before expanding your practice, expand your competence. Dabblers – lawyers working outside their usual area of practice – cause a significant number of claims. Read this to understand why.

13 Wondering when to report that claim or potential claim? Do it now: Late reporting of a claim can have severe consequences. Read this article so it doesn't happen to you.

14 The morning after mediation: Settling a matter can require lots of give and take and some compromise, with the result that clients may have second thoughts about what they agreed to the day before. Avoid this predicament with the advice in this article.

15 A checklist for avoiding conflicts on lateral transfers: Lateral transfers need to be a good fit and having the right credentials is important, but so is avoiding conflicts of interest. Get the advice to do it right here.

For an electronic version of this brochure with links to these resources, visit practicepro.ca/topresources



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LAWPRO insurance
TitlePLUS Home Buying
Guide – Canada



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Planning to do real estate work?

A primer on title insurance and the TitlePLUS[®] program

If you're planning to do any real estate work when you go into practice, you'll soon hear about a resource used by many real estate practitioners – title insurance. It's a type of insurance coverage that lawyers across Canada are telling their clients about to help protect them against some typical problems that might crop up after closing – problems that in the past might have led to the client filing a malpractice claim against the lawyer.

Several companies offer title insurance – including LAWPRO, through its TitlePLUS title insurance program. This article provides a very basic overview of the what and why of title insurance, how our TitlePLUS program is different, and where you can find more information.

What is title insurance?

As its name suggests, title insurance is an insurance policy for purchasers, mortgage lenders and existing owners of real property that provides compensation for losses suffered because of problems with title, survey, zoning and other issues with the property – even if they are not discovered until years after the purchase is completed.

Some of these issues are unpredictable or undetectable – such as forgery, fraud, missing heirs, and unregistered easements. Other problems that can affect a property covered under a title insurance policy include issues such as construction liens, access rights and conflicting interests in a property.

When the lawyer in the transaction has secured a title insurance policy for the owner or mortgage lender, it is the title insurer – and not the lawyer or client – who assumes the risk for matters covered under the policy¹ and, if there are losses, pays compensation.

It is important to understand that title insurance replaces the title opinion and not the lawyer in the transaction. The role of the real estate lawyer remains just as important

to ensure the client's interests are properly addressed and protected. In fact, depending on the issue, a client may prefer that the lawyer do a search to determine the status of a matter rather than depend on title insurance and the right to be able to make a claim to an insurer at a later date.

What's different about the TitlePLUS title insurance program?

LAWPRO's TitlePLUS program is different in several ways:

1. Title + legal services coverage: With TitlePLUS coverage, the legal services that you – as the lawyer in the transaction – provide are also covered by the policy². So if as part of your services you make an error or overlook something (e.g., fail to register a document or remove an encumbrance, incorrectly adjust items on closing), the TitlePLUS policyholder – your client – can seek compensation directly from us. In other words, the error will not result in a claim under your LAWPRO errors and omission policy if you obtained a TitlePLUS policy for your client.

2. Online software that makes closings

easy: We make it easy for you to undertake real estate transactions by providing you with access to an online system that walks you through a closing.

3. It's all-Canadian: In fact, TitlePLUS title insurance is the only all-Canadian title insurance product on the market today.

4. We advocate for the real estate bar:

Each year, LAWPRO undertakes an extensive consumer public awareness/education campaign on how a lawyer protects their interests in various scenarios – from buying a home or cottage to drawing up a power of attorney to the perils of running a home-based business. In the past few years, this effort to put lawyers at the forefront has reached millions of consumers across Canada.

How can you find out more?

Go to titleplus.ca for information on the TitlePLUS program, including How To videos.

For more information on some of the tools and resources for home buyers, see titleplus.ca/rsreg. ■

¹ Title insurance policies may vary. Refer to the policy for full details, including actual terms and conditions.

² TitlePLUS policies issued with respect to properties in Québec and OwnerEXPRESS[®] (existing owner) policies do not include legal services coverage.

Common practice pitfalls:



How to avoid them

Lawyers' Professional Indemnity Company (LAWPRO) was created to insure lawyers against legal malpractice claims. Most (though not all) claims are brought by a lawyer's own client and include an allegation that the lawyer made a mistake or did not meet the standard of care expected of him or her when delivering legal services.

No lawyer is immune to a claim; in fact, our records suggest that four out of every five lawyers will be the subject of a claim at one point in their career. Malpractice claims can be stressful, can hurt your reputation, and can be costly (even if the only financial consequence to the lawyer is an increase in insurance premiums).

Understanding the most common causes of claims so that you can build risk management skills early in your career is your best line of defence.

What kinds of mistakes lead to claims?

Students in the midst of law school, with its mountain of reading on cases and substantive law, might be surprised to learn that "errors of law" are not the biggest pitfall to watch out for in the world of private practice. In fact, in the last ten years, only about 12 per cent of LAWPRO malpractice claims were caused by lawyers getting the law wrong (except in very complex areas like family or tax law).

So, if knowing the law isn't the problem, what *is* the danger that new lawyers should be on the lookout for? In a nutshell, you could call it "human error": breakdowns in communication, poor calendaring and procrastination, and not digging deeply enough into a client's matter. These types of errors make up almost 70 per cent of the claims LAWPRO sees.

Students may not yet know what area of law they will ultimately end up practising, but the causes of claims are remarkably similar in all types of practice, firm size and geographic location. Here's an overview of the biggest pitfalls:

Client communication

In almost every area of practice, the number one cause of claims to LAWPRO is a breakdown in lawyer-client communication. This ought to be the easiest type of error to guard against, but it is also

the most common. Often these claims arise because the lawyer and client disagree on what was said or done – or not said or done – sometimes because communications are rushed. This is partly the result of lawyers being busier than ever, and partly due to clients who expect faster replies and more 'round the clock' responses from their lawyer.

However, there is much that can be done at every stage of the matter to prevent these types of claims. Right from the outset, a well-drafted retainer letter can set the client's expectations of how the matter will proceed and what the lawyer will (and won't) do for them.

As the matter progresses, it is important to document conversations with the client, your advice, and the course of action the client wishes to pursue. This documentation can be a lifesaver in the event of a malpractice claim. Clients may later say they asked the lawyer to do X and it wasn't done; or the lawyer may have done Y and the client claims he didn't authorize this course of action. If there is no documentation of lawyer/client conversations, the claim then turns on credibility, and LAWPRO's experience has been that courts are more likely to believe the client's more specific recollections over the lawyer's typically vague or non-existent memory.

It's an unfortunate fact that while email and other electronic media provide more ways than ever for a lawyer to interact with clients, all these lines of communication seem to result in even more misunderstandings. Clients or lawyers read things into emails that



aren't there, miss the meaning of what was said, or read between the lines and make assumptions. Face-to-face communication is the best way to ensure miscommunications don't happen. If meeting in person isn't possible, at least pick up the phone to avoid misunderstandings when important matters need to be discussed.

Clients whose expectations have been adequately managed are less likely to turn on their lawyers (rightly or wrongly) than those who are taken by surprise by the result of their case or legal fees. Visit practicepro.ca for our resources on managing lawyer/client relationships.

Inadequate investigation

This is a type of error closely related to poor communication and is best described as lawyers not taking the time to uncover all the facts or develop sufficient understanding of a client's matter. It can be considered a symptom of "smartphone legal advice": quick questions and quick answers by lawyers and clients who are both in a rush. These claims go to the very core of what lawyers are supposed to do for their clients – give legal advice based on the client's specific situation – and involve the lawyer not taking extra time or thought to dig deeper and ask appropriate questions about the matter.

These claims can arise in any area of law. We see them most commonly in busy real estate practices, where rushed lawyers miss deficiencies in a condo status certificate, misread a survey, or don't find out what long-term plans a client may have for a property (so that they can ensure those plans are viable). In litigation it could mean not making a reasonable effort to identify all the parties to an action within the limitation period. In wills and estates law it could mean not inquiring into the capacity of an elderly client or failing to ask about the existence of previous wills.

The best way to avoid these claims is to simply slow down. Take the time to read between the lines so you can identify all appropriate issues and concerns. Ask yourself: What does the client really want? Does everything add up? Are there any issues or concerns that should be highlighted for the client? If something doesn't add up, dig deeper.

One way to ensure that the right questions are asked on a matter is to make use of the practicePRO programs articles and checklists. At practicepro.ca/checklists you'll find checklists for domestic contract matters, commercial transactions, and independent legal advice, as

well as claims prevention articles from *LAWPRO Magazine* arranged by particular areas of law at practicepro.ca/topiclisting.

Time management

It seems to be human nature to put off tasks until the deadline is looming (as any student pulling an all-nighter will attest). It's no different for lawyers, which makes missed deadlines a major source of LAWPRO claims. This is most common in plaintiff litigation, which has strict limitation periods and document filing deadlines to manage.

While every lawyer seems to have a dusty file or two in their office that they never quite get around to, time management claims are not always the result of simple procrastination. In some cases the lawyer fails to ascertain the limitation period on a matter, or even if they do know, fails to properly calendar the limitation period or act when it comes up.

There are a number of things you can do to avoid missing a crucial deadline. Familiarize yourself with the *Limitations Act, 2002* by using practicePRO's limitations resources at practicepro.ca/limitations. Use practice management software with tickler systems to alert you to approaching deadlines. Be aware of the danger of the registrar dismissing an action for delay under Rule 48 of the *Rules of Civil Procedure* (see our Rule 48 Transition Toolkit at practicepro.ca/rule48 for help).

Finally, building in a one- or two-day cushion on deadlines and reminders can help prevent this type of error when there are unexpected problems that stop you from meeting a deadline for a filing (e.g. ice storm; or taxi in an accident on the way to courthouse on last day to file).

These are very general descriptions of the common causes of LAWPRO claims. If you want to learn more about malpractice claims in particular areas of law, you'll find a wealth of articles in *LAWPRO Magazine's* archives (arranged both chronologically and by topic at lawpro.ca/MagazineArchives). There are detailed examinations of claims causes in several areas of law, as well as articles featuring advice from LAWPRO's own claims counsel on the common mistakes they see lawyers making and how to avoid them. ■

Tim Lemieux is Claims Prevention & Stakeholder Relations Co-ordinator at LAWPRO.

New lawyer cyber dangers and how to avoid them

Like the local bank, your practice holds valuable information and money. Your computer systems may contain client information, trade secrets, and intellectual property. Your trust accounts have large sums of money. A cyber breach or trust account theft will harm your clients and potentially cripple your practice. Security guards, specialized safes, and sophisticated procedures protect the local bank. What safeguards have you put in place for your practice?

Perceived to be less sophisticated than banks and big companies, lawyers make easy targets for tech-savvy criminals. The payoff, which can include emptying trust accounts and taking advantage of confidential information, is big for hackers. Young lawyers can be especially vulnerable given their lack of experience.

Bad cheque frauds

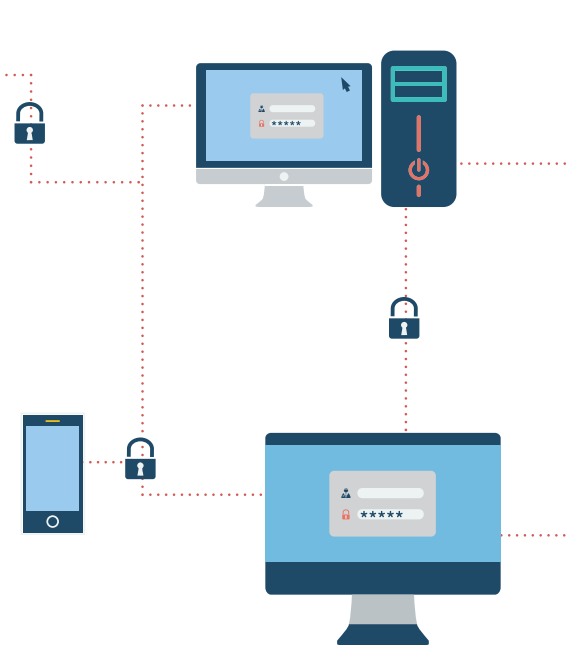
Bad cheque fraud occurs when a fraudster, posing as a legitimate client, retains a lawyer on a contrived legal matter. The fraudster may ask for help with collecting a business debt, facilitating a loan, enforcing an agreement against an ex-spouse, or collecting a fee for trademark or copyright infringement. Whatever the legal issue, a common red flag is that the matter must be resolved quickly and with little effort. A cheque arrives from the opposing party, and the lawyer deposits the cheque. The client demands the funds from the cheque be released immediately. The lawyer releases the funds before the cheque clears. The fraudster vanishes into thin air, and the lawyer discovers, too late, that the bad cheque bounced.

These deceptions are sophisticated. Fraudsters use realistic looking fake identification. They will have all the usual supporting documents a real file will have. They will seek to add you on LinkedIn and may appear in your social network as “friends” of people you know. We have even seen fake websites created

to support these frauds. Organized crime is behind these frauds and more money and effort is invested into duping you than ever before.

Spot the red flags: Fraudster clients are often in a rush and pressure you to take shortcuts and get the deal done quickly. They have no issue with paying higher fees. They may use names that do not match their email addresses and often express a preference to only communicate by email. Without explanation, the payment amounts may not match the expected payments and no explanation is forthcoming. The cheque is drawn from an unrelated party. And in all cases, fraudsters demand the funds from the cheque to be transferred before the cheque clears.

Protect yourself with these tips: Never disburse funds from your trust account until you are sure the incoming funds are real and in your account. Be aware the bank can reverse a bad cheque, even a certified cheque or bank draft, after any amount of time. Familiarize yourself with the requirements of LAWPRO’s coverage for counterfeit cheques and bank drafts. Cross-check names online and on practicePRO’s AvoidAClaim.com blog where you can find the names of confirmed fraudsters. Look up addresses using Street View in Google Maps, and conduct reverse searches on phone numbers using canada411.ca. And if you are in doubt, call LAWPRO. We will help you determine if the matter is legitimate.



Email dangers

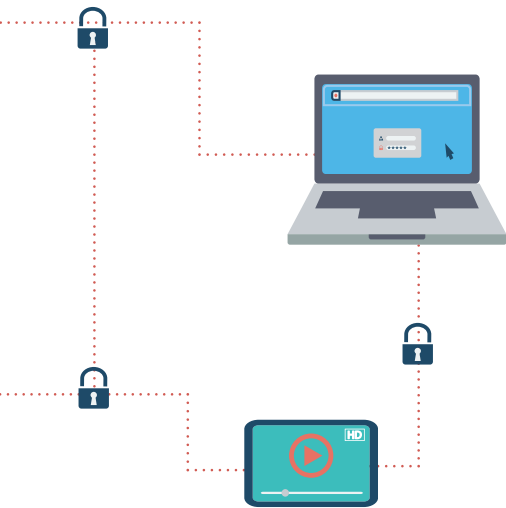
Email is the most frequent way law firm systems are compromised. This occurs when someone opens an infected attachment, clicks on a link in an email, or responds to a phishing message. Once installed, malware can give hackers access to your system and/or destroy your data. Educate your staff about the dangers of email.

Phishing – don’t take the bait

Phishing is the attempt to acquire sensitive information such as usernames, passwords, and credit card details by masquerading as a trustworthy entity in an email. Phishing scams are usually bulk emails sent to large numbers of people. Even if only two or three per cent of recipients fall for them, hundreds or even thousands of people can be victimized.

Phishing messages take the form of an email, allegedly from your bank or another business you know that suggests your account has been compromised or that payment is overdue. They will have the same layout, logos and links as legitimate emails from these companies. They try to create a sense of urgency and ask you to login to reset your password or verify a payment was made. However, the link you click takes you to an imposter website that looks much like the familiar company site, and when you login

// tech tip



you are actually giving your password or other personal information to the hackers. They will use your information for malicious purposes such as ID theft or credit card fraud.

Prevent phishing by putting your cursor over the link in an email. Your email program will show the actual web address at the bottom of the screen. If it is not familiar to you, it is likely a phishing attempt.

Spear phishing – a bait just for you

The “spear” in spear phishing alludes to the fact that messages are targeted to specific individuals. Spear phishing messages are more convincing because they are personally addressed, appear to be from someone you already know, and may include other detailed personalized information. In some cases a phone call will come in as a follow-up to the message. In one case, a senior accounting staff member at a large firm received a request on an active file, purportedly from the firm’s managing partner, to send a bank account number and account signatures to a person in Europe so they could verify a certified cheque was from the firm.

Follow firm processes and procedures for the review and approval of financial transactions – and don’t bypass them due to urgent circumstances. Never share confidential client

or firm information without being sure it is appropriate to do so by getting confirmation from someone familiar with the file. Be on the lookout for and question any last minute changes on fund transfers or payments.

Loss of client data on portable devices

Laptops, tablets, and mobile phones may contain confidential and sensitive information. Should a portable device be lost or stolen, client data may go with it. Prevent the intrusion by ensuring all portable devices have a strong password and are encrypted. A good practice is to enable the device to allow a remote wipe of all data.

Other devious cyber frauds

There is no end to the efforts and imagination hackers will put into infiltrating law practices. In 2012, a Trojan banker virus infected an Ontario law firm. This virus presented a spoofed version of the website of the firm’s bank on the bookkeeper’s computer, and passwords entered on the fake site were passed to the hackers, who then used them to wire funds from the firm’s trust account.

LAWPRO has also recently seen instances where a fraudster hacks into a client’s email and surreptitiously monitors emails going back and forth between the lawyer and the client. At the opportune time, usually just before a real estate deal is closing or the loan funds are to be advanced, the hacker sends an email redirecting where the funds should go. This change of instructions appears to be coming from the client via the client’s email, but if the lawyer follows these instructions, the money goes to the fraudster.

Ransomware is an under-reported but increasingly common form of attack. It is usually spread by clicking on an infected email attachment or website and encrypts all the data files on a firm’s computers. A message then pops-up stating that if you don’t pay a

certain amount of money within a tight deadline, the files will be destroyed.

Poor tech hygiene often weakest link

As with brushing your teeth, maintaining good tech hygiene needs to be done regularly and with care.

Passwords should be used at entry points and changed regularly. A good rule of thumb is a 12-character password which includes mixed lower and upper case letters, and symbols. Poor passwords are one of the main ways hackers gain access to law firms.

Operating systems (Windows, Linux, OS X) and other software should be updated regularly. Once out-of-date (some lawyers still use the now-defunct and unsupported Windows XP), operating systems are vulnerable as known weaknesses can be exploited. Firewalls, which protect access to the network, should be turned on. Anti-virus software should be installed and updated. Networks and systems should be checked regularly.

Protect by being proactive

The profession handles massive amounts of information and money. Organized crime and other entities with significant resources continue to find inventive ways to hack in. The need to be vigilant and keep up with technological safeguards is high. Hackers will look for and exploit the weakest link in your systems and hardware.

Be proactive and take the steps discussed here. See the *LAWPRO Magazine* “Cybercrime and Law Firms” for more information on how to keep your professional and personal data safe. The magazine is chock-full of simple tips you can use now to improve your cybersecurity. ■

Ian Hu is Counsel, Claims Prevention and practicePRO at LAWPRO.

What new lawyers need to know about LAWPRO's mandatory professional liability insurance

These FAQs answer some of the more common questions we hear from newly-called lawyers. The answers will help you determine if you need insurance coverage (or whether you're exempt) and which steps you need to take to get your LAWPRO insurance coverage in place.

What is professional liability insurance?

Professional liability insurance is designed to indemnify lawyers against the consequences of a lawyer's liability for a client's loss. For this reason, only lawyers in *private practice* are subject to the mandatory insurance requirement.



What is private practice?

Private practice, for the purpose of LAWPRO's insurance program, is the delivery of professional services (including advice) to anybody who is not the lawyer's employer. In general, lawyers in private practice perform professional services for clients for pay. Note as well, providing legal advice or help to family or friends, or providing free legal advice to *pro bono* clients also falls within the definition of private practice.

Visit lawpro.ca/newcalls
for more information
about insurance requirements

Do all members of the Ontario bar have to purchase professional liability insurance?

If you are engaged in private practice in Ontario, you will need to purchase coverage through LAWPRO. [See the left-hand text on the next page for more details on getting insurance from LAWPRO.](#)

If you are not in private practice and meet certain criteria, you are likely exempt from the mandatory insurance requirement. [See the exempt lawyer FAQs on the right-hand side of the next page.](#)





Going into private practice.

How do I apply?

If you will be working as a sole practitioner, you will need to complete an application online. (You'll receive a mailing from us with instructions.) New lawyers can apply at any time after receiving a Law Society number from the Law Society of Upper Canada (be sure to have insurance in place before you begin practising!). After the first year, you will be asked, each October, to renew your insurance for the following year.

If you'll be joining a firm, you may want to speak with the firm administrator or office manager before you apply directly, as there may be specific practice or payment options that need to be reflected on your application form.

How much will it cost?

Not every lawyer in private practice pays the same premium. LAWPRO offers discounts to certain categories of lawyers (including part-time practitioners, and lawyers who practise criminal and/or immigration law exclusively). The base premium for the year 2016 is \$3,350 plus PST.



Newly called lawyers receive a discount: Lawyers newly called to the bar in the current year receive a 50 per cent discount from the standard base rate in their first full year of practice. Additional discounts are available in the second, third, and fourth years (40, 30 and 20 per cent, respectively). These discounts reflect the risk profile of new lawyers. Because the maximum premium discount for any lawyer is 50 per cent, these discounts cannot be combined with other discounts.

Some lawyers pay more than the base premium. For example, there is additional premium required for the practice of real estate law (a higher-risk practice area, from a claims perspective). Also, lawyers for whom LAWPRO has paid claims within the previous five years may pay more for their insurance because of these prior claims.

Not going into private practice.

What kinds of lawyers are exempt from the mandatory insurance requirement?

In general, lawyers working as in-house counsel, who are employed by the government, who work in education, or who work for a clinic funded by Legal Aid Ontario are exempt from the requirement to buy insurance. Lawyers who do *pro bono* work that meets certain criteria, or who are on temporary leave, may also be exempt.



If I'm not going into private practice, can I just forget about insurance?

No. The Law Society of Upper Canada requires that ALL members of the bar (not just those in private practice) confirm their practice status every year. This means that you must either pay for insurance, or file an application for exemption from the insurance requirement.



LAWPRO's insurance application, exemption application, and other relevant forms can be found (and filed) online. See lawpro.ca/newcalls for more details.

What happens if...

I meet the general criteria for exemption, but later find myself providing legal advice to someone other than my employer, or handling a legal matter for a family member or friend?



HOW DO I FIND OUT MORE?

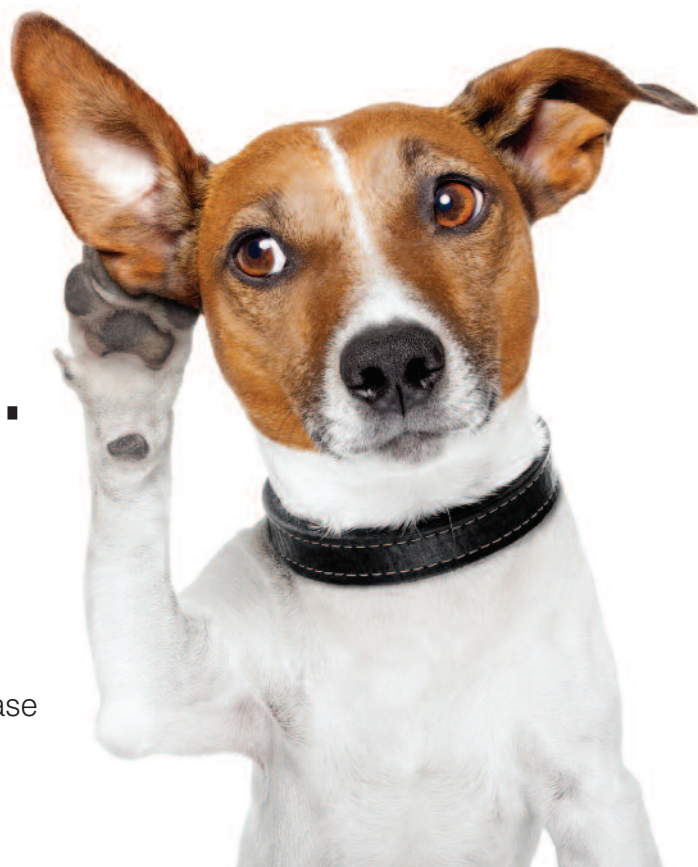
For more information, please visit our website at lawpro.ca and lawpro.ca/newcalls for information specific to new calls. You can also send an email to LAWPRO Customer Service at: service@lawpro.ca, or you can call us at: 416-598-5899 or 1-800-410-1013.

Anytime you provide professional services, you expose yourself to a potential claim. Even if you are not in full-time private practice, if you contemplate providing even occasional legal advice or services, you will need to purchase insurance coverage (there are a few narrow exceptions, including one for certain kinds of *pro bono* work). LAWPRO has created a series of *Insurance Matters* booklets to help individuals who feel they are exempt consider potential areas of exposure. Check out these resources online at lawpro.ca, or get in touch with us to request copies. ■

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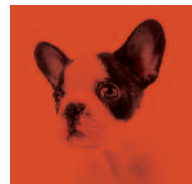
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² Premium is calculated based on purchase price. The policy pricing above applies to the following types of residential properties: houses, condominiums, cottages, rural properties,

vacant land (some restrictions may apply), and residential rentals (up to six units). Please call for pricing for (a) residential properties under New Home Direct, New Home Program and New Condo Select; (b) residential properties with 7 or more dwelling units, farm, leasehold or commercial properties; (c) transactions up to \$200,000; or (d) transactions over \$500,000, up to a maximum of \$5 million.

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Stress management for law students (from a recent grad!)



We all know what law school stress looks like. Come exam time, we see its physical manifestations: the law student, hibernating in the law library, subsisting on a diet of coffee and candy, sits surrounded by mountains of books, empty cans of energy drinks and an arsenal of highlighters. We recognize the bloodshot eyes and the anxiety-ridden knuckle cracking. Stress is synonymous with law school, but it's important to remember that stress is merely the interaction between a situation and the way we perceive it. You cannot eliminate all the stress from your life, but you can modify your reaction to it.

Situation: You landed an interview with the firm of your dreams. You visualize yourself summering and articling there and launching your legal career into the stratosphere. Sadly, during the interview, you were asked an unexpected question. You froze, your thoughts racing and heart pounding. After what seemed like an eternity, you stuttered something incoherent. You know that you blew it.

Solution: Reframe your thinking about this interview. Yes, maybe you did not get the job. However, instead of focusing on your disappointment and perceived weaknesses, which will only lower your self-esteem, concentrate on viewing this as a learning experience. Identify the reason why you struggled with the question, call the interviewer to ask for some feedback and work on improving your interviewing skills. (And check out our list of common interview questions in this article: practicepro.ca/20tips) Next time, you will be better prepared to handle tough questions and you will be one step closer to getting that offer.

Situation: You have just finished writing a tricky exam and you feel pretty confident. Over burgers, you and your friends start discussing the exam. They all thought that this exam was easy. In their answers, they identified more issues and discussed more cases than you did. You discovered that you made several errors and you are now terrified that you will get a low mark.

Solution: Feelings of inadequacy are not uncommon when law students discuss the following: how much time and effort they devoted to an essay or exam, how deep their understanding of the course material is, the difficulty level of an exam, etc. Steer clear of these stressor conversations. Set boundaries with your friends. If your friends insist on discussing the exam, remove yourself from the conversation. Remember that conversations of this sort are never productive, you have already finished your exam and you cannot edit your answers. Additionally, just because your friends answered the questions differently does not mean that they were right. Law professors mark exams in mysterious ways. Before panicking, wait until you get the exam results. If you did underperform, focus your efforts on the next exam.

Situation: This is a hectic week and you are sure that you are on the verge of a nervous breakdown. You have a 20 page essay due, your moot factum is still unfinished, you are behind on all your readings and you are doing intake interviews at the legal aid clinic. How are you going to get through this?

Solution: For now, you have no choice but to take a deep breath, break each project into smaller tasks, stop procrastinating and get to work. Take everything one small step at a time. In the future, try to spend more time with your non-law friends. They will help you maintain your mental health. Your law school friends are dealing with the same

**Member Assistance Program**

Your Member Assistance Program (MAP) is available 24/7

1-855-403-8922 (toll free)
TTY: 1-866-433-3305
International (call collect): 514-875-0720
myassistplan.com

stressors you are, and commiserating over these challenges may exacerbate your anxiety. If you spend all your time with law students, you will eventually start believing that your entire self-worth depends on how many OCI interviews you got or how many course prizes you won. Non-law friends can take you out of your funk. They can show you a different perspective and remind you that there is a world outside of law. Find people who will look perplexed when you make a Lord Denning joke and make sure you spend some time with these people each week.

Finally, although most law school-related stress is manageable, if the stress in your life becomes overwhelming, be sure to seek help. Law students often don't realize that they are eligible to access the services provided by the Member Assistance Program (MAP) for lawyers – a program funded by the Law Society of Upper Canada and LAWPRO, and delivered by Homewood Health. Visit lsuc.on.ca/map for more about the MAP. ■

Alexandra Kozlov graduated from the Queen's Faculty of Law in 2012 and articulated with the Workplace Safety and Insurance Appeal Tribunal.

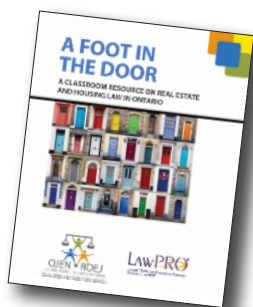
Caron Wishart scholarship



The Caron Wishart Memorial Scholarship, initiated by LAWPRO and supported by many members of the bar and the Government of Ontario's funds matching program, was awarded for the fourth time this year. The 2016 recipient is University of Toronto Faculty of Law second year student Vivian Lee. Vivian's legal interest is criminal law, specifically how visible minority youth interact with the criminal justice system.

Outreach

As part of LAWPRO's public awareness efforts to promote the role of lawyers, we have produced two new videos *Does your lifestyle suit a condo?* and *Ever wonder what happens if you die without a will?* These videos, in addition to radio clips and articles on topics like home buying, being an executor and protecting your intellectual property are available for lawyers to use to help promote their services. Find them on titleplus.ca under the "How a lawyer can help" button.



LAWPRO and OJEN pioneer real estate in the classroom

LAWPRO, in collaboration with the Ontario Justice Education Network (OJEN), has created learning materials for Ontario secondary schools. Entitled *A Foot in the Door: A Classroom Resource on Real Estate and Housing Law in Ontario*, the lesson plans address two of the most important skills in life – knowledge of legal issues and financial literacy. Better informed consumers ask the right questions when working with a lawyer and are better prepared to provide relevant information and understand the documents and issues involved. We hope that these materials will help improve the financial and legal literacy of future consumers while also fostering the communication and understanding between real estate clients and their lawyers.

LAWPRO's commitment to corporate social responsibility

To support the broader Canadian community, LAWPRO employees select five charities each year. Funds are raised through employee-led events and denim Friday contributions, and the company matches those donations. The selected charities for 2015 were: Anaphylaxis Canada, Children's Breakfast Club, Fanconi Canada, Good Shepherd Refuge, and The Humane Society. In 2015, LAWPRO raised over \$27,000 which was distributed between the five charities.



\$27,000

IN DONATIONS THROUGH THE COMPANY'S ANNUAL CHARITABLE GIVING PROGRAM

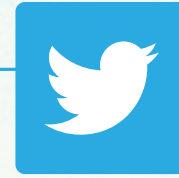
LAWPRO employees can also give back by requesting one "charity day" per year during which they work for a registered charity of their choice. In 2015, several of our employees took advantage of the charity day by helping Belmont House, Daily Bread Food Bank, Fanconi Canada, Habitat for Humanity, Kol Hope Foundation for Children, and Rethink Breast Cancer.

In addition, LAWPRO supports Canadian Cancer Society Daffodil Days, Casserole Campaign for the Homeless through the Good Shepherd Centre, and Partners for Blood Drive through Canadian Blood Services.

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The LAWPRO LinkedIn page will keep you informed about our corporate news and connect you with other key legal stakeholders. Find and share topical and thought provoking information with other LinkedIn users.



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