

# Surviving being sued

In the midst of your busy practice, your world suddenly comes crashing down. You receive a letter alleging that you have made a mistake or have been served with a claim for negligence. Your emotions run the gamut from anger, defensiveness, giving up, and loss of control to fear and guilt. You may feel sick to your stomach and start losing sleep; your practice suffers because of a lack of focus; you withdraw socially or want to just talk about the problem *ad nauseam*; you may use or abuse alcohol and/or drugs. And the process has not even started yet!

Here are some tips to deal with the potential stress associated with this situation.

- **Do something quickly** – Even if you put the letter or claim off to the side, it will not go away. You must do something quickly so that things do not get worse or limitation periods are not missed. Report to LAWPRO ASAP as required under your insurance policy. Complete the Claims Notice Report available on the LAWPRO website or provide notice in writing. Include your contact information, information about your client, the retainer and the nature of the claim, how you became aware of the claim (or potential claim), the amount of potential damages, and a chronology of events. Remember to include pertinent documentation.
- **Talk to claims counsel and legal counsel if one is appointed** – Remember, the lawyer who represents him/herself has a fool for a client. Your claims counsel needs to have all the facts, promptly, so that she can assess the situation and determine the best strategy to follow. Defence counsel, if appointed, is your legal representative: Treat him or her as such.
- **Do what you are asked or advised to do!** – Do a memo to refresh yourself and get a quick outline of the salient facts. It can be fleshed out later as you review your file and speak to the claims or legal counsel. Get all documents together. Make additional notes. If information is needed, provide it, quickly and accurately. Discuss strategy but listen to what's being said: You'll be able to participate more fully if you take the time to understand.
- **Review the file fully** – Turn over the whole file to defence counsel when requested, but make copies of all relevant documents for yourself for personal review.
- **Check the factual accuracy** of anything your defence counsel prepares. Ensure you always know what is being written and said on your behalf. Ask questions before anything is filed, to avoid having to question strategy and accuracy later on.
- **Understand the winding nature of the process** – As you know from your own experience, it often takes time to resolve a matter. Practise patience. Of course you want to get this claim out of the way as quickly as possible: LAWPRO counsel (and defence counsel) are working on your file as expeditiously as possible. They know the process and will look after your matter in a timely fashion.
- **Set priorities** – Let go of things that distract your concentration on this matter such as unreasonable clients, unrealistic expectations or overwork. Focus on what you can do to best assist your claims counsel or lawyer. Review your practice to see where the stressors are and try to address them to lighten your worries on a daily basis.
- **Use effective stress management techniques and self-care methods** – Take care of yourself physically – sleep eight hours per night, eat three healthy meals a day, exercise regularly, breathe deeply when you feel the stress overwhelming you, cut down or cut out coffee, nicotine and alcohol. If you are not feeling physically well, go to your family doctor and get a full physical checkup. Emotionally – meditate and talk about your feelings with someone you love and trust. Spiritually – appreciate what you have and do not focus on what you do not have. Call the Ontario Lawyers Assistance Program for a referral to a peer support lawyer or counselling. – 1-877-576-6227.
- **Access resources** – Go to [www.lawpro.ca](http://www.lawpro.ca) and follow the practicePRO section to the online Coaching Clinic. You will find 150 modules to help you with stress relief, practice tips and communication skills. Invest some time in yourself. Review the resources available at [www.olap.ca](http://www.olap.ca).
- **Look at the situation realistically** – It is easy to look at the worst case scenario and expect that that will happen. This is called catastrophising. Alternatively, it is also possible to look at the situation and get the mindset that nothing bad will happen. This is the Heaven's Reward Fallacy. With your claims counsel and defence counsel, realistically assess the situation with the upsides and downsides. Put your situation into perspective.
- **Stay in control** – Control what you can – your responses, your attitude, your thoughts. Leave the rest of the



Ontario Lawyers' Assistance Program

things that you have delegated to those you assigned them to. If you obsess about the case and cannot seem to shake the fear, guilt or anger, allow yourself a set time limit every day to devote to the issue – ten minutes maybe but a half hour tops. When the time limit is up, it is up. Shut it down for the day. Move on to other responsibilities and self-care needs. Live in the moment. Write a journal about your feelings, make an audio tape of affirmations, read a daily reflection, work with your hands, play sports, scream into a pillow, pray or take a long walk to meditate about the joys in your life.

- **Accept your feelings** – Balance your doubts with self-belief and confidence. Identify and limit self-recrimination. Do not allow yourself to sink into despair. Talk to someone who understands and who can listen sympathetically and non-judgmentally like an OLAP peer support lawyer. Get professional help from a therapist or counsellor through your doctor or through an OLAP referral.
- **Prepare for the discovery, trial or hearing, if necessary** – Review the file carefully. Review the questions with your lawyer that will be asked of you and prepare for cross-examination. Be prepared to address the tough issues head on. Speak confidently and with precision. Do not try to tell your whole story in a gush of information when you are asked your name. Answer only the question asked. Try not to get defensive or angry. Stay as calm and clinical as you can in the circumstances where you are under pressure you may not have experienced before.
- **Put yourself in a defendant/respondent's shoes** – Do not take the system for granted because you work in the courts. It is different when you are one of the parties. Review where you sit, how you act, how you dress and what you are to do.

## OLAP contacts

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

Program Manager:	<b>Leota Embleton</b> , MSW, IACAD	<a href="mailto:leota@olap.ca">leota@olap.ca</a>
Clinician:	<b>Judy Grout</b> , MSW	<a href="mailto:judy@olap.ca">judy@olap.ca</a>
Case Managers:	<b>Doron Gold</b> , BA, LLB <b>Terri Wilkinson</b> , BA, LLB, RN <b>Jill Fenaughty</b> , BA, MA, LLB	<a href="mailto:doron@olap.ca">doron@olap.ca</a> <a href="mailto:terri@olap.ca">terri@olap.ca</a> <a href="mailto:jill@olap.ca">jill@olap.ca</a>
Office Manager:	<b>Jill Keaney</b>	<a href="mailto:jill.Keaney@olap.ca">jill.Keaney@olap.ca</a>
Volunteer Executive Director:	<b>John Starzynski</b> , LLB	<a href="mailto:john@olap.ca">john@olap.ca</a>

[www.olap.ca](http://www.olap.ca)

- **Use the “Best Friend” technique** – Imagine that your best friend is being grilled and put yourself in those shoes. Stand up for yourself as you would for your best friend. Speak confidently and with precision.
- **Call OLAP** – Talking to another lawyer who understands the legal system, the legal culture that we work in and the stresses of everyday practice is important to prevent isolation. OLAP case managers are all lawyers. They help lawyers, law students and their immediate families with issues of stress, burnout, addictions and mental wellness concerns. This is a free, 24-hour, confidential service to the profession.

OLAP also has a corps of 100 volunteer peer support lawyers who understand other lawyers and are willing to lend a friendly, sympathetic ear to any caller who needs help. OLAP can refer you to other free counselling resources in your own local community if that is needed as well.

OLAP has a lawyers support group that meets the first and third Wednesday of each month. Call Jill Fenaughty at 1-877-576-6227.

A Lawyers Twelve-Step group meets every Monday at Bellwoods Health Centre. Call Terri Wilkinson at 1-877-576-6227.

The Women's Wellness and Balance Group, in association with the Women's Law Association of Ontario, have quarterly luncheon presentations. Call Jill Keaney at 1-877-576-6227.

