



New Year's resolutions

for a healthier law practice
and a new you

by Dan Pinnington and Tim Lemieux

The start of a new year is a time for self-reflection and self-improvement. Many of you will think about making changes in your personal and work lives. But while you all have good intentions, it can be difficult to break old habits, especially when you are running hard on the treadmill of a busy life and practice. So, to harness the good intentions you all have at this time of year, this article provides a collection of New Year's resolutions you can make to improve your practice and have a more fulfilling personal life.

Some of the resolutions we have collected focus on specific areas of law. Others will help you with various law practice operation and management issues – and many will help you avoid or at least lessen the likelihood you will face a malpractice claim. A good number of the resolutions will have a positive impact on your personal life.

A lot of the resolutions we present are fairly small or simple things that you can easily do. Some are bigger and will require some effort on your part. To help you successfully implement the resolutions we have presented, first a word on change and how change takes place.

In a perfect world, you could show up at your office tomorrow and follow through on all the resolutions in this article, and all your personal resolutions too. Unfortunately, it's just not that easy. It can be hard to make changes, even when you need and want to make them happen. Just remember that change is not a one-time event. Change is incremental. It takes time and effort. For change to happen, you must make a commitment to change, and change one thing at a time. Don't give yourself a self-improvement hangover by trying to tackle a bunch of resolutions at once. This will guarantee frustration and failure.

Start by identifying the resolutions that will help you deal with a problem or issue that you think should be addressed. Start small – take baby steps. Pick the smallest things that will make the biggest differences. Break resolutions that require multiple steps and big changes into smaller steps and changes. You will find it is easier to begin and successfully complete each step, and you'll be amazed at how easily you can successfully follow through on the larger resolutions by doing this.

No doubt, you are extremely busy. Billable work for clients has a high priority and will win most of the time, but it shouldn't win all of the time. Budget time for change. Set aside a bit of time, each day, each week, each month. Make an appointment with yourself – in your calendar – and don't break that appointment. It's the only way to avoid the "I'm too busy" excuse.

With small steps, over time, our resolutions can help you can make big changes. Good luck with your efforts.

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Resolutions

for better file and matter management

Effective file management provides the foundation for timely, valuable client service and appropriate management of client matters. Here are some resolutions to help you complete the critical steps in file management:

I will complete a conflicts check before opening a file: Conflicts of interest can lead to ugly and expensive malpractice claims. The best time to catch and avoid a conflicts claim is during a thorough conflicts search before a file is opened. A thorough search looks for conflicts involving both the client(s) and others connected with a matter.

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. Open a file for every matter you handle to make sure that the file is properly handled.

I will use a tickler system for limitations periods and time-sensitive tasks: Missed deadlines and procrastination are the second most common cause of malpractice claims. A formal tickler system that tracks critical deadlines and tasks is the best way to avoid missing deadlines.

I will have signed retainer agreements or engagement letters in all my files: Start out on the right foot with a written retainer letter or agreement. It establishes your terms of engagement and should clearly identify who the client is and what you are retained to do.

I will send a final reporting letter at the end of every retainer: A final reporting letter clearly signals the end of a retainer to a client. Along with a final account, it should summarize the work that was done for the client, including outlining the key terms of any documents or agreements, the outcome of the matter and any ongoing steps or obligations that the client has.

I will not handle matters I am uncomfortable with: Dabblers are more likely to face a malpractice claim. If you are unsure or hesitant about handling the matter for any reason (e.g., unfamiliar with the area of law, a potential conflict exists, a matter for a relative or friend, or a demanding or difficult client), get appropriate help or refer it to another lawyer.

The top 10 downloaded LAWPRO Magazine articles



- 1 'Beware the Dangers of Metadata' by Dan Pinnington
- 2 'Capacity and Capacity Assessment in Ontario' by Judith Wahl
- 3 'Critical Issues Facing the Legal Profession' by David Bilinsky
- 4 'Dealing with Difficult Clients' by Justice Carol Curtis
- 5 'Dos and Don'ts for Twitter' by Dan Pinnington
- 6 'Administrative Dismissals, Part 2' by Domenic Bellacicco
- 7 'How Long Should You Keep Your Closed Files?' by Dan Pinnington
- 8 'Practice Pitfalls' by Tim Lemieux and Norman McInnes
- 9 'Herding Cats: Revealing the Lawyer Personality' by Dr. Larry Richards
- 10 'The Biggest Malpractice Claim Risks' by Dan Pinnington

Available at: www.practicepro.ca/topdownloads


Resolutions to avoid litigation claims

- #1 area of law for LAWPRO claims (33%)
- Average of 682 claims per year
- Average of \$20 million per year in costs
- Average individual claim cost \$30,000

(For the years 2007-2011)

Top 5 errors

- Failure to ascertain a deadline
- Inadequate investigation or discovery of fact
- Failure to calendar
- Poor communication with client
- Procrastination

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- ☐ *I will enter target dates a few days early to avoid last minute complications.*
Unforeseen circumstances can arise on the day a document needs to be filed. Setting your target date a few days before a deadline could prevent a snow storm, traffic jam or sick-at-home clerk resulting in a missed deadline.
 - ☐ *I will familiarize myself with the Limitations Act, 2002.*
We continue to see claims related to lawyers' unfamiliarity with the new limitations rules. Take the time to review the rules and the related jurisprudence: See, for example, practicePRO's limitations resources at practicepro.ca/limitations, and LAWPRO's limitations casebooks, including this comprehensive review: www.practicepro.ca/LawPROmag/LessonsLearned_LimitationsAct.pdf
 - ☐ *I will avoid administrative dismissals.*
Rule 48 of the Rules of Civil Procedure allows for the administrative dismissal of non-progressing actions. Be sure to take timely steps to move litigation forward.
 - ☐ *I will talk to my clients more often and not rely on email so much.*
Lawyers are increasingly using emails to communicate with clients, and this is resulting in misunderstandings. Clients and lawyers read things into emails that aren't there, miss the meaning of what is said, or read between the lines and make assumptions. During a long litigation matter, arrange some face-to-face meetings, or at least a phone call if distance is an issue.
 - ☐ *I will make sure to have written confirmation of instructions and advice.*
As in all areas of law, this is a crucial to helping LAWPRO defend you in the event of a claim where you may have no recollection of the details years later. Take notes on your conversations with the client, and document in writing things like the details of settlement offers, the extent of what you will do in limited retainer cases, your advice on accepting (or not) offers, and the likelihood of winning or losing a case and the costs involved.
 - ☐ *I will create more detailed docket notes.*
Like the resolution above, this has the benefit of helping protect you in the event of a claim (e.g. "Conference with client re risks and costs of litigation" is much better than just "Conference with client re lawsuit.") It also will help you determine if you are making money on a particular case by giving you a better understanding of the amount of time you and your staff are spending on it.
 - ☐ *I will review my file before closing it to make sure every task is accounted for.*
It's a good idea to review your file before closing it and/or putting it into storage to ensure that nothing still needs to be done. If there is and it is part of your retainer, you should ensure that you complete the outstanding work. If it is not, confirm in writing to the client that it is the client's responsibility to complete the work.



Resolutions

to better set and control client expectations

Clients can be demanding and will sometimes have expectations that will be unreasonable. Unmet expectations, even if they are totally unreasonable, are a recipe for unhappy clients. Setting and controlling client expectations is one of the best things you can do to ensure that you have a happy and satisfied client at each stage and the conclusion of a matter. Follow these resolutions to better set and control your clients' expectations:

I will carefully explain how the matter will proceed: While you may have handled a particular type of matter hundreds of times before, remember that your client is going through it for the first time. Make sure the client understands the process and steps that will occur as the matter proceeds.

I will avoid legal jargon when explaining things to my clients: Don't use legal jargon when explaining things to clients as it may confuse them.

I will give the client a realistic indication of how long the matter will take: Clients will want their matter resolved as quickly as possible. Give them a true indication of how long the matter will take, and highlight any issues that might arise and delay a resolution of the matter.

I will provide the client with a full picture of all costs and disbursements: Clients don't want to spend money on legal fees and they will want to keep fees as low as possible. If you quote a range of fees they will remember the lower number. Give your clients a clear explanation of all fees and disbursements that they will or might incur. Be honest here – don't quote a lower cost to please them. In the litigation context you should include a warning that they could be responsible for paying the fees of the opposing party.

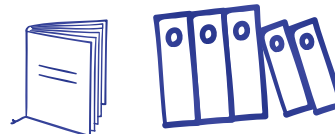
I will clearly explain to the client all possible outcomes or results: Clients always want a positive outcome to their matter. Unfortunately, not every client will get what they want. Make sure your clients have a clear appreciation of all possible outcomes, including negative or unpleasant ones.

I will answer all my clients' questions to their satisfaction: Carefully listen to and address any questions your clients ask. Do the questions indicate that they don't understand something or that there could be another relevant issue you need to give advice on?

Confirm the above information and advice in writing: In a personal meeting or phone call, unsophisticated and stressed clients who have worries and financial concerns may struggle to listen and understand what you are telling them. To avoid any possible confusion, confirm important discussions and advice in writing.

I will immediately highlight for clients any unexpected changes that arise: Unexpected things can happen through the course of handling any matter. If something happens that will change the process, timing, costs or outcome of a matter, make sure the client is immediately made aware of the change and why it happened. Confirm this advice in writing.

The top 10 downloaded papers and supplemental resources



- 1 E-Discovery Reading List
- 2 LAWPRO Fraud Fact Sheet
- 3 Managing the Finances of Your Practice booklet
- 4 Transition Rules chart: *Limitations Act, 2002*
- 5 Top 10 Technology Tools (and Tips on How to Use Them)
- 6 'Dealing with Difficult Judges' by Justice Carol Curtis
- 7 Managing the Lawyer/Client Relationship
- 8 Managing Conflict of Interest Situations
- 9 Managing a Mentoring Relationship
- 10 Managing the Security and Privacy of Electronic Data in a Law Office

Available at: www.practicepro.ca/topdownloads

Resolutions to avoid real estate claims

- #2 area of law for LawPRO claims (30%)
- Average of 626 claims per year
- Average of \$23 million per year in costs
- Average individual claim cost: \$37,000

(For the years 2007-2011)

Top 5 errors

- Inadequate investigation or discovery of fact
- Fail to obtain client consent
- Fail to follow client instructions
- Fail to know or apply the law
- Poor communication with client

☐ I will ensure I meet with my clients in person at least once.

In most real estate practices the staff handle many aspects of the client's matter. However, ultimate responsibility still lies with the supervising lawyer. Take the time to meet with the client in person to review the transaction and understand the client instructions, particularly with respect to the client's intended uses of the property. Not every matter is straightforward, and you don't want to have to be addressing a problem that was only noticed the day the deal is to be closed, or never noticed at all.

☐ I will remember that the lender is also my client in most residential transactions.

Lawyers often forget, because they deal face-to-face with the purchasers, that the lender is also their client and is owed a duty of care. You have to provide any information to the lender that is material to the transaction. The lending clients can bring claims against lawyers for failing to disclose all the relevant information they knew (or ought to have known).

☐ I will make sure I take my instructions from the person with the true interest at risk in the transaction.

At times it may be easier to gather information relevant to the transaction from intermediaries like a mortgage broker or real estate agent. However, in the event of a claim lawyers need to be able to show that they took their instructions from the person with the value at risk in the transaction, or at least have documentation from that person authorizing the lawyer to take instructions from the intermediary in all circumstances.

☐ I will document my conversations with and instructions from the client.

This is the best defence you'll have against a malpractice claim. The client may only be involved in one or two real estate transactions in their lifetime and will remember the details, while the lawyer who sees countless transactions will likely have little specific recollection of one matter. Keep notes of your conversations with the client and document what you discussed and what actions you took in a detailed reporting letter to the client.

☐ I will not give my electronic registration password to my clerks or anyone else.

Only the lawyer who received the electronic registration credentials provided by the Ministry of Government Services is entitled to use the lawyer disc and password to register an instrument on title using the electronic system. And yet LawPRO sees claims in which the lawyer allowed (or claims not to have been aware) that someone else in the office was using the password. As tempting as it may be in a busy real estate practice to let the clerk register instruments requiring a lawyer's electronic signature...don't.



to better document your files

You can still find yourself being sued for malpractice, even if you have done everything correctly. A well-documented file can help to explain what work was done or to justify an account and can be a lifesaver when it comes to defending a malpractice claim. A good paper trail can help show what work was done on a file long after your direct and specific memories of the file have faded. Here are some resolutions you can make to help you keep a better-documented file:

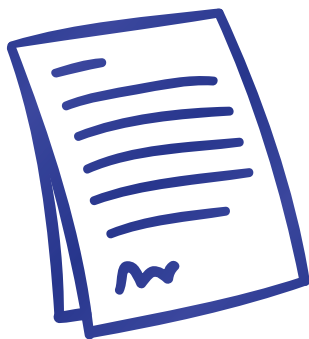
I will document the important conversations and communications on my files: It is just not practical to document everything on every matter, but you should document as much as you can in some contemporaneous manner (i.e. notes in a file, a formal confirmation letter or quick email to the client, detailed time dockets, a memo to file, etc.)

I will make specific efforts to document and confirm major discussions and decisions on my matters: For the sake of reconstructing the work that was done on a matter, you want to make sure you record advice or instructions that involved significant issues or outcomes, and major client instructions or decisions (e.g., strategy discussions, settlement discussions, changes to previous decisions or advice), and send confirmation of key discussions and decisions to your client.

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: Every action you take and decision you make will be judged with harsh 20/20 hindsight. Clients have a tendency to not remember the advice they received as to negative outcomes, longer times for resolution or higher costs. Protect yourself in these situations by confirming these discussions with your client.

I will also be extra careful to document my files with difficult or emotional clients: Take extra care to document your file if you are dealing with difficult or emotional clients as they may not hear or understand your advice (no matter how hard you try to communicate it) and are more likely to complain about it later.

I will get signed directions for major decisions on a matter: On major decisions, a signed direction is your best option for confirming that a client did indeed give instructions to follow a particular course of action.



I will use written offers to settle: Offers to settle have to address many details, and there are many opportunities for confusion or mistakes. A written offer to settle can help eliminate misunderstandings and miscommunications and make sure all details of a settlement are documented and confirmed.

I will not document nasty or embarrassing things: In moments of frustration you might find yourself mad at your opposing counsel, the opposing party, the judge handling your matter or even your client. These thoughts should *not* be documented in your file as they could come back to haunt you in the event they are disclosed to your client in a malpractice proceeding.

I will capture all manners of communication in my file: Some clients will use email as their primary communications channel. In this situation documenting email conversations is important to tracking what occurred on a matter. However, there is no need to print and store every email in the paper file, as long as you have the emails stored in an organized and regularly backed-up electronic form so you can retrieve them if necessary.

I will keep draft versions of documents in the file: Draft or interim versions of a document can assist in showing how a file progressed, in particular if there are marginal notes reflecting discussions with clients.

I will keep a copy of the final version in the file: For obvious reasons, having a copy of the final signed document in the file is essential. But, consider whether you really want or need to have the final signed original document in your file. Sending the original to the client means you can avoid the onerous and potentially costly obligations of taking care of the original as long as it is in your possession, including in your closed file storage.

I will send interim and final reporting letters on my files: At significant milestones and especially at the end of the matter, reporting letters can confirm what work was done and the successes obtained for the client, and next or further steps to be undertaken on a matter, by you or the client. A final reporting letter should confirm that the retainer is terminated. (And in the final reporting letter don't forget to ask a happy client for a referral to friends, family and business colleagues – some clients think you may be too busy to take on new matters, so politely disabuse them of that notion!)

Resolutions to avoid corporate/commercial claims

- **#3 area of law for LawPRO claims (11%)**
- **Average of 230 claims per year**
- **Average of \$13.9 million per year in costs**
- **Average cost per claim of \$61,000**

(For the years 2007-2011)

Top 5 errors:

- **Failure to follow client instructions**
- **Inadequate investigation or discovery of fact**
- **Failure to obtain client consent**
- **Conflict of interest: Acting for more than one party**
- **Failure to know or apply the law**

☐ *I will carefully document instructions, advice and steps taken.*

Sometimes claims against corporate lawyers are a result of an incomplete or improperly drafted document or other mistake by the lawyer, but in many cases there is simply a dispute over what was said and done or not said and done, or confusion over who was to look after which tasks. Taking detailed notes and documenting conversations with the client helps avoid this, as does using LawPRO's new "Checklist for Commercial Transactions", available at: practicepro.ca/LawPROmag/Commercial_Transaction_Checklist.pdf

☐ *I will not dabble in areas outside my expertise.*

Corporate and commercial law is complex and diverse, so don't stray outside your area of expertise. If necessary, retain the services of an expert in specialist areas like franchise law, IP or tax if you don't have thorough knowledge of those fields.

☐ *I will follow the firm's conflict checking system and take action on conflicts.*

Most law firms now have rigorous conflicts checking systems in place, and they do a good job of catching potential conflicts. The problem is that often these warnings are ignored because of poor judgement or greed. Listen to your instincts, and ask yourself "who is my client?" You can't always objectively judge your own conflicts, so get the opinion of someone outside the matter. If there's a conflict, decline the retainer even if it means turning down work for a good client or turning down substantial fees.

☐ *I will take the time to catch all the details and do the job right.*

Whether it is misreading (or not reading) information on a corporate document, not doing a title search on a corporate lease matter, or failing to ensure that two merged corporations don't lose a 'grandfathered' exemption, rushing or taking shortcuts can come back to haunt you. Take the time to do the job right, even if it takes a bit longer or involves coming back on another day.

Resolutions

to avoid doing things that annoy clients the most

Clients will, understandably, get upset if they are treated badly or confronted with surprises. Make sure you appreciate how your words, actions, or inactions can annoy or even distress your clients. Here are some resolutions you can make to avoid doing the most common things lawyers do that annoy clients:

I will promptly return phone calls: Unacknowledged or unreturned phone calls are some of the most common complaints about lawyers. To avoid these problems, set and control client expectations at the very start of the relationship. Establish a reasonable policy on how quickly calls will be returned (e.g., within 24 hours, by the end of the next business day, or whatever is appropriate for your area of law or clients). Inform the client of the policy, and abide by it. Set up a mechanism for staff to return calls within the established timeframe if you are not available.

I will promptly reply to e-mails: In like fashion, emails that go unanswered are also a common client complaint. Some clients expect virtually instant answers to e-mail messages. Control this expectation by setting a policy on email communications (e.g. how and when to communicate by email, how long replies will take, alternative contacts and alternatives to email).

I won't make clients wait in reception: Do you remember how you felt the last time you were made to wait for an appointment when you had arrived on time? Don't make your clients feel the same way. Get off the phone or stop whatever else you are doing if a client is waiting for a scheduled appointment.

I will deliver on promises of performance: When it comes to deadlines, you can guarantee a happy client if you under-promise and over-deliver. Be realistic and don't make promises to deliver if you cannot keep those promises. Be realistic in your assessment of what you can accomplish and by when. In like vein, be careful not to promise an unlikely or impossible outcome or resolution on a matter. Extra caution is warranted here as clients will hear what they want to hear when it comes to a promised outcome. To protect yourself, clearly document your advice to clients on what the expected outcome will be.

I will be prepared for client meetings: Don't kid yourself – clients can instantly tell when you are not prepared. Shuffling through papers, using the wrong names or facts, and other similar clues make clients think to themselves that they may have the wrong lawyer. Make sure you are properly prepared for client meetings.

I will keep my clients informed and will communicate with them during long periods of inactivity: Clients always want to feel their matter is moving toward a resolution. But in litigation and other areas of law there can be long periods of inactivity as a matter of course. Keep them informed of the status of a matter and when they can expect it to move forward. Send copies of all incoming and outgoing correspondence to the client.

I will not send large bills without warning or explanation: This scenario calls for an in-person meeting to explain the charges to the client. Better yet, avoid it altogether with a strict retainer policy.

I will apologize if I fall down on the level of service my clients deserve: If you fail to do any of the foregoing things or otherwise come below an acceptable level of client service, acknowledge it to them, sincerely apologize, and make sure it doesn't happen again.



Resolutions to avoid family law claims

- #4 area of law for LawPRO claims (8%)
- Average of 165 claims per year
- Average of \$4 million per year in costs
- Average cost per claim of \$25,000

(For the years 2007-2011)

Top 5 errors:

- Failure to follow client instructions
- Failure to obtain client consent
- Failure to know or apply the law
- Inadequate investigation or discovery of fact
- Planning error in choice of procedures

☐ I will make better use of checklists and reporting letters.

Family law involves complex documents that deal with complicated issues involving emotional clients. There are many risks of errors by the lawyer, and misunderstandings by the client. LAWPRO's new *Domestic Contracts Matter Toolkit* (practicepro.ca/LawPROmag/Domestic_Contract_Matter_Toolkit.pdf) has checklists and forms that contain points and questions lawyers should systematically consider as they conduct the initial interview on a domestic contract matter and when they meet with the client to review and sign the document. And a final reporting letter detailing what you did and what advice you gave can be a lifesaver in the event of a claim, which may arise long after you've forgotten the details of a particular file.

☐ I will be aware of the limitations of my legal knowledge.

Family law is one of the most complex practice areas, with dozens of federal and provincial statutes and a huge amount of case law to keep track of. No lawyer can hope to be an expert in all aspects of this field, so it's important to know when to seek advice from more specialized counsel (for estate planning, for example) or third party experts such as tax advisors, accountants or actuaries.

☐ I will proactively direct and control client expectations.

Given the stress and emotions involved in their cases, many family law clients can be difficult to deal with. They may have unrealistic expectations as to the process, timing, costs, and potential outcomes of their matters. This makes it especially important that you manage their expectations from the outset to avoid disappointment and surprises later that might result in a claim. It's also very important, in this area of law, to carefully explain the terms of domestic contracts so that clients cannot later allege that they did not understand the effects of these agreements.

☐ I will learn to say "no" and not take on a potentially difficult client.

Further to the resolution above, there may be cases where the client will never be satisfied and it might be best to not take on the case at all. Lawyers involved in claims often tell LAWPRO that their instincts told them a client was going to be trouble. Have they changed lawyers several times? Do their demands seem unreasonable? Ask yourself if it's worth accepting the retainer.



Resolutions

to avoid fee disputes (and make more money)

Fees disputes commonly lead to unpaid accounts, Law Society complaints and/or malpractice claims. For these reasons you should do your best to avoid fee disputes with your clients. Here are some simple resolutions that will help you accomplish this:

I will get a sufficient retainer at the start of a matter: At the start of the matter ask for a retainer that is sufficient to do all of the initial work on the matter. Ask for a retainer that will cover all the work – asking for less gives the client unrealistic expectations about fees and means you are facing collection issues when you ask the client to replenish the retainer.

I will ask clients to replenish the retainer before it runs out: Monitor your work-in-progress so that you don't perform work for which you may be unable to collect payment, and request replenishment of the retainer before it is exhausted.

I will bill my matters regularly: Keep the client informed of the ongoing costs of the work you are doing for them by sending a regular bill. Consider billing monthly, or send accounts at milestones to report how the matter is progressing.

I will stop work if a retainer is not replenished or I am not paid: Monitor your work-in-progress and stop working if a retainer is not replenished. Don't wait until just before a court date to try and get off the record on a matter.

I will not sue for fees: Suing a client to collect an unpaid account almost guarantees you will face a counter-suit alleging negligence. In most cases that allegation of negligence will be completely unfounded, but it still will trigger a duty to report a claim to LAWPRO.

I will use the reports in my accounting software to monitor retainer amounts, WIP hours and outstanding accounts: Most law office accounting packages have reports you can run that will tell you retainer amounts in trust, WIP hours and outstanding accounts. Use these reports to proactively manage your retainer and billing practices so you don't find yourself in a position of needing to sue a client to collect an outstanding account.

Resolutions to avoid claims with LAWPRO and practicePRO resources

With a bit of effort, the risks of a malpractice claim can be significantly reduced. LAWPRO and practicePRO have created various practice aids and resources to help you pro-actively reduce your risk of a malpractice claim. Make an effort to use the following LAWPRO claims prevention resources:

I will save \$100 on my premium by claiming the LAWPRO Risk Management Credit: By taking two CPD programs that are approved for the LAWPRO Risk Management Credit, you can save \$100 on your premium. Visit lawpro.ca/creditapproved to see a list of approved programs and remember to claim your credit by September 15, 2013.

I will visit the LAWPRO Magazine Archives page: You can easily find every article from every past issue of *LAWPRO Magazine* on the LAWPRO Magazine Archives page (practicePRO.ca/MagazineArchives).

I will visit the topical listing page: On our topical listing page articles and risk management resources are easy to find as they are listed by practice area and other topics (practicePRO.ca/TopicListing).

I will borrow a book from the practicePRO Lending Library: This library has more than 120 books on various topics that Ontario lawyers can borrow for free. There are books on practice management, firm finances and billing, legal technology, marketing, how to start and build a practice, selling and winding down a practice, and many

other topics. Go to practicePRO.ca/lendinglibrary for a full list of books and borrowing instructions.

I will regularly use practicePRO checklists in the coming year: In the course of working on many files over many years, it is inevitable that a step or issue of concern will be missed at some point on one of those files. A checklist is one of the best ways to make sure all necessary steps and communications occur on every matter. To address areas of high risk practicePRO has prepared several checklists for Ontario lawyers. At practicePRO.ca/checklists you can find checklists for an ILA consultation, a corporate agreement, client intake on a domestic contract matter, the risk of sitting on a non-profit board, employee departures, and a post-matter client survey.

I will check the AvoidAClaim.com blog to confirm my fraud suspicions: Spidey-sense tingling? If any aspect of a transaction smacks of possible fraud, visit the AvoidAClaim.com blog to compare your client's name with the names of confirmed fraudsters as well as fake client ID, cheques and other documents. While you're there, sign up for the RSS feed, or to receive email notice of new posts.

Resolutions to avoid wills & estates claims

- **#5 cause of LAWPRO claims (7%)**
- **Average of 145 claims a year**
- **Average \$5.7 million per year in costs**
- **Average cost per claim of \$40,000**

(For the years 2007-2011)

Top 5 errors:

- **Inadequate investigation or discovery of fact**
- **Failure to know or apply the law**
- **Failure to obtain client consent**
- **Failure to follow client instructions**
- **Poor communication with client**

☐ *I will ask more probing questions when meeting with a client to prepare a will.*
Too many lawyers are not asking the questions that could uncover facts that could cause problems later, or making clear to the client what information they need to provide. Was there a prior will? Are all the beneficiaries identified correctly? What about gift-overs? Were all assets identified, and how are they registered? Was there a previous marriage? Ask, ask, ask. And then do a reporting letter to confirm everything that was discussed.

☐ *I will not act for family members or friends.*
We see claims where lawyers didn't make proper enquiries or take proper documentation because they assumed they had good knowledge of their family or friends' personal circumstances. It's best not to act for them, but if you must, treat them as if they were strangers. And remember if a claim arises it will likely not be from the friend or family member, but from a disappointed beneficiary with no personal relationship with you.

☐ *I will confirm as best I can the capacity of the testator and watch for undue influence.*
With greater numbers of elderly clients, lawyers need to be vigilant about these issues. Meet with the client separately from those benefiting from a will change, and have written proof that the client understands what they are asking and the advice you've given. And while it is difficult to be completely certain of capacity, be sure to document what steps you've taken to satisfy yourself that the client's capacity has been verified.

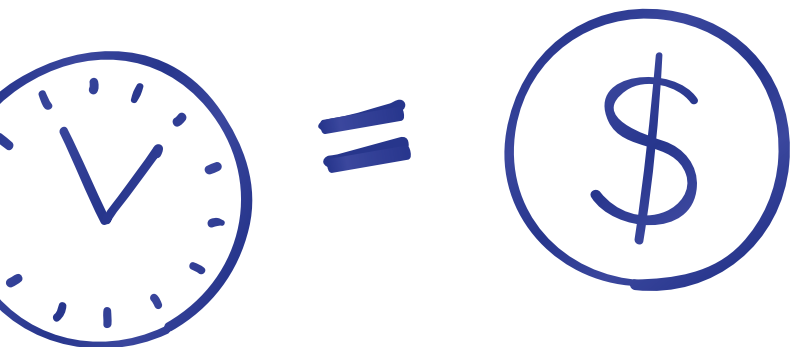
☐ *I will take the time to compare the drafted will with my notes.*
It sounds like obvious advice, but we see claims where the final version of the will did not adequately reflect the instructions that the client gave, or overlooked some important contingencies. Many of these errors could have been spotted by simply reviewing the notes from the meeting with the client. It can help to have another lawyer proofread the will, or set it aside for a few days and re-read it with fresh eyes. When you review it, consider the will from the position of the beneficiaries or disappointed would-be beneficiaries. Ask yourself if you were going to challenge this will, on what basis would you do so?

☐ *I will review the completed will with my client.*
Once you have a final draft of the will, meet with the client to review and explain the will's terms.

Resolutions

to capture more time (and make more money)

With technology and a few tricks, you can increase your billable time by catching more of the actual time you spend on tasks. This gives you more time to bill, which will ultimately transfer to a better bottom line. Here are some of the best ways you can use technology to capture and bill more time:



I will use electronic timesheets and enter my own time: Paper timesheets are error-prone and inefficient because they require double entry. The efficiency, extra speed, and greater accuracy of entering your own time on electronic timesheets make this resolution a no-brainer.

I will enter time contemporaneously as I complete tasks throughout the day: Trying to create time entries for work done in the distant past is time-consuming, and not likely to be very accurate or complete. Studies have shown that lawyers gain up to 20 per cent in their billable time when they docket their time contemporaneously to doing their work.

I will review my dockets and "to do" list at the end of the day: At the end of the day spend a few minutes reviewing your dockets, and make any necessary corrections or additions while things are still fresh in your mind.

I will use standard billing codes and include details in my dockets: Many law office accounting programs have standard billing codes, for example, "conference with client," or "review of

correspondence." While these codes are convenient (and you should use them for this reason), they don't include enough detail. Having detailed time entries is a great record of the work you did on a file, and for communicating to the client the details of that work. A detailed entry should look something like this: "telephone conference with client re details of weekend access problems." Or, "drafting of correspondence to client confirming instructions to skip zoning search." Clients will have fewer fee complaints when your accounts have detailed time entries.

I will record every minute I spend on a file: Don't pre-judge and write off time spent on a file by not recording it on the day it was done. Wait until your final or interim bill is prepared on the file, at which time you can properly judge all the factors that determine what should be billed, including the time that was spent on it, the outcome, etc. You can easily make adjustments to an account by editing it at this stage. And, if you do elect to write-off certain billing entries, show them on the bill, as they are still part of the work done for the client, notwithstanding the write-off.

I will docket all my administrative and other non-billable time: To properly evaluate where your time is being spent, your efficiency, and ultimately the profitability of your practice, it is important that you understand how much time you are spending on non-billable tasks, and what they are. You can't do this without knowing how much time you spend on non-billable tasks and what those tasks are.

I will review detailed time and billing reports for my practice: Practice management software and accounting products can give you detailed reports that breakdown your time by file, client, matter type, practice area, etc. Review these reports to better understand where your time is going, and where you can make changes in how you allocate your time.

Resolutions to avoid criminal law claims



- 2% of LAWPRO claims
- Average of 32 claims per year
- Average of \$404,000 per year in claims costs
- Average cost per claim of \$13,000

(For the years 2007-2011)

Top 5 errors

- Failure to obtain client consent
- Poor communication with client
- Failure to follow client instructions
- Failure to know or apply the law
- Inadequate investigation or discovery of fact

☐ *I will take the time to ensure the client understands my recommendations.*
Failing to effectively communicate with the client is just as much a claims pitfall in criminal law as in other areas. This could be because of the rushed nature of many “courthouse steps” conversations, or the fact that the lawyer’s years of experience on cases may obscure the fact that the client doesn’t fully understand the course of action the lawyer recommends. There is a risk that clients may later regret their choices and make a claim against the lawyer. To guard against this, be sure to provide detailed information about your analysis of the case, the plea options available, your recommendations, and a reminder that the plea decision is the client’s alone. It may not be required to document ALL your communications with the client, but it is good practice to do so as much as possible.

☐ *I will discuss with the client the potential consequences of pleading guilty (and document it).*
While criminal law is traditionally a low claims-risk area of law, those claims we do see often involve a failure by the lawyer to communicate all the long term ramifications of pleading guilty to a charge. For instance, a truck driver pleading guilty to DWI may find out later that he may have difficulties with his job if he can’t cross the U.S. border. Be sure to document your conversations with the client in this regard.

☐ *I will promptly notify LAWPRO of any appeals based on “ineffective assistance of counsel.”*
A client may appeal a guilty verdict based on grounds that the trial lawyer provided ineffective assistance. The appellate lawyer may ask the trial lawyer to sign an affidavit supporting this ground of appeal. If asked to do so, you should call LAWPRO right away so that we can advise on whether it is necessary and if so, how to do so without admitting negligence.

☐ *I will meet with my client in my office whenever possible.*
Client meetings held at the courthouse while awaiting appearances sometimes lead to poor documentation of the content of the meeting, and incomplete understanding, by the client of what was explained. Wherever possible, and especially where charges are serious, you should make the effort to hold dedicated meetings at your office to discuss important issues if a client is not in custody.



for stress relief, wellness and balance

The life of a lawyer, especially a solo or small firm practitioner, is often stressful. Stress itself is not necessarily a bad thing; our body's reaction to stress actually helps us to meet the sudden demands that we face as busy lawyers. However, too much stress too often becomes chronic stress, and takes its toll on our physical, mental and emotional well-being. That, in turn, affects our personal lives and our ability to serve our clients. The trick is to eliminate some of the stressors in life, and build our resiliency for the stresses we cannot change. Try to incorporate several of the following practical tips into your daily routine in an effort to help you reduce your stress and enhance your performance in the practice of law.

I will take a real lunch break: Make time at midday for exercise, or invite an old friend to lunch. Catch up on business, but don't make that your primary focus. Laugh and enjoy the time. The time away from work will pay stress-reduction dividends.

I will read a good book: Find and read a book, fiction or non-fiction, on a subject that really interests you and that – this is the important part – is not connected to the law. Reading helps renew the mind and spirit!

I will get help if I need it: The fine line between “ordinary” stress and a mental health problem or addiction can be easy to miss, so it's important to tune in to how you feel. Prolonged feelings of hopelessness or unusual anger; complaints by others about your mood or behaviour; and making mistakes because of stress or addiction symptoms are just a few clues that you may not be able to manage your stress on your own. There are many places you can turn for help,

including to your family physician or a trusted confidante. Know when to reach out.

I will make time for exercise: Exercise is one of the most effective ways to combat the effects of stress on the human body. Commit to making exercise a regular part of your schedule. You are most likely to succeed if you start with short exercise sessions three times per week, then build to longer more frequent sessions. (As lawyers, we have to add: “Consult your doctor before beginning a new exercise regime.”)

I will go outside: Mounting evidence suggests that exposure to the natural world improves mental health and cognition for many people. Need to brainstorm ideas for an article or an argument? Try thinking on your feet as you walk around a local park; or park farther away so that you can walk a few blocks before and after work. Spend a few hours every weekend outdoors.

The top 10 precedents and checklists



- 1 Sample law firm budget spreadsheet
- 2 Law firm business plan outline
- 3 General retainer agreement
- 4 Employee departure checklist
- 5 Sample associate agreement

- 6 Sitting on a non-profit board:
A risk management checklist
- 7 Independent legal advice checklist
- 8 Criminal law retainer agreement
- 9 Family law retainer agreement
- 10 Sample law firm privacy policy

Available at: www.practicepro.ca/topdownloads

Seven New Year's resolutions for a better practice

We have assembled a whole bunch of resolutions in this article, but there are some that are truly suited and appropriate to being annual New Year's resolutions. All of them help to reduce stress: Less stress will immediately guarantee you a better New Year. Here they are:

- ☐ **I will fire my worst client:** This client is the one that calls you almost every day, sends you hourly emails, never has enough for a retainer and bickers about paying your fees. When ending the retainer, make sure you comply with the *Rules of Professional Conduct*.
- ☐ **I will book my vacation:** Your body and mind need a vacation and some downtime. Grab your calendar and block off two weeks for a vacation. Make sure to coordinate with your spouse/significant other. Under no circumstances do you book anything during those two weeks. Schedule it now and make sure you both take it!
- ☐ **I will book a medical appointment:** Are you seeing the doctor or other health professionals as often as you should? Don't put off your regular check-up because you are too busy. Investing some time now may mean that small health issues don't become big ones.
- ☐ **I will give more priority to exercise this year:** Put this in your calendar, too. Even if it is just a walk around the block at mid-day, bowling with the kids or using that dusty treadmill while you watch TV, it all helps to improve physical and mental health.
- ☐ **I will tackle that file I have been avoiding:** Set aside some time in your calendar in the first two weeks of the year to deal with that dusty file on the floor in the corner of your office that you have been avoiding. Unlike a fine wine, the file won't get better with age!
- ☐ **I will connect with my spouse/partner:** The practice of law is very stressful and demanding, on both you and your spouse or partner and family members. Take your significant other out to dinner and ask them: How and where does my work bug you? What needs to be changed to make this year better?
- ☐ **I will connect with a few of my best clients:** Take your best client(s) out to lunch, dinner or a coffee (if strapped for cash) and ask them: What am I doing well? What am I not doing well? What needs to be changed to make this year better? And the most important point – do this off the clock. An off-the-clock visit to the premises of a business law client is often appreciated – everyone likes to show off their operations.

by Dan Pinnington, vice president, claims prevention and stakeholder relations and Tim Lemieux, practicePRO