

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. The December 2012 issue of *LAWPRO Magazine* proposed dozens of New Years' resolutions for lawyers in every area of practice. We've reproduced a few excerpts relevant to newly-called lawyers here. 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 enter target dates a few days early to avoid last minute complications.
- I will familiarize myself with the *Limitations Act, 2002*.
- I will avoid the administrative dismissal of proceedings for delay.
- 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 create more detailed docket notes.
- 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 more 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.

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 and stakeholder relations, and Tim Lemieux is practicePRO co-ordinator at LAWPRO.