

managing the

**L A W Y E R / C L I E N T**

relationship





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## **Disclaimer**

This booklet includes techniques which are designed to minimize the likelihood of being sued for professional liability. 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.

It's a fact that lawyers today practise in an increasingly complex world. The demands on members of the legal profession and the related risk of a claim have never been greater. Today, exposure to claims and the related need for liability insurance is simply a reality of practice. For you, as a lawyer with a claim, costs come in several forms: First, there's the deductible that you are obligated to pay on a claim. There's also a claims history surcharge that's added to your premium if you have a claim. And then there are issues such as stress, time, professional stigma and lost opportunity to work on other matters – all of which come at a cost.

For the profession, the cost of claims comes in the form of your annual insurance premium. The lower the number and cost of claims reported by the profession, the lower the annual insurance premium. In other words, reducing claims benefits both you and the profession equally. Understanding these realities is just good, sound business.

The best way to protect yourself against these realities is through **proactive** action on your part to minimize and even avoid risk. The most significant claims-prone aspect of practice is your relationship with your clients.

The purpose of this booklet is to help you better understand and prepare yourself for your client relationships.

Fundamental to the lawyer's practice is the ability to effectively manage the lawyer/client relationship through its various stages. This point cannot be over-emphasized as failure to effectively manage the lawyer/client relationship can easily lead to client dissatisfaction and a professional negligence claim.

Performing legal services for a client involves a number of different stages. Initially, you, as a lawyer, will have to decide whether it is appropriate for you to accept the new client or case. Assuming that you make the decision to proceed with the relationship, you must turn your mind to how it will begin and how it will be structured.

At some point, the relationship will come to an end because either your work has been completed or the relationship is in some way undermined, requiring early termination. At each stage, careful thought and planning will be required.

What follows is a brief discussion on specific areas of sensitivity which give rise to claims and how to approach each of the key stages in the lawyer/client relationship.

## client/case screening

### **Deciding whether to accept the case**

The first step when approached by a potential client is to decide whether to agree to represent the client in the particular matter. Before accepting representation, you should obtain as much information as possible to determine whether you can undertake the work required competently, effectively and responsibly. This step is referred to as “client screening” or “case screening,” and, if done thoroughly, can go a long way to avoiding situations that result in malpractice claims.

Review **Appendix 1 - Checklist for Client/Case Screening** for the points which should be considered before taking on a new client or case.

## non-engagement

### **The screening is done. The answer is no. You will not act. What's next?**

Once the lawyer decides to decline a representation, the lawyer must communicate that decision to the prospective client immediately and in writing.

A common source of claims is miscommunication. The client believes that he or she has retained the lawyer to act on his/her behalf but the lawyer did not appreciate this assumption, and consequently did not take steps to protect the client's interests. To avoid confusion, the lawyer should clarify with any prospective client that he/she is not acting on the client's behalf.

Furthermore, the lawyer should maintain sufficient information to avoid subsequent conflicts of interest and breach of confidentiality, depending on the nature and degree of information obtained from the prospective client in the initial consultation.

The letter setting out this information to any prospective client is typically referred to as a **"non-engagement letter"** and should deal with the following issues:

- State that not representing the prospective client
- Refrain from commenting on the merits of the case
- Identify generally the fact that time limits might apply to bar recovery
- Return any materials provided during the consultation

Refer to **Appendix 2 - Checklist for Non-engagement Letter** which outlines the specific points to be included.

## engagement

**The screening is done. The answer is yes. You will act. What's next?**

### **Beginning the relationship**

Once you have decided that you are prepared to represent the client in a particular matter, you are ready to begin building a relationship with that client. Even if you already have a relationship with the client, but are taking on a new case, it is essential that you communicate with him or her to establish a mutual understanding of the nature and scope of the matter to be pursued.

Right at the outset you will need to think through the type of legal service you will provide and how you will provide it. Review **Appendix 3 - Checklist for Engagement/Retainer Letter** which lists points which should be canvassed with the client and then confirmed in writing in an "engagement letter agreement" also known as a "retainer letter agreement."

**With the engagement letter agreement in place, the relationship is well-defined on paper. Now comes the implementation stage.**

Once the retainer is in place and efforts are underway to handle the matter, the lawyer must continue to work with the client on the developed strategy. As the matter evolves, the client's needs and objectives could change; the strategy then must be reviewed and adjusted to respond to any prevailing developments. The process is a dynamic one involving ongoing investigation, ongoing legal analysis and research, and communication with the client to keep him or her informed about the status of the matter and the need for his/her instructions. It may be that the terms of the initial retainer change. If that is the case, these changes should be documented by a confirming letter to the client.



## disengagement

When your retainer is completed the representation should cease, including termination of the authority and your duty as a lawyer to protect the client's interests.

Although most retainers end when services are completed, representation may also end when a client dies, when you as lawyer die or are disbarred or become disabled, when the client discharges you, or when you withdraw. Various Rules of Professional Conduct will apply to your ability to withdraw.

In addition, a written record of the circumstances of termination must be prepared so as to disengage the lawyer/client relationship. Such a letter is referred to as a **"disengagement letter"** or a **"termination letter."**

There are two types of disengagement letters – one to document a situation where the matter has been completed, and one to reflect that the retainer has been terminated prior to its expected completion. Consider **Appendix 4 - Checklist for Disengagement/Termination Letter** which canvasses the matters to be addressed in such a letter.

## **Issues to address at termination**

At the time of termination of the representation, you must consider the following issues:

- return of client property (including file documents);
- confidentiality and retention of lawyer's file information;
- duties with respect to future conflicts of interest; and
- accounts for fees and disbursements.

If your decision to terminate the relationship relates to the non-payment of fees, think twice before suing the client for fees. Many professional liability claims result from counterclaims in response to a lawyer's action to recover fees. The lawyer is faced with an account receivable and with the additional headaches of having to spend time defending a claim, having to pay an insurance deductible, and losing precious time that could otherwise be spent on the practice.

# adopting a risk management approach

LPIC's challenge is to help lawyers practise law more effectively. One way you can protect yourself against the risk associated with law practice is to fully understand your policy and the insurance coverage you have in place. In fact, the requirement that you must be insured is in itself an aspect of risk management, in that insurance protects you and your client from the financial consequences of a mistake.

If you receive a notice of claim, you must advise LPIC in a timely fashion. LPIC's claims reporting and handling procedures are summarized for you in **Appendix 8**.

Insurance is, however, only the first step. Equally, if not more important, is the need for you to take an active role in managing the risk associated with law practice – through risk management.

As a profession, we're not as advanced as many other businesses when it comes to managing risk. Business and industry have long used risk management as a strategic tool to avoid or minimize various kinds of losses and costs. Law Societies in other jurisdictions such as Australia and some states in the United States, which have adopted risk management initiatives, conclude that behaviour patterns that result in claims can be changed if lawyers are aware of the causes of claims and of the mechanisms to protect themselves against claims.

## benefits of risk management

Experience elsewhere also reveals that risk management is a win-win proposition for all parties: It improves the practice climate which, in turn, benefits lawyers and clients alike. Lawyers report their practices are more profitable and enjoyable, and they find they can better manage their time and improve the level of service they provide to clients. Risk management also pays off on a larger scale – through enhanced credibility for the profession. Clearly risk management must be an integral part of your law practice.

# risk management techniques

What follows is a brief primer on how to start bringing the benefits of risk management techniques to your practice today.

As explained earlier, as a practitioner you must manage your client relationships. This means that you must not overlook the basic aspects of running a practice and serving clients. Lawyers need to become aware of and understand the importance of basic quality assurance techniques so they can better satisfy client needs and develop personal risk management strategies to avoid claims.

There are a range of helpful tools to achieve these objectives. They include: sound routines and systems for tracking timelines, documents and billings; computer technology; effective communication; and time management and planning strategies. These tools can reduce the risk of malpractice because they control the administrative and communication activities which cause many of the claims against lawyers.

## systems and trails

Checks and balances will reduce your exposure to claims only if they are used. For these suggested systems and processes to be effective, lawyers must make them an integral part of their practice. But remember too that they are only tools to help you in your practice. As a lawyer you are obliged to turn your mind to the peculiarities of each case at hand, and to provide for additional matters which might not have been addressed in other cases. Always be alert to the twists and turns of practice and the fact that each case has its own unique features. Consider **Appendix 5 - Checklist of Systems and Trails**.

## effective communication

As a lawyer, you are in the business of providing legal services. Service is the operative word here. Whether or not you provide good service is a matter of the client's perception. To most clients, however, good service means effective communication. Accordingly, the importance of having good communication skills to handle the lawyer/client interface cannot be over-emphasized.

In 1992, the Law Society conducted a study of the public's perceptions of lawyers. Topping the list of complaints was lawyers' inability or failure to communicate. When asked to list their priorities, survey participants ranked communication and service higher than quality of work and fees.

These same factors – communication and service – also have professional liability implications. A significant cause of LPIC claims relates to lawyers' poor communication skills and not being service oriented.

The importance of being able to listen and impart information to clients promptly, regularly and effectively must be kept in mind through every stage of legal representation. Consider the points set out in **Appendix 6 - Checklist for Effective Communication**.

## planning

In today's competitive environment traditional practices are giving way to sophisticated marketing and management techniques. It is increasingly difficult to reconcile issues such as the needs to

provide quality service, remain competitive, reduce stress associated with the increased complexity of law practice, and the desire for personal satisfaction.

Lawyers must recognize that short- and long-term planning are essential for both large firms faced with explosive growth and radical changes in clients' expectations, and for small firms and sole practitioners coping with an information boom and other administrative challenges. Planning enables lawyers to anticipate and adapt to the changes which have become the hallmark of modern practice.

Periodically evaluate your practice and engage in short- and long-range planning which includes setting goals, establishing methods to achieve the goals and reviewing the effectiveness and progress of the methodology.

## technology

Today, using computers is a must for any successful legal practice. The efficiencies that computers provide will not only help you attract clients, but also allow you to service your clients more cost effectively. At the same time, you need to be aware of the liability issues that come with relying on computer technology. Consider subscribing to a regular information service on developments in law office technology to help you keep up to date on the options available to you. In addition, keep in mind the points set out in **Appendix 7 - Checklist of Technology Tips** to minimize your exposure to claims.

## time management

Procrastination stands as one of the leading causes of claims against all lawyers. Effective time management enables lawyers to practise effectively and efficiently, and enjoy practice. In essence, consciously managing your time encourages you to work smarter not harder. There are a plethora of texts and tips which invite lawyers to reap the rewards of effective time management. You are well advised to spend some time familiarizing yourself with some of the literature. Listed below are some key pointers:

- learn to say “No”
- set priorities
- plan/schedule in advance
- delegate
- avoid interruptions
- keep the filing up to date

For the most part, these risk management techniques are applications of common sense. It is essential that lawyers appreciate just how effective this common sense approach can be when it is applied to everyday law practice.

The rewards of risk management include improved practice and profitability, along with a significantly reduced exposure to claims. We believe that the more you know about claims and claims prevention, especially with respect to the management of the lawyer/client relationship, the more you will be open to developing patterns and habits that help you develop strong relationships with clients and thereby avoid claims.

But we also know that risk management strategies are only as successful as your – or your organization's – commitment to them. Risk management is a long-term commitment. It requires behavioural change and it can succeed only with the cooperation and commitment of the people it is designed to benefit – you, the practitioner. As your professional liability insurer, we look forward to working with you to help you manage the changing practice climate and all of the challenges which change presents.

## checklist for client / case screening

- In the case of a new client, identify through independent means the client for whom you are going to act. Don't get caught with an imposter on your hands.
  
- First impressions often provide a helpful signal about the potential relationship. Trust your instincts.
  
- You owe a duty of loyalty, independent judgment and confidentiality to every client. Is there any apparent or potential conflict of interest which would require you to decline?
  - Consider whether acting would pose a conflict vis-a-vis another current client, a former client or lawyer in your firm.
  - Do not enquire about confidential information until the issue of potential conflict has been addressed.
  - If there is a conflict consider whether it can be waived by consent.
  - If consentable, have the consents been documented and validated?
  - Consider occasions when representation would be inappropriate regardless of the parties' consent.
  
- You must have the requisite knowledge and skill so as to avoid undue risk or expense to the client.
  - Do not pretend to know every area of the law.
  - Consider the type of research that may be necessary.
  - Consider the use of expert witnesses or need for legal specialists.

## checklist for client / case screening

- Timeliness is always important to clients. Will you be diligent and prompt in meeting time deadlines imposed by either the client or the law (limitation periods)?
  
- Cost considerations including legal fees and other expenses must be addressed to allow the potential client to make an informed decision on the suitability of you as his/her lawyer.
  - Consider the client's ability to pay.
  - Review with the client your ability to withdraw for non-payment of fees.
  
- Do not ignore your suspicions or actual knowledge of a client's unlawful objectives or conduct.
  - Avoid assisting client in criminal or fraudulent activities.
  - Have regard to the Rules of Professional Conduct and your concurrent duties to courts, other lawyers and members of the public.
  
- Identify whether client expectations are achievable.
  - Are the client's expectations realistic?
  - Consider your ability in the future to obtain instructions if the client demonstrates significant emotional or erratic behaviour or has unrealistic expectations.
  
- Acting for friends and relatives is a risky business.
  - Think twice before doing so.
  - Bring the usual discipline of practice to these clients as well.
  - Avoid acting outside of areas of expertise, cutting corners, failing to obtain consents or written instructions.

## checklist for client / case screening

- Beware the phantom client.
  - People you speak to socially or casually or who make limited inquiries may believe that you are acting as their lawyer. Be sure to dispel the myth.
  - Consider also the multiple hidden clients who are family members or commercially related. What appear to be common interests at the start can soon turn into conflicting ones.
  
- Was previous counsel involved?
  - Ask the question – Why is the client changing lawyers?
  - Have other lawyers/firms rejected the representation? If so, why?
  - Consider the client who is eternally unsatisfied.
  - Satisfy yourself that the claim or allegations being made are well-founded.
  - Be wary of the client who cannot easily agree on your fee and any necessary financial up front commitment.
  - Don't be satisfied with the assumptions made by previous counsel. Make your own factual investigation and analyze all legal issues so that you can avoid any erroneous assumptions of previous counsel and address possible new developments.

## checklist for non-engagement letter

- Clearly confirm that the representation is declined and that there is no lawyer/client relationship. You need not set out your reasons for your decision.
- Return any documentation or other property obtained during the consultation.
- Refer to the fact that statutes of limitations may apply to bar recovery if steps are not taken promptly to pursue rights or remedies. If a specific statute of limitations poses an immediate problem, specific reference should be made to a need for urgent action on the part of the client.
- Advise the client to seek other legal counsel as soon as possible to pursue his/her rights.
- Take care not to express an opinion on the merits of the claim unless careful research has been conducted to support the position.
- Confirm acknowledgment of receipt of the non-engagement letter by the client and document his/her receipt.

## checklist for engagement/retainer letter

- Generally
  - Language of retainer must be clear and understandable.
  - Document should provide for acknowledgment and acceptance of all of the terms by the client.
  - Specify that any changes to the terms of the letter agreement must be in writing.
  
- Parties to be represented
  - Identify the client – obtain proper legal names for all persons and business entities.
  - Identify all other parties in matters.
  - If there are multiple clients, explain that the effect of lawyer/client privilege does not apply as between them.
  - If conflict is being waived on consent, set out terms regarding consent.
  
- Client's objectives and strategy
  - Identify the client's objectives and propose strategy to meet the objectives.
  - Outline the scope of representation and identify specificity of the retainer where it is limited.
  - Identify nature and degree of factual investigation to be made.
  - Explain ambit of legal analysis to be performed.
  - Outline key steps in the representation.
  - Provide an estimated time frame for all major work and identify critical points in time.

## checklist for engagement/retainer letter

- Client communications
  - Set out line of communication and need for instructions. If there are multiple clients, set out the process for instructions and disclosure or need for ILA.
  - Confirm type of reporting needed by the client.
  
- Responsibilities of lawyer, staff and client
  - Identify significant areas of responsibility vis-a-vis you, the law firm, the client or a third party, and include permission from the client before incurring significant expenses with third parties such as experts or other service providers.
  - Define your level of authority and identify matters which specifically require the client's consent.
  - Explain and confirm delegation within your firm.
  
- Safeguarding client property/investment of funds
  - Identify property being held at your law firm and confirm arrangements for safekeeping.
  - Confirm investment of any funds being held in trust.
  
- Fees and expenses
  - Identify the basis for the fees to be charged (e.g. fixed fee, hourly rates, blended option). If charges are on an hourly rate basis, the current rate for each lawyer and other time keeper assigned to the matter should be described along with an indication of whether rates are subject to change in the future.

## checklist for engagement/retainer letter

- Review the nature of the out-of-pocket disbursements to be billed and distinguish between internal expenses such as photocopying and long distance charges as opposed to charges from an outside vendor such as court fees, government searches and agency fees.
  - Set out the timing of rendering of accounts and period within which accounts are to be paid.
  - Identify the need for any financial commitment in advance (referred to as a financial retainer) and terms upon which funds are to held/invested and drawn upon and replenished in the future.
  - Describe billing format and elicit any particular billing format requirements of the client e.g. detailed statements – identify time keeper rates, tasks undertaken.
  - Outline consequences, if any, of late payment of accounts and circumstances under which the retainer will be terminated for non-payment.
- Grounds for termination or withdrawal of services
- Set out grounds for your termination/withdrawal (e.g. failing to receive instructions or any other grounds).

## **checklist for disengagement/termination letter (the engagement has been completed)**

- Confirm that the particular matter has been completed.
- Specify steps taken to complete the matter (e.g. executed mutual releases, orders dismissing action or for non-litigation, closing book, share transfers).
- Specify what if any additional steps are to be taken by the client in future to protect interests (e.g. renewal of execution); provide copies of documents to third parties such as a bank or insurance company.
- Enquire whether client desires further services if any new developments arise.
- Return client documents and identify destruction policy regarding your file records.
- Include the final account and a trust statement reconciling funds received and dispersed if appropriate.
- Thank the client for the opportunity of working on the matter.

## **additional items for disengagement/termination letter (before the engagement has been completed)**

- Confirm why the relationship is ending.
- Address any final account or outstanding account.
- Explain the conditions under which you and your staff will consult with successor counsel and provide access to work product although payment not yet received.
- Outline important deadlines and uncompleted activities so as to bring to the attention of the client the status of the matter and avoid prejudicing their interests.
- Confirm receipt of the disengagement letter by the client (e.g. registered mail or process server).

## checklist of systems and trails

- Conflicts systems
  - Develop client information sheet to check conflicts.
  - Consider other current clients, former clients, adverse parties, lawyers and staff in your office.
  - Also consider the nature of the work and whether it conflicts ideologically with other cases you are handling e.g. representing management as opposed to union in a labour matter.
  
- Tickler systems
  - Identify time deadlines, follow ups and reminders.
  - Establish a system for checking on the accuracy of information inputs.
  - Keep a backup system as a safety net.
  - Calendar every case, not just those in litigation.
  - Conduct a personal hands-on review on an interim basis (monthly or quarterly) to be sure that each case is up to date.
  
- Filing systems and document control policies
  - Ensure safekeeping, retaining, recording and retrieving of client information.
  - Use precedents and checklists for standardized documents.
  
- Systems to handle routine matters
  - Standardize correspondence.
  - Develop precedents for documents and checklists for steps to be taken.
  - Develop a bank of legal research for common issues.

## checklist of systems and trails

- Usable trails and records
  - Make and retain notes of all meetings and telephone conversations and confirm information in writing.
  - Develop checklists for standard tasks to ensure all steps are followed in each case.
  - All important advice to the client should be confirmed in writing.
  - Write to the client when the client is proceeding contrary to your advice.
  - Always document all settlement offers and rejections and confirm client's knowledge of same and client instructions in writing.
  
- Training and supervising lawyers, law clerks and staff
  - Develop a manual which outlines procedures and policies.
  - Give adequate instructions and supervise all work product.
  - Explain importance of a client-centered approach.

## checklist of systems and trails

- Fair billing and avoiding fee disputes
  - Establish your fee at the outset with the agreement of the client.
  - Set out the method of billing and the degree of particularity required.
  - Keep accurate records of your time spent, regardless of whether the billing will be on an hourly basis. You want to be able to have a record of all of your efforts expended for the client.
  - Render accounts on an interim basis.
  - Do not change your method of billing during the course of your representation without the express consent of the client.
  - Avoid suing a client for fees. Only if a large amount of money is involved will it likely be at all worthwhile. Be advised that a fee dispute when litigated by the lawyer often results in a defence of alleged malpractice, which can end up taking far more time, money and energy than the account receivable was worth.

## checklist for effective communication

- A client-centered approach
  - Address the issue from the client’s point of view.
  - Show an interest in the client as a person.
  - Do not be late for appointments and arrange some meetings at the client’s office.
  
- Active listening
  - Observe the client while listening to assess his/her credibility and emotional state.
  - Listen for what the client is **not** telling you.
  - Do not assume that you know the problem.
  
- Direct questioning
  - Keep the client focused on the issues.
  - Enquire about the client’s affairs that may affect the issues in the case at hand.
  
- Helpful explaining
  - Use clear and simple language, be succinct and avoid legal jargon.
  - Use headings in any lengthy report.
  
- Keeping clients informed and involved
  - Execute a clear engagement letter.
  - Copy the client with work product and arrange for regular reporting.
  - Return phone calls promptly.
  - Do not proceed on any key matter without the client’s consent.

## checklist for effective communication

- Encouraging realistic expectations
  - Avoid taking too sympathetic a view of the client's situation with the result that your opinion on the merits is compromised or diluted.
  - Put your opinions and recommendations in writing from the outset.
  - Instructions from an unrealistic client are generally difficult to obtain.
  
- Dealing with unpleasant relationships
  - Pay attention to what makes the relationship unpleasant and deal with those factors immediately.
  - Consider terminating the relationship on the basis of a lack of confidence by the client. However, if you must continue the relationship, be sure to put your advice in writing in every instance.
  - Involve another lawyer in the firm who may have a better relationship with the client.

## checklist of technology tips

- Have a backup system for your calendar and tickler systems
  - Sophisticated computerized systems for calendaring, docketing and ticklers can fail from time to time or mistakes can be made. Retain a form of hard copy backup.
  
- Proofread documents generated from computer templates
  - While various applications are now available on computers to check spelling, grammar and context, errors still can be made by inserting, deleting or retaining the wrong information.
  - Any document prepared should always be proofread, particularly key documents.
  
- Back up data
  - Do not risk losing all of your information as this could impact both the client and you.
  
- Use your computer equipment
  - Do not rely on the staff to use the computer. Reap the benefit from your investment in the equipment.
  - Understand how the computer works along with the available software applications so that you can communicate directly with your clients, retrieve information for them immediately, and insulate yourself from staff absences or emergencies.
  
- Supervise your staff's use of computers
  - Supervision of how your staff use the computer is very significant to your practice.
  - Work with staff to devise useful and sensible filing systems so that documents and information being used can be easily identified and properly retrieved.

## claims reporting and handling

### When to report a claim

Through the provisions of the LPIC insurance policy, insureds have a contractual obligation to report any incident which is the subject of a claim or which could give rise to a claim.

A claim is broadly defined as any written or oral demand for money or service; or any written or oral allegation of a breach in rendering professional services by the lawyer.

The Rules of Professional Conduct of the Law Society of Upper Canada also oblige lawyers to report.

Rule 3, Commentary 10 states that lawyers must promptly inform both the client and “an insurer or other indemnitor” of any “mistake which is or may be damaging to the client and which cannot be readily rectified...in connection with a matter for which the lawyer is responsible.” The same section requires lawyers to “assist and co-operate with the insurer or other indemnitor to the extent necessary to enable any claim which is made to be dealt with promptly.”

Underlying all of these requirements is the lawyer’s obligation under the Rule to ensure that neither the client’s nor the lawyer’s rights of indemnity are prejudiced by the lawyer’s actions.

Rule 5, Commentary 15 outlines the steps to take when you discover that you may have committed an error.

## claims reporting and handling

### How to report a claim

#### Contact:

Claims Coordinator  
Lawyers' Professional Indemnity Company  
One Dundas Street West, Suite 2200  
Toronto, ON M5G 1Z3  
phone: (416) 598-5830  
fax: (416) 599-8341  
e mail: claims@lpic.ca

#### Required information:

- your name, the name of your firm, full mailing address and fax number;
- name of your client;
- brief description of your retainer, stating when you were retained, why you were retained and the nature of the negligence now being alleged as well as when the events took place which are the subject of the complaint;
- the manner and date in which you became aware of the potential claim or claim;
- any pertinent documentation relating directly to the claim;
- a chronology of events; and
- the amount of potential damages.

## claims reporting and handling

### The need to report promptly

LPIC has divided its claims management team into specific units. The New Claims Unit is charged with repairing or resolving the matter quickly and cost effectively. The examiner assigned to the problem will contact the lawyer within 24 hours, obtain as much information as possible and determine a strategy for that file. In many cases the examiners are able to think of a solution to the problem that avoids the claim and the need to defend it altogether.

It's particularly important for lawyers not to take steps on their own. The steps they take may make the situation worse and could jeopardize their insurance coverage.

### LPIC's duties

LPIC's duties to the insured involve the duty to defend the insured member and the duty to indemnify the insured for all sums which the insured is legally obligated to pay as damages arising out of a claim, provided the liability is a result of an error, omission or negligent act in the performance of professional services. The policy will not indemnify a lawyer for claims arising directly or indirectly from any dishonest, fraudulent, criminal or malicious act. This exclusion is endorsed so that it does not apply to lawyers who practise in partnership, or in association with others or who have voluntarily purchased innocent party insurance coverage.

## **claims reporting and handling**

### **What to expect when you report a claim**

You can expect that you will be contacted by an examiner experienced in professional liability and enter into discussions about the nature of the potential claim.

If further investigation is required you may be asked to meet with the examiner or an adjuster. If defence counsel is required you can expect to be involved in selecting the appropriate defence counsel.

All of our counsel have tendered to do LPIC defence work. The examiner and the insured member select from that list the lawyer best qualified to handle the specific claim. You will receive regular reports from defence counsel and copies of the accounts and budgets, and will be part of the strategy discussions. By working together as a team to resolve these matters, LPIC strives to provide lawyers with the highest quality claims service.

**About the Author:**

This material was prepared for the Lawyers' Professional Indemnity Company (LPIC) by **Karen K.H. Bell**, Risk Management Counsel.

Ms. Bell is widely regarded as an expert in the areas of law practice management, dispute resolution and loss prevention. She has chaired the CBAO's Law Practice Management section, has taught practice management and professional responsibility in the Law Society of Upper Canada's Bar Admission program, and, as a commercial litigator and defence counsel for insurers, has developed an appreciation for the application and benefits of risk management to law practice and business. Formerly a litigation partner at a large Toronto law firm, Ms. Bell has established her own specialty practice as Risk Management Counsel.



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