



# Preparing your practice for the unpredictable

When lightning strikes

New from practicePRO:  
managing PRACTICE  
interruptions

TitlePLUS: 5 years and  
going strong

# When even the best laid plans...



*No doubt each of us will forever remember where we were and what we were doing on September 11, 2001.*

*I know I will – and not only because of the staggering magnitude of the tragedy.*

*We of course had a disaster recovery plan; the only problem was we had not appreciated – until that moment – how robust the plan really needed to be.*

A key player in our plan – our Information Systems director was (of all places) in New York City, on a conference. Our first thoughts were to locate him, and reassure ourselves and his family that he was safe. Luckily he was both safe and able to communicate with us.

Unfortunately **his** backup was on vacation. And the backup to the backup in our Systems Department had just moved and we had no means of reaching him.

Never has the need to not only have a plan, but to also plan for redundancies in both people and equipment been driven home quite as clearly.

The theme for this issue of LAWPRO®, our new risk and practice management magazine, had its genesis in the terrible events of that morning.

Subsequent research told us that this very important topic – planning for anything from a minor business interruption to a full-blown disaster – was not very high on the agenda for many law firms. In fact, even today (and despite the media coverage and resources published on this subject) many law firms still are ill-equipped to ensure the continuity of their practice should disaster strike.

To help remedy this situation, we're putting two tools at your disposal. Inserted in this issue of LAWPRO you will find a copy of the latest in our series of *managing* booklets designed to help you manage specific aspects of your law practice. *managing PRACTICE interruptions* walks you through the steps you should take to ensure your practice will survive an unexpected event, such as a flood, a fire, theft, a major power outage or loss of

a key staff person. Like its predecessors, this *managing* booklet provides practical, easy-to-implement ideas and checklists that address virtually every step of the process, from developing a plan to managing your practice through the recovery stage.

Complementing the *managing PRACTICE interruptions* booklet is this magazine, which invites law firms who have given this subject some thought to share their experiences and successes with you. With the kind of sage advice that you'll find on the following pages, there's no need to ever reinvent the wheel on disaster recovery.

How did we at LAWPRO fare that horrible day? Once we had started to digest the magnitude of the disaster unfolding on television, we opted to close down the office and let our staff focus on what was really crucial at that time: being with their families. Luckily, our management team has a wealth of experience in technology, systems and people management on which we could draw to safely shut down our operations.

With one exception: No one could figure out how to get around the (building-owned) program that automatically locks our office door at 5 p.m. ...not even a phalanx of building security guards.

I trust that solution is now in their disaster recovery plans.

Michelle Strom  
President

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## FEATURE

### Preparing for the unpredictable

Whether it's as manageable as a power outage or as devastating as a fire that wipes out your practice, preparing for the unexpected simply makes good business sense. Seven law firms share their ideas, solutions and views on why and how lawyers must be prepared to manage practice interruptions, large and small. . . . . 2

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## Insert

*Managing PRACTICE interruptions* is the fifth in a series of booklets from practicePRO to help lawyers manage the specific aspects of law practice – and the related risk issues – more effectively and efficiently. The booklet guides you through the steps involved in being prepared for the unpredictable, from what goes into your plan to how to manage the recovery process. Detach and keep as part of your library of *managing* booklets from practicePRO.

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# When lightning strikes . . . are you prepared?

*It can be as devastating as a fire, a major theft or other physical calamity that has the potential to wipe out your practice.*

*Or it can be as manageable as a power outage that puts you out of commission for a few hours.*

*Regardless of the scale, unpredictable events put the focus on you and how prepared you are for a practice interruption.*

A topic – like the process of preparing for practice interruptions – is not necessarily an easy one. It takes time, effort and resources – all of which you are tempted to allocate to your immediate business pressures – to ensure that you and your practice are prepared for the unplanned. But as the events of September 11, 2001, have driven home, preparing your practice for business continuity is, in both the short and long term, good for business.

This issue of LawPRO magazine focuses on how you can prepare your practice to weather virtually any “storm.” The seven firms interviewed for our article represent a cross-section of firm sizes, practice areas and geo-

graphic locations. For all of the firms interviewed, the issue of practice continuity is a priority; but the plan and preparations underfoot vary significantly. Although larger firms have the resources to plan, smaller firms are often better positioned to manage business interruptions simply because their processes and needs are less complex. In this article, we profile the “best practices” implemented by these firms, as one way of facilitating the exchange of ideas and information on this vital and topical issue within the legal community. Specifically, we examine this topic of practice continuity in four principal areas: preparing the plan, the people, the premises, and the practice.

## The plan

"Accidents don't make appointments."

For most law firms, the events of last September reinforced this conventional wisdom and the need to prepare for virtually any kind of eventuality.

"It was a bit of a wake-up call for us all," admits Jamie Trimble, partner with Hughes, Amys.

"It made disaster planning a very topical issue for TLOMA (Toronto Law Office Managers Association) which in turn kick-started the planning process for many, many firms I know about," says Millie Waicus, network administrator with Bereskin & Parr.

"Without a doubt, it fast-tracked both planning and implementation of disaster recovery efforts," adds Arthur Shiff, senior partner at Davies Ward Phillips & Vineberg LLP.

But almost a year later, most firms are still grappling with the planning process.

At Goodmans LLP, the events of 9-11 prompted a major change in the scope of its business interruption planning. "Previously, we'd looked primarily at the technological issues," says Joseph Siu, the firm's chief technology officer. "After September 11, we refocused on the larger topic of business continuity planning: how do we stay in business if we cannot access our main office, how do we communicate with staff, how do we regroup."

Addressing those questions has raised even more issues that have further expanded the project's scope. "We're finding that certain ideas are not as feasible as we thought: There are back end issues related to moving data around to accommodate our decision to maintain a hot site that affects the front end – from both a resource and timing point of view. We've discovered we need to





Tom Troughton and Karen Curtis

upgrade all servers so that we can replicate information between our current and hot site; we need to accelerate the timeline for phasing out our Novell servers. These are all major issues from a resource point of view.”

Developing and implementing the plan has become a “massive undertaking, with us doing two years of work in one.” His goal: to finish compiling the master plan by the end of the current year so that Goodmans is prepared to meet its principal objective: To have the firm back in practice within 24 hours of a disaster.

Time and resources are more critical issues for smaller firms, which, by necessity, have opted to focus their recovery planning efforts on what Rick Mount calls “the mission critical issue: being able to service

clients.” The ice storm of several years ago, as well as two virus invasions that ground the firm to a halt, have provided Mount Clark Yemensky Bowman with first-hand experience at preparing for the unpredictable.

“Our plan, though not written down, focuses on eight key areas: premises, phones, computers, technical support, database access, client document access, client files and accounting records,” says Rick, a partner and the firm’s “tech expert.” Using this roadmap, he’s assessed the firm’s key vulnerabilities, outlined how to respond and the costs involved, and implemented a number of measures to minimize the impact of a business interruption on many of these core areas. For example, a spate of thefts at Ottawa-

Nepean area law offices prompted the firm to install its own office alarm system; renovations provided an opportunity to install a separate electrical system (with insulated, isolated circuits) and panel dedicated only to the firm’s computer system. But Rick drew the line on changing passwords every two to three months: “You always have to balance risk against practicality and productivity,” he points out.

It’s this kind of pragmatism that is crucial to recovery planning, says Hughes, Amys’ Jamie Trimble. “It is essential for every firm to work through a process of risk assessment: where do the most real risks lie; how do you eliminate or minimize them; and if you cannot eliminate or minimize the risk, how to finance them; as well, as lawyers, we need to take into

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account the regulatory constraints we all face.” In Toronto, for example, power outages are “almost epidemic – but this is a very manageable problem. You put surge protection and UPS (uninterruptible power supplies) on all systems.” Similarly, the danger of virus contamination is much bigger than a server meltdown. “So virus protection software is a top priority – for our network, our laptops and anything that hooks into our systems.”

Millie Waicus took the assessment process one step further, developing a “vulnerability assessment” spreadsheet that Bereskin & Parr now uses as its initial implementation guide. “Going through this process pointed out some critical but simple things we could do to reduce our exposure – in areas such as a power failure, theft and even flood.” Drip pans have been installed over the firm’s server area, to minimize damage that could be caused by a malfunction of overhead air conditioning units; the firm has reconfigured some of its computer equipment to ensure everything is on surge protectors and on a UPS; and it has created redundancies to allow for a backup capacity on its servers.

The next steps, adds Dennis Nault, director of administration and finance at the firm, are to “expand what we have on paper and itemize what we still have to do, especially when it comes to

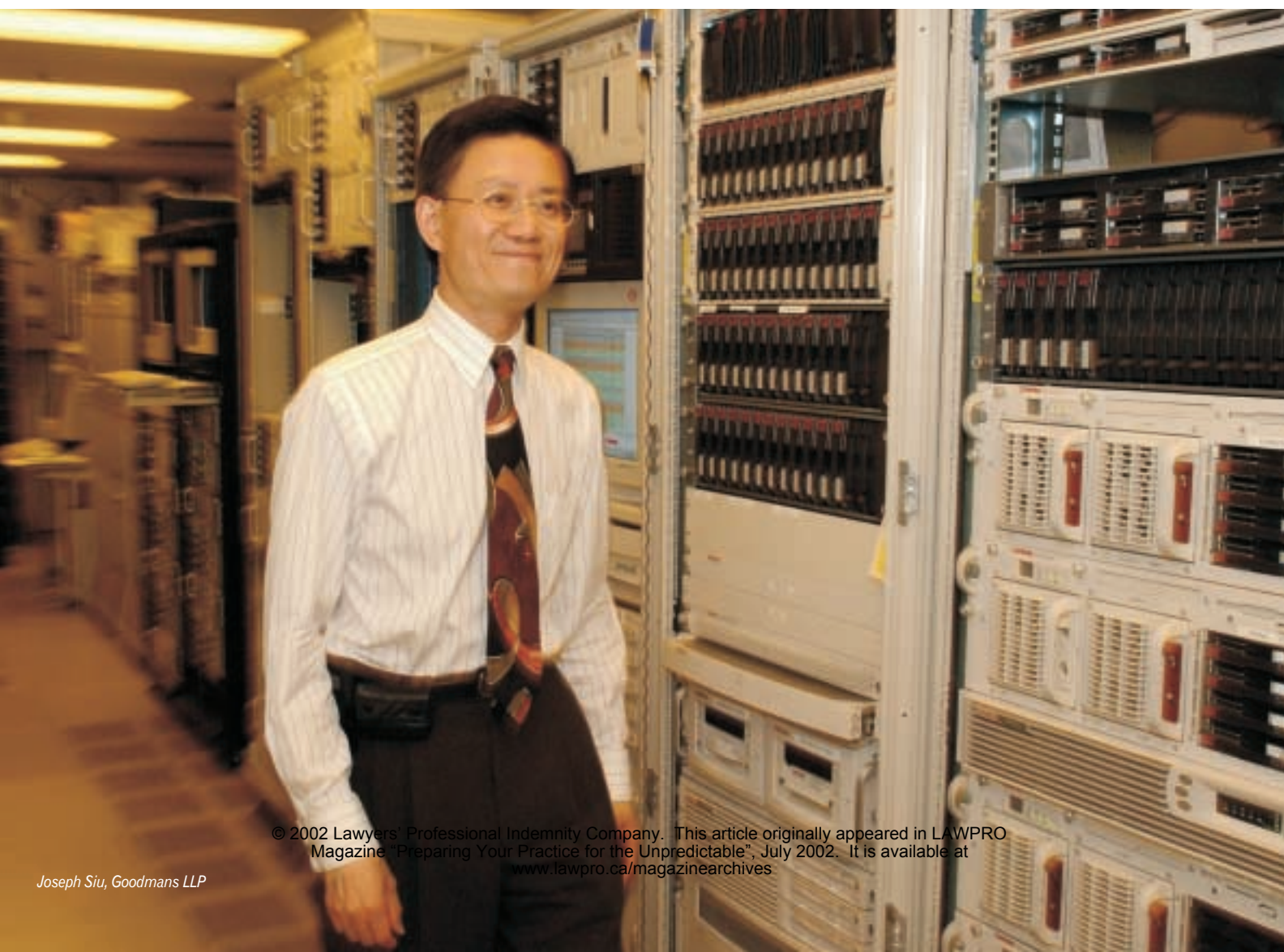
preparing for major disasters, and then bring everyone from management to staff into the loop.”

But committing the plan to paper, say all firms, is only the first step: By definition, planning is a dynamic process. “Every firm should be doing a risk analysis on an ongoing basis,” says Jamie Trimble.

“Once a year – usually during insurance renewal – is a good time to take stock, and turn your mind to the kinds of things you are doing to protect your practice overall,” adds Tom Troughton, a Kingston-based sole practitioner.

Adds Mike McArthur of Cline Backus Nightingale McArthur in Simcoe: “We need to talk about this (recovery planning) a lot more as a profession. Technology, and what we now demand from technology, will fundamentally change the way we practise law. We have to be more management and systems focused – and that means looking at how we protect these systems on an ongoing basis”.

practicePRO has created a spreadsheet that you can use to identify and assess your vulnerabilities. It is available for download at [www.practicepro.ca/disasterrecovery](http://www.practicepro.ca/disasterrecovery).





### Preparing your people

Protecting the safety of their employees is a top priority for all law firms participating in this article. Many law firms maintain computerized staff lists with current home telephone numbers, e-mail addresses and even emergency contact names and numbers. Some have even established "telephone trees" with designated contact persons responsible for phoning others in case of emergency.

Goodmans plans to create a separate Web page that would provide clients and staff with access to critical information on next steps and contacts.

Davies Ward, like others, maintains a central number to which staff can call in for instructions in cases of emergencies; that line is used even now during major snowstorms, downtown power outages or other unforeseen events. The firm also provides seminars for staff to upgrade their first aid/CPR skills, and keeps first aid kits (and, in the case of Davies Ward and Bereskin & Parr, oxygen) on their premises. Like many firms, Bereskin & Parr has established pre-set meeting spots outside the building where staff are to congregate for a head count in case of a building evacuation.

Firms operating in highrises face unique people issues centred around evacuation, the ability to account for staff after an emergency, and staff ability to provide emergency first aid, points out Jamie Trimble. For Hughes, Amys, this meant pressing its building administration for more fire drills and evacuation exercises post 9-11; the firm pays special attention to the training of its fire marshalls and floor wardens. Davies Ward retained an engineering firm to ensure that, in an emergency, all doors would disengage and not lock staff in.

"When all is said and done, a firm's major asset is its people. We have to make sure that they are safe and equipped to handle any of these situations," says Jamie.

### Protecting property and premises

Even the smallest of law practices today are computer-dependent. So it comes as no surprise that a principal concern for all law firms is the need to safeguard both its computer hardware and software and databases.

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## Regular backups a key

For many law firms, last fall drove home the need to not only do regular, thorough backups of all systems and databases, but to also store backups offsite and, for Toronto law firms, outside the downtown core.

Most larger law firms report doing full, daily backups that encompass client records, personnel records, accounting and supplier information; some send tapes offsite daily, others on a weekly basis. Bereskin & Parr has its two main client servers backed up remotely via the web on a nightly basis, as well as backing up all systems onto tapes that go offsite; plans call for all systems and databases to be backed up remotely starting this summer, thus ensuring two levels of redundancy for all of its online records and databases, reports Millie Waicus.

Goodmans has taken the backup process one step further, establishing a full hot site at a remote location outside the downtown core; the servers housed at the hot site are a replicate of its main servers, ensuring that the firm can be operational within 24 hours of losing its downtown location. Providing access to the hot site for a large number of staff, however, has created its own share of problems, reports Joseph. "Our Citrix system, which now supports 20 to 30 people, will need to be able to support 200 or more staff, making this server a much more important part of our overall plan than it was. And this change has significant resource implications."

A vital link in the technological equation, adds Rick Mount, is the technology support person used by the firm. Mount Clark has opted for a firm that maintains a VPN (Virtual Private Network), enabling its tech support firm to troubleshoot from offsite. The value of having the tech support firm also maintain identical backup systems was driven home recently when the law firm's central server "fried."

"Our tech support guy brought in his backup, boosted the RAM and had us up and running within hours, with one of our staff computers acting as the server," says Rick.

To ensure the integrity of its backups, Cline Backus Nightingale's Russ Doucet (the firm's information technology specialist), encourages staff to store all information on a server and not on their desktops. "We also remind staff to synchronize laptops and PDAs (Personal Digital Assistants) with our main network, so that we can ensure full backup of all of our work."

Protecting yourself by doing backups, maintains Tom Troughton, is as important for the sole practitioner as for the largest law firm. He and his secretary back up each other's desktop computers regularly. He also backs up onto an external hard drive, then copies the data onto his computer at home. "For a sole practice, especially, it is critical that you turn your attention to protecting your work – and to make your support person a vital link of that backup system, as she is absolutely essential to your practice," explains Tom.

## THE NEWEST ONE:

Equally essential, even for a small practice says Tom, is to plan an alternative site in case your principal work site is unavailable.

He maintains at home the necessary equipment to operate an off-site office, being a computer, fax machine, copier, and Internet connection. His secretary has at her home both a fax machine and a computer that is connected to the Internet. This gives her the option of working from home, both now, and in the event of an emergency. From their respective homes, Tom and his secretary can communicate and share data with each other, as well as clients and other counsel, via telephone, fax or e-mail. Copies of the office backup diskette are taken home by his secretary. For security and confidentiality reasons the diskette is stored separate from her computer. She can access it on her home computer if necessary. This gives her all the information she needs to work from home, and provides additional safety as a second off-site location for storing the backup.

Nor is the home office concept limited to sole or small firms. Goodmans' initial plan would have lawyers working at home on an interim basis, likely with support staff working out of the lawyers' homes. This type of arrangement would complement a small working office, at a still-to-be-determined space outside the downtown Toronto core, which would accommodate core functionalities on an interim basis, says Joseph. Similarly, Rick Mount has equipped his own home office with additional circuits and wiring that would allow his home to act as a contingency site for several firm employees.

Law firms operating out of several locations, such as Davies Ward, plan to make one of their other sites a designated alternative site. In the case of Davies, its Montreal location likely will be designated a hot site at which the firm will replicate its Toronto systems; Bereskin & Parr plans to put backup servers into its newly opened Mississauga office, to facilitate business continuity. Hughes, Amys' Hamilton office would serve as an alternative site if a catastrophe hit its Toronto offices.

## Protecting your practice

A law firm's stock in trade is knowledge – the information resident in its client records; and the intellectual capital of its employees.

Protecting client records from destruction therefore is a principal concern. Most firms use fireproof cabinets and/or storage vaults to protect critical client documents such as wills, powers of attorney, as well as other critical business papers. Tom Troughton has opted to store his critical client records in a vault in a main bank branch, for additional security. Mount Clark Yemensky sends its minute books offsite, to a secure storage facility. Rick Mount recently had that facility improve its insurance coverage, to better protect the firm in case any of those records were destroyed accidentally. Its location – a renovated service centre – has given Cline Backus the opportunity to house its critical client files in a concrete enclosed area in the basement.

Equally important – but less frequently acknowledged – in an effective recovery plan is the need to protect the firm's access to its intellectual capital, says Jamie Trimble. "It is essential, short and long term, to foster a culture that makes sharing of knowledge and information a way of doing business in the

firm,” says Jamie. “You need to make it a policy that your people take intellectual capital out of their head and put it on the network – be it contact lists, precedents, research, or anything else. Intellectual capital cannot be proprietary and resident with one individual; it must be shared.” Complementing this aspect of business interruption planning at Hughes, Amys is a policy of maintaining key man insurance on the firm’s principals, as well as succession planning that addresses, among other issues, the need for partners to maintain powers of attorney on each other.

For sole practitioners like Tom Troughton, a backup “buddy” system is an essential part of protecting their practice. For the past 15 years, he and another sole practitioner in the Kingston area have covered for each other during vacations and other situations; both have also named each other as estate executors, and have powers of attorney for each other. An essential part of this buddy system, for Tom, is a periodic summary of next immediate steps for all of his open files: these summaries not only help evaluate his own practice but can also enable the buddy lawyer to step into Tom’s shoes and service his clients on a “business as usual” basis. Maintaining a team approach with his support staff (under which their functions are complementary) and using this periodic summary makes easier another lawyer being efficiently involved if Tom is incapacitated.

And business as usual is what planning for the unpredictable is all about.



*Rick Mount, Mount Clark Yemensky Brown*

## The interviewees

**Mike McArthur** is a partner with Simcoe-based Cline Backus Nightingale & McArthur. The seven-lawyer, fully computerized firm provides litigation, corporate and real estate services to clients in south-west Ontario. **Russ Doucet** is the firm’s information technology specialist.

**Rick Mount** is a partner and technology expert with Mount Clark Yemensky Bowman in Nepean, just outside Ottawa. The six-lawyer firm provides a wide range of legal services (excluding intellectual property and criminal law) and makes extensive use of technologies in its offices.

**Tom Troughton** is a sole practitioner in general practice in the Kingston area, now practising on a semi-retired basis. A former teacher, university lecturer and college dean, he also served as president and director of CSALT (Canadian Society for Advancement of Legal Technology).

**Joseph Siu** is chief technology officer with Goodmans LLP, a 170-lawyer firm headquartered in Toronto but with offices in Vancouver and Hong Kong.

**Arthur Shiff** is a senior at Davies Ward Phillips and Vineberg LLP. The 225-lawyer firm has offices in Toronto, Montreal, New York and Beijing.

**Dennis Nault** is director of administration and finance with Bereskin & Parr in Toronto. **Millie Waicus** is the firm’s network administrator. The practice of the firm extends to all aspects of intellectual property law.

**Jamie Trimble** is a partner with Hughes, Amys, a fully computerized, boutique litigation firm, helping clients from across Canada resolve their disputes. Hughes, Amys’ 29 lawyers serve their clients from offices in Toronto and Hamilton. Because of his insurance-based practice, Jamie has a particular interest in risk management issues and matters.

# Backup best practices

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*The following checklist is an extract from a more thorough discussion of computer-related issues in a new publication from practicePRO: managing PRACTICE interruptions. This full booklet is included as an insert with this issue of LAWPRO magazine, and is available for download in PDF format at [www.practicepro.ca/disasterrecovery](http://www.practicepro.ca/disasterrecovery).*

- **Do a full backup:** Full backups are preferred to partial backups. Having everything that was on your hard drive is better than finding out you need a critical file that isn't in your backup and is not otherwise available.
- **Do backups daily:** Modern backup hardware is able to do complete backups of large hard drives in a matter of hours. Backups can be set to run automatically, usually in the middle of the night. Doing a daily backup ensures you are as up-to-date as possible as you have all of the work and data that you created up until the end of the previous day.
- **Identify responsible person(s) and alternatives:** Doing the backup should be a mandatory responsibility that is assigned to a specific individual, and a specific alternate individual. You want to ensure that a backup is done every day, without fail.
- **Review the backup log:** Most backup software programs create a log report when a backup is completed. This report details what was backed up, and if there were any problems.
- **Regularly do test restores:** Don't believe the backup log. Periodically it will report successfully completing a backup, despite the fact that some or all of the data to be backed up was missed. The only way to truly test your back up is to regularly do a test restore of selected files and folders.
- **Identify offsite storage location:** Tapes left on top of your server in your office will be destroyed or taken along with your server if there is a fire or theft. You should store at least some backup tapes in one or more safe off-site locations.
- **Rotate and keep generations of tapes:** Don't use the same tape over and over; rotate your backup tapes. For example, use a series of five tapes, one for each night of the week. This can be helpful when database corruption is detected sometime after it occurred. Having an older backup will allow you to reach back to an earlier date if necessary. Some firms keep end of week, end of month or end of year backups.
- **Replace tapes regularly:** Backup tapes degrade over time and with use. You should replace your backup tapes every six months. When they get to the end of their life, rotate them out as end of month tape etc.
- **Don't forget data on desktops, laptops and PDAs:** Usually server backups are configured to only backup data on servers. Make sure that data on desktop computers, laptops and PDAs (Personal Digital Assistants) gets backed up as well. Also have staff backup the phone numbers stored in their cell phones.
- **Make sure open files are being backed up:** Some backup software, and in particular older versions, will not back up files that are in use or "open" by other programs. Central accounting system, e-mail and other database files often remain open 24 hours a day. Make sure that your backup is getting all open files.
- **Create written instructions for restoring:** Many offices have one or two people who know how to do a backup, but no one who knows how to restore backed up data. Create written instructions and train several people to do this task.
- **Find a hardware backup buddy:** If your backup server and tape unit are destroyed or stolen, you could find yourself with a good backup tape and no compatible tape unit to do a restore. Ideally find someone who has a server and tape unit that is identical to yours.

A partial backup from last week is better than no backup at all. If you aren't doing full regular backups, at least spend some time backing up some of your important files. It is easy to copy files onto a CD or some type of removable storage device. It is even easier to simply copy them to another computer on the network. This won't help if your office burns down, but it will if you have a hard drive failure.

# TitlePLUS® Celebrates its Fifth Birthday

*Believe it or not, this September TitlePLUS will be celebrating its fifth birthday, and as you know, many changes have occurred in this time:*

- *TitlePLUS added to its suite of new products and services, [LawyerMortgage.com](http://LawyerMortgage.com), [NewHome.LawyerDoneDeal.com](http://NewHome.LawyerDoneDeal.com) and RealtiPLUS®;*
- *our department has grown to more than 35 employees; and*
- *we now work with over 1,700 real estate lawyers and approximately 50 lenders in the province.*

*We have expanded the tools available to you, and hope you are using them to your advantage. The combination of your efforts and TitlePLUS commitment to develop new products and services that meet your needs should help you remain competitive in the ever-changing real estate marketplace.*



## **New products**

With the growing trend of the Internet as the preferred route of software development and product deployment, TitlePLUS has recently introduced two new powerful Internet tools, [LawyerMortgage.com](http://LawyerMortgage.com) and [NewHome.LawyerDoneDeal.com](http://NewHome.LawyerDoneDeal.com). These innovative products, allow lawyers to efficiently and cost effectively order TitlePLUS policies on the Web, at their convenience.

## Streamlined premiums

In January 2002, TitlePLUS introduced a new streamlined premium structure that allows lawyers to remain competitive by offering home buyers beneficial premiums. These new premiums will apply regardless of whether the property is on municipal or private water/septic systems and/or the property is a condominium, freehold home, cottage, multi-unit dwelling, or registered with [NewHome.LawyerDoneDeal.com](http://NewHome.LawyerDoneDeal.com).<sup>1</sup>

TitlePLUS premiums	
Attached Transactions: \$500,000 and under	
In-Title Interest Delivery System	Freehold: \$100.00, Mortgage: \$100.00
Out-of-Title Delivery System	Freehold: \$100.00, Mortgage: \$100.00
Non-Attached Transactions: \$500,000 and under	
Freehold	\$100.00
Mortgage	\$100.00

1. The amount of the premium depends on the type of the property and the value of the property. The amount of the premium is also dependent on the type of the property and the value of the property. The amount of the premium is also dependent on the type of the property and the value of the property. The amount of the premium is also dependent on the type of the property and the value of the property.



## TitlePLUS territories

In 2000, we divided Ontario into four territories, each managed by a TitlePLUS Consultant. This initiative was designed to provide responsive, timely, personal service to the real estate bar in all areas of the province. The consultants are responsible for meeting with lawyers and their staff to answer any questions they may have, and to provide training in the use of TitlePLUS and the various software delivery channels. Your local Consultant is always available to help you and your staff with a vast array of services pertinent to your practice. This approach has proven to be quite beneficial because it allows us to anticipate your needs. We encourage you to take advantage of this excellent resource.

## Promotional materials

We have designed a collection of new pamphlets and folders to explain and promote title insurance and TitlePLUS to the four stakeholder groups involved in the real estate deal – lawyers, lenders, real estate professionals and home owners. As with all TitlePLUS materials, we have kept our pamphlets simple, informative and user-friendly; each set meets the specific needs of its target market. All of these pamphlets are available free of charge. If you would like to receive copies to distribute, please contact us.





### Advertising

Our latest advertising campaign, entitled "Nothing's Sweeter," comprises ads aimed at home buyers, realtors and lawyers. The visual is designed to attract attention and generate interest in TitlePLUS and to meet our core mandate: to promote real estate lawyers and the services that they offer to their clients. Look for our ads in legal, real estate and consumer publications.



### Focus newsletters

*Focus on Lawyers* and *Focus on Lenders* are our two new publications that contain pertinent information for both groups of professionals. These newsletters provide topical real estate articles and tips necessary to keep you at the forefront of the changing nature of real estate practice. *Focus on Lawyers* and *Focus on Lenders* are available by contacting us.

## Lenders

Over the last five years, we have been successful in expanding our roster of TitlePLUS Confirmed Lenders. The Confirmed Lenders list contains all the information you need on each lender to complete a TitlePLUS application. As the underwriting has been pre-approved by the lender, no additional work is required on your part. This is an important component to the streamlined use of our software delivery channels, especially in the case of [LawyerMortgage.com](http://LawyerMortgage.com), where you will benefit from the low premiums and ease of use of the Web site. We have assisted many lawyers in bringing new lenders on-board, so if you work closely with a lender that is not yet signed up, don't hesitate to contact us.

## Conferences

This September we will be hosting our fifth annual lawyers' conference. In past years, we have covered topics such as: The Virtual Real Estate Market, Lender's Perspective: Real Estate Industry Trends, e-reg™, Marketing for Professionals, What do your Clients Want?, Change Management in the Workplace, Sales Opportunities for Lawyers, RealtiPLUS, Web Consciousness, Real Estate Claims Trends, Commercial Underwriting Basics, New Condo Act, and Meeting Your Client's Expectations. Historically these conferences have been very successful as well as educational. This year will be no exception.

## Events

A large part of our mandate is to promote TitlePLUS, and in doing so, promote you. In the last five years we have attended at

and/or sponsored over 350 events, including home buyer seminars, real estate tradeshow, lender events, golf tournaments, technology initiative presentations, law society programs, e-reg™ information sessions, and a variety of other local sessions. We continue to be a presence in the marketplace, on your behalf. Please notify us of any events in your area, and we will do our best to participate.

## Revamped web site

We are currently overhauling the TitlePLUS Web site to provide you with the tools and information you need to make your practice more efficient. The new site will be visually appealing, easy to navigate, and of course, informative. Be sure to visit [www.titleplus.ca](http://www.titleplus.ca) often.

## Our commitment to you

As we grow, we continue to believe in the basics. We believe superior customer service is critical and that competitively priced products that fulfill your needs are the keys to success.

Furthermore, we believe that home buyers/owners, lawyers, lenders, realtors and TitlePLUS should all continue to be involved in the real estate transaction. In this regard, we will continue to work with all stakeholders to ensure that this philosophy remains intact.

We welcome your comments, call 1-800-410-1013 or (416) 598-5899, fax 1-800-286-7639 or (416) 599-8341, or e-mail [titleplus@lawpro.ca](mailto:titleplus@lawpro.ca). We look forward to hearing from you.

<sup>1</sup> Some restrictions may apply; call us for premiums regarding farm and leasehold properties.

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# “Repairing” Lawyers’ Mistakes

by Debra Rolph

Research Director

The practising legal profession knows that the Lawyers’ Professional Indemnity Company (LAWPRO) pays claims and defends claims against lawyers. LAWPRO’s efforts to repair errors committed by solicitors are less well publicized. This is unfortunate, since “repair” efforts save LAWPRO and you, the lawyers we insure, millions of dollars in claims payments.

## Litigation

### Limitations

LAWPRO’s “repair” efforts are best known in the area of civil litigation. These efforts include intervening in cases where limitation periods have allegedly been missed by the insured, setting aside default judgments, adding parties to claims after the expiration of limitation periods, extending time for serving statements of claim, opposing the enforcement of settlements entered into through solicitors’ errors, and other miscellaneous errors.

Ontario’s legal malpractice insurers, first through the Errors and Omissions Department of the Law Society, then through LPIC, and now called LAWPRO, have been so extensively involved in the evolution of Ontario’s limitations law that a lengthy article would be necessary to do justice to this subject. The point of the insurer’s involvement in the limitations cases is to demonstrate that the insured in fact had not missed a limitation period. LAWPRO has most recently been involved

in cases where limitation periods for claiming Statutory Accident Benefits have allegedly been missed. A few examples will suffice.

*Kitchenham and Axa Insurance* (Ont. Ct. Gen. Div, August 19, 1998, Court File 23899/96)

Kennedy, J. held that by virtue of s. 281(5) and Regulation 67(2) of the *Insurance Act*, Axa as insurer is not allowed to rely on this limitation period unless its denial is clear and unequivocal. Where the insurer offered to reconsider its position after the date of its denial letter, it was no longer entitled to take the position that the limitation period ran from the date of his original letter of denial.

*Smith v. Co-operators General Insurance Co.* [2002] S.C.C. 30

Bernadette Smith, who was injured in a motor vehicle accident on April 14, 1994, received statutory benefits from the Co-operators General Insurance Company. The insurer ceased paying those benefits on May 8, 1996. Its notice of termination read as follows:

“We have assessed your claim for accident benefits.

This form tells you how we calculated your benefits. If you disagree with our assessment, please contact us immediately.

“If we cannot settle the application to your satisfaction, you have the right to ask for mediation through the Ontario Insurance Commission. You can contact them in Toronto at (416) 250-6750 or toll free at 1-800-668-0128.”

In a letter sent to Ms. Smith’s solicitor on the same day, the Co-operators wrote, “please be advised that Ms. Smith is no longer entitled to Income Replacement Benefits.” After the mediation failed, Ms. Smith issued a statement of claim for ongoing statutory benefits on September 8, 1998. The insurer brought a motion for summary judgment on the grounds that the claim was barred under the two-year limitation period set out in s. 281(5) of the *Insurance Act*. MacKinnon, J. allowed the Co-operators motion and dismissed the action. A majority of the Court of Appeal upheld that judgment.

The Supreme Court of Canada allowed Smith’s appeal. The two-year limitation period

under s. 281(5) of the *Insurance Act* only begins to run upon the issuance by the insurer of a valid refusal. No such refusal is given if there has not been adequate compliance with s. 71 of the *Statutory Accidents Benefits Schedule* (“SABS”). Section 71 obliges insurers to inform claimants of the entire dispute resolution process under ss. 279 to 283 of the *Insurance Act* and not merely the right under s. 280(1) to refer a dispute to mediation. Since Ms. Smith was only informed of the first step of the process, a proper refusal was not given. Consequently, the limitation period under s. 281(5) of the *Insurance Act* did not begin to run.

### Extending Time for Serving Statement of Claim

*Chiarelli v. Wiens*, (2000) 46 O.R. (3d) 780 (C.A)

The plaintiff Cathy Chiarelli was injured when the car in which she was a passenger was struck by a vehicle driven by Elizabeth Wiens. The accident occurred in a parking lot on October 26, 1988. The statement of claim was issued on October 24, 1990. The plaintiff’s solicitor, who was



retained shortly after the accident, failed to serve the statement of claim. His explanation was that he “froze” and was unable to come to grips with his error. The plaintiff only became aware of the problem when she changed solicitors in 1997. Taliano, J., allowed an extension of time for service of the statement of claim. The Divisional Court set aside Justice Taliano’s order.

The Court of Appeal allowed the plaintiffs’ appeal from the order of the Divisional Court; Taliano, J. committed no error in principle in exercising his discretion to allow an extension of time. The basic consideration is whether the extension of time for service will advance the just resolution of the dispute, without prejudice or unfairness to the parties. The court should be mainly concerned with the rights of litigants, not the conduct of counsel. While the onus is on the plaintiffs to establish that the defendant will not be prejudiced, the defence has an evidentiary obligation to provide some details of the alleged prejudice that it will suffer. The defence cannot create prejudice by its failure to do something which it reasonably could or ought to have done. Prejudice that will defeat an extension of time for service must have been caused by the delay. The Divisional Court erred in suggesting that because the limitation under the *Highway Traffic Act* is two years, an extension should not be granted where there is more than two years of “silence”

after the time for serving the statement of claim has elapsed. Each case should be decided on its own facts, focusing, as the motions court judge did, on whether the defence was prejudiced by the delay.

*Clarke v. Pattison*, [1999] O.J. No. 374 (Ont.Ct.Gen.Div.)

A statement of claim relating to a motor vehicle injury which occurred in August, 1990, was issued in a timely fashion, but not served due to stress and marital problems on the part of plaintiff’s then solicitor. An order was made extending time for service and allowing substitutional service on the defendant’s insurer. Farley, J. held that while the onus of proving lack of prejudice or unfairness lies with the plaintiff, it rests with the defendant to demonstrate actual prejudice and unfairness in the circumstances. The defendant must show that he will be prejudiced, as opposed to speculating that there could be prejudice on general grounds which may have led to problems because of the delay. The plaintiff should only have the burden of presenting evidence which is in the knowledge of the plaintiff. The court is concerned primarily with the rights of litigants rather than the conduct of solicitors.

### **Adding Parties after Expiration of the Limitation Period**

*Glassman v. Honda Canada Inc. et al.*, (1999) 41 O.R. (3d) 649 (C.A.)

Brenda Glassman was a passenger in a Honda all terrain vehicle on August 18, 1990, when it went off the roadway and into a ditch. Her statement of claim was served on Honda Canada on September 19, 1991. Honda Canada requested additional time to file a statement of defence. The statement of defence was finally delivered some four months after the expiry of the two-year limitation period. In the statement of defence, Honda Canada denied that it designed or manufactured the vehicle, or that when the vehicle was imported into Canada, or that it was in any way unsafe. Honda Canada did not add Honda R & D Co. Ltd. or The Honda Motor Company Ltd. (both Japanese companies) as third parties, or claim against them in any way. Due to inadvertence, Glassman’s solicitor did not notice Honda Canada’s denial that it had designed or manufactured the vehicle until several months later.

In conducting the examinations for discovery of Honda Canada’s representative in May, 1994, the identities of the Honda companies that designed and manufactured the vehicle were obtained. Ms. Glassman’s solicitor drafted a motion seeking to add Honda Motor and Honda R & D as party defendants. Philp, J. granted leave to add Honda Motor and Honda R & D as parties as if they had been named in the original statement of claim. In supplementary reasons Philp J., confirmed that the added

defendants were not allowed to put the expiry of the limitation period in issue in their statement of defence. Philp J. stated, “...a reasonable inference can be drawn that when Honda Canada is presented with a claim alleging faulty manufacture and design of one of its parent’s ATV’s, that it would immediately advise its parent of the claim.”

The two Japanese Honda corporations unsuccessfully appealed to the Divisional Court, and then to the Court of Appeal. The Honda companies chose not to file an affidavit in reply to the application to add them. Philp J. drew the inference that Honda Motor and Honda R & D were aware of the action, and in the opinion of the Court of Appeal, he was entitled to do so.

The Court of Appeal also agreed that special circumstances existed which would warrant the adding of the proposed parties. Ordinarily, allowing defendants to be added to a lawsuit involving a motor vehicle after the expiry of the two-year limitation period gives the plaintiff an advantage because it takes away the right a defendant would have had to plead a defence. Assuming that the limitation period in this instance was two years, the presumption of prejudice to the added defendants was rebutted by the inference that they had knowledge of the action. The appeal was dismissed.

## Extending Time for Serving Notice of Appeal

*Duca Community Credit Union Limited v. Giovannoli et al.* [2001] O.J. No. 36 (Ont.C.A.)

Solicitor for the appellant attempted to serve notice of appeal by fax on the 30th day after release of reasons for judgment at trial. Most of the respondents were served on the following day. Two respondents, however, were not served until six months later. The Court of Appeal Registry refused to allow filing of the notices of appeal since they were served outside the 30-day period. An application to extend the time for serving and filing the notice of appeal was not brought until seven months after the reasons for judgment. MacPherson, J.A. allowed the application, although he commented that it was a “close call.” The appellant always intended to appeal, and did attempt to serve and file the appeal within the time stipulated by Rule 61.04. The respondents would not be prejudiced by allowing the extension.

## Settlements Entered into Through Solicitors' Mistakes

*Wilde v. Wilde* [2000] O.J. No. 2395 (Ont.S.C.J.)

Mrs. Wilde brought a divorce action against her husband. The couples' only substantial assets were the matrimonial home and the husband's pen-

sion entitlement with the federal government. Throughout the negotiations, it was clear that Mrs. Wilde claimed an interest in her husband's pension. Negotiations proceeded on the basis that the pension issue would be dealt with pursuant to the *Pension Benefits Divisions Act*.

Mrs. Wilde's solicitor served an offer to settle which made no mention whatsoever of the pension. Mr. Wilde quickly accepted it. Mr. Wilde's solicitor then asked that the Minutes of Settlement contain a release of Mrs. Wilde's pension claim. This was agreed to. The Minutes of Settlement were incorporated into the divorce judgment which was not, however, formally issued and entered. One week after judgment was pronounced, Mrs. Wilde and her solicitor appreciated that an error was made. Mrs. Wilde moved to set aside the agreement and the judgment; Mr. Wilde moved for judgment. The Court refused to enforce the judgment on the basis of unilateral mistake. Mr. Wilde and his counsel knew or should have known of the error. The Minutes of Settlement were rescinded on the same basis.

### Rule 57.07

*Khalil v. Ontario College of Art* [2001] O.J. No. 1846 and 1847 (Ont.Div.Ct.)

A solicitor represented the plaintiff on an appeal from a decision of the Human Rights Commission Board of Inquiry. The appeal was unsuccessful,

as were a number of motions brought by the solicitor along the way. The Divisional Court expressed concern that the appeal proceedings were lengthened unnecessarily by the appellant's pursuit of unmeritorious motions and groundless allegations against the Commission and Board of Inquiry.

The Court declined to award costs against the solicitor under Rule 57.07. The Court considered *Young v. Young*, *Carmichael v. Strathshore Industrial Park*, and *Fong v. Chan*, and held that after hearing all the submissions and exercising its discretion, the material before it did not attract an order under Rule 57.07

## Wills and Estates

*Kelly v. Hughes and Garbutt* [2000] O.J. No. 4491 (Ont.S.C.J.)

The Estate Trustee (a solicitor) was under the mistaken impression that taxes had already been withheld on a RRIF owned by the deceased. He therefore made an interim distribution of \$150,000 to the two residuary beneficiaries. The Estate Trustee then learned that approximately \$95,000 in taxes was owing to Revenue Canada. The beneficiaries refused to repay the money. The Estate Trustee was successful in a motion to compel repayment of the money. Immediately after receiving the money, the two beneficiaries had used the money to pay out a mortgage on their home. This was not

sufficient prejudice or change of position on the beneficiaries' part which would justify a refusal of the relief sought by the Estate Trustee.

## Construction Liens

*Zelman v. Feder* [2001] O.J. No. 1857 (Ont.Div.Ct.)

Property owners moved to vacate a construction lien registered against their property, on the basis that the Commissioner of Oaths had failed to sign the *jurat* in the affidavit of verification. Affidavit evidence was presented by the Commissioner to the motions judge that the affidavit was properly completed in her presence by the lien claimant, and that she neglected to sign the *jurat* through inadvertence.

Archibald, J. allowed the application, holding that the error was fatal and could not be remedied. The lien claimants successfully appealed to the Divisional Court. The Court held that there is a distinction to be made between the affidavit of verification itself and the *jurat*, which merely provided the evidential proof of the proper completion of the affidavit. It was appropriate to accept subsequent proof that the affidavit was properly completed.

## Commercial Law

*Insurance Management Inc. v. RTH & A. Inc.* [2000] O.J. No. 4768 (Ont.S.C.J.)

A solicitor acted for both the vendor and the purchaser of a business. The closing date

was December 31, 1998. Part of the purchase price was payable on closing. Two other installments were due one year and two years from the closing date. The solicitor initially prepared a promissory note stipulating a payment of \$200,000 on January 1, 2000, and a second payment of \$200,000 on January 1, 2001. The solicitor then received instructions that the payment date should be December 31. The solicitor's secretary changed "January 1" to "December 31", but did not change "2000" and "2001" to "1999" and "2000". Therefore, instead of moving the payment date up one day, she moved it back one year.

The vendor successfully moved for rectification. The purchaser took the position that parole evidence was not admissible to contradict the clear provision of the promissory note. The Court rejected this contention. A review of minutes of meetings, correspondence, and cash flow statements made it clear that the parties had agreed that the second and third installments of the purchase price were due on the first and second anniversaries of the closing, not on the second and third anniversaries. The Court accepted the approach set out in *S.M. Waddams' The Law of Contracts – Fourth Edition* – with respect to the burden of proof on rectification applications. There is no need for a special onus of proof.

## Real Estate

*Doraty v. Dallas Homes Inc. and Costanzo*, Unreported judgment of Charbonneau, J. June 21, 2001, Court File No. 98-CV-7638 (Ottawa)

The plaintiff solicitor acted for the VanDoormaals in placing a \$100,000 first mortgage on a building lot. The owner defaulted. The owner then contracted to sell this lot, and two others, to Dallas Homes, another builder. Costanzo was the owner of Dallas Homes. The purchase price was simply the assumption by Dallas of all of the liens and encumbrances on the properties. Because Dallas needed cash to complete the houses, it was agreed that the VanDoormaals' mortgage would not be paid until after closing.

The solicitor inadvertently discharged the VanDoormaals' mortgage. Costanzo, who learned of the error several months after closing, arranged to quickly sell the property to a third party, who had no notice of the error. Costanzo then refused to pay the mortgage.

LAWPRO paid out the VanDoormaals, and then commenced an action against Dallas and Costanzo personally. The action was successful. The Court held that Dallas was "unjustly enriched", and imposed a constructive trust. When Costanzo realized that the discharge had been registered by mistake, he proceeded to convert the

VanDoormaals' interest in the property to the benefit of Dallas. As such, his conduct was tortious. It was both wrongful conversion and interference with the VanDoormaals' contractual rights. Costanzo authorized and participated in the tortious conduct. He acted wilfully and in bad faith.

*Midland Mortgage Corporation v. #784401 Ontario Ltd.* (1997) 34 O.R. (3d) 594 (C.A.)

In August, 1989, Midland Mortgage Corporation agreed to advance a new first mortgage of \$225,000. At that point, the property was encumbered by a \$190,000 first mortgage in favour of Midland, plus other encumbrances. Midland's solicitor advanced the mortgage proceeds and discharged the first Midland mortgage without obtaining a postponement from one of the "subsequent" chargees, or obtaining any written confirmation that a postponement would be forthcoming.

Midland became aware of the problem in 1991. When the "subsequent" (now "prior") chargees refused to give a postponement, Midland brought an application for a declaration that the new Midland charge had priority over the other charge. Jarvis, J. dismissed the application, apparently on the basis that subrogation is not applicable in the Land Titles system.

The Court of Appeal held that Midland did have priority

over the other charge, but only for the amount advanced to retire the old Midland charge, rather than for the full amount of the new charge. Midland enjoyed priority at the old Midland charge rate – 12.25 per cent rather than the "new" rate of 13.5 per cent.

The Court rejected the other chargee's contention that they would be prejudiced if effect were given to the doctrine on subrogation. By limiting Midland's subrogation rights to the amount actually advanced to discharge the old Midland charge plus the "old" rate of 12.25 per cent interest, the other chargees were no better and no worse off than they were before the new Midland charge was proposed.

## Conclusion

LAWPRO's "repair" efforts take many forms – limitations motions, obtaining extensions of time to serve pleadings, adding parties after expiration of limitation periods, defending motions to enforce settlements entered into by error, rectification of defective documents, recovering funds erroneously paid out, and using subrogation to solve mortgage priority problems. While "repair" efforts may not be as glamorous as trials, they are nevertheless extremely important to LAWPRO and its insureds.

# Are you properly inoculated?

practice  
PRO

Computer virus infections are a fact of life for Ontario lawyers. For this reason, every computer in every law office should have antivirus software installed on it. However, to be fully protected you need to do more. You must also make sure your *virus definition file* is up-to-date.

A virus definition file contains virus profiles for each of several thousand known viruses. The antivirus software uses the data in these profiles to recognize when an e-mail attachment or file on your hard drive is infected.

New viruses are created on a daily basis. This creates a problem because your antivirus software may not recognize a virus that is not profiled in the virus definition file installed on your computer.

When a new virus is identified, the antivirus software companies add its profile to their virus definition file. Updated virus definition files are available for download on most antivirus software web sites. To be fully protected, you should have the most up-to-date virus definition file installed on your computer. You can do this manually. However, most antivirus programs include an auto-update feature that enables the program to automatically download and install updated virus definition files. You should check your antivirus program and make sure this feature is enabled.

Most antivirus software Web sites contain instructions for downloading updated virus definition files, and how to configure the automatic update feature. Set aside some time to make sure your computers are fully protected.



*Dan Pinnington is Director of practicePRO, LAWPRO's risk and practice management initiative.*

# The Online COACHING CENTRE helps you manage change

## ... and qualify for \$50 CLE credit

It takes planning to enable your practice to survive a disaster or serious interruption, and to assure that critical operations can resume within a reasonable time. Planning not only depends on the implementation of a disaster prevention and recovery program, it also depends on the ability of you and your staff to manage and adapt to change.

To this end, we present Module 20 of the Online COACHING CENTRE: *Managing change by building resilience*. It will help

you sharpen your skills for supporting people through change. This module is one of the 150 modules offered by the OCC. Complete two other modules and you are eligible for LAWPRO®'s \$50 CLE Premium Credit.

LAWPRO believes that the Online COACHING CENTRE will help lawyers better manage stress and change in their practice. Therefore, LAWPRO is offering lawyers who complete three modules of the OCC and file an online Survey and

Declaration on LAWPRO's Web site by September 15, 2002, a \$50 CLE Premium Credit, to be applied against their 2003 insurance premiums. The maximum credit for using the OCC is \$50. To access other OCC modules, go to [www.practicepro.ca](http://www.practicepro.ca).

The CLE Premium Credit program, one of LAWPRO's risk management initiatives, also offers lawyers who attend a LAWPRO approved CLE program and complete the online Survey and Declaration on

LAWPRO's Web site, a \$50 premium credit (to a maximum of \$100). Promotional literature for qualifying programs carries our "seal" of approval. A list of qualifying programs is posted on the LAWPRO Web site at [www.lawpro.ca/clecredit](http://www.lawpro.ca/clecredit).

To learn more about the CLE Premium Credit program contact practicePRO® by e-mail: [practicepro@lawpro.ca](mailto:practicepro@lawpro.ca) or call 416-598-5899 or 1 800 410-1013.

## Getting Stress Hardy

### Module #20: Managing change by... building resilience



#### Coaching

People who are good at managing change help their colleagues and staff build resilience in times of change. They provide ongoing support. These are the key elements.

##### Help people bounce back

- sometimes change produces pain, guilt or anger
- to bounce back people need to feel safe, empowered, reassured
- sometimes they simply need time

##### Be future, not past, oriented

- people need to believe that the future will be better
- usually change is intended to bring a more positive future
- this needs to be communicated

##### Celebrating success

- search out what is going well and make a "big deal" of it
- this reassures people that the future they are living in is better than the past from before the change occurred

##### Learning from the past

- keep track of what is working and what isn't

#### Charting successes and failures

- be open about keeping people informed of what is going well and what isn't
- opening up generously to people with information increases their connection to the organization which is strengthening

#### Mentoring

Consider how you might manage a situation where the change is very stressful and wearing people down.

##### Describe the stressful situation.

**What might you do to help people bounce back? How can you make them feel safe or empowered or reassured?**

**What can you do to regularly communicate that the future will be better?**

**How can you celebrate success?**

**What would you do to ensure you learn from the past?**

**What can you do to keep people in the loop? To help them feel like an "insider" and therefore more committed?**

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# Technology breakfast update



*These breakfast presentations focus on legal technology, although the content and format will vary. Some sessions will feature product comparisons. Others will be practical discussions and demonstrations of specific products by actual users. Still others will review practical technology skills at a basic level.*

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## Summaries of past breakfasts:

The practicePRO Technology Breakfast sessions got off to a good start. For those who were unable to attend, summaries of past breakfasts appear at [www.practicepro.ca/techbreakfasts](http://www.practicepro.ca/techbreakfasts), including:

- Winning With Technology (April 26)
- Voice Recognition (May 24)
- Case Management Software Comparison: Amicus Attorney vs TimeMatters (June 21)

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## Upcoming breakfasts:

### **July 19 – PowerPoint 101**

For marketing purposes using PowerPoint has become an essential skill. At this session, Dan Pinnington will highlight PowerPoint presentation do's and don'ts, including some basic tips, tricks and traps.

### **August 23 – Practical Power Tips For Excel**

Spreadsheets are a powerful tool for lawyers. Unfortunately most lawyers aren't using them. In this session for basic and intermediate users, Dan Pinnington will review great practical tips and tricks for doing more with Excel.

### **September 27 – Legal Research On the Web**

Do you know all the best research sources on the Web? At this session Bonnie Fish, Director of Firm Research at Fogler Rubinoff, will review the Web sites that she uses and finds most useful.

### **Oct 25 – Integrated Justice Project (IJP) Update**

The IJP will transform how you practice law through electronic filing (E-File). Come to this session for an update on the status of the IJP, and the E-File demonstration.

### **November 29 – E-brief Acrobatics With Adobe**

E-briefs are the ultimate tool for presenting your case, its facts and the relevant law to a court. Glenn Smith of Lenczner Slaght Royce Smith Griffin will review what you need to know to create and present an e-brief in Adobe Acrobat.

#### **To register:**

All practicePRO Technology Breakfasts will be at LAWPRO®'s office, One Dundas St. West, Suite 2200, Toronto. Attendance is limited to 25 people. Cost of \$15 includes a continental style breakfast, which will be available starting at 7:45 am. Sessions start promptly at 8:00 am, and finish at 8:45 am. To register, please contact Nanette O'Connor at (416) 596-4623 or 1 800 410-1013, or by e-mail at [nanette.oconnor@lawpro.ca](mailto:nanette.oconnor@lawpro.ca).

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## 3rd Annual LegalTech Toronto

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LAWPRO is pleased to sponsor the 3rd Annual LegalTech Toronto. Mark your calendars for November 13-14, 2002.

A distinguished faculty of judges, lawyers and legal technologists will teach you how technology can meet your ever-changing practice needs. This year's program features 25 sessions grouped into three separate tracks.

*Track #1: The Litigator's Edge* will review the application of technology to all stages of litigation matters, including document management and eliminating paper, case strategizing, discovery, and using technology in the courtroom.

*Track #2: Practice Made Perfect* will focus on issues relating to electronic communications, collaboration and sharing of work product, knowledge management, technology planning and procurement, and doing more with the technology you already have.

Dan Pinnington, Director, practicePRO, is Vice-Chair of the show, and Track Leader for *Track #3: Technology in Motion*. This track will highlight various topics, including using Adobe Acrobat, case management software, essential legal task related utilities, how to harness the Internet, and technology related security and privacy issues.

Michelle Strom, President of LAWPRO, will speak on disaster prevention and recovery.

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## Anti-Money Laundering Legislation Update

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The Law Society of British Columbia and the Federation of Law Societies of Canada commenced a constitutional challenge of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* in November, 2001. The Law Society and the Federation contend that this legislation will require lawyers to disclose a client's confidential financial information to the federal government, thereby preventing Canadians from obtaining confidential legal advice from their lawyers.

Last November, the B.C. Supreme Court granted B.C. lawyers interlocutory relief from the suspicious transaction recording and reporting requirements of this legislation. Following that decision, the Federation of Law Societies went to court in several other provinces and obtained similar interlocutory orders exempting lawyers in those provinces.

As a result of an agreement reached in mid-May between the Attorney General and the Federation (on behalf of all provincial and territorial law societies), all lawyers and law firms in Canada will remain exempt from the recording and reporting requirements imposed by Part 1 this legislation, with respect to both suspicious transactions and large cash transactions.

Lawyers and law firms are also exempt from the requirement to set up a "compliance regime", which is also imposed by Part 1 of the *Act*.

These exemptions will remain in place while the B.C. challenge proceeds through the courts. The B.C. Supreme Court hearing on the merits, originally scheduled for June 24, 2002, has been adjourned by consent. A new date has not been set.

Should the Federation be successful in its challenge in B.C. Supreme Court, the terms of this agreement provide that lawyers in all provinces will remain exempt from Part 1 of the *Act*, pending the outcome of any appeal to the B.C. Court of Appeal. Should the Federation be successful before the B.C. Court of Appeal, lawyers in all provinces will remain exempt from Part 1 the legislation, pending the outcome of any appeal to the Supreme Court of Canada.

Even if the constitutional challenge is eventually unsuccessful, lawyers will not be required to report retroactively. Lawyers should not, therefore, collect from clients any information that is specifically and only required for compliance with Part 1 of the *Act*.

However, note that lawyers will not be exempt from the cross border reporting Regulations implementing Part 2 of the *Act*. These regulations were published in the Canada Gazette on June 22, 2002, and will come into force later this year. These regulations require persons to report the importation or exportation of

amounts over \$10,000 of currency and monetary instruments in bearer form, whether carried across the border, or imported or exported by mail, courier or by any other means. There is no requirement to report bank drafts or cheques or other negotiable instruments made payable to a named person and which have not been endorsed.

Visit [www.practicepro.ca/mlguide](http://www.practicepro.ca/mlguide) for up-to-date information on the status of the challenge, other news relevant to the proceeds of crime legislation, or to subscribe to the practicePRO Anti-Money Laundering Legislation E-mail News service.

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## July 30: Second quarter filing deadline

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Real estate and civil litigation transaction levies and forms for the quarter ended June 30, 2002, are due and payable on July 30, 2002. All real estate and civil litigation lawyers must file a transaction levy form indicating the number of civil or real estate transactions undertaken for the period from April 1 to June 30, 2002. A filing must be made even if there were no transactions to report for this period.

Transaction levy filing forms are available on the LAWPRO Web site at [www.lawpro.ca](http://www.lawpro.ca). To complete your transaction filings electronically, click on **File Online**; to access blank forms in PDF format, click on **Insurance Forms**.



## LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LAWPRO®)

President: Michelle Strom

LAWPRO news is published by the Lawyers' Professional Indemnity Company (LAWPRO) to update practitioners about LAWPRO's activities and insurance programs, and to provide practical advice on ways lawyers can minimize their exposure to potential claims.

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