

LAWPRO

A person's hands are shown holding a black book titled "ONTARIO REPORTS THIRD SERIES" in a gym setting. The book is held at an angle, and the person's hands are visible. In the background, there are several black dumbbells and a stack of purple and blue exercise mats on a wooden floor. The overall scene suggests a connection between law and fitness.

work & wellness

Finding work/life balance
Technology & stress: good vs. bad
Fitness and lawyers

Also
Real estate claims on rise
Promoting role of lawyers
Egregious error standard falls



Gone biking

Effortless balance. If only it was as easy to achieve in our work-life environment as it is when we ride a bicycle.

Just when you think you've struck the right balance between the demands of your personal and professional life, something changes and you find yourself needing to re-establish your equilibrium.

In truth – as one of the lawyers profiled in this issue of LAWPRO Magazine points out – striking the right balance is a never-ending quest: Because our lives are dynamic, not static, we need to constantly re-define what it takes to maintain a healthy balance.

We also need to recognize that our roads are our own. Each of us needs to take the time to examine who we are, what we expect out of our lives and how we are going to get there. Recognize the need (and desire) to live a healthy and happy life and you realize that balance is not something that's simply going to happen as a by-product of living: It's something we need to work at.

And what better time of year to take stock than now as we head into the (more) leisurely "daze" of summer. There's no better time than now to reflect on the many facets that help make life whole – and, if needed, to

contemplate an action plan for re-balancing your priorities. Have you blocked off time for a summer vacation?

LAWPRO tries to practice what we preach. We support the work of the new Ontario Lawyers' Assistance Program, which is the successor organization to both LINK and the Ontario Bar Assistance Program, because experience tells us that there is a causal relationship between the health of the bar including stress/burnout/substance abuse and mental health issues, and the increased likelihood of a claim. In the Wellness section of our practicePRO website, we have many wellness-related resources to help lawyers access assessment tools and information quickly and easily.

May the sun shine on all of us this summer and if you encounter hills and headwinds, there is no shame in slowing down and walking.

Happy biking.

A handwritten signature in blue ink, appearing to read "Michelle L.M. Strom".

Michelle L.M. Strom
President and CEO

Table of Contents

COVER

Balancing life

Achieving a balance between their personal and professional life is difficult, say a majority of lawyers recently surveyed. John Starzynski of the Ontario Lawyers' Assistance Program (formerly OBAP) discusses how to deal with stress and burnout – the first signs of potential trouble. Also profiles of three lawyers who have achieved work/life balance in three unique ways 2

Fitness and balance

Fitness leader and LLB Winnie Talan provides tips on how to integrate exercise into a hectic lawyer's lifestyle 8

Technology: good tool, bad tool

Technology can enslave us – if we let it: Understanding the demands inherent in technology is the first step to making best use of technology as the “good tool” it is, says Jim Calloway of the Oklahoma Bar Association . . 11

Reporting misconduct

A discussion of the obligations imposed on the bar when they know about a lawyer dealing with abuse or mental health issues 13

FEATURES

Communications issues underlie spike in real estate claims

Claims VP Caron Wishart provides practical tips on how to carefully manage the intake and closing steps in a real estate transaction to help lawyers avoid communications-related issues that give rise to claims 14

DEPARTMENTS

TitlePLUS:

Bar-related is better

Rich Patterson, president of a major U.S. title insurance company and keynote speaker at a recent TitlePLUS conference, makes a case for the advantages to lawyers of working with bar-related title insurance companies 16

TitlePLUS keeps it “real simple”

A new TitlePLUS ad campaign takes the bar-related message to heart and promotes the role of a lawyer in a real estate transaction 17

Errors & Omissions: Advice on foreign law not covered 18

Casebook: “Egregious error” standard not defensible; LawPRO ILA Checklist helps vindicate lawyer at trial: A summary of *Webb v. Tomlinson*, [2006] CanLII 18192 (ON S.C.) 19

Tech Tip: Surfing with your keyboard 22

Online Coaching Centre: Getting stress hardy 24

Significant stat: Solo, small and big firms make same errors 25

Newsbriefs 28

Events Calendar 29



Balancing life



Leota Embleton and John Starzynski

Life is a balancing act.

Family, work, friends, hobbies, exercise, volunteer activities, spirituality: These are but some of the many balls we try to keep in the air in our quest to live fulfilling and responsible lives.

Our families – immediate and extended – often compete for our time and energy. We have relationships with partners and spouses to nurture. Children occupy a special place, and add yet another set of variables: We're responsible for teaching, guiding, and helping them fashion life skills. Many of us coach soccer, baseball or hockey teams. Others ferry children to dance classes, music lessons and other activities. Our spare time, such as it is, becomes even more scarce. As our parents age, we may be faced with additional caregiving duties. We do all these things with love and with no expectation of reward.

Personally, we lead lives that fulfill us. Lawyers are prime candidates for community activity. We sit on charitable boards, hospital foundations, sports committees. We help at church. We sit on provincial and

national boards. We give back to our communities. We are the backbone of strong cities and towns.

On the whole, lawyers balance all these life and work roles quite effectively. But it's not easy, as a recent

Canadian Bar Association-Ipsos Reid survey points out: 68 per cent of those surveyed say that they have difficulty achieving a balance between their professional and personal lives. The biggest challenge, according to 84 per cent of lawyers? Time demands.

How do you know when you need help?

Feeling out of balance however is not the same as being out of balance. And sometimes the pressures of keeping all those balls in the air become overwhelming.

Like the general population, lawyers face the challenges of stress, burnout, addictions and mental health issues. For lawyers especially, stress and burnout are common – and often an indicator of a potential for more serious problems. Stress often leads to addiction-related issues: About 10 per cent of the general population will have an addictions problem with alcohol, another 10 per cent with drugs (although these two overlap), and another 10 per cent end up with gambling problems. About 10 per cent of the population will have mental health issues, and a small percentage are affected by other addictions and issues – sexual addictions, eating disorders and internet addiction.

On a cumulative basis, people will usually have two or even three problems at the same time, so that at any one time up to 20 per cent of people struggle with an addiction or mental health problem or both.

This article will examine the most common, easily diagnosed and treated issue: stress and burnout. Discussions of other potential concerns, including depression, substance abuse and addictions, are available on the practicePRO website at www.practicepro.ca/wellness.

Stress and burnout

Stress is very much part of everyone's everyday life. But when stress becomes overwhelming, our ability to cope becomes impaired. The following are early indicators that stress in your life may be affecting your ability to cope. Keep in mind that these are just signs. The more signs you have, the more likely you are not handling stress well.

Physical indicators: Panic attacks during which your heart races and pounds, your head feels like it is going to blow off, fast breathing or gasping for breath, muscle tension and dry mouth; headaches; dizziness; clenching jaw or grinding teeth; chest pains;

OBAP + LINK = OLAP

In the Winter 2006 issue of LawPRO Magazine, we carried a notice that OBAP and LINK had agreed to merge the two organizations. The new organization is called Ontario Lawyers' Assistance Program (OLAP). Contact names and phone numbers will remain the same as for OBAP.

indigestion; nausea; bloating; cramps; constipation; ulcers; colitis; back pain; appetite loss or increase; loss of interest in sex; shut down of menstruation; fatigue; insomnia; high blood pressure; heart disease; increased number of flu, colds and infections.

Mental indicators: Memory impairment and concentration difficulties; trouble making decisions.

Emotional signals: Nervousness; anxiety and tension; agitation; apathy; depression.

Behavioral signs: Fidgeting; nail biting; compulsive eating; smoking excessively; aggressiveness.

Dealing with stress and burnout

If you feel that you are stressed or burned out, your first step is to get professional medical help. Go to your family doctor to get a medical workup to check your thyroid, blood pressure, cholesterol, etc. Get a referral to a counselor.

On your own, follow these suggestions:

Physical: Get eight hours of sleep a night. Eat three, reasonably sized meals a day; have snacks with protein during the day. Watch your personal hygiene. Cut down or cut out caffeine and smoking. Watch your weight. Enjoy regular sex. Exercise three times a week for a minimum of half an hour each time. Take breaks during the day to catch your breath. Create opportunities to laugh – a lot.

Mental: Read something light and not law-related. Do cross-words or Sudoku. Write out the pros and cons of decisions you must make to help you focus. Meditate.

Emotional: Find a good friend or confidant with whom to share your hopes, dreams and disappointments. Get a pet. Time manage and learn to say "no." Do something you enjoy – golf, gardening. Use relaxation techniques such as yoga, cognitive behavioral therapy and/or mindfulness. Recognize your anger and stress through personal and physical awareness and release it by deep breathing.

Behavioral: Quit smoking and cut out drinks with caffeine. Watch your diet and alcohol consumption. Play with your kids.

Conclusion

Lawyers face challenges much like the general population. Most lawyers will find balance and health in their lives. Some will struggle with addictions and mental illness.

If you think that you may have a problem and could use an assessment, counseling and another lawyer to talk to about your issues, call the Ontario Lawyers' Assistance Program. All communication with OLAP is confidential. To reach the program manager, Leota Embleton, please call 1-877-576-6227. To reach the volunteer executive director, John Starzynski, please call 1-877-584-6227.

John Starzynski is the volunteer executive director with the Ontario Lawyers' Assistance Program (OLAP).

CBA survey: Lawyers' solutions to work/life balance

The Canadian Bar Association's Futures Initiative survey (conducted by Ipsos-Reid Corporation) asked lawyers a number of questions related to their decision to practice law and their satisfaction with that decision. Lawyers who said they did not have difficulty balancing professional and personal lives were asked how they achieved this balance. Their solutions:

- Managing workload (including declining work) – 16%
- Flexible hours – 15%
- Not working for a large firm – 15%
- Having/developing effective time management skill and working efficiently – 14%
- Working in government legal system/work in-house – 11%
- Being involved in personal interests outside the workplace – 10%.

For the complete survey results, go to www.cba.org/cba/futures/pdf/ipsos_final.pdf

OLAP workshops address special women and wellness topics

Without a doubt, women are changing the face of the law profession: They now account for 50 per cent or more of students enrolled at law schools across the country. More and more of them are partners, managing partners, members of the judiciary and senior corporate leaders. Women have high expectations for themselves and for their careers. They also have high expectations of their employers. They are making changes in the workplace: Reports of job sharing, flexible work schedules and reduced billable hours requirement may be rare, but they are real.

How are women lawyers and the challenges they face different from their male colleagues? What do they expect from a career in law – and what do they need to get there?

As part of its ongoing focus on wellness and balance in the legal profession, the Ontario Lawyers' Assistance Program (OLAP) offers women lawyers a Women's Wellness and Balance Luncheon Series. This special programming aims to involve women lawyers and provide interesting and practical information to promote wellness.

In the past year, more than 125 women have participated in quarterly workshops that covered a wide range of topics including:

- **Women's Health and Alternative Therapies** – questions to ask and how to assess alternative therapies;
- **The Feminine Spirit at Work** – insights to close the gap between one's personal and professional values;
- **How to be a Board Member in a Charity of your Choice** – the rewards of giving back to the community; and
- **Take Care of Yourself** – tips on creating your own success in health, wealth and well-being.

Presenters provide information and lead discussion – all in the time it takes to have lunch!

The workshops are sponsored by OLAP with support from the Ontario Bar Association and the Women's Law Association – Ontario. To get reports of the series and to find out about upcoming luncheons check out the website www.olap.ca.



Ray Mikkola

Balance on blades

Commuting two to three hours a day is standard practice for many Toronto-area lawyers. But when Ray Mikkola added up the hours and realized he was spending half a billable year in transit, the need to rebalance work and family time took on a new dimension. He left the large downtown firm where he had been a partner for ten years and moved to Pallett Valo in central Mississauga. These days, getting to work is either a ten-minute drive or 20 minutes by rollerblade.

The primary factor in the decision to move was work/life balance: With five children, Ray did not want his career to interfere with his home life. Ray also wanted to practise in the community where he has spent his entire life. "Mississauga is particularly well-suited to a rewarding law practice," he says. "Many Fortune 500 companies are located here. With Blackberries and Citrix (an application that allows secure, remote computer access), there's no particular reason to have a Toronto practice." He gets to visit with clients in their place of business and he feels more like a member of the client's team.

Pallett Valo expects and encourages its lawyers to have a life outside of work – a reflection, perhaps, of the fact that about half of its partners (including its managing partner) are women. "Life here is not just about billable hours; it's more multi-faceted. Many of my colleagues volunteer in the community. I'm also less concerned about the time I spend outside the office in client development and in community involvement," says Ray.

"Being involved makes you more productive and helps develop your people skills. After all, we're a people profession." The

result, he says, is a career that's more rewarding – and more time to effectively put to both the career and family.

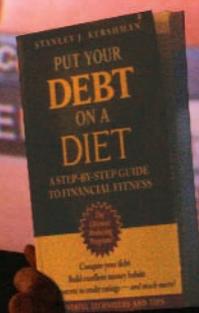
If anything, he spends more time at the office than he did in Toronto: "Commuting time is lost time: By saving three hours a day, I get in a few more hours at work and a few more hours at home."

Practising at Pallett Valo has given Ray more time to devote to his interests outside of his practice. A recipient of the Queen's Golden Jubilee medal for military service, Ray spent 26 years in the reserves. He is vice president of Last Post Fund's Ontario Chapter, which arranges burials for veterans whose families do not have the means to do so. He is also very active with the Ontario Bar Association and the Canadian Bar Association. And when he's not volunteering, Ray is busy converting his new farm to organic production.

Of course, the main reason he moved his practice closer to home was to spend more time with his wife and children: He's home for more meals, and has more time for family activities. By rollerblading to work, Ray gets more exercise than he used to. The bottom line: He's happier at home and at work. Not surprisingly, he's a strong advocate of rethinking work/life balance: "As lawyers in Ontario, we have incredible mobility. We can pick up and apply our trade elsewhere.

"It's important for lawyers to think about why they became lawyers in the first place, and to consider whether what they're doing now is consistent with that," says Ray. "Your practice is not a dress rehearsal for anything else. This is it: If you're not happy with it, you have to take steps to alter your situation."

Balancing time



Stanley Kershman

For Stanley Kershman, balance means busy.

A successful bankruptcy/insolvency law specialist with Perley, Robertson, Hill & McDougall LLP in Ottawa, Stanley is also an author, radio and television commentator, active member of his community, peer volunteer advisor on financial issues with the Ontario Bar Assistance Program (and recipient of its 2006 Volunteer of the Year award for his OBAP work over the past eight years), collector – and a committed family man who's home to take the kids to lessons and activities.

"What work/life balance looks like to me may not be someone else's idea of balance – because each of us is unique. The key though is to understand that we all need goals that transcend our work."

A social person by nature – "meeting and helping people keeps me going" – Stanley set out 15 years ago to re-jig his priorities. "I'd gone to hear a motivational speaker talk about how to have your best year ever. And what he talked about was all aspects of life – your partner, your children, charities, causes, hobbies, activities; he talked about success in terms of what is important to us individually, what makes us feel like a whole person, and not in terms of dollars or hours spent toiling over a desk."

The demands of a young family required that he keep his new hobbies simple – collecting autographs of famous people, starting a toy soldier collection and the like. As his children's demands on his time lessened ("it's important to redefine your goals at

different stages in life") he branched out into another latent interest: media work. "I knew from my bankruptcy work that I had a powerful message that the media would be interested in – and that consumers were ready to hear." A highly readable and practical book to help consumers better manage finances – *How to Put Your Debt on a Diet* – has led to regular stints as a commentator on consumer finance issues for CBC, ROBTv, and Ottawa radio and newspapers.

In the late 1990s, Stanley added OBAP to his growing list of extracurricular activities. "As lawyers, we are a helping profession: Our clients come to us for help. I believe it's also important for us to be a helping profession for ourselves, to ourselves." Although he'd never used OBAP's services himself, Stanley saw how his financial expertise could be put to good use through OBAP. "We all need someone outside our organizations to talk to at some point – and for OLAP (formerly OBAP), I'm now the finance and stress point guy."

One particularly rewarding experience was helping a seasoned lawyer, who was working seven days a week because he did not feel he could ask for time off, convince himself that he was entitled to a vacation. "Two weeks after we'd talked for several times, he called to let me know he had booked a holiday – and his firm was fine with it."

The experience drove home a message he'd heard a decade earlier: "All we have is time – what we do with it, depends on us."

Balance = flexibility

Cathy Smuk has been a mother as long as she's been a lawyer: Her daughter was born during her Bar ads, so it has always been important that her career choices accommodate a busy family life. After years of working in different environments, Cathy has discovered the best fit was right at home.

Cathy began her career at a downtown law firm, but found that high billing requirements and a long commute from Richmond Hill made it difficult to balance work and family. She switched tracks and became a legal consultant at an employee benefits firm, where she worked 50 hour workweeks. After her second child was born, she went part-time, and when she had her third child, she decided to stay at home for a few years.

When her children were a bit older, she got back to work as a part-time employment equity consultant at an employee benefits company. In 2001, Cathy decided she needed the stimulation of traditional practice, so she joined a family law firm in Scarborough. While both the benefits company and the law firm allowed her to work part-time, flex hours and work from home, a year of trekking from Newmarket to Scarborough convinced her to set up her practice from her home. According to Cathy, the timing has to be right to make the switch. "I don't know how this would have worked when my kids were babies," she says. "It worked out really well with school-aged children."

An important component to working from home is having boundaries, says Cathy. "The support of your family – not just your spouse, but also your kids – is key. They have to be respectful of your boundaries and know when not to interrupt. You have to be organized and disciplined, and not get distracted."

Working is definitely less stressful for Cathy: "There's no office politics, just me and the dog," she laughs. "There's no socializing or chatting with colleagues, so the time spent in my office is very solid and efficient." Being her own boss allows for flexible hours: As long as her work gets done, she can accommodate her family's busy schedule. And with lower overhead, she feels less pressure to have high billings. "It's okay to ask for help," she says. "I have a bookkeeper, an accountant and a process server. The tendency is to want to do things yourself, but you have to delegate."

Another benefit is that she now exercises regularly. She used to go for early morning walks and then felt tired for the rest of the day. She is now able to take a break to go for a walk or to the gym throughout the day, which has reduced her stress levels.

Cathy does not advertise: Her busy practice relies solely on word-of-mouth. Despite her success, she cautions that lawyers thinking about setting up a home office have to be willing to go through a slow period at the beginning. She started her practice after attending a Law Society workshop on starting up your own business. "I didn't do it for a long time because it just didn't seem possible, I didn't see it as a serious option."

"Try it. You can maintain a professional practice out of your home. It just takes discipline and support."



Cathy Smuk



Fitting fitness into the legal balance

We all subscribe to the notion that physical activity is an important component of health and wellness. But too few of us put that thought into action.

The cost of inactivity – to us individually and to the economy – is significant. Beyond simply relieving stress, regular exercise reduces the risk of health risks such as heart disease, falls and injuries, obesity, high blood pressure, adult-onset diabetes, osteoporosis, stroke, depression, colon cancer and premature death. Research published in the November issue of the Canadian Medical Association Journal concluded that illness due to physical inactivity costs the Canadian health care system at least \$2.1 billion annually in direct health care costs.

According to the Canadian Fitness and Health Research Institute, a majority of Ontarians don't exercise enough. Our most common excuses?

- Lack of time – 76 per cent;
- Lack of energy – 66 per cent;
- Lack of interest or motivation – 63 per cent;

For lawyers, these issues can be even greater barriers, given the demands of a legal career.

No one knows that better than Winnie Talan, an award-winning fitness professional with a distinctive background: A group fitness leader and a personal trainer, she is also an Osgoode Hall graduate (LL.B. in 1993).

She began working as a fitness instructor while doing her undergraduate degree, and on graduating from law school, Winnie decided to take some time to explore a career in fitness. In addition to having worked as a group exercise manager at the Sports Club of Canada's Parkview Club, she also recruits group exercise instructors for the Sports Clubs of Canada, teaches certification courses through Can-Fit PRO, and is an instructor in the Fitness and Health Promotion Diploma program at Humber College.

LAWPRO Magazine interviewed Winnie on the job.

Why do we all need to work out?

You need to remember to look at the big picture: it's great to have a successful career, but you need to take care of yourself as well. We take the simple things for granted, such as walking to the corner store, or playing with our grandkids. But if you don't take care of your body today, you won't be able to do those things when you're older.

Too often it takes something drastic – such as a health scare or the sudden death of someone you know – to get us motivated. Health and well-being go hand in hand with keeping yourself mentally stimulated. You can't just focus on one aspect of your life.

How do you make fitness part of your lifestyle?

It really depends on your personality style. If you're a scheduler, it just needs to be scheduled. Put it in your dayplanner and make sure you keep your regular session. Personal training can be an excellent option, it costs money, so you feel it if you miss a session.

Type A personalities live by being accountable and taking responsibility for their actions. They're usually goal-oriented and self-motivated, so they should really focus on making a personal commitment to themselves by writing down their fitness goals and planning a strategy to achieve them.

If you're a litigator or someone who thrives off competition, join a squash league. Playing against others offers that level of competition – it provides an outlet for that competitive energy that's physical rather than professional.

If you're more of a private person, you have to be disciplined enough to give yourself some time. You have to be able to say, "I gave 10 hours at the office, I can have one hour for me." Lawyers are famous for being married to the job, they can just work and work. At some point you have to be able to shut that off and just do something for yourself.

Many people enjoy the social aspect of joining a gym: Fitness classes are very social, you see all the regulars, they give you a chance to be away from other lawyers for a change. Others might have a lunch time walking or running group, or they may want to join a gym with a buddy.

Often people will adopt a fitness routine and get discouraged and quit a short while later. What do you recommend to keep them motivated?

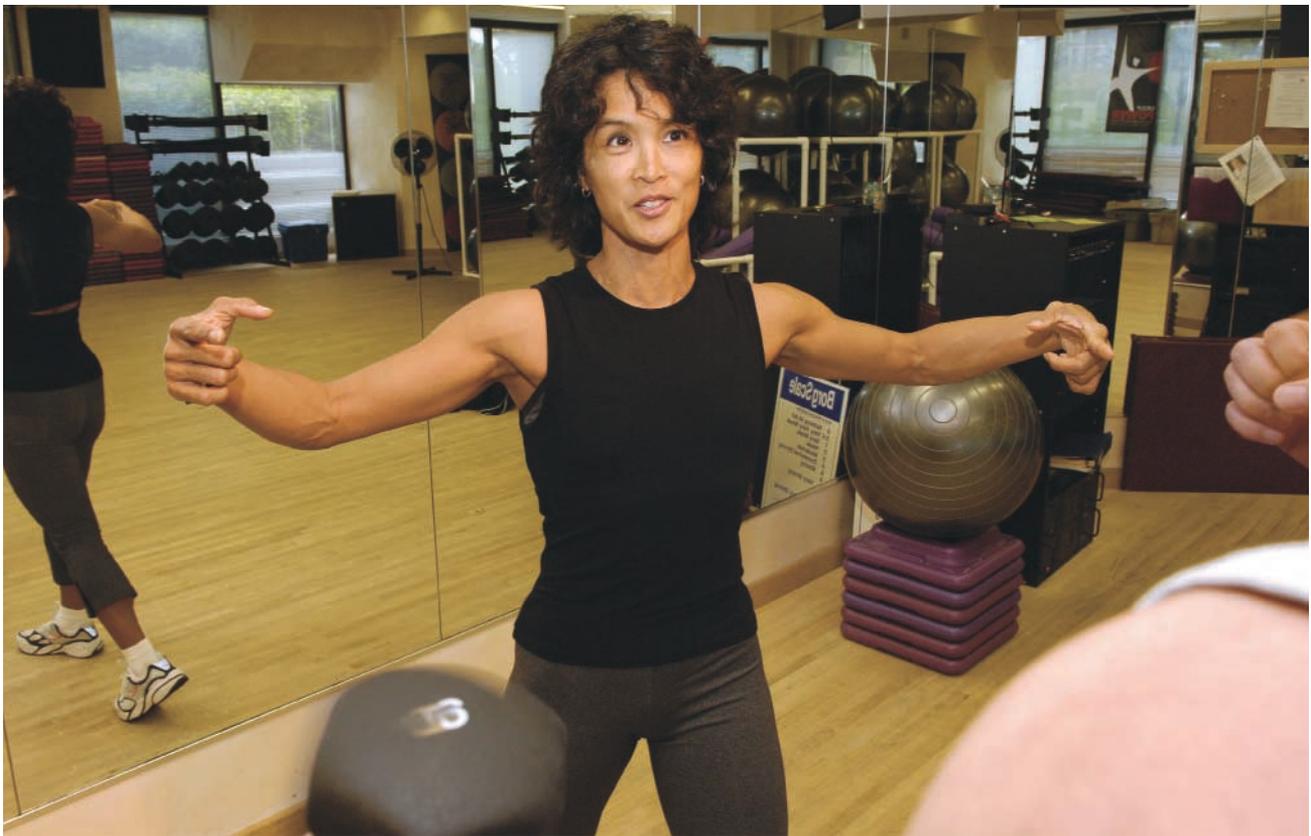
Often a support system is the best motivator. When you join a gym, there are trainers, class instructors and other people around you. When you work out with a trainer, he or she is often your best support system, teaching you and encouraging you. Get someone at work who will commit with you, someone who will work out with you. A bit of peer pressure can be great motivation. Many office workers do a group power walk at lunch, and the guilt of not showing up is often enough to keep the group going. It's the same with joining a sports league: You have to be there at a specific time, you know you have others expecting and even depending on you. For a competitive person, the worst thing is to lose by default.

We all know we need to be more active and eat better. Keep going to the gym, hang in there for two or three weeks, you won't see rewards right away. You have to remember it's a long-term process, you won't see an immediate payoff.

What do you say to those who say they are too busy to exercise?

You don't necessarily have to make extra time for exercise. We encourage people to incorporate exercise into their lives by adopting an active lifestyle. When managing your time is important, you can easily do more stretching and less sitting, and walk to get more cardio into your daily routine. Everyone has 24 hours in a day. All the small things you do add up, incrementally.

A good resources is Canada's Physical Activity Guide (www.phac-aspc.gc.ca/pau-uap/paguide/index.html). The basic principle behind it is to get the body to do 60 minutes of activity



per day. For example, walking the dog, walking to the store, gardening, light housework. You can walk on the golf course instead of using a cart. Park at the parking lot exit at the shopping mall instead of close to the mall entrance. Get off the bus or subway a few stops early. Play with your kids at the playground. Even taking a walk after supper will do you a world of good. What you're doing for your body is worth the extra time.

What are fitness trends that lawyers can adopt into their routines?

Like the rest of the population, lawyers are getting older. In the 1980s, fitness was very body-oriented, people worked hard, trained hard and played hard. Today, 25 years later, the same people are in their fifties, and mind/body style classes such as yoga or Pilates are popular. The focus is now on total body balance, there's an awareness that the mind and body are related. Fitness consumers are more educated. Beyond wanting to look good, they realize that there are health and well-being benefits.

We now view fitness as a journey of the mind: Pilates, spinning and yoga all go along with that, there's a huge interest in those forms of fitness. We're more aware of functional training, which is about teaching the body to do what it does in real life. Functional training is less machine-oriented: You mimic actions from daily life such as lifting boxes, shoveling snow, or

movements from sports. It appeals to clients on an intellectual level as it results in better performance of one's movements and actions in real life. Today's trainers are more able to adapt to different strategies and take an individual approach that works with each client.

What can law firms do to encourage their employees to be more active?

Keeping your people healthy is worth the up-front investment. Many companies participate in challenges or charity runs. It just takes one person to arrange a corporate team. That way you get people who are new to fitness participating in a non-threatening environment. Many workplaces subsidize corporate gym memberships or have on-site facilities. The Canadian Council for Health & Active Living at Work has a comprehensive guide to implementing active living programs in the workplace called 'Making it Work' (cchalw-ccsvat.ca/english/), which offers lots of practical advice.

Ultimately, you have to have a desire from within. It's never too late: You're never too old to start. Later on in life, you'll really reap the benefits: Regular exercise can improve your quality of life and help you live longer. Ask yourself, "Do I want to be able to play with my grandkids?" Feeling fulfilled through your career is great, but you can't forget to take care of your body too.

Technology & stress: Good tool, bad tool

by Jim Calloway



We resort to technology to make our lives easier, our work more efficient, our practices better. Why then do we seem to suffer from more stress and a compromised quality of life? Why, when we have technology tools that accomplish tasks in a fraction of the time it used to take do we work more and longer hours – not less? And is there anything we can do about it?

Part of the answer, suggests Jim Calloway, director of the Management Assistance Program for the Oklahoma Bar Association, is coming to terms with technology itself. The following is an edited version of an article Mr. Calloway originally wrote for The Oklahoma Bar Journal (Vol. 30, No. 3). The full text is available at www.practicepro.ca/technologystress.pdf.

Calloway's Rules of Technology and Stress

1. THE KEY POINT: USING TECHNOLOGY SPEEDS UP THE PACE OF EVERYTHING.

The purpose of almost all technology is to do things faster, and often better, than we humans can.

In simpler times, getting to work an hour early meant an hour of uninterrupted time to prepare for the day. Interaction with those outside the office was limited because their phones were not yet being answered. Now, through the technological magic of e-mail, faxes and mobile phones, you can get to work early and have a half-dozen negative interactions with others before the day even officially starts. We can, and therefore do, run at a faster pace. And if you let technology set your pace, it will be make you run faster and faster.

To survive in a law practice, you have to learn how to set your own pace.

2. LIVING IN A TECHNOLOGICAL SOCIETY IS STRESSFUL.

Technology eases our lives in many ways, but it also is demanding and time-consuming. Realizing its benefits generally requires knowledge and understanding.

When you depend on a device to do something for you, can you still do it when the device is inoperable? If there was a power failure in the manual typewriter era, you could light a few candles and keep going. When there's no power, today's law office is shut down. The same is true when a machine is broken or "the network is down." Automated phone systems

may be a money saver for the company you call, but you need time and energy to navigate through the menus. In fact, many of the benefits of e-commerce revolve around forcing the consumer to enter data that previously was entered by clerical staff on the company's payroll.

We live in a society that provides a constant flood of information. From hundreds of cable TV channels to the Internet to the mobile phone, there is more information pushed at you each day than you can possibly retain and manage. How could anyone manage it all? For most of us the term "information management" would be better described as "information triage."

There is little wonder that today many of us feel like we are trying to take a drink of water from an open, spewing fire hydrant as we look for an answer. There's just too much.

3. TECHNOLOGY ALWAYS INVOLVES TRADE-OFFS.

Technology may give us great benefits, but it also can take ... and take ... and take some more.

There is certainly no free lunch where law office technology is concerned. You may implement technology that does a marvelous job for you. But it still has to be purchased and installed. Plus, it's mostly useless without investing in training and maintenance.

One of the biggest stress producers of technology is knowing that you have the tool right at your fingertips that will do the task you need done right now, but not knowing how to make it do so. You likely do not even have all the features of your mobile phone committed

to memory and are a rare person indeed if you have mastered your wordprocessing software. But investing hours in training and learning how to use your technology can be just as frustrating as not knowing how to work the program in the first place – especially when there is “real work” still to be done.

The reality is we pay for the benefits of technology. You can reduce your stress just by understanding and accepting that premise. Celebrate when technology allows you to land a new client from across the country who would have never heard of you in the pre-Internet days. Then when you spend 45 minutes reading online help files, cryptic instruction manuals and third-party books to learn how to do a task in “only” a minute, try to accept that as well. Besides, hopefully next time it will only take you a minute to do the task.

4. DEALING WITH CHANGE GENERATES STRESS, AND TECHNOLOGY WILL ALWAYS BE CHANGING.

Technology expands, improves and changes. Dealing with change is always stressful.

Computers in the law office clearly make certain tasks, such as billing, much easier. But it seems that as soon as you master one part of technology, there is an improvement or an upgrade that requires you to change how you operate. This seemingly constant process of learning, relearning and then learning anew all over again has led many to rebel and refuse to change.

Lewis Carroll described the way many of us feel in Alice's Adventures in Wonderland: “You have to run as fast as you can to stay where you are.”

5. INFORMATION TECHNOLOGY DISTANCES THE HUMAN ELEMENT IN COMMUNICATIONS.

Certainly you can get a laugh from an e-mail from a friend or be touched by a warm voice mail from your spouse.

But we learned in the early days of e-mail that there was more to interpersonal communications than the words. Without the context of facial expressions, voice tone and other cues, a lot of misunderstandings arose. E-mailers soon adopted emoticons, like little smiley faces, to improve their communications.

As we communicate more and more by e-mail, we should be aware of this fact. If you sit in your office with the door closed and send out directions by e-mail all day, your staff will feel more job stress and will not function well as a team. Good teams are based on relationships and understanding. It is difficult to create or nurture a relationship via e-mail.

6. YOU CAN BE CONNECTED ALL THE TIME, AND YOU CANNOT BE CONNECTED ALL THE TIME.

With relatively inexpensive investments in technology you can literally be available to your clients and to your work projects 24-7. This is not, of itself, bad. Using a laptop or personal digital assistant to make use of otherwise unproductive time, being able to work remotely when you are ill, are a good thing.

But lawyers tend to be highly motivated, highly focused individuals. Fifty- to sixty-hour workweeks are not uncommon. Current technology allows you to work around the clock from wherever



you may be. You can check the office e-mail from home at night after the family goes to bed. You can track down your staff or other lawyers at odd hours with their mobile phone numbers. You can access your office files remotely. You can, quite literally, work all the time.

You can – but you can't. We human beings are not machines. We cannot stay focused on work for too long without a break. When we try to do it, we begin to function erratically. We lose our tempers. We lose our objectivity. We make mistakes. We manifest the results of our stress in many different ways.

So what can we do about this?

You need to set your own pace and recognize that the use of technology tools will pressure you to speed up your pace.

You need to adopt a triage approach to the flood of information you receive every day. You cannot handle it all. You must practise prioritization, which may be the most important job and life skill of the 21st century.

You need to give some thought to the trade-offs and negative consequences of your technology instead of just blindly accepting them.

Do not let technology tools convince you to undertake more than you can handle. You can only safely handle so much work. It is very important to not let your technology's capabilities lure you into agreeing to do more than you can or should do.

You need to give yourself permission and time for fun and recreation. Laying on the sofa watching an old movie you love is not being lazy, it is recharging your batteries.

Good tool, bad tool

Technology gives us a set of tools. These are new and powerful tools. But they are still tools – our tools. And we should control our tools.

We have decisions to make about how to use our technology tools. Using the tool when it helps and not using it when it detracts is the key – and know when to hit the “off” switch.

*Jim Calloway (jimc@okbar.org) is director of the Management Assistance Program for the Oklahoma Bar Association and is co-editor of the ABA LPM book *Winning Alternatives to the Billable Hour: Strategies That Work*, Second Edition.*

Your duty to report misconduct by a struggling lawyer

Most lawyers are familiar with the obligations placed on them by subrule 6.01(3) of the Rules of Professional Conduct to report to the Law Society the misappropriation or misapplication of trust monies or participation in serious criminal activity by another lawyer.

But, do you have a similar obligation to report a lawyer who has a significant mental health or substance abuse problem?

In some circumstances, which are also outlined in subrule 6.01(3) of the Rules, you have a duty to report a lawyer with these types of problems. Subrule 6.01(3) states:

"A lawyer shall report to the Society, unless to do so would be unlawful or would involve a breach of solicitor-client privilege:

(b) the abandonment of a law practice;

(d) the mental instability of a lawyer of such a serious nature that the lawyer's clients are likely to be severely prejudiced; and

(e) any other situation where a lawyer's clients are likely to be severely prejudiced.

The full text of Rule 6 is available at www.lsuc.on.ca/regulation/a/profconduct/rule6/.

Note that under the Rules a breach of solicitor-client privilege is much narrower than breach of confidentiality. Confidentiality, under the Rules, applies to "all information concerning the business and affairs of the client acquired in the course of the professional relationship." Privilege is a matter of substantive law and applies to communications passing between a lawyer and client for the purpose of obtaining legal advice.

The protection of the public is the primary rationale behind the obligation to report lawyer misconduct. The commentary to subrule 6.01(3) states: "Unless a

lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper ... for a lawyer to report to the Society any instance involving a breach of these rules." Needless to say, many lawyers are reluctant to report a fellow member of the bar. If you are in any doubt whether a report should be made, the Commentary states that you should consider seeking the advice of the Law Society directly or indirectly (e.g. through another lawyer).

The commentary states that the reporting obligation is not meant to interfere with the traditional solicitor-client relationship, and in all cases the report must be made bona fide without malice or ulterior motive.

In some cases you may have a duty to encourage a fellow lawyer to seek help for personal problems. The Commentary to subrule 6.01(3) recognizes that instances of improper conduct may arise from emotional, mental, or family disturbances or substance abuse. It also directs that lawyers who suffer from such problems should be encouraged to seek assistance as early as possible through the Ontario Bar Assistance Program (OBAP) or other similar support or counseling program.

Contact information for these programs, as well as various self-assessment tools and other information on health and balance issues are available at www.practicepro.ca/wellness.

It is clear that there are members of the profession struggling with various personal problems. You are encouraged to be familiar with your duties to report lawyer misconduct, and to encourage a struggling lawyer to seek help where it is appropriate to do so.

Real estate claims on the rise: Poor communication is the culprit

By Caron Wishart, vice-president, Claims

When the costs associated with real estate claims first started moving upwards in 2004, we took note that this was an area to watch. But when that same upwards trend gained momentum in 2005, we undertook a more detailed analysis of claims in this practice area, with a view to giving the real estate bar a “heads up” on what could shape up to be a reversal of the trends of the early part of this decade.

Although the number of real estate claims has remained relatively stable, the cost of those claims has increased to 40 per cent of all claims costs in 2005 from just under 30 per cent in 2004 and 23 per cent in 2003. For the first time in several years, in 2005 real estate claims costs again exceeded litigation claims – good news perhaps for the litigation bar, but bad news for real estate practitioners.

Although costly fraud claims account for some of this increase, we are also seeing much larger losses in individual real estate files than previously – likely reflecting higher property values and active real estate development opportunities.

Is this a blip or a sign of things to come? From a statistical point of view, it's too early to know for sure, but we do know this is a situation worth monitoring, and communicating on with lawyers in real estate practice.

One could also ask how this can happen given the prevalence of title insurance in the market. Analysis of the underlying causes of loss indicates that claims made against lawyers do not arise out of technical or

search errors. They arise out of failure to give good legal advice.

As the chart on the next page indicates, communication errors and inadequate investigation of facts account for 55 per cent of the number of claims reported. Clients retain lawyers in real estate transactions because they want guidance and because they want to be looked after. The legal advice given in connection with the real estate transaction is the most valuable contribution that a lawyer can make.

How can you ensure that you are giving your client the advice needed? Pay attention at the two most significant points in a real estate transaction – the beginning and the end.

In the beginning...

It is important that a lawyer pay attention to the “big picture” of the transaction. Does the deal make sense? Are there indicia of fraud? Are you being asked to paper the deal? Are there conflicting clauses in the agreement or mortgage instructions? Are the people involved in the transactions the people you are meeting with?

Ask yourself the following questions. If anything in the intake process causes you concern, do you have a process to:

- identify the indicia of fraud?
- ensure that your clerk or assistant brings concerns to you in a timely manner?

- ensure that you have a process to bring your concerns to the client's attention?
- deal with a transaction if the other party is not represented?

This is by no means a definitive list of the questions you should be asking. The TitlePLUS client intake form can alert you to other matters of concern. The form is available at www.titleplus.ca, click on **Products and Services**.

In the end...

The other significant time in a real estate transaction is at the end, as you are preparing for the closing. At this point you need someone to pay attention to the details. If there are several people in your office, then assign the person who is best at detail work to become involved at this stage. If you are a sole practitioner with limited support, then try to do this at the time of day when you are best able to do this task. Once again it is important to keep asking yourself if the transaction makes sense.

- Are the funds being properly directed? If you are acting for a purchaser and some of the funds are being directed back to the purchaser that should raise a red flag.
- Is your client asking you to take a personal risk? For example, has a client indicated on three separate occasions that he or she has forgotten his or her ID? If you do not confirm ID, you could end up with a negligence claim against you in the event that a fraud is being perpetrated.

- Has the deal changed significantly? If so, who needs to know about those changes? The client? The lender? The other side?
- Are there inconsistencies between the closing documents and the terms in the Agreement of Purchase and Sale? If so, those matters need to be resolved.

If you are focused at the beginning and end of a transaction, the likelihood of a negligence claim against you is diminished. Once you have identified issues, it is also important to ensure that you have the processes and procedures in place to deal with those matters. You will then be able to provide your clients with the legal advice that they expect from you.

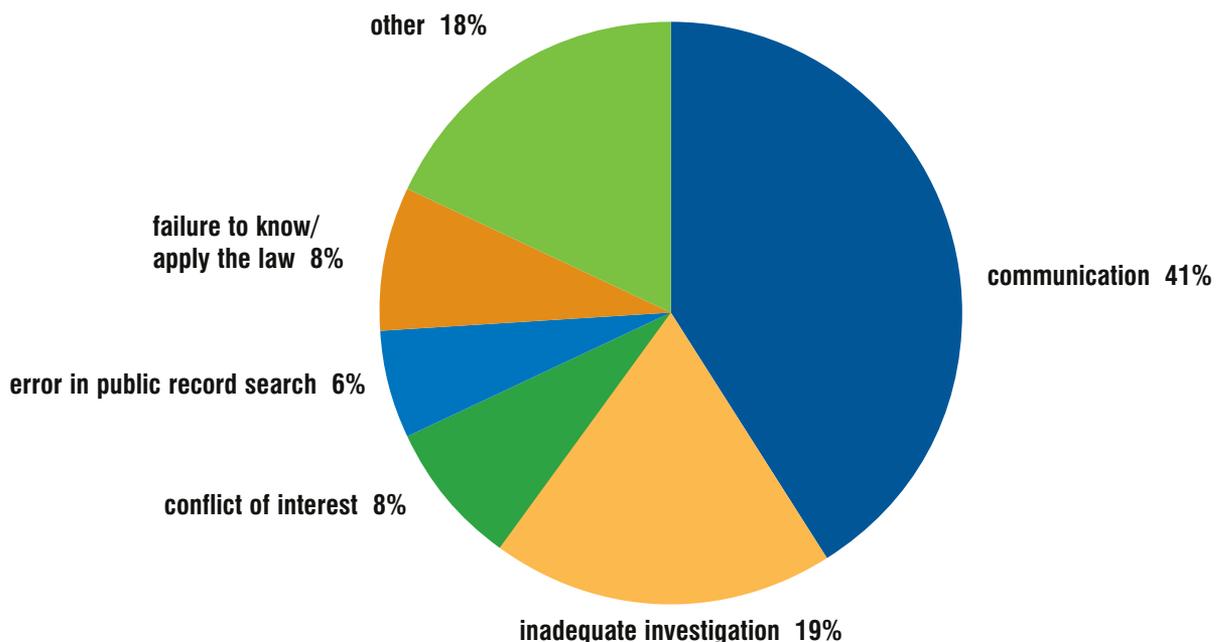
Create your own checklist

If you have not already done so, take a few moments to create your own checklist for indicia of fraud. Please refer to the Summer 2004 issue of LawPRO magazine for assistance. The magazine is available online at www.lawpro.ca/fraudreport.

You can probably create the checklist in less than an hour and achieve a permanent improvement to your office procedures – and reduce the likelihood that you'll become part of LawPRO's claim statistics.

Caron Wishart is vice-president of Claims at LawPRO.

Real estate claims – causes of loss (2003-2005)



Bar-related™ is better

Bar-related funds – which combine the best of title insurance with the talent, skill and knowledge of a real estate lawyer – always provide consumers with a superior product in the marketplace.

But the biggest obstacle to getting that message out is the bar itself.

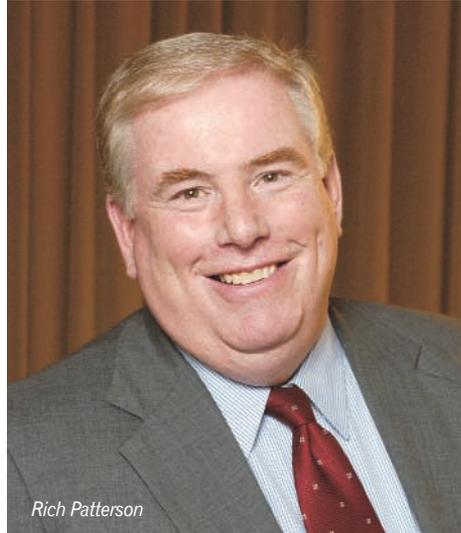
Rich Patterson, president of Connecticut Attorneys' Title Insurance Company (CATIC) and a keynote speaker at the ninth annual TitlePLUS Conference held in Toronto in mid-May, challenged lawyers to step up to the plate – to recognize and tout the value they bring to the table.

"We are the problem," he told the 200 lawyers and law clerks in the crowd. "We have allowed this fundamental disconnect between who provides value in a real estate transaction, and the price we charge." Research conducted in the United States points out that most homebuyers are anxious about the complexities they associate with buying a home, and need advice and assistance. Yet when asked what lawyers do in a real estate transaction, they replied: The paperwork.

"Do you ever tell your clients what you do?" he asked. "Do you explain all the steps you have taken to make the deal happen? Chances are you've become so focused on being competitive, all you're doing is exactly what your clients say you do – the paperwork."

Lawyers cannot win the low-cost game, he warned: "You'll end up marginalizing yourself, and losing to offshore services that can do a title search for less than \$20."

What homebuyers don't know is that (in the context of U.S. transactions) these offshore services don't also search probates, foreclosures etc, because their title insurers have opted to assume this



Rich Patterson

risk. Mr. Patterson contends that homebuyers would pay to have the extra searches done – but need to be better informed by lawyers about when and where it is appropriate to conduct these searches.

He reiterated that lawyers are the value providers in a real estate transaction. "You facilitate the transaction, you make the deal happen." Moreover, bar-related title insurers, such as his own firm and the TitlePLUS program in Canada, are committed to lawyers. "Our strength is in a community of people working for a common purpose: making sure that attorneys will be competitive."

"Bar-related funds are the lever, the alternative, the difference maker," he added. "We act differently, we influence the competition, we work to involve and expand the scope of services that lawyers provide to home buying clients."

Other types of title insurance companies, he warned lawyers, have no such goal. "They'll do whatever they need to create value for their shareholders."

One of the most visible and effective ways in which CATIC and other bar-related insurers in the U.S. have put their mandate to work is in advertising campaigns that forcefully promote the need to seek an attorney's advice when buying a home. CATIC's campaign, now in its second year, is not only influencing consumers,

but is also sparking change among attorneys. One young lawyer, who was using CATIC's campaign to help market himself in his community so impressed a homeowner that she called to let him know she would be using him – and no one else – when it came time to sell her home later that year.

CATIC, the largest title insurance underwriter in New England, also offers lenders, realtors and lawyers a myriad of other services, from seminars and training on real property issues to technology consultations (through an affiliate), to group purchasing discounts on office equipment and supplies. Next up on CATIC's agenda is to revisit the whole closing process: "We're going to turn the ordeal and anxiety that homeowners associate with the closing into a celebration with gifts, goodies, champagne – because celebrating is what resonates with people," said Mr. Patterson.

He encouraged lawyers in the audience to likewise think outside the box. "Look up more, define yourself beyond the four corners of the transaction. Move out of your comfort zone, talk up how your participation benefits all parties when you next meet with your banker, your clients, others in your community."

Moreover, real estate is a good way to make a living: "It's both a door opener to other business opportunities, and a source of a regular revenue stream."

TitlePLUS promotes role of lawyer

A “real simple” winning combination

The combination of a lawyer and TitlePLUS title insurance are a homebuyer’s best bet when it comes to buying a home: That’s the core message of a high profile new TitlePLUS advertising campaign.

The print and radio campaign, which is now running in major markets across Ontario, focuses on the types of issues that can arise in a transaction, and how using a TitlePLUS lawyer and title insurance can make life “real simple” for the homebuyer.

Homebuyers are referred to the *Real Simple Real Estate Guide* on the TitlePLUS website, where they’ll find a series of interactive mortgage, land transfer and other calculators helpful to consumers, as well as information on the role of a lawyer and the benefits of TitlePLUS insurance in real estate transactions.

Since its launch in early May, the web-based guide has attracted close to 2,000 visitors, one-third of whom clicked through to the *Locate a Lawyer* link to help find a TitlePLUS lawyer in their area.

“The response to this campaign – which has exceeded our expectations – indicates that homebuyers want to know more about what happens when they buy a home. They’re looking for good information and advice. We believe TitlePLUS lawyers are in the best position possible to respond to those needs, and to assure consumers that they are doing all they can to protect their investment in their home,” says Kathleen Waters, vice-president of TitlePLUS.

This consumer-directed campaign takes a different approach from previous campaigns, and although targeted to consumers also clearly reinforces with how the TitlePLUS program supports the

role of lawyers in real estate conveyancing. “Raising the lawyers’ profile, and supporting the notion that lawyers add value to a real estate transaction, are very much part of our overall campaign objective,” adds Mark Farrish, TitlePLUS director of marketing and sales. “As a bar-related™ title insurer, we’re better positioned than anyone to get this message out to consumers.”

The present campaign will support lawyers through this summer’s peak real estate season. Follow-up campaigns and other initiatives to profile the TitlePLUS program will be announced later this year.

To access the *Real Simple Real Estate Guide*, go to www.titleplus.ca and click on the *Real Simple Guide* link.



**CONGRATULATIONS
ON THE PURCHASE OF YOUR CONDO.**

Too bad someone else owns it.

Identity theft, impersonation and forgery are real estate crimes that actually happen. That’s why it’s best to use a professional real estate lawyer who can obtain TitlePLUS® Title Insurance for most real estate transactions. Because the only thing more important than finding the home of your dreams is finding peace of mind.

TitlePLUS Title Insurance and your real estate lawyer. Together we make real estate real simple.

Visit titleplus.ca for our Real Simple Real Estate Guide.

Underwritten by Lawyers’ Professional Indemnity Company. ® Registered trademark of Lawyers’ Professional Indemnity Company.




**YOU’VE JUST FOUND
THE HOUSE OF YOUR DREAMS.**

Unfortunately it comes with a \$10,000 nightmare.

Unpaid property taxes may be just one of the nightmares that can come with your dream home. That’s why TitlePLUS® Title Insurance recommends using a professional Real Estate Lawyer for any real estate transaction.

TitlePLUS Title Insurance and your real estate lawyer. Together we make real estate real simple.

Visit titleplus.ca for our Real Simple Real Estate Guide.

Underwritten by Lawyers’ Professional Indemnity Company. ® Registered trademark of Lawyers’ Professional Indemnity Company.




**YOU’VE JUST BOUGHT A HOME
WITH A DREAM KITCHEN.**

Too bad it hasn’t been paid for.

Unexpected liens and other charges on title can show up whether you’re buying a new house, a resale home or a condo. For complete assurance when you buy, TitlePLUS® Title Insurance recommends using a professional Real Estate Lawyer for any real estate transaction.

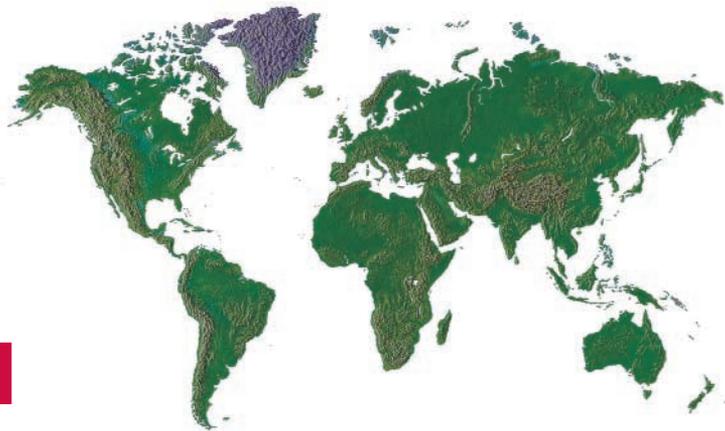
TitlePLUS Title Insurance and your real estate lawyer. Together we make real estate real simple.

Visit titleplus.ca for our Real Simple Real Estate Guide.

Underwritten by Lawyers’ Professional Indemnity Company. ® Registered trademark of Lawyers’ Professional Indemnity Company.



Advice on foreign law not covered



With the Internet, international commerce and global travel, it is now much more common for the personal or business dealings of individuals and companies to involve foreign countries. And when legal problems or issues arise from these dealings, Ontario lawyers may find themselves with clients seeking advice on matters involving foreign law.

When foreign law issues arise on a matter, lawyers should tread carefully as advice with respect to foreign law is not covered under your professional liability insurance policy with LAWPRO.

The LAWPRO professional liability insurance policy provides coverage to lawyers for the performance of professional services (as defined in the policy), anywhere in Canada, where such services are performed with respect to the laws of Canada, its provinces and territories. The LAWPRO policy is available at www.lawpro.ca/insurance.

In many cases it will be readily apparent that foreign law is involved with a matter.

Examples include a trademark registration or patent application in the United States, a contract governed by the Uniform Commercial Code, or where a client is sued in a foreign country.

But in some cases, the foreign law issues may not be so obvious. On a real estate, matrimonial or will/estate planning matter there might be a vacation property in the United States or another country – the transfer or disposition of which will involve the law where the property is situated.

A commercial contract may have a clause specifying it is governed by foreign law. Sometimes it will be assumed from the outset that foreign law applies to the contract. In other cases, the law of the contract may be determined at the very end as a matter of negotiation.

When you are working on files, be aware of and watch for issues that involve or touch on foreign law. Do not give advice with respect to foreign law. You should advise your clients to seek an opinion from foreign counsel when a matter

requires advice on foreign law. Carefully document in correspondence to the client your advice with respect to the need to retain foreign counsel.

Do not provide professional services to clients with respect to U.S. or other foreign law unless you are called to the bar or otherwise qualified to give legal advice for that foreign jurisdiction. You may wish to investigate separate coverage for these activities as LAWPRO's primary policy will not cover this work.

If you have excess coverage from LAWPRO, note that advice with respect to foreign law is not covered under the terms of the LAWPRO Excess policy. If you have excess malpractice coverage from another insurer, talk to your broker or agent to determine if you are covered at the excess level for advice with respect to foreign law.

Cases to note for litigation counsel



The Court of Appeal has recently delivered two judgments which deprive litigation counsel of their ability to rely on the “egregious error” standard in defending malpractice actions against themselves. While the distinction between “egregious error” and “reasonable competence” may sound dramatic, it remains to be seen whether this distinction gives rise to different outcomes where a trial on the merits takes place. Two superior court judgments discussed in this column illustrate the point.

In a third judgment, the Court of Appeal refused to characterize criminal defence counsels’ alleged errors as breaches of fiduciary duty.

In a refreshing judgment, a superior court judge refused to hold a solicitor liable for his ex-client’s mishandling of his own trial, one year after the solicitor got off the record.

“Egregious error” standard is gone

The most striking development for litigation counsel in 2005 was the Court of Appeal’s judgment in *Folland v. Reardon*, (2005) 74 O.R. (3d) 688, which held that litigation counsel no longer have the benefit of the “egregious error” standard of care.

The defendant solicitor represented the plaintiff at a criminal trial where the plaintiff was convicted of sexual assault. The conviction was subsequently set aside on the basis of fresh evidence.

The Court of Appeal declined to summarily dismiss the action against the solicitor.

Mr. Justice Doherty, on behalf of the Court of Appeal, held that, given the ubiquitous presence of the reasonableness standard in negligence law, criminal defence counsel should be held to the standard of a reasonably competent counsel acting in a criminal proceeding. Courts should avoid using phrases such as “egregious error” and “clearest of cases” when describing the circumstances in which negligence allegations will succeed against lawyers.

On April 21, 2006, the Ontario Court of Appeal handed down its judgment in *Ristimaki v. Cooper*, [2006] O.J.No.1559. The trial judge had dismissed the action against Cooper; the Court of Appeal ordered a new trial.

Ristimaki alleged that Cooper failed to diligently and competently prosecute her claim for an equalization payment from her husband. One of the issues in the lawsuit was Cooper’s settlement of a motion to compel financial disclosure by the husband. The trial judge referred to the well known passage from the judgment of Mr. Justice Anderson in *Karpenko v. Paroian, Courey, Cohen & Houston*, (1980) 30 O.R. (2d) 776 (H.C.J.), where the Court observed at p. 791 that to establish negligence against a lawyer in respect of his or her advice concerning the settlement of a case, proof of an egregious error is required.

Mr. Justice Armstrong, who wrote the reasons of the Court of Appeal, held that in light of *Folland*, the standard of reasonableness, rather than egregious error, must apply. He also wrote that the difference between the standard of

reasonableness and the standard of egregious error is significant.

It has been LAWPRO’s experience that while in theory there may be a substantial difference between the “standard of reasonableness” and “egregious error,” in practice there is little real difference between them. LAWPRO has always proceeded on the basis that a trial judge will NOT dismiss an action against a lawyer who had fallen below the standard of a reasonably competent civil litigator, because his or her error(s) were nevertheless not “egregious.”

It should also be noted that in accepting the “reasonably competent lawyer” standard in *Folland*, Mr. Justice Doherty did not detract from the caution against characterizing errors in judgment as negligence. Mr. Justice Doherty noted at paragraph 44 that lawyers make many decisions in the course of a lawsuit. Those decisions require the exercise of judgment. Inevitably, some of those decisions, when viewed with the benefit of hindsight, will be seen as unwise. The standard demands that the lawyer bring to the exercise of his or her judgment the effort, knowledge and insight of the reasonably competent lawyer. If the lawyer has met that standard, his or her duty to the client is discharged, even if the decision proves to be disastrous. Absent the “egregious error” language, this passage sounds very much like *Karpenko*.

Other improvident settlement cases

Rivait v. Monforton, [2005] O.J. No. 4698 (S.C.J.) post-dates *Folland*. The Court

found that a lawyer was not negligent in settling his client's personal injury claim for \$110,000 before a firm prognosis was available. The client had a poor pre-accident work record, and suffered from a pre-existing injury. She was receiving WCB and CPP benefits at the time of her injury. A jury may have concluded that she never would have returned to work even if there had been no accident. The tortfeasor was entitled to a credit for the no-fault benefits she had and would have received. These would have substantially reduced her claim, had it settled at a later date. Had the action not settled and proceeded to a jury trial, the plaintiff would not have received a more favourable recovery.

See also *Lioris v. Mahler*, [2005] O.J. No. 59 (Ont.S.C.J.) The plaintiff Lioris unsuccessfully sued his solicitor Mahler on the basis that Mahler consented to the dismissal of Lioris's personal injury action without Lioris's consent.

Justice Horkins found that Lioris did agree to the dismissal of his action. While Mahler should have confirmed these instructions in writing, his failure to do so did not mean that Mahler was negligent.

The Court was satisfied that Mahler discharged his retainer with the skill of a prudent solicitor.

A prudent solicitor must recognize that not every claim is a viable one, and exercise sufficient judgment to advise a client when the time has come to abandon a hopeless case. Mahler did so. It would be inappropriate to second-guess Mahler who knew that a favourable medical opinion could not be obtained and that the client was concerned about incurring costs.

In any event, Lioris failed to demonstrate "some reasonable probability" or a "substantial chance" that damages could have been recovered. There was no medical evidence to show that Lioris could have satisfied the OMPP threshold test, had the action not been dismissed.

In *Kuzyk v. Fireman*, [2005] O.J. No. 1840 (S.C.J.), the plaintiff's action against the law firm which settled his personal injury action was dismissed.

Plaintiff alleged that the solicitors were negligent in failing to "ensure" that plaintiff recovered \$525,000, "net" of all outstanding fees and disbursements. The plaintiff had been represented by four other solicitors before retaining the defendants. The Court accepted the defendants' position that the \$525,000 was to be "net" of the defendants' fees, not of the other four lawyers' fees. Those fees remained the responsibility of the plaintiff. The plaintiff conceded that the \$650,000 all-inclusive settlement negotiated by his solicitor was an excellent one. The plaintiff would not have done better had he proceeded to trial.

The plaintiff signed an authorization to settle which stated that the plaintiff would "net" \$525,000. The authorization was not a contract with the defendant law firm "guaranteeing" a recovery of \$525,000 net of all expenses. The obligations between the plaintiff and the law firm were governed by the original retainer. The plaintiff gave no fresh consideration to support a new contract.

The defendant was not negligent in failing to resort to the *Solicitors' Act* to compel one of the previous solicitors to render his account. The defendant had expressed the view, before settlement, that this solicitor's account would be in the range of \$5,000 – \$10,000. After settlement, the solicitor delivered an account in excess of \$57,000. It had neither been assessed nor paid prior to the trial of the malpractice action. It was unknown whether the plaintiff would actually pay more than the \$5,000 – \$10,000 suggested by the defendant. The plaintiff owed money to the earlier solicitor, and there was no more money to be had from the defendants in the underlying action.

The defendant did not breach its fiduciary duty to the plaintiff in using \$75,000 of

the settlement money to pay directly the outstanding disbursements. The plaintiff alleged that the money should have been paid over to him, and he would have paid the disbursements. Justice Archibald found that the solicitor's actions were reasonable. The defendant received about \$50,000 on account of its own fees. There was no breach of fiduciary duty in failing to take less on account of its fees in order that the plaintiff might recover more. There is no need to send a client out for independent legal advice where, in order to settle a claim, both the plaintiff and the plaintiff's solicitor reduce their respective recoveries. In this case, the fees taken by the defendant were considerably less than what they were entitled to under the retainer agreement.

The plaintiff led no evidence to establish that he had any chance, let alone a substantial chance, to recover more if the action had gone to trial, or if the trial had been adjourned and a second mediation held.

Counsel not liable for client's errors

In *Nicolardi V. Daley, Daley, Byers and Fanjoy* [2005] O.J. No. 2346, Nicolardi's negligence action against solicitor Fanjoy, who had represented him in a motor vehicle accident claim, was dismissed. Fanjoy was removed from the record one year before the plaintiff's action was tried. After Fanjoy got off the record, Nicolardi retained a new solicitor, but fired that solicitor. In doing so, Nicolardi was unreasonable and the cause of his own loss. The plaintiff represented himself at trial. Cameron, J. held that Fanjoy was not responsible for the manner in which Nicolardi conducted his own trial.

Alleged errors by criminal defence counsel NOT breaches of fiduciary duty

In *Frumusa v. Ungaro et al.*, [2006] O.J. No. 686 (C.A.); affirming [2005] O.J. No. 2412,

Lawyer who used ILA Checklist vindicated at trial

In *Webb v. Tomlinson*, [2006] CanLII 18192 (ON S.C.), LAWPRO successfully defended solicitor James Tomlinson. Fortunately for Tomlinson, he had used the independent legal advice (ILA) Checklist prepared by Philip Epstein, Q.C., and publicized by LAWPRO.

Tomlinson gave ILA to Jean Webb. Webb had agreed to mortgage her home in order to loan \$100,000 to her ex-husband, who wished to purchase an auto wrecking business. Unfortunately, the business did not prosper, and the husband declared bankruptcy. Webb sought to recover her loss from Tomlinson.

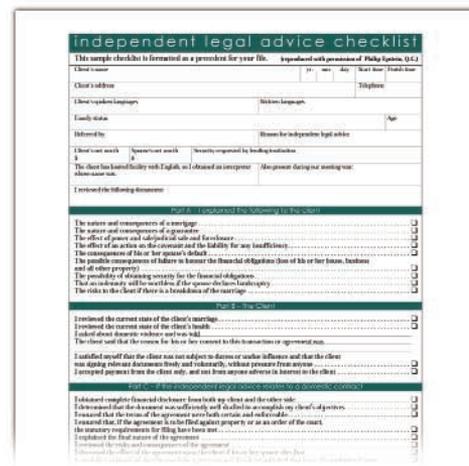
At trial, Tomlinson testified that he followed the ILA Checklist recommended by LAWPRO. He produced the Checklist that he had filled in during the course of the meeting. Tomlinson's checkmarks and written inserts indicated the items he discussed with Webb. Tomlinson also produced four pages of handwritten notes which he made during and at the conclusion of the meeting. The notes showed that Tomlinson discussed and explained the nature and consequences of the mortgage loan, particularly that Webb risked losing her home if her ex-husband were unable to pay. The notes gave a start and stop time for the meeting, which last 45 minutes.

Justice Belobaba accepted Tomlinson's version of the advice given at the meeting, based on the Checklist and notes. Justice Belobaba held that the law is clear that lawyers providing ILA

are generally not required to go beyond the mortgage transaction to assess the financial feasibility of how the mortgage funds will be used. Lawyers giving ILA are not required to give business advice. In any event, Tomlinson did explain to Webb that Webb could lose her home if the mortgage were not repaid.

This excellent outcome was possible because Tomlinson gave advice based on the items suggested in the Checklist, and conscientiously documented that advice.

The ILA Checklist is available at practicepro.ca/ilachecklist



the Court of Appeal resisted an invitation to expand the ambit of counsel's liability for breach of fiduciary. The plaintiff alleged breaches of fiduciary duty because his claims for breach of contract and negligence were statute barred.

The plaintiff alleged that his criminal counsel failed to zealously represent his interests, and thereby committed breaches of fiduciary duty. He alleged that the defendants failed to give proper advice, were not diligent, failed to lead necessary evidence, failed to properly attack Crown witnesses, and failed to call the plaintiff as a witness.

The Court of Appeal agreed with the following passage from the reasons of Herman, J.:

"A breach of fiduciary duty occurs where the relationship of trust and loyalty between the lawyer and the client has broken down, that is, situations in which the lawyer has been dishonest, is in a position of conflict of interest or has divided loyalties. The breach of fiduciary duty does not otherwise extend to situations in which the quality of advice or representation is at issue."

The plaintiff's breach of fiduciary duty claims were struck out.

As of the date of this writing, *Rivait v. Monforton*, [2005] O.J. No. 4698 (S.C.J.), *Kuzyk v. Fireman*, [2005] O.J. No. 1840 (S.C.J.) and *Nicolardi v. Daley, Daley, Byers and Fanjoy* [2005] O.J. No. 2346 (S.C.J.) are under appeal.

Debra Rolph is director of research at LAWPRO.

Surfing with your keyboard

Navigating the Web is pretty simple: You are well on your way if you master the point-and-click along with the Forward and Back buttons. But, with a few keyboard shortcuts, you can take your surfing to the next level.

Why are keyboard shortcuts better? Because they let you jump between and around web pages more quickly. If your hands are already on the keyboard, it is always much faster to keep them there: Taking one hand off the keyboard to reach to the mouse, clicking away, and then bringing it back to the keyboard always takes longer.

This Tech Tips column reviews some keyboard shortcuts for navigating between websites, and finding information and moving within web pages.

Note that the keyboard shortcuts reviewed in this column all work in Internet Explorer 6, and the majority of them also work in the Firefox and Opera browsers.

Navigating between pages

Jumping to a new site or digging down within a site are part and parcel of surfing the web. Sometimes you find gold, and sometimes you find nothing. If you strike out, you are likely using the Back button to retrace your footsteps. Instead, try pressing the BackSpace key or Alt+Left Arrow, both of which will do the same thing.

And after going backwards, you can use Alt+Right arrow instead of the Forward button to easily go through the same sites.

If I find a page with relevant information or a good list of links (often Google search results), I like keeping it open as an anchor so I can easily come back to it. To do this I open and review new pages in a separate window by right-clicking on the link, and selecting Open in New Window. This opens the link in a new instance of your browser. Pressing Shift before clicking on a link will do the same thing. In both cases, the new window will be less than a full screen so you can easily see your anchor page. If you want to make the new window the full size of your screen, just double click on the window's

title bar (the bar across the top of the window).

Note the little upside down triangles next to the Forward and Back buttons. Clicking these will give you a listing of the sites you have been to, and you can jump forward or back several sites at once. Note that you can use these links to jump backwards when a website won't let you.

To see more of a page on the screen, use F11 to toggle between full-screen and regular views of a browser window.

To instantly close a browser window, press Ctrl+W.

Moving around a page

You can use scroll bars to move up or down on a page, but there are other much better options for doing the same thing. If you just want to move a bit, the up or down arrow keys will move you a few lines or so at a time. To make bigger jumps, PageDown and PageUp will move you down/up almost a full screen at a time. The Spacebar and Shift+SpaceBar will actually do the same thing. Note that these shortcuts only work if the central or main frame on the page has the focus. Web programmers who are on the ball will set up pages this way. If these shortcuts don't work, you can manually move the focus to the main frame on the page by clicking on it.

Pressing the Home key will instantly jump you to the top of the page, and the End key will instantly jump you to the bottom of the page.

Dealing with misbehaving pages

Every now and then you will find yourself dealing with a page that isn't loading properly. To try fixing this, press F5 or Ctrl+R to reload or refresh the page. If this doesn't solve the problem and you are stuck on a page that is taking forever to download, press Esc to stop the page from continuing to load. You can then go back to a previous page or go to another page.

Using the address bar

The address bar is where you enter the URLs of websites you want to visit. Most of you will get to the address bar by clicking on it with your mouse. Pressing Alt+D will do the same thing.

Now, carefully watch what happens when you press Alt+D (or click on the address bar): The text in the URL in the address bar will be highlighted. Pressing almost any key on the keyboard will delete the highlighted text – which is fine if you want to type something new. However, what if you want part of the highlighted text? Press Home, End or Right/Left Arrow keys and the highlighted text will remain in the address bar and no longer be highlighted. You can then edit it to enter the URL you want. Use Ctrl and the Right or Left Arrows to jump through the URL.

Pressing F4 will open a dropdown list below the Address Bar listing websites that you have typed in the address bar. You can move down through the list by pressing the Down Arrow, and jump to the highlighted site by hitting Enter.

A dropdown list of these sites will also appear if you start typing a URL in the address bar. But take a careful look at the sites listed: They will be filtered to match the text you are typing in. After typing several characters, you should see the URL for the page you are looking for. Use the Down Arrow to select it and hit Enter. This helps you avoid typing a lengthy URL.

Miscellaneous shortcuts

If you are lazy, remember that pressing Ctrl+Enter will automatically add www. to the beginning and .com to the end of the text typed in the address bar.

And a bit of a scary shortcut: To see all the sites you've visited in your History press Ctrl+H.

Chances are you (like most of us) cannot remember how to properly type http://. But it doesn't matter – when typing URLs in the address bar skip the http:// and just start at the www for any site that has

www in its URL. (And remember this point if you are mentioning a URL in an article.)

Finding information on a page

On really long pages you may find yourself looking for specific text or information. To easily find where a particular word or text is on any page, simply press Ctrl+F. This opens the Find dialog box. Enter the word or words you are looking for, and press Enter or click on the Find Next button. You can press Enter or Find Next a second time and it will jump to the next occurrence, and the same again for the

third occurrence, and so on. It will tell you when there are no more occurrences in the remainder of the page. If you want to refine your search, note the options in the Find dialog box for matching whole words and case.

Take me Home

Press Alt+Home will instantly jump you to your home page (the page that loads automatically every time you start IE).

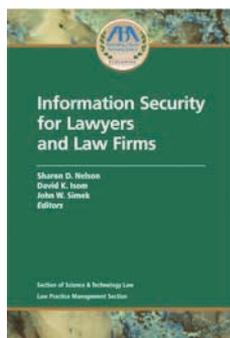
To change your home page, click on Tools, Internet Options, and in the Home Page box type the URL for the page you want in the Address box.

In the Home Page box you will also see the Use Blank button which forces IE to open without loading a page. My browser is set to this option which is great if I am on a slow internet or wireless connection. IE instantly opens and I can go to the site I want without having to wait for the specified home page to load.

Happy – and faster – surfing everyone.

Dan Pinnington is director of practicePRO, LAWPRO's risk and practice management program. He can be reached at dan.pinnington@lawpro.ca

book review



Information Security for Lawyers and Law Firms

Sharon D. Nelson, David K. Isom and John W. Simek, Editors
ABA Law Practice Management Section and Section of Science and Technology Law
Publication Date: April 2006, ISBN: 1-59031-663-0

Protecting the security and confidentiality of client and firm information is critical to the success of your practice, and an obligation under the Rules of Professional Conduct. To minimize the risk of a breach of confidentiality, you need to understand where the risks are, and implement office management practices and appropriate technology to ensure all firm data remains confidential and secure.

This is a tall order for busy practicing lawyers. LAWPRO provided some assistance in early 2005 with the *Managing the security and privacy of electronic information in a law office* booklet (www.practicepro.ca/securitybooklet). But what if you want or need more help?

The ABA has come to the rescue with the recently published *Information*

Security for Lawyers and Law Firms book. The book is intended to help non-technical people understand where the risks are, and what can be done to reduce or eliminate them.

At 424 pages, it is a substantial book that covers many different topics. It begins with an information security glossary and a review of basic security concepts and practices.

It then provides the answers to the following common questions: What are viruses, worms, trojans, spyware and metadata? How do I know if I have been infected or hacked, and how do I respond if I have been? Do I need a firewall? Does our firm need an e-mail, internet and technology use policy? How can e-mails and documents be secured with signatures and encryption? How can I securely access

my firm data from a remote location? Is my data backup procedure adequate? What do I need to do to safely turn my data over to a third-party service provider?

This book is a thorough resource that will help you do everything you need to do to protect the sensitive information in your office.

Lawyers dealing with matters involving electronic discovery will also find the book useful as many of the topics it covers will come up when dealing with the collection, preservation and production of electronic information.

This book costs US\$79.95. For more information about it, and other excellent ABA LPM Section publications, go to www.abanet.org/lpm/catalog.

Workshop: getting stress hardy

Module: #6 Managing stress by ... changing your reaction to stressful situations

Coaching

When you're in a stressful situation, you have three alternatives if you want to take some action to relieve the distress you are suffering from:

- You can change your reaction (actions) to the stressful situation.
- You can change your thinking (attitudes, beliefs, opinions) about the stressful situations.
- You can take a temporary break from the situation.

To change your reaction to stressful situations, consider the following questions:

1. Decide if the situation is changeable
 - Situations created by people are changeable because people are changeable.
 - Circumstances that happen to people are not changeable e.g. heart attacks, cancer, traffic injury, birth defects.
2. If changeable, can you change it?
 - Is it something that you personally have control over?
3. Even if you can change it, is it worthwhile to do so?
 - Sometimes the emotional costs are so high, the change is not worth the trouble.
4. If changeable by someone else, what steps can you take that will have some influence?
 - How? Where? When?

Mentoring

Thinking about a stressful situation you face, do the following analysis:

Describe the situation

Is the situation changeable?

If changeable, can I change it?

If changeable by someone else can I influence?

- How? _____
- Where? _____
- When? _____

Is it worthwhile changing the situation?

About the OCC

The Online COACHING CENTRE (OCC) is LAWPRO's innovative online education tool. It lets you quickly and easily enhance a variety of "soft skills" that not only help you survive and thrive, but also help reduce malpractice claims.

The OCC is entirely Web-based, allowing lawyers across Ontario to use it at a time and place convenient to them. It is organized into six workshops, each of which contains approximately 25 learning modules, such as the one profiled on this page. Modules encourage self-teaching and self-evaluation; answers you provide when working in the modules should be saved for review at a later time.

To access the OCC, go to www.practicepro.ca/occ

Solo, small and large firms make same errors

Without even trying, most lawyers could come up with dozens of ways in which big law firms are different from their small and solo firm counterparts. But despite all these differences, the most common malpractice errors at large, small and solo firms are virtually identical.

The charts that accompany this article illustrate the eight most common types of errors for all malpractice claims handled by LAWPRO between 2000 and 2005. Statistics are divided into two categories: firms of 75 or more lawyers, and sole practitioners.

It is striking how similar the errors are in these two different types of firms. The six most common errors are the same in rank, and very similar in proportion. Surprisingly, in rank and proportion, the errors at firms of two to ten lawyers and 11 to 74 lawyers are virtually identical as well.

Most lawyers are surprised to learn a failure to know or apply substantive law is not the most common error that lawyers make. It is only the fourth most common error at firms of all sizes. The biggest claims risks, and the biggest opportunity to reduce claims exposure, lie in basic lawyer/client communications, and in time and deadline management.

Communications-related errors #1 claims concern

Lawyer/client communication-related errors are the biggest cause of malpractice claims. For all types of firms, they represent roughly one-third of the claims LAWPRO handles.

There are three types of communication-related errors. For both large and small firms, the most common communications-related error is a failure to follow the client's instructions. Often these claims arise because the client says one thing about what was said or done, or not said or done, and the lawyer says another. These claims tend to come down to credibility, and in handling claims LAWPRO finds these matters are difficult to defend if the lawyer has not documented the instructions or not backed up with sufficient notes or other documentation in the file.

Poor communications with a client is the second most common communications error. These claims often involve a failure to explain to the client information about timing, fees and disbursements, options, implications of decisions and potential outcomes. The third most common communications error: a failure to obtain the client's consent or to inform the client.

On top of being the most common malpractice errors, communications-related claims are also among the easiest to prevent. You can significantly reduce your exposure to this type of claim by controlling client expectations from the very start of the matter, actively communicating with the client at all stages of the matter, creating a paper trail by carefully documenting instructions and advice, and confirming what work was done on a matter at each step along the way.

Time management and deadlines

Missed deadlines and time management and related errors are the second biggest cause of LAWPRO claims at all sizes of firms.

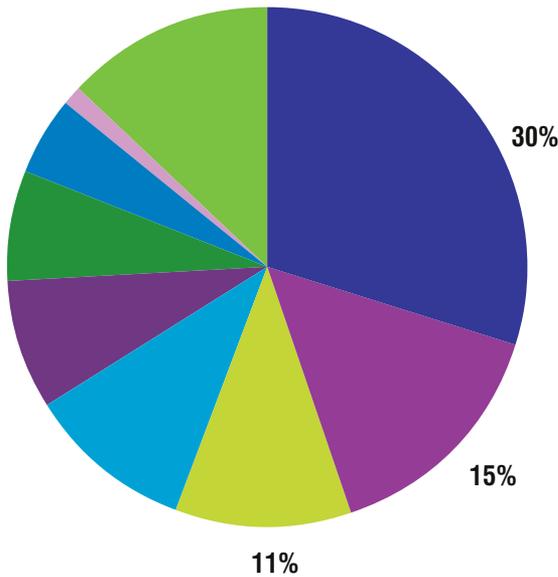
The most common time-related error is a failure to know or ascertain deadline – missing a limitation period because you didn't know it. The good news is that this type of error has decreased over the last several years. The bad news is that the other time- and deadline-related errors are holding stable or increasing. At this stage it is not clear if the new Limitations Act will result in fewer claims.

A failure to calendar is the second most common time-related error (a limitation period was known, but it was not properly entered in a calendar or tickler system). The fourth most common time-related error is the failure to react to calendar error (in other words, the limitation period was known and entered into a tickler system, but was missed due to a failure to use or respond to the tickler reminder).

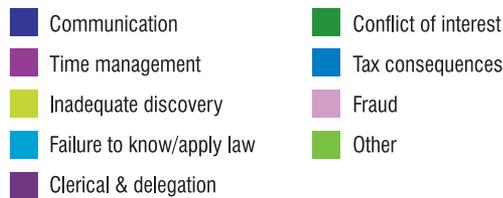
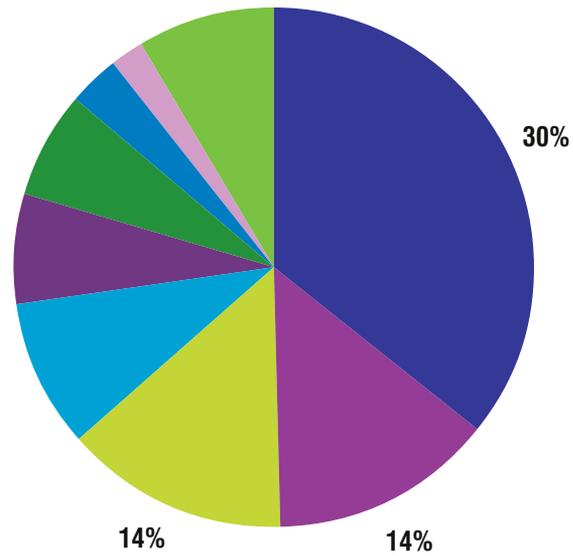
Lawyers at firms of all sizes seem to have a dusty file or two that sits on the corner of their desks for far too long, and makes procrastination-related errors the third most common time-related error.

These deadline and time management errors are also easily preventable with better time management skills and the proper use of tickler systems. Practice management software programs such as

Firms over 75



Solo firms



A full listing of the types of errors made by size of firm is available on the practicePRO website at www.practicepro.ca/firmerrors.pdf.

Amicus Attorney and Time Matters are excellent tools for helping lawyers manage deadlines and tasks, and for helping them better manage client communications and relationships.

Digging a bit deeper

Inadequate discovery of facts or inadequate investigation is the third most common error at firms of all sizes. This error has been on the rise for the last several years in several areas of law. It goes to the very core of what lawyers are supposed to do for their clients – give legal advice – and basically involves the lawyer not taking a bit of extra time or thought to dig deeper and ask appropriate questions on the matter.

On a real estate deal this type of claim might involve not delving into the client's long-term plans for the property, and then failing to follow up on appropriate

zoning or bylaw searches to ensure the client can use the property as intended. On a family law or wills and estates planning matters, it might involve not digging into more details about the status of past marital relationships, other children or step-children, or assets.

To avoid these claims, take the time to read between the lines so you can identify all appropriate issues and concerns. Ask yourself: What does the client really want? Does everything add up? Are there any issues or concerns that should be highlighted for the client?

Clerical and delegation errors

Clerical and delegation-related errors are the fifth most common type of error at large and solo firms, and rank sixth at firms of two to ten lawyers. These errors include things such as simple clerical errors, errors in mathematical calcula-

tions where work is delegated to an employee or outsider and is not checked, and a failure to file document where no deadline is involved.

Delegation of tasks to knowledgeable support staff is an essential part of the operation of every practice as it makes lawyers more efficient and effective. However, ultimately, the lawyer is responsible for delegated work, and steps should be taken to review delegated work were appropriate. Extra care is especially warranted if there is something different or unusual on the matter.

Conflicts of interest

Conflicts of interest claims rank sixth for large and solo firms, and fifth for firms of two to ten lawyers. Conflicts-related claims have been on a general downwards trend for many years. However, since the Supreme Court of

Canada's decision in *R. vs. Neil*, there is clearly increased sensitivity to the duties of loyalty and confidentiality that lawyers owe their clients.

It is easier for litigators to steer clear of conflicts of interest because they are in an adversarial position. Real estate and corporate commercial lawyers may be pressured to act for multiple clients by the clients themselves.

To avoid conflicts of interest, make sure your firm has a procedure and system in place for checking conflicts at the earliest possible point in time. Ideally it should be an electronic system and include more than just client names. A system that includes individuals and entities related to the client, including corporations and affiliates, officers and directors, partners, and trade names etc. will catch more real and potential conflicts.

Tax errors

A failure to understand or anticipate tax consequences is the seventh most common error at large firms, and occurs less frequently at solo and small firms. This shouldn't be a surprise as larger firms tend to do more work that involves tax issues. In some of these claims the tax issues just are not spotted. But even in cases where tax issues are identified, errors occur because advice from a tax partner or lawyer is not sought, or the tax partner or lawyer is given insufficient information to give proper advice. Be sensitive to possible tax issues, and seek advice from a lawyer with appropriate tax expertise if these issues arise.

Fraud

While real estate fraud sometimes has a higher profile, fraud by firm lawyers and staff is also a concern, and fraud-related claims occur at both large and small firms. Regardless of firm size, it is important

that every firm implement appropriate internal controls to ensure that funds in trust accounts are handled properly and that all transaction involving client monies are properly documented.

Firms have different claims “personalities”

It is interesting to note that on an aggregate basis, the malpractice error types and proportions can vary significantly from firm to firm. Sometimes this is a reflection of practising in a different area of law, but it can also very much reflect an individual firm's calendaring procedures and time management practices.

For example, firms that do a poor job of managing tasks and deadlines have more time management and missed deadlines related claims. One large Toronto firm seems to have kept conflicts claims very low by having excellent conflicts checking procedures and an increased sensitivity

to conflicts claims through an annual conflicts education program that is mandatory for all lawyers and staff.

Your marching orders

The eight most common malpractice errors represent more than 90 per cent of the errors for all sizes of firms. In terms of risk management and claims prevention, taking some proactive steps to address these claims is your best opportunity to reduce your claims exposure. See the practicePRO resources sidebar below for tools that you can use to help you take proactive steps to reduce your claims exposure.

Dan Pinnington is director of practicePRO, LAWPRO's risk and practice management program. He can be reached at dan.pinnington@lawpro.ca

practicePRO resources

LawPRO Magazine archives: www.practicepro.ca/magazinearchives

Retainer Precedents: www.practicepro.ca/financesbooklet

Managing booklets and other practice aids: www.practicepro.ca/practice/default.asp

Lawyer/Client Relationships booklet: www.practicepro.ca/relationshipsbooklet

Limitations charts: www.practicepro.ca/limitations

Topical Listing of LawPRO & practicePRO resources: www.practicepro.ca/topiclisting

Dealing with difficult clients: www.practicepro.ca/difficultclients

LawPRO Magazine Fraud issue: www.lawpro.ca/fraudreport

ILA Checklist: www.practicepro.ca/ilachecklist

LawPRO wins Privacy Award

LAWPRO has been recognized with the "2006 Top Privacy Policies in Canada Award" by NYMITY, one of Canada's leading privacy research firms. LAWPRO was selected in the insurance category based on its clear, complete and readily available notice of its privacy policies and practices. More than 200 organizations were assessed in eight business sectors, with awards going to the top five performers in each category. For more information see www.lawpro.ca.

Expanded TitlePLUS residential property coverage

TitlePLUS is expanding coverage for residential property policies applied for on or after June 1, 2006. The new "Supplementary Coverage Endorsement for Residential Properties" will, in particular, expand the coverage available for post-Policy Date risks. Updating the TitlePLUS coverage ensures that we continue to offer the most comprehensive coverage available in the Canadian marketplace.

For more information, please see www.titleplus.ca.

LawPRO welcomes new Board members

The Board of Directors is pleased to welcome new Board members Abraham Feinstein, Q.C. and James R. Caskey, Q.C.

Mr. Feinstein is a partner with Soloway Wright in Ottawa. A bencher of the Law Society of Upper Canada since 1991, Mr. Feinstein has served as chairman of the Governance Restructuring Committee, co-chair of the Sole and Small Firm Practitioners Task Force, chair of LibraryCo's Integration Task Force and is

currently chair of LibraryCo's Board of Directors.

Mr. Caskey is a partner with Siskinds LLP in London. A past president of the Middlesex Law Association, Mr. Caskey has been a bencher of the Law Society since 2003. He serves as co-chair of the Government Relations and Public Affairs Committee. He is a Fellow of the American College of Trial Lawyers and has served as commission counsel to the Waterloo Judicial Inquiry and counsel to the London Police Services Board.

Deadline reminders

CLE PREMIUM CREDIT DEADLINE: SEPTEMBER 15, 2006

How would you like to save up to \$100 on your 2007 insurance premium? It's easy, with the LAWPRO CLE Premium Credit program – a risk management initiative that provides a \$50 credit for each qualifying CLE program you have completed between September 16, 2005, and September 15, 2006 (to a maximum of \$100 per lawyer). Your credit will be automatically applied to your 2007 insurance premium invoice. To obtain the credit, you must complete the online Declaration on the LAWPRO website at www.lawpro.ca/cledec no later than **September 15, 2006**. Three types of programs currently are eligible for this premium credit initiative:

- **LawPRO-approved CLE programs:** LAWPRO has worked closely with major CLE providers to develop CLE programs that include a risk management component and therefore qualify for the CLE Premium Credit program. A list of CLE programs that qualify for the premium credit is available online at www.lawpro.ca/clelist. Promotional material for programs that qualify for the credit also carry the LAWPRO "seal of approval."
- **The practicePRO Online Coaching Centre (OCC):** This online, self-help

tool offers 150 modules that help lawyers enhance the "soft skills" that are vital to law practice. To qualify for a \$50 premium credit, you must complete three OCC modules that you have not completed previously. The maximum credit for using the OCC in 2005-06 is \$50. Access the OCC at www.practicepro.ca/occ.

- **Law Society Self-Assessment Tool:** Completing one section of the Law Society's Best Practices Self-Assessment Tool also qualifies for one \$50 credit.

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

TRANSACTION LEVY FILINGS

- Real estate and civil litigation transaction levy surcharge payments for the second quarter of the year ending June 30, 2006, are due on July 31, 2006.

2006 INSURANCE PREMIUM PAYMENTS

- The final quarterly installments by preauthorized bank account withdrawal or credit card will be processed on July 15, 2006, and October 15, 2006.
- Monthly installments by preauthorized bank account withdrawal or credit card will be processed on the 15th of each month.

Information on reduction in Goods and Services Tax (GST)

Lawyers should be aware that the **2006 federal budget** contains proposals for the reduction of the GST rate to **six** per cent from **seven** per cent effective July 1, 2006. Lawyers should consider reviewing their billing and accounting practices in light of the proposed amendments.

Transaction Levy Surcharges

For your information we have summarized the implications of these GST proposals on the Real Estate and Civil Litigation Transaction Levy Surcharges for lawyers.

REMITTANCE OF THE TRANSACTION LEVY SURCHARGES TO LAWPRO

Transaction Levy Surcharges are considered insurance premiums and therefore, like the basic premiums for your professional liability insurance, are NOT subject to GST. The total amount that is to be remitted to LAWPRO therefore remains unchanged at \$50 per transaction regardless of the proposed change in the GST rate.

CALCULATING THE TRANSACTION LEVY SURCHARGE WHEN IT IS DISBURSED TO CLIENTS

As you are aware, you may disburse the full \$50 Transaction Levy Surcharge on your invoices to clients. This disbursement is subject to GST. In most circumstances and as a general rule, lawyers issuing invoices to clients dated on or after July 1, 2006, would apply GST at the new rate of six per cent, being \$3.00 on each \$50 Transaction Levy Surcharge disbursed to clients.

New transitional rules for sales of real property

The budget also contains specific transitional rules for the GST rate reduction with respect to sales of real property. The transitional rules set out the circumstances

in which the reduced percentage rate will apply and the circumstances in which a purchaser may claim a rebate from the Canada Revenue Agency. Factors such as the date of the agreement of purchase and sale and the date of closing (i.e., where ownership and possession of the property is transferred) may affect the amount payable and the entitlement to a rebate.

CRA website

Lawyers should refer to the Canada Revenue Agency website at www.cra-arc.gc.ca/agency/budget/2006/gstrateqa-e.html for information on CRA's interpretation and administration of these GST-related amendments.

calendar

Events calendar



June 19

LSUC Family Law Clerks Program
Practice Management in Family Law
Dan Pinnington and Carole Curtis,
Barrister & Solicitor
Toronto

August 13-15

CBA Canadian Legal
Conference & Expo
TitlePLUS exhibiting
practicePRO exhibiting
St. John's Convention Centre,
St. John's, NL

September 7

ABA Legal Malpractice Conference
Why E-documents are different
Dan Pinnington, practicePRO
Chicago, IL

September 13

Lender Awareness Session
TitlePLUS Exhibiting
Location TBD, New Brunswick

September 14

Oakville Milton District Real Estate
Board Trade Show
TitlePLUS Exhibiting
Oakville Conference & Banquet Centre

September 14

Lender Awareness Session
Location TBD, PEI

September 27

Lender Awareness Session
Location TBD, Saskatoon, SK

October 13

Pacific Legal Technology Conference
Powerful and Persuasive Presentations – Pinnington presenting
Dan Pinnington, practicePRO
Vancouver, BC

October 19

TLOMA Annual Conference
Why Electronic Documents are Different
Dan Pinnington, practicePRO
Niagara-On-the-Lake

November 6

CBA Managing Partners Conference
Avoiding Malpractice Claims
Dan Pinnington, practicePRO
Halifax, NS

LAWPRO®

www.lawpro.ca



www.practicepro.ca



www.titleplus.ca



LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LAWPRO®)

President & CEO: Michelle Strom

LAWPRO Magazine 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.

Editor: Dagmar Kanzler
dagmar.kanzler@lawpro.ca

Contributing editors: Stephanie Wei
stephanie.wei@lawpro.ca

Dan Pinninton
dan.pinninton@lawpro.ca

Design & Production: Freeman Communications

Tel: (416) 598-5800 or 1-800-410-1013
Fax: (416) 599-8341 or 1-800-286-7639
www.lawpro.ca

Disclaimer:

This publication 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.