Volume 7, Issue 1 Winter 2008

LawPRO®

personality & practice

The lawyer personality revealed
Multi-generational workplaces
Towards cultural competency
Personality & lawyers' malpractice

PLUS:
Torquemada Rule
Fraud scam alert
Real Estate Practice Coverage

Delivering on the promise of "more"

Six years ago – when we launched this magazine and our new corporate logo – I suggested that there's "More to LawPRO than meets the eye."

That comment has proven to be prophetic.

In the 20 issues we have published since spring 2002, we have tackled topics that have run the gamut from preparing for practice interruptions, to financial planning and management, to improving client communication. We've examined how leadership and culture contribute to client-focused law firms, debated the future of real estate practice, delved into the trials and tribulations of family law practice, and sounded the alarm on fraud – always with an eye on the future implications of these topics for lawyers and their law practices.

We've often been ahead of the curve: We contemplated what the boomer phenomenon – specifically the pending retirement of the baby boom – means for lawyers before it became topical to do so. We demonstrated how online technologies make law practice more competitive, and explored work, wellness and balance. Our reach and impact were corroborated by none other than the Discovery Task Force, led by Hon. Mr. Justice Colin Campbell, who opted to use LawPRO magazine as the vehicle through which to reach out to the profession to discuss electronic discovery and its implications for law practice.

The current issue of our magazine gives you a heads up on two topical issues: how to make multi-generational workplaces work; and how to be culturally sensitive, in the largest sense of the term.

Our company, and LawPRO magazine, are uniquely positioned to look at the big picture – to gather and analyze information, to identify trends and issues, and help the profession prepare for what's ahead.

What's ahead for LawPRO also speaks to the ability to deliver "more". We have been invited to deliver the keynote address on trends in lawyers' liability at the LawAsia conference this spring.

Why LawPRO? Because we're recognized as a leader among legal malpractice insurers. Why a Canadian insurer? Because Canada – with its multicultural workforce, its international trading links, political stability and economic strength – punches above its weight on the world stage.

What's ahead for me? A sabbatical that will allow this Boomer to learn and think in a new language and get ready for the adventures of the next fifty years.

I am extremely proud of the magazine we have provided the profession over the last six years, and of the ways in which LawPRO has evolved. I know our strong editorial team backed by our senior management group and headed by incoming President & CEO Kathleen Waters (see page 36 for details) will continue to deliver more than meets the eye.

Michelle L.M. Strom
President & CEO

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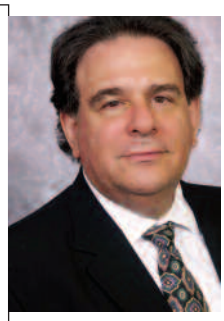

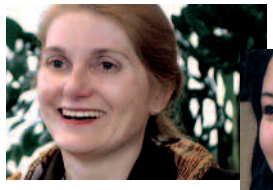



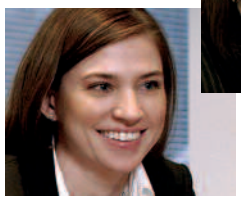

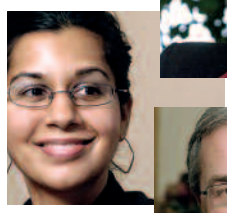
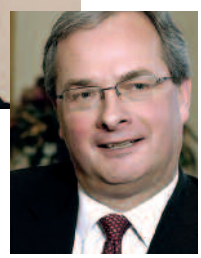

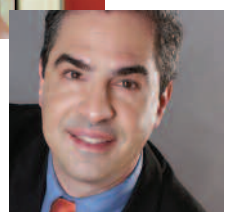

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DEPARTMENTS

Dr. Larry Richard

Herding cats:

The lawyer personality revealed

Ed note: *The following condensed version of Dr. Larry Richard's feature article on "herding cats" is reproduced with permission of the author. The full text is available at* www.hildebrandt.com/Documents.aspx?Doc_ID=2430

"Managing lawyers is like herding cats." It turns out that the old saying is based on fact. I've been studying the personality traits of lawyers for the past twenty years, and have measured dozens of traits among thousands of lawyers. Research confirms that not only are lawyers highly autonomous, but they share a number of personality traits that distinguish them from the general public.

These "lawyer personality traits" have broad implications for the management of lawyers, the cultivation of rainmakers, the retention of associates and a range of other critical issues in the day-to-day practice of law. This article examines how lawyers differ from the lay public – in some cases significantly – and how rainmakers differ from other lawyers. I'll then discuss how such personality data can be used to improve hiring and management.

[The Caliper Profile test] has been in use for over 35 years. Over one million professionals, business managers, sales people and other executive level individuals have been profiled with this tool. Over the past few years, it's become the test I rely on most frequently in helping lawyers understand the personality forces at work in their firms. At this point, I've profiled more than 1,000 lawyers with the Caliper Profile – mostly in senior management positions in

law firms and corporate law departments. The patterns may surprise you.

Rainmaking

Perhaps the most intriguing data has to do with the personality traits of successful rainmakers. Harold Weinstein, Chief Operating Officer of Caliper Corporation, notes that "over the years our research has shown that there's a strong correlation between performance and motivation. People who are working in roles that are consistent with their personality, values and interpersonal characteristics generally outperform those who are less well-matched, by a ratio of two-to-one. Nowhere is this pattern more consistent than in the role of selling or 'rainmaking'."

In a study jointly conducted by Caliper and Altman Weil in 1998, we looked at a group of 95 lawyers judged by their peers to be "excellent lawyers." The group was divided into two subgroups: successful rainmakers and "service partners." The former were in the top echelon in terms of developing new business; the latter were in the bottom echelon, despite their other standout qualities. The average Ego Drive score for the rainmakers was 60 (on a scale of 0 to 100) compared to only 38 for the service partners.

The average Ego Strength score for the rainmakers was 63 compared to only 43 for the service partners.

And the average Empathy score for rainmakers was 75 compared to only 65 for the service partners. (This difference was not statistically significant, but will likely turn out to be so with a larger sample size. Lawyers across the board tend to score a bit above average in empathy.)

In short, the Caliper Profile clearly differentiates between those with the personality profile frequently associated with successful selling and those who are not very successful.

Does this mean that if you don't have a "rainmaker's personality" you can't originate business? Of course not. But it does suggest that some people, by virtue of their personality, are much more comfortable in the rainmaking role and can't not make rain, whereas for the rest of us it may be a struggle. Since rainmaking is an important function in any law firm, many lawyers with lower scores on the key rainmaking traits will nevertheless make an effort to originate business, and some will succeed. However, as a general rule, they will find it much less comfortable, much harder to do, and less rewarding than it is for the classical rainmaker.

One other key implication of this data is that since personality traits like these tend to remain fairly stable over time, some degree of predictability is possible. So, for example, if you are hiring a lateral associate and you want to increase the odds of hiring an individual who will become a strong business generator as a partner, you can gather data using the Caliper Profile that will increase your odds of hiring an associate with rainmaking potential.

By the way, the three classical sales traits were not the only distinctions we found in our research. Successful rainmakers also scored more assertive, sociable, risk-taking and confident, and significantly less cautious (less of a perfectionist) and less skeptical (more trusting) than the service partners.

Herding cats

Since our 1998 research, we have profiled several hundred more lawyers and have observed some distinct and persistent patterns that may offer insight to frustrated managing partners about why it's sometimes difficult to get your partners to go along with even seemingly simple management decisions.

The skeptic

Let's start with a trait called "Skepticism". People who score high on this trait tend to be skeptical, even cynical, judgmental, questioning, argumentative and somewhat self-protective. People who score low tend to be accepting of others, trusting, and give others the benefit of the doubt.

In larger firms that we have profiled, the trait known as Skepticism is consistently the highest scoring trait among lawyers, averaging around *the 90th percentile!*

These high levels of skepticism explain many of the oddities and frustrations encountered in trying to manage lawyers.

First, it's likely that high levels of this trait are important for success as a lawyer in many areas of practice such as litigation, tax or M&A work.

Second, the average person tends to use his or her stronger personality traits across all situations, rather than turning them on and off at will. Thus, if the profession attracts highly skeptical individuals, these skeptical lawyers will be skeptical not only when they're representing a client but also in other roles which might actually require *lower* levels of skepticism. In other words, the skeptical litigator may be well-suited for adversarial encounters, but this same litigator will maintain the skeptical stance in partnership meetings, while mentoring younger lawyers, or in heading up a committee despite the fact that these situations may all be performed more effectively in a climate of trust, acceptance and collaboration.

The urgent

Another trait that distinguishes lawyers from the general public is their higher Urgency scores. A high score on Urgency is characterized by impatience, a need to get things done, a sense of immediacy. Low scorers tend to be patient, contemplative, measured, in no particular rush. The excellent lawyers in our study scored roughly twenty per cent higher on this trait than the general public. Awareness about one's own level of Urgency can immediately improve one's effectiveness with others.

Urgent people charge around like they are on their way to a fire. They may finish others' sentences, jump to conclusions, be impulsive. There is an intensity to their behavioral style, since they are results-oriented. They seek efficiency and economy in

everything from conversations to case management to relationships. While clients certainly reward many lawyers for moving their matters along, Urgency can have a negative side as well. Urgent people are sometimes brusque, poor listeners, and can be annoying to many people. This can add a level of tension to meetings, a level of frustration to mentor/mentee relationships, and a sense of oppression to lawyer/secretary interactions.

The potential downside of this trait emerges most significantly in interpersonal relationships. Urgent lawyers who try to be "efficient in relationships" may eventually realize how oxymoronic this idea is.

The sociable

This may also explain why lawyers also differ from the general population so dramatically in the next trait – Sociability. The excellent lawyers in the Caliper/Altman Weil study had an average Sociability score of only 12.8%, compared to an average of 50% for the general public.

Sociability is described as a desire to interact with people, especially a comfort level in initiating new, intimate connections with others. Low scorers are not necessarily anti-social. Rather, they simply find it uncomfortable to initiate intimate relationships and so are more likely to rely on relationships that already exist, relationships in which they've already done the hard "getting-to-know-you" part, such as their spouses, friends and family members.

What this also means is that at work low scorers are less inclined to enjoy interacting with others, and may prefer to spend more time dealing with information, the intellect, or interactions that emphasize the mind rather than the heart.

Is it any wonder that lawyers score low on this trait? The law is a profession devoted to logic and the intellect. Almost every law firm has standards of intellectual rigor which can be seen in their hiring processes and in the adulation paid to intellectually superior lawyers. Yet it's hard to find a law firm that pays equal attention to the importance of relationships, that rewards and supports the cultivation of "quality time" among its professional personnel or in any way measures one's people skills.

Low Sociability scores have broad implications for many aspects of law firm management – mentoring, teamwork, practice group leadership, client retention, support staff turnover, and rainmaking. In our Caliper/Altman Weil study, rainmakers scored nearly *three and a half times higher on Sociability* than the service partners!

Resilience

Another important trait on which lawyers depart from the general norm is Resilience or Ego Strength, which we touched on briefly under *Rainmaking* above. People who are low on Resilience tend to be defensive, resist taking in feedback, and can be hypersensitive to criticism. In the hundreds of cases we've gathered, nearly all of the lawyers we've profiled (90 per cent of them) score in the lower half of this trait, with the average being 30 per cent. The range is quite wide, with quite a number of lawyers scoring in the bottom tenth percentile.

What does this tell us? Despite the outward confidence and even boldness that characterizes most lawyers, we may be a bit more sensitive under the surface. These lower scores suggest a self-protective quality. This may explain why so many partners' meetings get sidetracked into defensive exchanges and why a simple request to turn in timesheets is often met with a defensive tirade.

Finally, let's look at the "herding cats" trait itself – Autonomy. Our most recent data, principally from larger firms, suggests that lawyers' Autonomy scores generally average at the 89th percentile. In other words, it's common for lawyers to resist being managed, to bridle at being told what to do, and to prize their independence.

Management and leadership applications

Anyone in a leadership position in a law firm – managing partners, heads of practice groups, members of management or executive committees, heads of branch offices – must learn their own personality traits and understand how they compare to the averages for the general population, the averages for lawyers, and the averages for your own firm.

It is also helpful to profile all the lawyers in the firm, or at least all of the owners. This not only gives valuable feedback to each individual, but also provides everyone with aggregate data about the personality contours of the firm. Are there blind spots? Are there large clusters of individuals with extreme scores on a particular trait? Are there personality "factions", i.e. one cluster of individuals with low scores on a particular trait and another cluster of individuals with a high score on that trait? The aggregate distribution of certain personality traits in a firm helps to shape the culture of the firm.

This culture-shaping process is usually invisible and goes on outside of our conscious awareness. But through effective use of testing, the curtain can be pulled back. Armed with this information, the lawyers in a firm can develop a greater sense of their strengths, more consciously build a firm culture, evolve a clearer marketing strategy, hire more intelligently, and cultivate business development in a more sensible fashion than requiring every partner to become a rainmaker.

Hiring and selection

Although designed as a selection tool, the Caliper Profile has emerged as an excellent tool for coaching, development, leadership training and other internal applications. But its greatest strength is its ability to help an employer reduce the risk of making a hiring mistake by helping to create a job match.

A candidate can be matched to (a) a job; (b) a person; or (c) a group or organization. By far the most common is job matching.

First, the firm develops a job description, listing key tasks and competencies that will be required for the job, as well as desirable and undesirable personal traits. Then potential candidates in the "finalist pool" are tested. The resulting personality profile can then be compared to the job requirements to see how well a particular candidate fits.

The same kind of comparison can be made between a job candidate and an individual with whom he or she might be working. Likewise, if you know the aggregate strengths and weaknesses of a partnership, you can seek a candidate that fills a gap or rounds out your resource roster. Bear in mind that greater diversity is almost always an advantage when it comes to personality. The key is understanding how to build a big tent while at the same time creating a culture in which differences are valued rather than becoming fuel for conflict. A diverse firm, with a culture that truly values diversity, will provide a greater competitive advantage than a firm filled with one basic personality style.

One important clarification is in order here. Some lawyers are critical of personality testing (I told you they were skeptical). But they often misunderstand the proper use of such testing, mistakenly assuming that the test will be used as a cut-off tool much in the way that a typing test might screen out any candidate for a secretarial job who can't exceed 75 words per minute. Properly used, personality testing should never be used as a cut-off tool. It is much more effective and appropriate when used to confirm, clarify or uncover.

Proper testing is always done after the candidate has survived at least an initial round of interviews. At this point, the lawyers who have conducted the interviews have formed some informal and unscientific opinions about a candidate's strengths, weaknesses, attractiveness, qualifications, etc. A good psychological test can help add insight to what the interviewers have discerned, confirming their hunches and adding more objective support to the mix.

Let's say that half the interviewers came away with the impression that the candidate was pretty detail-oriented, while the other half of the interview team came away convinced that the candidate was a "big-picture" person. By one version of common sense, these divergent impressions are incompatible. A person is either detail-oriented or big-picture but not both.

But human nature is more complex than that, and a good personality test can uncover nuances that make apparent inconsistencies like this make sense. In the Caliper Profile, for instance, one could be high on Cautiousness (wanting to make sure that all the "i's" are dotted and the "t's" are crossed before going public with information), yet low on Thoroughness (not wanting to dig into the details, preferring the big picture, approximations). The combination is not all that unusual, and someone with this particular profile might appear to be detail-oriented when providing information that they know others will rely upon, yet be very much a big-picture person when it comes to how they conceptualize problems. If two interview teams asked different kinds of questions, each could elicit a piece of the puzzle, leading to inconsistent impressions which the personality test could easily clarify and harmonize.

There is another less obvious benefit to this approach. One recent study suggests that job satisfaction is higher and job turnover is lower among new hires who were given low expectations in the hiring interview than among those to whom a rosy picture was painted. In the example given above, the candidate was in effect given lower expectations – "You might not get the mentoring you need;" "People here can sometimes be quite critical;" "There can be a lot of pressure on this job." These lower expectations in effect inoculated the candidate against later job dissatisfaction.

The dysfunctional law firm

Finally, personality testing is one of our most effective tools in helping firms, or groups of lawyers within firms, that are dysfunctional. We all know of law firms in which the partners bicker with one another, backbite behind closed doors (or in open meetings), experience high turnover, have lowered morale, or show any of the other classic symptoms of a dysfunctional firm. In almost every case, the understanding gained by profiling the lawyers and explaining their personality differences helps to defuse the conflict and shift from "taking differences personally" to understanding and accepting differences.

Bear in mind that a dysfunctional firm involves very complex group dynamics, and personality feedback by itself is not a cure-all. But it is one very effective arrow in the quiver of organizational improvement tools. Joe Welty, Managing Partner of Miles & Stockbridge in Baltimore, remembers when we helped his firm several years ago, "I found the personality feedback to be very valuable and very telling about how we interact with each other and almost predictive of how the group will interact in the future and stay together as a group. I really believe in it." In Joe's case, the personality feedback he's referring to came from the Myers-Briggs Type Indicator or MBTI, another widely used personality measure.

In summary

This article has given you a glimpse into the personality traits of lawyers and provided you with some insight into the ways that personality information can be used to help a law practice operate in a more business-like fashion. Make personality insights part of your repertoire, and you may improve your performance and management.

Dr. Larry Richard is the head of the Leadership & Organization Development Practice Group with Hildebrandt International, a leading professional services consulting firm. Dr. Richards pioneered the application of psychology and other behavioral sciences to the improvement of leadership and management practices in the legal profession. Dr. Richards can be reached at rrichard@hildebrandt.com.

Nora Spinks

Leveraging generational diversity in law

'They' have no life! 'They' have work ethic!
'They' show no respect! No,' they' show no respect!
'They' make unapologetic demands! 'They' are unsure of themselves!

They, them, those ... each generation assessing the others. Generational diversity is quickly becoming one of the top stressors in organizations. With five distinct generational characteristics mixed with other elements of diversity including gender, culture, ethnicity, language, experience etc., the complexity of our workforce has never been greater.

Historically, there were three distinct generational groups in an organization. Generally, you started with your own generational cohort and as you got older, you progressed predictably up the hierarchy, tending to remain with your own group throughout your career. Top levels rarely, if ever, had contact with lower levels and therefore younger generations. Today, with team-based projects, and elimination of hierarchical layers in organizations, there is a greater likelihood that you will come in daily contact with generations other than your own.

In the past, distinct generational characteristics would take 22 to 25 years to appear in the workforce. Today, it is every 10 years and the timeframe between generations continues to shrink. Many people in today's workforce will experience six, or even seven, distinct generations in the workforce during their career.

Generations in today's workforce

Traditionalists are approximately in their mid-sixties today, the oldest generation in the workplace. Following them are *Boomers*, in their mid to late fifties now turning sixty at a rate of one every seven seconds in North America, who are thinking about retirement or career redefinement.

Squeezed between Boomers and the next generation is the forgotten generation: the *Trailing Boomers*. Often grouped with the Boomers, they have characteristics distinct from Boomers. They are often described as the most over-worked, over-whelmed, over-tired and over-looked generation in the workplace. For them, retirement is not on the horizon, their children are approaching college/university, they have eldercare demands and are taking on more responsibility as Boomers shift into pre-retirement.

The *Nexus* generation or *Gen 'X'* is now in their early to mid-thirties starting families advancing their careers and moving into positions of authority.

The *Net* generation of *Gen 'Y'* is approaching thirty, exploring their options, settling into committed relationships in their personal lives, and assessing their choices in their professional lives.

Gen I, at the top end is just starting university, has been in the part-time service sector for a while as students. 'I' stands for I am unique, internet everything, instant gratification, iPods, iPhones... They will be in your offices as students, interns and associates very soon.

Generational characteristics

Generational characteristics are formed by demographics; social, economic, political circumstances; pivotal collective moments shared by many; technology and pop culture; and, stages and phases human development. The more rapid the pace of change – the shorter the generational cycles. The shorter the generational cycles – the more generations in the workplace at one time.

When considering generational diversity remember that there are more shades of grey than black and white. Some would argue that you can define a generation by when you were born. The reality is that where you were born, your family structure, how you were parented, your cultural norms, social values and roles of authority in your life will have as much impact, if not more, than your date of birth.

Demographics

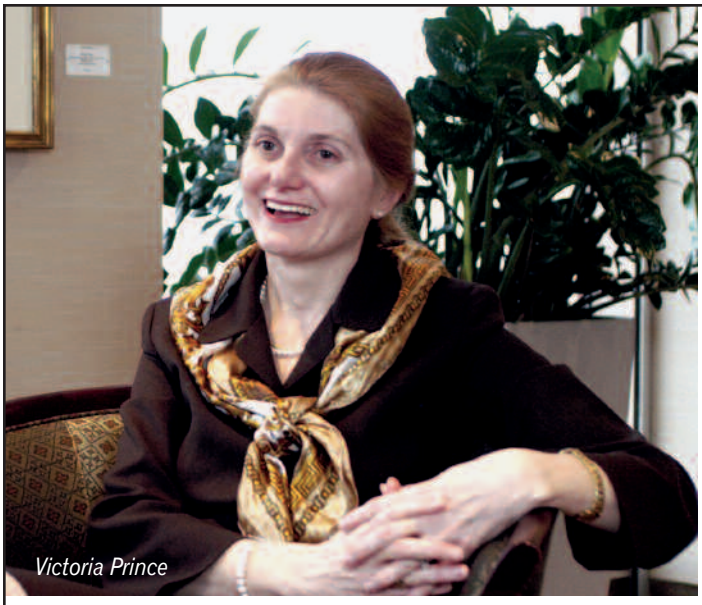
If you are from a generation that is disproportionately larger or significantly smaller than the rest of the population, you will have a lot of power and influence. For example, in response to the arrival of the Boomer generation, which is proportionately larger than the rest of the population, society invested heavily in: maternity wards as they arrived; elementary schools as they reached school age; colleges and universities as they approached adulthood; and new retirement models as Boomers approach 60 years of age.

The Nexus generation or Gen 'X' is significantly smaller than other generational cohorts. They have power because as there are so few of them they are in high demand, able to exercise their power due to their relative scarcity.

For each Boomer looking for work or interested in advancing his or her career, there were four or five others wanting and available to take their place. For every Nexus employee, there are multiple jobs and opportunities available. The Nexus generation can make demands and choices because they are in such demand.

Social, political, economic climate

As human beings, if we grow up in a period of abundance we expect abundance to return even during periods of scarcity. If we are raised during periods of scarcity, we expect scarcity to return even during times of abundance. So, if you were raised during the depression or by parents who experienced the


Victoria Prince


Tracy Robillard

BLG moves on all fronts

Like all law firms, the challenge of keeping the best and brightest of its young associates is a priority for Borden Ladner Gervais LLP (BLG). And like most firms, Bordens is also dealing with the reality of an aging workforce who are not only nearing retirement but also dealing with a host of "sandwich generation issues." All of these converging realities were landing squarely in the lap of Victoria Prince, Managing Partner, Administration at BLG.

"As a trailing baby boomer I've always had a personal interest in the whole issue of multi-generational workplaces," she explains. "And because I am involved in hiring and training associates, I know that our new lawyers are not the same as me: They don't necessarily see the world the way I do. What, I wondered, is qualitatively different about this group?

"I also know that the issues older lawyers may be facing – such as eldercare – are very different from those of the Gen X and Gen Y lawyers." BLG's challenge was to find a way for the firm to address these many and often conflicting priorities.

Two separate presentations by Nora Spinks on the issue of multi-generational workplaces came with a host of lessons. To Victoria's surprise, the "partner" session was a sellout. The associate session was less well attended – "associates initially did not see this as their issue while partners were keen to know more."

Like many of her co-workers, BLG associate Tracy Robillard was inclined to give the multi-generational PD session a pass: "It was a subject I did not think applied to me – but I was wrong. It helped me understand where others in our organization are coming from (I remember thinking – 'I finally get my grandmother!'), and that helps me work better with different people here. Frankly, it also left me a little intimidated about the generation behind me – they're faster, smarter, better multi-taskers than us!"

Eye-opening to both groups was the lesson of context: "Who we are and what we expect are driven by the environment that shaped us – and that environment is very different for each of the four or five generations that work here at BLG," explains Victoria. "Our oldest lawyers were born during WWII, whereas our associates are the product of boomer parents who've taken them on exotic trips, exposed them to a host of extra-curricular activities and even helped them with the down payment for their condo."

A simple – but regular – "thank you" is more important for the associate generation than for most others. Whereas boomers look to their job for fulfillment, younger lawyers may find fulfillment in social networking. "Working hard does not define who you are for younger generations," observes Victoria. "They look to the work-place to provide an entrée to social opportunities; they cluster around social interests more than age groups. So if you want to hire a superstar, you'd better be prepared to hire the superstars' friends as well."

The insights have led to a renewed emphasis on communication at BLG. An associate retention committee is working on ways to identify and better address associate needs. The associate committee is looking at more cross-generational activities and better ways of communication and interaction. New lawyers and lateral hires are welcomed with a portfolio, sweets, a mentor partner and a super mentor (a single individual available to all associates. This role is played by Laleh Moshiri, the director of professional development programs). The childcare and eldercare emergency services available to all staff (BLG contracts with an outside supplier to provide these services) acknowledge the needs of two very different generations of BLG employees.

"As an employer, we need to respond to employees' different contexts," says Victoria. "We cannot just say 'That's the way it has always been done around here' because our workforce is much too mobile for that to be a useful strategy."

depression, you will be more likely to save for a 'rainy day.' If you are raised during economic prosperity and growth, you will assume opportunities will be available and that your needs will be taken care of in the future.

Pivotal collective moments

If you remember where you were when you heard about the Kennedy assassination in 1963, you are likely a Traditionalist or Boomer; watched the first man step onto the moon in 1969, a Traditionalist, Boomer or Trailing Boomer; remember when Kurt Cobain took his own life in 1994, you are likely a Nexus. These shared social moments help to shape a generation and impact generational behaviours. Your memories of bomb drills, fire drills or lock-down drills are part of defining your generation.

Technology and pop culture

Television, computer games, and internet social networking help to shape a generation. If you remember watching Dallas on Friday nights with your friends, you are likely a Boomer or Trailing Boomer. If you watch television via YouTube at a time that is convenient to you, while you talk to your friends on FaceBook or MSN, then you are likely a Net or Gen I.

If you are Nexus, Net or I you are likely comfortable meeting over the phone on conference calls or web meetings. If you are a Trailing Boomer or older, you likely prefer face-to-face meetings to establish and nurture relationships and conduct business,

Human development

In terms of human, brain and social development, one of the most important times for defining a generation characteristic is around the age of 10. At that age, you are developing the capacity for abstract thought, connecting information with experience and expanding your level of independence.

In grade five, you begin to make assumptions about work based on the key messages you receive from parents, teachers, media and society. If you were ten and heard consistently that if you work hard you will get ahead, you are likely a Trailing Boomer or older. If you heard that you will have multiple careers, multiple employers, you should keep your options open, it is about employability not employment that offers stability, then you are likely Nexus or younger.

These messages form a subconscious core that leads to behaviours and attitudes about work, employer/employee relationships, advancement and success.

Generational diversity in law

'They' have no life! 'They' have no commitment!

You may think "they have no life" when observing Boomers or older partners, but if you come from the "work hard you'll get ahead" generation, you are more likely to be work-centric, where work comes first and everything else fits around it.

If you are younger, you may have heard and experienced that no matter how hard you work you could get laid off or have limited advancement through no fault of your own due to mergers/acquisitions; you may be more family-centric where family comes first or dual work/family-centric where work and family are equally important. From another generation's perspective, it looks like Boomers have no life or Nexus and younger have no work ethic. In fact, each has a different way of defining success and looking at work.

'They' show no respect! No,' they' show no respect!

In response to a recent e-mail sent to a group of individuals across generations, who were going to be attending a meeting, each recipient was asked to acknowledge receipt of the revised information and raise any questions about the upcoming event. A Traditionalist responded with a formal letter complete with *Dear Nora* and concluding with *Respectfully, Frank*. A Trailing Boomer, rushed and over-worked, responded with short bulleted thoughts – *got it thanks – no questions – will be there – safe travels – see you Thursday – Marie*. A Net generation recipient replied simply with *C U*. Each generation may have thought the other disrespectful. Too long-winded, too formal, too rushed, too curt ... when in fact, they were responding appropriately – demonstrating respect from their own generation's perspective.

'They' make unapologetic demands! 'They' are unsure of themselves!

A Boomer partner asking a Nexus or Net associate to do something without first acknowledging they're likely already busy by saying, "I'm sorry, I know you are busy, but I need this for a client right away," may be seen as rude or uncaring. And when a Boomer or Traditionalist hears a Nexus or Net associate start by saying, "I'm sorry but I need to ask for clarification," it may appear to a Boomer that the associate lacks confidence, expecting them to just make the demand, "I need the following information to complete this task."

Each perspective is understandable and legitimate from their own generation's perspective. But there will be much less stress and misunderstandings as generations begin to become more aware of, and gain a greater understanding of, the others' point of view, life experience, priorities, behaviours and attitudes.

Susan Clarke (left), Christine Marchetti (right)

Don Ross

Gowlings rethinks from the ground up

What started as a simple presentation on multi-generational workplaces by Work-Life Harmony's Nora Spinks a year ago has generated some fundamental thinking about "the way we do things" at Gowling Lafleur Henderson LLP.

"Our partners had expressed an interest in learning more about what associates need and think. We, as boomers, had a good understanding of where we are coming from, but we wanted to better know more about our younger professionals, and we wanted to educate the whole organization about each other – which makes for a better workplace," explains Susan Clarke, Director of Professional Development at Gowlings Toronto office.

The spring 2007 session proved to be an eye-opener for partners and associates alike.

"Enlightening," is how second-year associate Christine Marchetti summed up the presentation. "We all know different people have different work styles and personalities. But we rarely step back to ask why and how we deal with these differences. Our generation, for example, has grown up thinking the older generations will accommodate us, but that doesn't always happen in a law firm. This kind of discussion helps us to understand that. I now see why others are the way they are, and why they think and act the way they do."

"Looking at the different generations through their own eyes provided useful, practical insights into what really motivates our younger lawyers, and what they are looking for in a workplace," adds Don Ross, a partner at Gowlings. "Younger lawyers have a broader range of priorities than previous generations did. And they like positive reinforcement and instant feedback.

"That's one reason we are looking at creating smaller work units – so that we can get better feedback and interaction systems going."

The multi-generational presentation, which was followed by a national associate survey on a variety of topics, has generated a number of changes at Gowlings. "Associates told us they want more information on our business generally," explains Susan. The response: A series of associate roundtables "a type of state-of-the-nation discussion" that brings associates into the strategic planning loop and gives them access to much of the information usually shared only with partners.

Associate interest in a more comprehensive training and professional development program ("this is after all the generation that values development opportunities above all else," says Susan) has resulted in a comprehensive series of associate and student seminars and workshops on key skills development (legal writing and drafting, negotiating and presentation skills), practice management techniques, marketing and building profile, as well as updates on the law.

Interest in addressing the needs of female lawyers has recently led to the creation of a Task Force on Women at Gowlings – peopled by both men and women, associates and partners alike. "Associates don't necessarily see issues as gender specific, but rather in generational terms. So our task force will consider gender issues in the broader context of retention, leadership, and knowledge-sharing for all," explains Susan.

Gowlings also formalized its flex time policy, which allows certain lawyers to work a shorter, compressed work week: "We wanted to accommodate the need for more balance for those with family and similar obligations. And we wanted a formal policy because we wanted to send out a signal that this is something we firmly stand behind," explains Susan.

Associates such as Christine welcomed the initiative: "This policy is really important news for young lawyers whose practices can fit around flex time. It's a challenge to achieve in our profession, but still have time to exercise, eat well, and work on all aspects of life – including family." One of those other aspects – the desire by younger lawyers to give back to the community and profession – also has Gowlings' backing: The firm supports pro bono and duty counsel work both as a development opportunity and by counting the firm-sanctioned volunteer work towards the associates' billable hours requirement.

"When dealing with young lawyers, it is important for senior lawyers to try to understand how they think and what motivates them," says Don. "Don't assume young lawyers will think like you. Different work models can be productive, and we can have faith that young lawyers want to help clients as much as we older ones do. We can learn a lot if we listen to our young lawyers because, after all, they will be the law firm leaders of tomorrow."

Leveraging Generational Diversity

Generations Currently and Soon to be Practising Law

Born	Age 10	Today 2008	Generation	Generational Behaviours/Attitudes
1940s	The Fifties	Mid to late 60s	Traditionalists	Work comes first; work hard; work long hours; follow rules; work then retire
1950s	The Sixties	Mid to late 50s	Boomers, Baby Boomers	Work hard-play hard; aim for 'Freedom 55'; face-time important; like predictability, consistency, standardization, limited flexibility; interested in exploring alternative to full retirement
1960s	The Seventies	Mid to late 40s	Trailing Boomers, Forgotten Generation	Work hard – no time for play; 'sandwich' generation; tired – retirement long way off; like predictability need flexibility, trailblazing flex
1970s	The Eighties	Mid to late 30's	Nexus, 'Gen X'	Family-centric or dual work-family centric; work hard not long; rules are start point of negotiation, prefer guidelines to policies; want more flexibility
1980s	The Nineties	Mid twenties to early thirties	Net, 'Gen Y', Millennials, Velos Generation	Work will never be done, so set boundaries between work and life; work hard and take breaks, vacation, sabbaticals; lots of options
1990s	The 2000's	Twenties	Gen 'I'	Work by multi-tasking; blend work and life throughout the day; ask lots of questions, seek fresh solutions, new ways of doing things; customize everything
2000s	Today	Pre teens and teens twenty	Wee Gen	Multi-tasking, multi-dimensional, creative, media savvy; confident; computer-based social networking; internet-based approaching work, relationships, communication

Nora Spinks is President of Work-Life Harmony Enterprises, an international research and consulting firm based in Toronto. She has been helping organizations leverage generational diversity in the work place since the early eighties. Nora can be reached at nspinks@worklifeharmony.ca

Left to right: Chris Pinnington, Reena Goyal, and Kate Broer

Inclusiveness part of FMC's culture

At Fraser Milner Casgrain LLP (FMC), recognizing and responding to the needs of different generations is an integral part of a much larger initiative – and, say FMC leaders, a vital part of the law firm culture.

"We see the multi-generational issue as part of a bigger picture discussion involving diversity and inclusiveness which, by definition, transcend age, race, ethnic, gender and any other distinctions," says Kate Broer, firm partner and co-chair of the firms's Diversity Committee.

"We've seen a real shift in our culture since launching this initiative about 18 months ago: Not only are younger generations more willing to speak up, but we've found that lawyers of all generations are finding their voice, are more willing to be heard no matter what the issue on the table."

Managing Partner Chris Pinnington attributes the "sea change" in culture to a deliberate change initiative led from the very highest levels of the organization: "We want to be recognized as the firm of choice, both internally and externally; internally, this means we're committed to a philosophy of inclusiveness that takes into account various lifestyles, beliefs, and individual challenges. We want to make sure there are opportunities for everyone, and to be a recognized leader in the pursuit of diversity and inclusiveness."

How does FMC walk this talk? Third-year associate Reena Goyal points to the firm's many initiatives – from its mentoring program to the high profile activities of the Diversity Committee's subcommittees, to a policy of engaging members at all levels in firm management matters – as tangible evidence of FMC's "more energetic, open, youthful attitude." Flexible work arrangements, job sharing, and the ability to work remotely are further evidence of the firm's open attitude.

And firm members are responding to these opportunities. A call for volunteers to serve on FMC's newly minted Diversity Committee in late 2006 attracted 35 lawyers from students to senior partners. Diversity initiative subcommittees charged with Education, Communication, and Scholarships and Awards responsibilities see students and partners working side-by-side on programs as diverse as the FMC Harry Jerome Scholarship for black students, conferences on diveristy in the legal profession and seminars on implementing diversity in the workplace. "These initiatives have led to us being connected to the business community, and to our clients who share our commitment, in ways we never envisaged."

Fundamental to the firm's mentoring philosophy is that mentors have as much to learn from the relationship as those being mentored. Associates have both a peer mentor and a partner mentor (selected by the associate, not the other way around); associates also are encouraged to become mentors themselves as early as possible in their careers, points out Reena, who is now mentoring an articling student.

"We see the mentoring program as an opportunity for inter-generational interaction which helps us all learn, and helps us relate effectively to the generational diversity of our clients," says Chris.

Fostering an environment in which even new associates feel comfortable coming forward with proposals has led to a number of new international business development opportunities: Second and third-year associates have been given the go-ahead to explore, and in some cases lead, fact-finding missions to China, India and Israel – resulting not only in new clients and retainers, but also opportunities to host international conferences abroad and linkages to leading business organizations in these and other countries.

"Tapping into the energy and enthusiasm of our younger lawyers is energizing and enlightening," says Kate. "They have great ideas, opinions, perspectives – and our challenge is to harness that experience for everyone's benefit and to weave all of this into something that becomes a permanent fabric of the firm."

Growing Cultural Competency

Are you culturally competent? Does your firm have the collective competency to meet the requirements of diverse employees and clients of today and tomorrow?

Judy Jaeger

Culture – *n.* the training and development of the mind; the refinement of taste and manners acquired by such training; the social and religious structures and intellectual and artistic manifestations etc. that characterize a society

Cultured – *past part.* to make a culture of; to grow in a prepared medium

Cultural – *adj.* of or relating to culture or a culture; produced by breeding

Competent – *adj.* having the necessary qualities or skills; showing adequate skill;

Larousse Universal Illustrated Dictionary

The traditional view of cultural competence would be to learn how to behave 'when in Rome' or 'when trying to work with *them*' – to learn the rituals or traditions of a certain cultural/ethnic group in order to do business or interact without offending.

How to shake hands, present your business card; the purpose of small talk; the appropriateness of eye contact or socializing with clients. Useful bits of knowledge to be sure in today's global world but in many ways, limiting our ability to become 'competent' because the reliance on checklists of behaviours for this group or that doesn't recognize two key factors:

1) not everyone in any group will exhibit or embrace every characteristic; and
2) things change very quickly, thus giving such lists a past-due date.

A fatal flaw in this interpretation of cultural competence is the reality that most of us don't interact with groups but rather with individuals who may or may not embrace some or all of the cultural stereotypes, rituals and characteristics.

Perhaps then, it is time to acknowledge a broader, more inclusive concept of *diversity cultural competence*. This concept speaks to building skills in recognizing, accepting and valuing the cultures (in the fullest sense) of those on the outside as well as the culture of the inside – individually, and collectively of the firm – and whether or not that culture is serving you well.

A firm's culture provides formal and informal direction to all that enter. It provides context for how we do things here; what gets recognized and valued; how we talk, communicate; what is important.

Regardless of what is said in policy, it is often the culture, formed by a history of stories and actions across the life of the organization, that determines an organization's unwritten 'book of shoulds.' That is, to thrive (not just survive) here, you/we should work this way, talk like that, attend these functions, look like this, value these things, and the list goes on.

It may be that these 'shoulds' have survived for years for good reason; it may also be just as likely that they exist because of past preferences and have had little examination for what is best for the firm today.

But let's step back a bit: why would you and your firm want to grow diversity cultural competence?

The top-of-mind answer for many is to manage the risk of allegations of harassment or discrimination from an employee or client. True, but for most, growing the skills and knowledge needed to meet legal requirements doesn't require a compelling business case. If we assume meeting legal obligations is a given, then why else would you examine the need for growing competence?

Why diversity competence matters

The reality of demographics: The changing demographics of Canada's population – your employees, suppliers, clients and community – provides a compelling reason to embrace diversity as part of a strategic advantage. As Canada's workforce ages and changes, the person or firm that can recognize, accept and use the talent of individuals and groups across the spectrum will be the one that attracts and retains that talent, attracts those clients, and has the capacity to be agile and innovative in the marketplace.

The reality of the marketplace: The competition is fierce, whether it is for talent or contracts. Technology makes information readily available and borders and boundaries disappear. The decision is often made on more than just price – the cultural fit, the relationship, the people involved, your reputation, the past and the future.

The reality of work: Employees are juggling work, life, family and change at a break-neck pace. Work is more complex, demanding continuous learning, the ability to work with shifting landscapes, access on demand, and matrixed lives. Loyalty belongs to those who earn it, and it is not only about the pay cheque. More often the question is "Is this mutually beneficial? Am I getting what I need in relation to what I give?"

Where to from here?

Longer term development of a diversity culture is about bringing out the best of individual strengths and talents to work towards common goals. Although true diversity lies not in what group individuals belong to, the issues of certain groups which share historical barriers and experiences offer a logical place to start.

Examining potential barriers in policies, practices and processes within a firm from a group perspective allows action which can signal change and create impact that helps the firm culture become one which acknowledges, accepts and leverages differences to the benefit of all. For example, historically the barriers identified as work/life issues such as the demands of child care and potential interruption of careers for child minding were seen as affecting women and thus "women's issues". However, strategies such as flexible workplace, time shifting, and improved family leave policies have, while benefiting working women, also benefited men and changed the internal cultural view in many firms regarding family obligations.

Growing diversity cultural competence doesn't happen overnight by reading a book or attending a training session. Rather it takes a conscious and consistent effort to develop a knowledge base and requisite skills.

Like many things, the place to start is with what you know.

Stereotype or Cultural Sensitivity?

Whenever a discussion about any group starts, it is imperative to consider – is this a stereotype which we are perpetuating or are we exhibiting awareness about valid cultural traditions and rituals?

How do you know? Ask yourself –

1. Is what I believe about a group based on fact?
2. Am I assuming *all* people in a certain group have this attribute?
3. Do the characteristics I ascribe to a group different from mine have a negative value?
4. How often am I reflecting on and challenging my beliefs about group attributes?
5. Do I use these 'beliefs' to make decisions or alternatively just to guide my further inquiry or validation?

Diversity Culture Competence Continuum

	Homogenous	Manage the Risk/ Employment Equity	Diversity Competence
	Exclusionary Club	**Compliance Affirmative Action**	**Redefinition Inclusive Culture**
Focus	• Strengthening What we Have.	• Designated Groups Statistics/Analysis/Goals • Removing Discrimination • Meeting legislation • Assimilation of designated groups	• Recognizing difference • Qualitative • Participative • Internal and External Relationships • Enhancing organizational decision making and problem solving
Key Question	• Why Change?	• How many do we have/need? • What are the characteristics of that group? • Requires Individual Change (i.e., hiring, development)	• How does this help our business (i.e., attraction, retention, innovation, social and corporate responsibility, reputation) • Requires Organizational Change
Driving Force	• Maintaining/Protecting the Status Quo	• Government Regulation • HR Lead	• Business Advantage • Business Champions
Nature of Activity	• Changes within the existing framework	• Specialized Recruitment and Training Programs • Focus Groups • Regulatory Reporting	• Cultural Change • Employee Involvement • Examination of Processes
Results	• The “Right Fit” • Insiders vs. Outsiders	• Numerical Representation • Government Approval • Improved environment for some • Process Improvements • Innovation	• Agility • Employee and Client/ Customer Approval
Challenges	• Ability to attract best and brightest • Ability to reflect external environment	• Backlash • Short Term • Exclusive to specific ‘designated’ Groups	• Challenges the Status Quo (and what we know) • Requires new skills and mindset • Evolutionary

Recognize reality

Firms, like individuals, develop a culture of their own. In fact, many take great pride in the strong culture and values that have been formed over the years. They fear that suggesting the firm needs to improve diversity cultural competence means the depreciation of history and what made the firm a success. This view clouds the ability to look at the processes in the firm with '*fresh eyes*' to determine how well what is there today will serve the firm tomorrow. Recognizing the *reality* of what has changed, both in the firm and outside the firm, means you make decisions fully informed.

A major stumbling block for individuals and firms is the reluctance to admit that biases, intentional or otherwise, have influence over how you operate.

The truth is everything we do is influenced to lesser or greater degrees by what we believe, prefer or want. Accepting there is more to learn about creating an inclusive culture and that there are skills involved in being able to recognize, bridge and value the differences speaks more to the leadership required to ensure future sustainability than the flawed belief there are no biases.

To find indicators of gaps in the firm's diversity cultural competence analyze data (turnover, hire, promotion, employee satisfaction surveys, feedback) by segments such as gender, level, age, and location. If there are variances in results by groups, this indicates that the firm culture/experience is at the very least inconsistent and potentially undermining efforts. Data indicators will point to where more information is needed, such as discussion groups or comparisons with other internal or external data. This reality check needs to be completed with fresh eyes so as not to simply accept an easy explanation for the differences or data results. This is where external information and expertise is of best value in order that the 'why' questions get fully answered.

Accept the impact

With a clear understanding of what is, once individuals and firms can accept that differences have an impact – positive or negative – the opportunities start to open up. What are the barriers and challenges. Where do we need change? What is it we want/need?

There is a tendency to want to move to solutions without spending time on the impact phase; however, this is a critical

Growing Diversity Cultural Competence

RECOGNIZE	ACCEPT	VALUE/UTILIZE
Reality	**Impact**	**Solutions**
What are the facts? Use internal and external data, studies and stories to establish a common understanding of what is. Initial audience – key influencers, potential champions **Key Questions** 1. What does it take to be successful here? 2. What behaviours are acceptable/ unacceptable? 3. Have we gathered input from different sources and perspectives, enough to give us fresh eyes?	**What does it mean?** What does it mean for us (as a firm/as individuals)? Look at talent management (i.e., succession planning, development, attraction and retention issues) innovation, reputation, and corporate citizenship implications. **Key Questions** 1. How do biases get in the way of our success? 2. What is our biggest challenge?	**What are the critical initiatives to move us forward?** Determine short- and long-term goals and measures and potential challenges. Identify what needs to be general foundation work (i.e., all audiences) and where targeted or a group-specific topic is appropriate (i.e., gender communications or affinity networks). **Key Question** 1. What is not on the table?

step – to ensure the reality check is valid, to establish an understanding across stakeholders regarding why the firm may change policies or practices (or why not), and to ensure actions are integrated and provide support and reinforcement rather than driving in multiple directions.

Solutions to value and utilize

With valid analysis and a solid understanding of the impact and gaps, identification of what actions are needed follows. What are the priorities? Who is involved and how?

Things to keep in mind:

- The most prevalent reasons for lack of progress for diversity initiatives are poor communication and lack of engagement of employees throughout the organization
- Growing diversity cultural competence requires a multi-year plan – establish reasonable goals and measurements and review and recalibrate based on progress
- Expect challenges – be prepared to address concerns with information and facts
- Individuals can grow personal competence; efforts at the firm level grow firm competence.

How long does it take? That depends on where the firm currently is in terms of positive human resource practices, senior leadership buy-in and the priority given to the work. Compliance work aside, many of the activities involved are things that firms may likely be doing in the normal course (recruitment, training, mentoring, communications). A diversity agenda means doing them differently using an additional critical lens and having a willingness to challenge how things have always been done.

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How do you rate your individual diversity cultural competence?

How would you answer?

1. I recognize my own diversity and how it impacts what I value.
2. I recognize that my values about things i.e., work, money, time, respect, family affect my decisions and behaviours.
3. I appreciate that my values might differ from a colleague or client and thus they may view things like work, money, time, respect, family differently from me.
4. I accept that my view (of work, money, time, respect, family) may not be the only one of value.
5. I recognize the challenges these differences may create even when we have similar goals in mind.
6. I take steps to learn more about 'cultures' different from mine and often reflect on how those differences might impact working with people from other 'cultures'.

Tips for Individuals

1. **Self-reflection** – Define what makes you diverse. What is your culture and how does it affect you at work? Consider how you value work, time, money, achievement. What does respect look like?
2. **Identify** a situation in the past when you felt on the outside of what was expected or valued? How did you resolve the conflict?
3. **Consider** experiencing another culture – for example volunteer at a community agency that serves people with whom you generally would not come in contact, or visit a traditional ethnic supermarket and really pay attention to the differences in service, food, language, greetings, eye contact, etc.

How to really communicate with clients

Paul M. Lisnek

and avoid malpractice claims

Ed note: *The following is a condensed version of an article available on the practicePRO website at* www.practicepro.ca/lawpromag.

It seems so simple and yet a primary reason for a client to proceed with a malpractice claim against his or her lawyer is the failure of that lawyer to communicate effectively. To successfully step into the lawyer-client relationship in a malpractice – or any – claim, one needs to understand certain underlying concepts about how communication functions most effectively.

First, communication is redundant

We are always communicating, even when we are not speaking. Our words carry only about seven per cent of our total message. The remainder of our message is contained in the way we say things (38 per cent) and in the visual components of what we say (55 per cent). Do we not watch carefully the expressions, vocal cues, dress and other non-verbal cues that accompany each word and sentence said by another, such as our client? We certainly read emotion and intent beyond and into words.

Second, meaning lies within the client

We often believe the impact of our message is in our words and our intent because we are the source of the message. The reality is that meaning lies in the recipient of the message and, most relevant to us, meaning is in the response to our messages. Therefore our messages must be prepared from (or perhaps for) the perspective of the recipient.

Put differently, people act and respond to their map of reality, not to reality itself. Certainly, two people can experience the same events or set of data, yet react differently and relate the events as though they are very different. This is because people take their view of the world into each situation. They rely on their view of the world to relate what will be reality and truth to them. Language skills are going to be essential to unmask what is known first-hand from what is assumed to be true simply because it fits the scenario.

Third, people make the best choice available to them at the time of decision

This is critical because clients sometimes see only one way to handle their concerns, or at best two options. Although there may be other options (perhaps known only in the client's unconscious), people do the best they can with what they perceive. When only one option for behaviour is available, there is no choice situation, and the decisionmaker is left in a robotic state. When there are but two options for action, the person may think he has a choice; but in reality he faces a dilemma.

For true choice to exist, a person must have at least three alternatives available to him or her. Think of the possible resolutions to problems or conflict that can result if only from the search for additional options!

Finally, there is no such thing as failure, only feedback.

Too many people seek to tell others what is wrong or right with their attitudes or behavior. The result is a perception that the information is criticism or implies failure. In reality, each time something does not work, we are presented simply with feedback from which future courses of conduct can be derived. People should study everything they do that does not produce desired results for the lessons learned and the new information that can be relied upon.

How people process differently

We can also improve our communication by recognizing the differences in how different people process information differently.

There are three primary processing modes: visual, auditory or sound, and kinesthetic or feeling. For example, many clients (and lawyers) are primarily visual processors. Their minds work like a Viewmaster, transforming input into pictures for interpretation; they describe events by describing the pictures that fly through their minds. Your interaction with clients, therefore, should tap into a use of visually-based words permitting that client to retrieve visual information.

Other people think and process information in words or sounds. These hearing-based people have a constant discussion going on in their heads; they react primarily to the sounds or voices that occupy their minds. They listen to and for details and can locate the logical connections between ideas; asking them to envision a scene or feel emotions presents them with difficulty. Your questions should guide them to process auditory information by concentrating on sounds, conversations, and what was said.

Finally, people who think in terms of feelings operate on an emotional level, rather than responding to what they see or hear. They rely on gut reactions and feelings. People who think this way convert external information into a feeling, then sense the feeling, and finally transform their feelings into terms they can communicate.

People provide "clues[1]" as to how they are thinking at any given point in time. As lawyers, we need to learn how to tap into indicators such as posture, gestures, breathing and many others.

Start testing this today. Vision-oriented people use visual words, including "clear," "picture," "focus," "see," "foggy." They use phrases such as "I see what you mean"; "Picture this for a moment"; "In my view…"; "He has a dark personality."

Hearing-oriented people select sound-based words such as "hear," "listen," "say," "talk" and "rings." They use phrases such as "I hear what you mean"; "That sounds good to me"; "That rings a bell"; "I want you to explain…"; "That clicks with me."

Feeling-based persons select tactile words, which include "comfort," "feel," "grasp," and "handle." They use phrases such

1 See Paul M. Lisnek and Eric Oliver, "Courtroom Power: Communication Strategies for Trial Lawyers," PESI Publications 2001).

as "I'm uncomfortable with…"; "There's a hot idea"; "That kind of talk is hard to handle."

Keep notes on the words and phrases used by clients. Structure your questions to permit the client to process in a way most comfortable for him or her. Ask a vision-based client to "describe" experiences, a hearing-based person to "tell you about …" and a feeling-based individual for "their sense of …"

Developing rapport

It is the lawyer's burden to develop rapport with clients; we can't put this burden on the layperson who relies on the lawyer for expertise and guidance.

So, what is rapport? It is the commonality and alignment between lawyers and clients, and it is grounded in conduct, not interpretations. The more behaviors we have in common with another person, the greater the likelihood for rapport. With awareness and some training in behavioral cues, lawyers can build rapport both consciously and subconsciously with clients.

Lawyers typically think that rapport is created through language. The truth is that rapport develops underneath our words and in the world of body movements and other factors.

But before we get there, let's reflect on language. The reality is that clients (and all people) communicate at two levels. The "lower" level of action or behavior ("I want $50,000 to settle this claim") and a higher or upper level called value or need ("that money represents my future security and safety and that's what this lawsuit is all about").

Most people communicate initially (and for quite some time) at the behavior/action level. It's very easy to make demands or make our points in the form of an articulated concrete position. But getting to the level of value is not an easy task. We can get there by asking our client "What is important to you about that demand?" Answers such as "security," "loyalty," and "survival" are the kinds of upper level drives that propel people to make the demands they make. Once we understand what drives our client, we must recognize that the value is a part of them; not just underlying the particular position they have said to you, but it is an underlying value in their life. That value often explains other behaviors that you might otherwise be at a loss to explain if you did not know what that client's value is (or if you do what most of us do, which is to impose our own values onto our clients and explain their positions in accordance with our personal values. This is not what we should be doing).

Be careful. Do not ask the client why he or she demands something. The use of the term "why" is an irrelevant inquiry about human behavior; it produces only fabrication and post-behavior explanation. Instead, ask your clients **what** is important to them. The word "what" does not put their demand into question. It simply acknowledges it and asks them to reflect on it. Once you have the connection between position and value, you can also use that value to explore other components of their position by asking, "In addition to $50,000, how else do you see our accomplishing the security you are seeking here?"

Since we don't really know what a client's behavior means, can we ever understand when a client is in agreement with us, or not? Yes we can. Every person has his or her own cues for agreement and rejection. The cues vary from person to person, but each person will always use the same cues to signal agreement or disagreement. Lawyers need to learn what each client's cues are for agreement and disagreement. We learn this by asking simple "yes" and "no" questions at the start of our interaction with the client. Carefully observe the client's nonverbal cues, as minute as they may be, and learn them because they will be the same every time that client agrees or disagrees, in your office, at lunch, and in every other setting.

In addition to understanding each client's agreement cues, lawyers can work to develop rapport on an other-than-conscious level. Subconscious rapport develops through the appropriate use of mirroring and matching of gestures, vocal tone and word type selection. This conduct creates sameness between lawyer and client. The technique of mirroring and matching operates at the subconscious level because it occurs naturally. It can be a conscious tool of the master communicator. Humans will automatically follow and mirror the behaviors of others (just observe the position of the person next to you on the airplane; it's just like yours). Lawyers can consciously match body positions and vocal cues.

To test for rapport:

1) carefully observe each client's posture, body position, vocal tone, and breathing rate;
2) match the cues and observe the mirroring which naturally occurs anyway within 10 to 50 seconds; and
3) if the person mirrors back the new behavior, the lawyer will know that rapport has been established. If the person does not mirror back the shift, rapport does not yet exist.

The message for lawyers: Accept responsibility for establishing an effective communicative relationship with your clients. Do not expect clients to see your point of view. Be the professional they have hired, not just in the law, but as the person who will be sure that your working interaction is clear and understood. The result of your efforts? Likely fewer malpractice claims and increased efforts to mend even broken relationships over unfortunate glitches that are bound to happen as our practices grow in number and complexity.

Dr. Paul M. Lisnek is the author of 13 books including "The Hidden Jury and Other Secret Tactics Lawyers Use to Win" and the upcoming "Art of Lawyering," to be published by Sourcebooks. He is CEO of Decision Analysis, a leading trial consulting firm (www.decision-analysis.com), host of "Newsmakers" on CNN Headline News on the Comcast Network in the Midwest, and a legal and political analyst for numerous television and radio stations.

Fraud scam alert

Two fraud scams that LawPRO learned about recently bear a striking resemblance – even though one was attempted on the east coast and the other south of the border. They both involve offshore "clients," unusual instructions and aggressive stances once the lawyers involved started asking questions.

The suspect purchaser

Deborah Gillis, Risk and Practice Management Advisor with the Lawyers' Insurance Association of Nova Scotia warned practitioners in her jurisdiction about the following scam:

A vendor listed his property for sale on the Internet. A person posing as a U.K. businessman offered to purchase the property directly from the vendor. There were a series of e-mails and phone calls between the vendor and the interested "purchaser" discussing the transaction. The vendor requested a non-refundable deposit of $62,500 from the "purchaser".

The "purchaser" couriered the vendor a "certified cheque" in the amount of $82,500. The cheque was drawn on an account purportedly held by a legitimate company at an Alberta branch of a nationally recognized bank. Addresses and phone numbers for the payer and the bank were included on the cheque.

When the vendor attended at his bank to deposit the cheque his banking officer called the number indicated for the Alberta bank to inquire about the authenticity of the cheque. The banking officer was told that it was "as good as gold" and that there were sufficient funds on account for the cheque to clear. The cheque was deposited and the vendor considered the funds certified.

In e-mails sent after the cheque was deposited, the "purchaser" explained to the vendor that he had received a loan from the company for this deal, as well as other transactions the "purchaser" had in process; hence it had to be in one lump sum from the loan company. The "purchaser" requested that the vendor accept $40,000 as the deposit, instead of $62,500 as the purchaser now needed the balance ($42,500) to complete another deal in Japan. He asked the vendor to wire the $42,500 to a bank account in Japan.

When the vendor began receiving these e-mails from the "purchaser" to wire $42,500 to Japan, he contacted a local lawyer. His lawyer contacted the "broker" who had been identified as the "purchaser's mortgage broker" in Ontario. The broker was evasive and wouldn't provide the lawyer with the "purchaser's" name or contact information. The broker eventually said he would have the "purchaser" contact the vendor's lawyer. When the "purchaser" did contact the lawyer, he said he was a 32-year-old U.K. businessman. After speaking to him, the vendor's lawyer doubted this was true. The conversations the lawyer had with the broker and the purchaser, combined with the poor grammar and spelling in the" purchaser's" e-mails, raised red flags in the mind of the vendor's lawyer. He advised his client not to return any funds.

When the vendor did not wire funds to the Japan account, the e-mails to him from the "purchaser" became aggressive and the vendor was threatened with a lawsuit. On his lawyer's advice the vendor continued to resist returning funds to the "purchaser." The "purchaser" persisted in attempting to convince the vendor to wire funds.

After the vendor's lawyer had personally spoken with the "purchaser" and "mortgage broker", the vendor received a waiver from a director of the non-existent company which appeared to authorize the release of the funds to Japan. Again, the document contained spelling errors, was not on letterhead, and in general, was suspicious.

Within days of the vendor depositing the $82,500 cheque to his account, the lawyer and his client discovered that the "good as gold" cheque was, in fact, worthless and part of a fraudulent scheme. Phone numbers for the bank and payer which were on the cheque had been ringing through to bogus representatives, who then confirmed the legitimacy of the payer, the cheque, and the availability of funds.

One of the most concerning aspects of this scheme from the vendor's lawyer's perspective was that there were actually valid phone numbers for the non-existent company and bank branch and that individuals at these numbers were receiving and responding to calls and holding the bank and payer out to be perfectly legitimate. The fraudsters were described by the lawyer as very bold and the scheme elaborate.

The fictitious divorcee

The following appeared on an American Bar Association (ABA) listserve for solo and small firm practitioners. It is reproduced with permission of the ABA.

"I was contacted via e-mail by a potential client who wanted me to represent her in a divorce action. … I sent, via e-mail, my retainer agreement that she was to return to me, signed, with the retainer cheque.

When she sent the (less-than-agreed upon) retainer check via UPS, she included instructions to wire a portion to a travel agent. At this point, bells went off in my head. I started digging and found out that the UPS package was sent from Oregon when she was supposedly in the U.K. (as was the travel agent). Also, the cheque was computer-generated (not that unusual for me to see) but from a company in Alexandria, VA. The address on the package was also from Virginia.

Then the phone started ringing. "Why haven't you sent the money?" The phone calls were not from the potential client but from the supposed travel agent. Several such phone calls came, all in a short period of time. The phone number did not show up on caller ID, but the calls were coming through the switchboard which is unusual for most phone calls to this office. … today there was an e-mail from the potential client (in which) she was for the first time indicating some type of physical or emotional abuse, although she did not say that outright. The e-mail also said that she was in a hurry to get everything started.

Needless to say, the money was not wired to the travel agent and thus far the cheque has not been deposited into my accounts. I am pretty sure that the cheque would be dishonored."

The Torquemada Rule

is Alive and Well

When Rule 57.07 first came into force in 1985, it was known among some members of the Ontario Bar as the "Torquemada Rule". Torquemada was the first grand inquisitor of the Spanish Inquisition. This comparison is a stretch, but Rule 57.07 does provide for the assessment of costs against solicitors personally in a wide variety of circumstances. At common law, costs were awarded only where the solicitor's conduct was "inexcusable, meriting reproof, grossly negligent, oppressive or outrageous." Solicitors who were merely negligent were not subject to costs orders. Under Rule 57.07, it is enough that the solicitor's negligence or other default caused costs to be wasted.

A survey of cases decided in 2007 illustrates the wide variety of circumstances in which a lawyer may be held liable for costs under Rule 57.07, or its equivalent in other provinces.

The Case:

***McDonald v. Standard Life*, [2007] O.J. No. 2334 – Aggressiveness in the absence of Righteousness is Mere Bullying**

Prior to discoveries, solicitor H became aware that the defendant had a surveillance video of her client. Solicitor H was concerned that her client would be seriously embarrassed by the video unless H: 1) got particulars of the video prior to her client's discovery, and 2) had the opportunity to examine the defendant before the plaintiff was discovered. Unfortunately for H the defendant had served its notice to examine first.

H moved to strike out the statement of defence on the basis that the defendant refused to provide a summary of facts of surveillance prior to discovery and refused to attend on discovery prior to the plaintiff being examined.

J. W. Quinn J. found that the plaintiff was not entitled to pre-discovery details of the surveillance. The Court also held that the defendant was not obliged to attend discovery prior to its discovery of the plaintiff. The Court observed that defendant's counsel had requested several times that H provide authority for the positions she took. H did not do so. The Court wrote:

> "Lawyers charge high hourly fees and to warrant such fees it is not asking too much that they be held accountable for not knowing the law in the case for which they have been retained. Here, H was not attempting to advocate a novel or otherwise meritorious point, to make new law or to otherwise enlighten the jurisprudence of this Province. She simply did not know the existing law and she stonewalled Sava's efforts to have her reveal the legal authority for her position regarding the discoveries. Warnings by Sava that H was not correct in law were ignored. She took a very aggressive stance with Sava over the discoveries. I have no quarrel with aggressive counsel (if civil). However, aggressiveness in the absence of righteousness is merely bullying."

The Court ordered that H not charge her client for any fees relating to the motion, and that she pay the defendant's costs on a partial indemnity basis fixed at $5,000.

The Case:

***Standard Life Assurance v. Elliott*, (2007) 86 O.R. (3d) 221 – Third Party Claims Arguable, But Brought with an Ulterior Motive**

Standard Life sued Elliott for return of $30,000 allegedly overpaid in disability benefits. M, on behalf of Elliott, served third party claims on every employee of Standard Life who had been involved in the file. Standard Life successfully moved to strike out the third party claims.

The Court found that the third party claims were an abuse of process. Adding all of the third parties was a completely unnecessary step that was grossly out of proportion to the actual amount in dispute between the parties. M "waged a war of attrition against the insurance company, intending to make it so expensive for the insurer to litigate his client's claim that it would simply give up." The fact the he felt there was some case law to support his position did not mean that the position was legitimately taken, as opposed to being taken for ulterior purposes. M deliberately caused excessive costs to be incurred without reasonable cause in order to put pressure on the insurance company. Costs were ordered payable by M and his client jointly and severally, on a substantial indemnity basis.

The Case:

***Schreiber v. Mulroney* [2007] O.J. No. 3040 and [2007] O.J. No. 3191 – Client's Instructions Do Not Excuse Breach of Undertaking and Lack of Civility**

The notorious litigation between Karlheinz Schreiber and Brian Mulroney gave rise to a Rule 57.07 order against D, Schreiber's solicitor. Schreiber sued Mulroney, alleging that he advanced money to Mulroney for services that were never performed. The suit was commenced in Ontario. Mulroney's counsel immediately advised D that he would be moving for an order that Ontario was not the appropriate jurisdiction. D confirmed his availability for a return date of the motion, but advised that unless he received Mulroney's motions material within a stated period of time, D would note Mulroney in default. Mulroney served his motions material within the time stipulated by D. Mulroney also brought a motion to extend the time for serving the statement of defence, which motion was adjourned.

D noted Mulroney in default and obtained a default judgment. The Court was not informed of the agreement not to note Mulroney in default, nor of the outstanding motions regarding jurisdiction and extension of time for filing a statement of defence. Mulroney's counsel was given no notice of the motion to obtain the default judgment, and only learned about it through the media.

J.C. Newbould, J. allowed Mulroney's motion to set aside the noting in default and the default judgment. If D intended to resile from his agreement not to note Mulroney in default, he should have given Mulroney's counsel notice of his intention. The fact that Schreiber may have instructed D to obtain the default judgment did not excuse D. D breached his agreement with Mulroney's counsel. It was an egregious breach that D had no right to commit and Schreiber had no right to instruct him to commit. A lawyer must decline to follow instructions which would constitute misconduct.

The Court also referred to the *Rules of Civility*. Principle 19 provides that counsel should not cause any default or dismissal to be entered without first notifying opposing Counsel. Principle 30 provides that counsel, not the client, has the sole discretion to determine the accommodations to be granted to opposing counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights.

The Court also took notice of correspondence between D and Mulroney's counsel, accusing Mulroney's counsel of discourtesy and surreptitiously attending before the Master. Copies of these letters were sent to the Advocates' Society, and the managing partner of the law firm of Mulroney's counsel. The Court held that this correspondence should be censured. Because the Court found that D was "no doubt under the gun" from Schreiber, D was only responsible for 25 per cent of Mulroney's costs, which exceeded $64,000.

The Case:

***Eblie v. Yankoski*, [2007] M.J. No. 145 – Affidavit Contains Hearsay and Irrelevant and Scandalous Allegations**

Yard J. reminded solicitors that in preparing affidavits, they must exercise professional skill and judgment. It is not appropriate to simply type what the client wants said. The impugned affidavit contained paragraphs that were irrelevant, scandalous, frivolous and vexatious. It was no answer to say that the affidavit was prepared in haste to support an urgent motion. It takes little or no additional time to observe the rules of evidence and practice in drafting an affidavit.

The Case:

***Plating Performance v. Ideal Plating Inc.* [2007] O.J. No. 792 – Solicitor's Failure to Properly Remove Himself from the Record**

Solicitor B was retained by the defendant Baweja to represent himself and the defendant Hastings. B filed a statement of defence. Baweja stopped paying B. B ceased acting. B did not properly remove himself from the record. He did not tell the defendant Hastings that he had ceased to act. He did not get a Notice of Intent to represent himself, or a Notice of Change of Solicitors, from Hastings. The plaintiff obtained default judgment against Hastings. Hastings subsequently learned about the default judgment, and successfully moved to set it aside. Costs were ordered against B personally, fixed at $10,500. B did not appear on the Rule 57.07 motion, even though he had been given notice of it.

The Case:

***Waterloo (City) v. Singh*, [2007] O.J. No. 2163. – Accepting a Retainer Knowing That There Was a Conflict**

D.J. Gordon J. held that the solicitors knew from the outset that there was a conflicts issue arising from their previous representation of the parties. They should not have accepted the retainer, or at least, ceased to act and moved to get off the record once the issue was identified by the city. However, the clients were equally responsible for the $10,000 costs order, since they were aware of the conflict from the beginning.

The Case:

***Rand Estate v. Lenton*, [2007] O.J. No. 831 – Delaying Tactics, Unnecessary Motions, Delay in Obeying Court Orders**

The Rand Estate commenced litigation to determine entitlement to certain life

insurance proceeds. A senior partner in the C & Partners law firm had drafted the shareholders agreement between Rand and Lenton, and had provided corporate advice to both. The agreement provided that the "key man" insurance would be used to "buy out" the shares owned by the deceased partner's estate. Lenton refused to pay any insurance money to the Estate.

C & Partners decided to represent Lenton against the interests of the Rand Estate, even though it had previously acted for both. The Rand Estate eventually got judgment against Lenton for over $1 million, but was able to collect only an insignificant part of that sum. After judgment went against Lenton, C & Partners placed a $100,000 mortgage on Lenton's only land asset to secure its fees, again to the prejudice of the Rand Estate.

The Estate sought the costs of the litigation pursuant to Rule 57.07, on the basis the C firm unreasonably caused costs to be wasted in various ways. The Court found that C & Partners used delaying tactics, brought unnecessary motions, was inadequately prepared for the motions which it brought, advanced arguments that had no merit, failed to appear at various hearings, acted for Lenton despite clear conflict of interest, disregarded court orders and disregarded obligation to be courteous to others. The Court vacated C & Partner's mortgage from Lenton's property, but C and Partners delayed removing it. The C firm's ongoing unprofessional conduct resulted in the Rand Estate incurring wasted legal costs. The total costs payable by the solicitors, including the costs of the Rule 57.07 motion was $63,150.

The Case:

Walsh v.1124660 Ontario Ltd. **[2007] O.J. NO. 639 – Conduct Verges on Contemptuous, but No Wasted Costs**

This case demonstrates that a solicitor whose conduct at trial borders on contempt of Court increases his chances of having to respond to a Rule 57.07 application. G.D. Lane, J. found that solicitor G's conduct towards the Court at trial was "quite uncalled for, rude and occasionally bordering on, if not actually, contempt." Nevertheless, Justice Lane declined to order costs against G. It would not have been right to award the adverse parties costs as punishment for G's contempt or near contempt. Contempt is generally punishable by fees, not costs. While G was responsible for some delay in the proceedings, these delays were not sufficient to warrant a costs order. The Court also declined to find G in contempt.

The Case:

Trang v. Alberta **[2007] A. J. No. 918 Alberta Court of Appeal Left in the Lurch for a More Interesting Case at Guantanamo Bay**

Solicitor W was lead counsel for Trang in a case to be argued before the Alberta Court of Appeal on June 5, 2007. W had agreed to this date. Some months prior to the agreed hearing date, solicitor W was given the opportunity to represent K, who was confined at Guantanamo Bay. One June 4, W sent a letter to the Court of Appeal, stating the he would be out of the country on June 5. It was impossible to reach W on June 4 or 5. Costs of $1,000 were awarded against W, payable to the Deputy Registrar of the Court.

The Court declined W's suggestion that W's client should be liable for these costs. The client had nothing to do with the adjournment. It came entirely from another client more attractive to W. W knew months previously that he might go to Cuba to represent K. He should have made arrangements for alternative counsel at the time. W did not promptly seek to adjourn the appeal when he first learned that he had the opportunity to be elsewhere. He did not tell the Court of the problem until he had left Canada and became unreachable, leaving the Court with a diktat.

The Case:

Rowe v. Lee **[2007] N.S.J. No. 42. – Staff problems and Client Pressures No Excuse for Not Preparing Motions Material in Time**

A Nova Scotia solicitor caused two chambers applications to be adjourned because he failed to file a memorandum of law in time. He was late with his memorandum when the application finally did come on for a hearing. By way of explanation, the solicitor pointed to inadequacies in his office staff, personal medical appointments, and client pressures. These excuses won no sympathy from the Court. The Court observed that difficulties with office staffing, client pressures and balancing one's personal life are issues faced by all practising lawyers in Nova Scotia. Despite these pressures, the vast majority of lawyers are able to comply with the time frames set out in the Civil Procedure Rules. Costs of $900 were awarded against the solicitor.

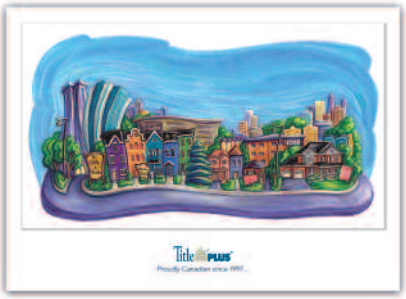
The Conclusion

As has been shown, wasted cost orders have been made against solicitors for derelictions of duty ranging from outrageous to relatively venial. The costs awarded may be small, or they may be substantial. Don't let it happen to you!

Debra Rolph is director of Research at LawPRO.

TitlePLUS® publication

marks program's 10th anniversary



To mark its 10th anniversary, the TitlePLUS program recently released a book chronicling the evolution of the program and its impact on title insurance and the Canadian real estate market.

The 30-page book covers a wide range of topics, from why working with a Bar-related® title insurer (such as TitlePLUS title insurance) is in the long-term best interests of lawyers, to how the TitlePLUS program has been adapted to the conveyancing and underwriting practices of the various jurisdictions, to how the program has empowered lawyers and consumers alike through its education efforts. The book also details the TitlePLUS program's innovative use of technology.

The TitlePLUS 10th anniversary book is available online at www.titleplus.ca (under What's New). Copies were mailed in late 2007 to TitlePLUS subscribers and business contacts. Additional copies are available from the TitlePLUS department by contacting Marcia Brokenshire at marcia.brokenshire@lawpro.ca (416-598-5882)

TitlePLUS PR campaign targets cottage, rental properties

Two new TitlePLUS media campaigns – one on the pitfalls of buying rental property, a second on the special issues that consumers looking to buy recreational properties need to consider – have been rolled out nationally.

Although rental properties seem to be a cash cow at first blush, they come with more than their share of issues that many consumers are unaware of: TitlePLUS articles caution buyers on the numerous legal pitfalls of converting a property into rental units, and explain how integral a lawyer is to the process.

The cottage campaign highlights issues such as potable water, sewage systems, access, and shoreline rights issues – many of which come as surprises for those who have only bought urban or suburban properties. Both campaigns reinforce that these types of transactions benefit from the counsel of a real estate lawyer.

A third set of articles explains how lawyers can help save homeowners money whether refinancing to help pay for renovations or because the term of their mortgage is coming to an end.

Since the TitlePLUS program launched its multi-faceted education campaign a year ago, articles on topics such as "Checklist for Condo Buyers," "How a lawyer can help when you refinance your mortgage," and "What to expect from your real estate lawyer," have appeared in publications read by eight million readers (regional newspapers, real estate trade publications, dailies) as well as reaching six million consumers via the web.

TitlePLUS services now bilingual

The TitlePLUS program is now offering information and services on their title insurance products in both official languages. Consumers and lawyers will now have access to both English and French-speaking customer service representatives.

"Providing bilingual services reflects our commitment to being a national provider of title insurance," said Chris March, TitlePLUS National Sales Manager. "We are continually enhancing the range of services and support we offer to those interested in learning more about our title insurance program, as well as to existing subscribers and policyholders. We are pleased that we can now better address the needs of the French-speaking communities across the country, by offering access via our call centre to bilingual TitlePLUS lawyers."

B.C. Law Society title insurance task force reports: LawPRO shares the same vision

The Law Society of B.C. Title Insurance Task Force reported in 2007 that real estate lawyers play a vital role in mortgage transactions and consumers are in need of education on the issue. The task force also noted that there are increasing issues with regard to financial institutions not encouraging borrowers to obtain legal advice when they are taking out mortgages.

The TitlePLUS Department went into action to ensure coverage of this important aspect of the report in B.C. and the legal press. Our message was that a lawyer not only helps homebuyers determine if they need title insurance, but also ensures a mortgage is registered properly and that the borrowers understand what they are signing. This is important at the time of purchasing a property and during refinancing. All too often, borrowers are encouraged to simply sign on the dotted line in order to obtain a loan – opening the door for headaches later on.

Need content for your website?

If you're looking for new content to post on your website or in a newsletter you produce, we can help. Any of the articles produced for the TitlePLUS education campaign are available for you to use, free of charge. For more information, contact LawPRO Communications at 416-598-5814.

FAQs: New Real Estate Practice Coverage

Ed. note: *The following frequently-asked questions (FAQs) are extracted from a more comprehensive discussion of the Real Estate Practice Coverage Option found on the LawPRO website at http://www.lawpro.ca/Insurance/faqs/faqs.asp.*

1. Who has to apply for this real estate practice coverage?

Any lawyer licensee intending to practise real estate law in Ontario in 2008 must apply for this additional coverage under the LawPRO policy.

"Real estate law" is a broadly defined term and is not limited to specific types of transactions, such as transfers or charges. Rather, the term is defined as follows:

Real estate law means the practice of the law of Canada, its provinces and territories, that concerns:

i. the registration of any instrument under the *Land Titles Act;* and/or

ii. the actual or contemplated transfer, charging, insuring, or otherwise affecting, an estate, right or interest in land;

and may include, without limitation, any one or more of the following services by a solicitor: the receipt of instructions, preparation of documents, searches and/or the providing of one or more opinions or certificates with respect to the title, transfer or charge, and/or with respect to the issuance of any title insurance policy.

2. Given that title insurance provides coverage for fraud, and that most transactions are now title-insured, why do we need this new Real Estate Practice Coverage. And why do lawyers have to pay this additional premium?

Fraud takes many forms, and occurs regardless of the type of transaction or whether any or all of the parties acquiring an interest in the land happen to be title-insured.

By requiring that all lawyer licensees who intend to practise real estate law in Ontario purchase this coverage, the public and Land Titles Assurance Fund are assured of protection against the effecting of registration of fraudulent instruments under the *Land Titles Act* where there is no title insurance to respond.

Consider, for example:

- the involvement of lawyer licensees on either side of a transaction, in instances involving opinions on title;
- lawyer licensees acting for the vendor or transferor on title insured transactions; and
- transactions that are entirely fraudulent in nature, with no opinion or title insurance having been provided.

The Real Estate Practice Coverage responds where the registration causes damages that arise out of any dishonest, fraudulent, criminal or malicious act or omission of the lawyer licensee.

The coverage is specific in its nature, in that:

- It does not apply to other types of circumstances involving fraud.
- It applies regardless of whether there was a retainer between the wronged party and the lawyer licensee.
- It assures a greater aggregate sub-limit protection than what is purchased by most lawyer licensees for innocent party protection.
- It affords protection even in the instance of sole practitioners, who may not carry any amount of innocent party protection.

3. If only one lawyer licensee in our firm assumes responsibility for registering all transfers handled by our firm, do I and the others also have to have this real estate practice coverage in place?

Yes – all lawyer licensees who practise real estate law must apply for this coverage.

4. I understand that the new Real Estate Practice Coverage may not be required until later in the first quarter of 2008. Can I continue to practise real estate law for the first part of 2008 without having the coverage in place?

Any lawyer licensee intending to practise real estate law in 2008 must be ELIGIBLE and apply for this coverage, and must have this coverage in place **before** being able to practise real estate law.

The implementation date depends largely on government requirements, but is expected to be on or around April 1, 2008. The $500 annual premium has been adjusted accordingly; for 2008, the cost of this coverage is $375.

If you have not already applied for this coverage on your 2008 application, you should apply for this coverage as soon as possible so that you are assured that you have coverage for your real estate work when this coverage first is required of real estate lawyer licensees in 2008.

For more information on how to apply, contact the Customer Service Department as service@lawpro.ca or call 416-598-5899 (toll-free 1-800-410-1013).

5. If I intend only to practise real estate law later in the year, do I need to apply for this coverage option now and pay for the whole of the year?

If you start or stop practising real estate law part way through the year, you will qualify for a pro rata premium adjustment to reflect the amount of time not practising real estate law, subject to:

- a 60-day minimum premium for this option;
- only one premium adjustment per lawyer for this option for the year (beyond this, the full $500 annual premium would apply); and
- the Return of Premium Provision described on page 13 of the Program Guide.

If you commence or cease the practice of real estate law part way through the year, you should provide LawPRO with a completed Application for Mid-Term Changes Form at least 10 days prior to the date that the requested change is to take effect. This form is available from our Customer Service department at service@lawpro.ca, tel. 416-598-5899 or 1-800-410-1013.

6. How does this coverage differ from Innocent Party Coverage?

This coverage goes beyond the Innocent Party protection that is carried by many Ontario lawyer licensees. It differs from Innocent Party protection in a number of ways, including:

- All eligible real estate lawyer licensees must carry this real estate practice coverage – including sole practitioners, who otherwise are not obliged to carry innocent party protection.
- Protection is limited to the registration of fraudulent instruments under the *Land Titles Act* where the lawyer licensee is the fraudster or implicated in the fraud, and does not apply to other types of circumstances involving fraud.
- This protection applies regardless of whether there was a retainer between the wronged party and the fraudulent lawyer licensee.
- The sub-limit protection is $250,000 per claim/$1 million aggregate, ensuring greater aggregate sublimit protection than what is purchased by most lawyer licensees for innocent party protection.
- No protection is provided under this real estate practice coverage for registrations occurring prior to the new coverage coming into force, nor for claims to which title insurance would apply.

7. Does this change affect my obligation to buy Innocent Party Coverage?

No. The endorsement providing for the real estate practise option coverage accommodates various practice circumstances.

So, if you are a sole practitioner or a lawyer licensee practising alone in a law corporation, you will continue not to have to purchase any amount of Innocent Party coverage. If you are a lawyer licensee practising in an association, partnership (including general, MDP and LLP partnerships) or law corporation (with more than one lawyer licensee), you will continue to have to purchase the minimum Mandatory Innocent Party coverage without obligation to purchase increased Innocent Party Sublimit protection.

Fraud – a continuing concern

Fraud continues to account for a significant portion of the claims in LawPRO's E&O portfolio.

More than 80 claims with a fraud component were identified in the claims reported to LawPRO in 2007 – similar levels to 2005. Although the ultimate costs of the 2007 fraud files will not be known with any certainty for some time, the comparable 2005 files have cost the program $9 million or 12 per cent of the claims cost for that year.

Real estate-related fraud continues to represent a major portion of our fraud portfolio, accounting for 63 per cent of fraud-related claims reported and 56 per cent of costs in 2007. Schemes run the gamut from fraud by employees, and clients to fraud where lawyers are complicit. With the new real estate coverage in place for April 2008, it is more important than ever for members of the profession to be vigilant in fraud detection.

Separating fact from fiction on deductibles and surcharges

LawPRO has received a number of inquiries from lawyers looking for more information on deductibles, surcharges and the need for additional errors and omissions insurance protection. This article explains the many ways in which deductible costs can be managed under the LawPRO program; it also addresses misconceptions about claims reporting and how and when deductibles and surcharges are applied when a claim is filed with LawPRO.

Do I need "extra" deductible insurance?

Consider these facts: Each year, LawPRO closes about half of all claims reported without a payment of any kind (defence or indemnity) being made. Moreover, we close about 80 per cent of claims without making any indemnity payment. In other words, the majority of lawyers reporting a claim are never called on to pay a deductible.

Furthermore, the LawPRO program provides you with a number of options to further reduce the likelihood of having to pay a deductible – for substantially less than the premium to secure alternative E&O coverage from another insurer:

- For only $345 you can apply to reduce your LawPRO deductible to $nil; so if a claim was made against you under your LawPRO E&O policy and a deductible called on, you would not have to pay a cent.
- For $230 or less, you can minimize the likelihood that you will have to pay any deductible by opting to have your LawPRO deductible **apply to only indemnity payments and/or repair costs**[1].

If my deductible is called on, do I have to pay it when I report the claim?

Contrary to some information being circulated, LawPRO **deductibles are not pre-payable**, nor does reporting a claim automatically trigger a deductible. What happens all depends on the type of deductible you select.

For example, deductibles that apply only to indemnity payments and repair costs are called on only when a judgment, settlement and/or repair cost has been incurred.

In the case of deductibles that apply to defence as well as indemnity and/or repair costs together, 50 per cent of the deductible will be called upon when a Statement of Defence is filed and 50 per cent at the commencement of discoveries or when an indemnity payment is made. For more information see your 2008 Program Guide or visit the Insurance FAQs on the LawPRO website at: http://www.lawpro.ca/insurance/faqs/lawyers_private_practice_faqs.asp#AboutDeductible

Does reporting a claim mean I end up paying the LawPRO claims history levy surcharge?

Only a very small percentage of lawyers insured by LawPRO have to pay the claims history levy surcharge. In fact, of the 6,500 lawyers who practised real estate law in 2007, only eight per cent paid a claims history levy surcharge.

As outlined in your insurance policy, the claims history levy surcharge applies to claims which resulted in LawPRO having to make a payment as a result of a judgment or to settle or repair a claim. Consider again that 80 per cent or more of claims reported to us annually are closed without any indemnity payment made and one might well question the need for additional E&O coverage.

What are my obligations to report a claim where a property is title insured?

You have a professional obligation to report an E&O claim, or potential E&O claim, to LawPRO, as described in the Law Society *Rules of Professional Conduct* [Rule 6.09(2) and (3)]. Failure to report – and report promptly – could result in a denial of coverage if the delay has prejudiced our position as your insurer.

Even on title-insured claims, it is to your advantage to report the matter to LawPRO. It costs you nothing to report, as deductibles and claims history levy surcharges are not triggered by the mere reporting of a claim or potential claim. If there is a debate over coverage, we can assist you by giving you access to the expertise and experience of our examiners and, if needed, claims counsel. Contrary to what has been claimed by others, we know, from experience, that claims do happen, sometimes to the very best of lawyers.

One of our first steps when a matter is reported to us is to determine if there is title insurance coverage in place. If the real estate transaction on which a claim is being made is TitlePLUS-insured, it is handled by LawPRO's TitlePLUS claims group. If another insurer has provided the title insurance coverage, and the matter falls within title coverage, we will advise you to report the claim to that insurer.

TitlePLUS® insurance offers legal services + title coverage

The TitlePLUS title insurance policy offers your clients both broad title coverage and legal services protection that is more comprehensive than that available through your LawPRO E&O program (TitlePLUS coverage, for example, includes coverage for post-closing fraud).

If a claim arises from a lawyer's legal services on a real estate transaction that is not covered by the other clauses of the TitlePLUS policy, a client would report the claim under this provision rather than the lawyer reporting through his/her LawPRO policy. Any claim expenses, indemnity payments and/or costs of repairs will not affect the LawPRO insurance premium; as well, no deductible would be called on, nor would any claims history levy surcharge. This level of protection for the client is included in every TitlePLUS policy at no additional cost, and eliminates the need for the lawyer to consider additional E&O coverage for title-insured transactions secured from another insurer.

1 Amount of increased premium to have deductible apply only to indemnity payments or costs of repairs varies from $172.50 to $287.50, depending on the amount of deductible selected.

Cellphone and BlackBerry® Etiquette: A Short Refresher

BlackBerry beeps and cell phone rings have become part of the cacophony of everyday background noise. That doesn't make it right, or any less annoying, when you force someone else to listen to the din.

There's no doubt cellphones and their progeny, BlackBerrys and smart phones, have transformed how, where and when we communicate with each other. They are truly practical and helpful devices when it comes to keeping in touch and co-ordinating activities in both our professional and our personal lives. And in some circumstances they are even essential (although there are great differences of opinion as to what exactly constitutes an "essential" call – more on that later).

However, several incidents over the past few weeks have compelled me to write a column on the etiquette of wireless devices. As you will learn, I'm of the general opinion that they can be seen but should not be heard.

Beeping keyboards and raucous ringtones

I recently sat through a conference keynote presentation while some bozo two rows behind me pounded away on his BlackBerry. How did I even know someone behind me was working on a BlackBerry? Because his keyboard beeper was turned on! Everyone around him had to sit there and listen to every letter of every word in every message being typed. Beep … beep, beep, beep … beep, beep…. I was steamed and ready to throw something at him, as I'm sure were many others there. I don't understand why he didn't realize he was being extremely disruptive and upsetting people.

Please, everyone, turn that keyboard beeper off

And the same goes for putting a stopper in raucous ringtones. I'm all for total freedom in musical tastes, and I don't care if you're a Britney Spears or an AC/DC fan. I just don't think you have to proclaim your musical preferences for all the world to hear in a blaring, personalized ringtone, especially in the middle of a meeting or presentation. Cellphones aren't for listening to music – iPods are. (That's why they have earphones!)

So how do you have your cellphone ring without letting the whole world know? Set your phone to ring at the lowest possible volume, or even better, use the vibrating ring. This lets you feel a little nudge on your hip that no one else knows about or hears. It usually works nicely, although some units vibrate a tad louder than they should. (If you have one of those, check its instructions to learn if you can tone it down a bit.)

Two's a party, three's a crowd

I want to talk about people who place their cellphones or BlackBerrys on the table at a meeting, lunch or dinner. Does anyone actually need to do that? I suggest not. It is really an intrusion – you're bringing an extra, uninvited guest to the table by doing so. It can also be a real distraction, especially if you're constantly checking it out of the corner of your eye, and even more so if you're actively reading messages, RSS feeds or other incoming info. Yes, it might help with topics for the dinner conversation, but to be honest, if I truly wanted real-time updates on the score of the Texas Longhorn's football game, I would have stayed home and watched it on TV.

As for meetings, okay, they can be boring – but they will be more productive and shorter when everyone pays full attention to what is going on.

And ditto for texting and instant messaging! In a meeting or meal setting, texting or instant messaging someone is no different from turning away from the person you're talking to and striking up a conversation with someone else. It's rude, so don't do it.

What if you find yourself really needing to bring a cellphone into a meeting when there is a truly urgent matter pending about which you're awaiting news? And I mean truly urgent – say, for example, that your wife is two weeks overdue and could give birth at any minute. Let's be honest, most calls from most clients are not that urgent.

First, at the start of the meeting simply let people know that you may get a call (and even why, if appropriate) and that you may have to excuse yourself when it comes in. Next, set your ringer on vibrate or silent flash – and make sure your phone is easily accessible, so you can avoid diving into and digging around the bottom of your bag looking for it.

Lastly, when the phone goes off, leave the room in the least disruptive manner possible. This means holding off on answering the call and starting the conversation until you are completely out of the room.

It shouldn't require a stick over the head

In some courtrooms in Ontario, cellphones are confiscated if they ring in court. And outside of the legal sphere, BlackBerry-free zones are starting to crop up in restaurants. Do we have to get stricter? Perhaps we should demand that all wireless devices be checked at the door.

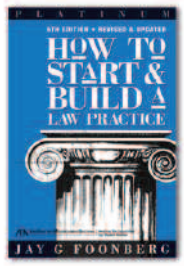
Remember that using a BlackBerry or a cellphone is a privilege, not a right. In professional and personal surroundings, be discrete, courteous and considerate to those around you. Client confidences should be protected, and the rest of the world shouldn't have to be bored by the intimate details and dirt of your personal calls. If you must talk on a cellphone in the presence of others, do so with a quiet voice and keep it short. For longer calls, please put yourself in a virtual phone booth by placing walls or distance between yourself and those who are near you.

A little consideration for others will go a long way and make the world a more peaceful place for all of us.

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

How to Start and Build
a Law Practice Platinum 5th Edition

Jay G. Foonberg, Publication Date: June 2004, ISBN: 1-59031-247-3



Flying Solo:
A Survival Guide for Solo and Small Firm Lawyers 4th Edition

Edited by K. William Gibson, Publication Date: June 2005, ISBN: 1-59031-480-8

For solo, small, medium and large firm lawyers alike, starting and building a successful practice requires far more than just a working knowledge of substantive law.

The list of things you need to deal with is almost endless. The most critical will include billing, collecting and practice finances; marketing and client development; using technology and the Internet; staffing issues; managing an office and creating internal procedures.

Unfortunately, most law schools don't teach much (if anything) on these topics. So, where do you go for help?

If you are just starting out, or are looking to expand an established practice, there are two bestsellers from the American Bar Association Law Practice Management Section that come to your rescue. Over many years they have been used by tens of thousands of lawyers as the comprehensive guides to planning, launching, and growing successful practices.

While both books are primarily pitched at solo and smaller firm lawyers, this should not scare medium and larger firm lawyers away from them – there is relevant and helpful content for lawyers of all firm sizes (albeit some topics will not be relevant to medium or larger firm lawyers – unless of course they end up leaving their firm at some point).

The first book is Jay G. Foonberg's *How to Start and Build a Law Practice Platinum 5th Edition*. This book is the ABA's top selling book of all time. It is packed with over 700 pages of guidance on building a business plan, identifying the right location, finding clients, setting fees, setting-up and managing your office, maintaining an ethical and responsible practice, and much more than can be listed in a short book review.

The second book is *Flying Solo: A Survival Guide for Solo and Small Firm Lawyers*. The fourth edition of this comprehensive 679-page guide includes practical information gathered from successful practitioners, law firm consultants, and state/provincial practice management advisors.

Both books cover much of the same territory. However *Flying Solo* includes a step-by-step analysis of the decision to start a solo/small firm practice, including a detailed self-assessment of whether the solo or very small firm setting is right for you. This is essential reading for anyone contemplating setting out on their own. If you have any hesitations, this one chapter will tell you whether you should set out down that road.

How to Start and Build and *Flying Solo* provide practical and time-tested answers to just about every real-life question that you will come up against as you start and build a law practice. If you're committed to starting – and growing – your practice, these books will give you the expert advice you need to make it succeed for years to come.

Both of these books are available for free loan to you from the practicePRO Lending Library (www.practicepro.ca/library). Full tables of contents for both books are online.

If you wish to purchase you own copy, *How to Start and Build* costs US$69.95. *Flying Solo* costs US$99.95. For more information about these and other excellent ABA LPM Section publications, go to www.abanet.org/lpm/catalog.

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

Also in the practicePRO Lending Library are the following books you can borrow on billing and financial management:

- **Collecting Your Fee: Getting Paid from Intake to Invoice**
  Edward Poll, published 2002, 166 pages with CD-ROM
- **Compensation Plans for Law Firms 4th Edition**
  Edited by James D. Cotterman, Altman Weil, Inc., published 2004, 192 pages
- **How to Draft Bills Clients Rush to Pay 2nd Edition**
  J. Harris Morgan & Jay G. Foonberg, published 2003, 136 pages
- **Results-Oriented Financial Management: A Step by Step Guide to Law Firm Profitability 2nd Edition**
  John G. Iezzi CPA, published 2003, 272 pages with CD-ROM
- **Winning Alternatives to the Billable Hour: Strategies That Work 2nd Edition**
  Edited by James A. Calloway & Mark A. Robertson, published 2002, 320 pages with diskette

For a full listing of titles available, see www.practicepro.ca/library.

Simultaneously acting

for members of same family is more risky

Many lawyers assume that simultaneously acting for members of the same family and their business or corporate entities is relatively safe from fraud and conflicts issues. After all, the parties all know each other and everyone is on good terms.

Unfortunately, this is just not the case. An analysis of LawPRO claims files tell us that there is actually a greater likelihood of a fraud or conflicts of interest issue when clients are related to or know each other.

Understanding when and why malpractice claims arise when work is done for related clients can help you avoid a claim.

When do these types of claims arise?

In the estate and real estate contexts, problems often result when there are dealings with a property that is owned by a parent and child, or by siblings.

On a will matter, allegations of undue influence or lack of ILA are often made when one family member appears to receive more than others under the will, or where it is unclear whether there was a gift or pre-taking when property is received before death.

In a real estate transaction, problems can arise after a mortgage is placed on a property and it is alleged that one sibling has received preferential treatment. Mortgage transactions involving spouses commonly lead to claims where one spouse is giving security but not receiving the benefit of the mortgage advance. Typically the lawyer is acting for both spouses and the mortgagee; when the mortgage goes into default a *non est factum* or undue influence defence is thrown up, and the mortgagee adds the lawyer into the action. It is vital in this scenario that the spouses be separately represented.

On the real estate fraud front, we have seen several high profile cases in Ontario in which a family member was the first true victim of the fraud, often because a power of attorney was fabricated or used incorrectly by another family member. Spousal impersonation has also been a problem for many years. Further complications arise because it can be challenging to establish the good faith of the alleged victim once a family member, now outside the jurisdiction, obtained significant proceeds from a real estate fraud.

In the business or corporate context, claims often arise when lawyers do work for both a corporation and its individual shareholders, or for multiple members of a partnership. As long as everyone involved is getting along, headed in the same direction and making money, all is fine. But circumstances change, often in unexpected ways. There can be unanticipated costs or even financial losses, marriages breakup, people lose interest and decide they want to cash-out or sell their interest, and so on. When changes such as these occur, clients who once all wanted the same thing now want very different things. As a result, duties of confidentiality and loyalty can become very complicated, and even irreconcilable. Defending conflicts of interest claims is complicated and tends to be more costly than other the types of claims LawPRO handles.

LawPRO is also seeing more "fail to warn" claims. These occur when a lawyer doing work for multiple people and/or entities makes a seemingly innocuous comment to one of the clients. Due to changed or unexpected circumstances, that comment ends up giving that one client an advantage, and the clients that didn't get the benefit of that comment allege a "fail to warn." When you are acting for multiple people or entities, take care to make sure all communications and advice reach all clients.

Indeed, when it comes to avoiding conflicts, the best defense is a good offence. Be extra vigilant in looking for potential conflicts when you are doing work for related individuals or entities, both at the start of the matter and as it proceeds.

Don't let your guard down

When handling a file for clients who are family members or know each other, lawyers seem to let their guard down and miss or do not followup on things that are slightly out of the ordinary. The situation can become even worse when the lawyer has become an acquaintance or close friend with one or more of the clients.

In this situation, it also seems lawyers are more likely to take shortcuts at various stages in a matter, including:

- not following formal file opening process, and, in particular, not doing a proper and full conflicts of interest check;
- not opening a file and doing "off-the-books" work;
- not documenting the file or keeping time dockets;
- skipping appropriate or necessary searches;
- not following up or completing tasks to be done by client or lawyer; or
- not sending interim or final accounts and reporting letters

When shortcuts are taken, things will be missed, mistakes will be made, and malpractice claims will result. For the reasons stated above, when clients know each other it is even more critical that you jump through all the procedural and legal hoops.

Most lawyers are surprised that they are more likely to get a claim where clients are related or know each other. Please be aware of your greater exposure in this circumstance, and don't let your guard down.

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

Ed note: *In this issue of LawPRO magazine we debut a new column of succinct, topical practice tips that arise out of claims situations that LawPRO and our defence counsel handle. If you have an idea for a practice tip that you would like to share with members of the profession, please e-mail your tip to the magazine editorial team at: practicepro@lawpro.ca*

Construction liens:

Starting over is not better

The phone rings: Your client needs a construction lien registered ASAP. In the rush to register, you make an error in drafting the claim for lien. Your first instinct -- or that of your law clerk – is to discharge the claim for lien and register a new claim for lien.

Stop – don't do it. Before you take that step, stop and consider the consequences of registration of the discharge. The registration of a discharge of a lien, however it occurs, results in a permanent loss of lien rights which cannot be revived. (see *Southridge Construction Group Inc. v. 667293 Ontario Limited (1992), 2 C..L.R. (2d) 177 affirmed (1993), 2.C.L.R. (2d)184, (Div. Ct.).*

The proper step to take is to register a second claim for lien and obtain a court order "vacating" the first lien and allowing the second claim for lien to proceed. This will ensure that all rights under the registered lien are preserved.

Pauleen Sheps, Claims Counsel Specialist

The fine print in Rule 49

Many lawyers may not be aware of an interesting aspect of Rule 49.

Sometimes, an Offer to Settle from the opposing lawyer will simply set out a figure as the amount the plaintiff is prepared to accept. It will make no reference to costs or interest. One might reasonably assume that if the defendant paid the amount requested, the defendant would then be entitled to a dismissal of the action.

In fact, an offer that is silent on costs, if accepted, permits the plaintiff to then assess costs to the date of acceptance.

Rule 49.07(5) provides that:

> Where an accepted offer to settle does not provide for the disposition of costs, the plaintiff is entitled,
>
> (a) where the offer was made by the defendant, to the plaintiff's costs assessed to the date the plaintiff was served with the offer; or
>
> (b) where the offer was made by the plaintiff, to the plaintiff's costs assessed to the date that the notice of acceptance was served.

This type of offer can be a trap for the unwary. Where a matter has gone to examinations for discovery and is approaching trial one might be tempted to accept such an offer as being an excellent one in the expectation that no costs would be paid, only to find – to one's shock – that costs would then be assessed which dwarf the benefit of having accepted the offer.

courtesy of Michael Kestenberg of Kestenberg Siegal Lipkus LLP

The personality wellness connection

"The only effort worth making is the one it takes to learn the geography of one's own nature." Paul Frederick Bowles

It is understood that every profession and vocation has specific and unique characteristics. Just as individuals have personalities, so do groups of individuals who are engaged in certain experiences. A set of mental, emotional and behavioural traits are common to the legal profession. Some of these may be stereotypical, but they offer a framework for comparison. If you are a lawyer, or the family member of a lawyer, there is value in looking at these traits to see which ones fit and how they affect both your practice and personal life. It is also worth examining how the practice of law has affected or changed your views of yourself.

The general view is that lawyers know how to get things done. They have superb analytical and negotiating skills and are problem solvers. Steven Keeva points out that no other profession comes close to the law in preparing people to take on a wide variety of challenges – law practice, business, politics, journalism. Lawyers are viewed as successful, knowledgeable, and leaders in the community.

Legal training develops a set of skills and also an attitude. A shift begins to take place in law school. This is sometimes subtle but powerful and includes a view of the world and how to manage it. Law students are expected to learn to "think like a lawyer." Susan Daicoff of the Florida Costal School of Law examined the impact of law school and the change that takes place during the law school experience. She notes that the pre-law student has normal levels of psychological distress, but once in practice, the individual's distress level is higher than normal accompanied by a pessimistic outlook on life. The result was a preference for "thinking" over "feeling."

David Hall also discusses this change in his book The *Spiritual Revitalization of the Legal Profession*. Specific traits are directly and subtly offered as the acceptable way to conduct oneself within the legal profession.

Personality traits

Often lawyers are referred to or describe themselves as Type A personalities. What is a Type A personality?

The two features of a Type A personality are: 1) time urgency (impatience); and 2) free-floating apprehension or hostility. Characteristics of people with Type A personalities include impatience, insecurity about one's status, competitive, aggressive and incapable of relaxation. The person with a Type A personality is also often successful in a material sense and highly regarded by peers and clients. These are characteristics that many lawyers and people who work with lawyers can recognize.

In his article, "*Do I think and Act Like a Lawyer?*" John Starzynski identifies lawyer values and attitudes and the impact on behaviour.

Perfectionism. Fear of making a mistake means that things have to be done perfectly and no one else can do it just right. The stress of perfectionism adds to lawyer stress.

Need for control. Often there is the need to control others in order to feel control of everything – process and outcome and all of the little details. This includes clients, staff, colleagues, and family members. This leads to stress and conflict because everyone has a different pace and different priorities. Also, recognizing what we don't need to control frees up time for the essentials.

Delayed gratification. Priorities tend to get shifted in order to meet the other patterns of perfectionism and control. Things other than work-related matters, files, deadlines, client demands mean that any time for self (relationships, social events, family functions) are postponed to a future time when there is less pressure. This time, of course, doesn't come.

Need for external recognition. It is not good enough to be right – there must be evidence and acknowledgement that you are right. Thus, the "win" in a case is external proof of being right. It is a constant state of defense.

Self doubt. Many lawyers feel like imposters. Lawyers often feel that they must appear confident and have the answers to complex questions. There is little room for error and some day someone might realize that they don't know the answers and are a fraud.

These characteristics make it difficult for lawyers to seek assistance. Lawyers are in a position of leadership and help people solve problems. It is therefore difficult to acknowledge the need for assistance. Professionals who work with lawyers are more effective if they understand the pressures and characteristics of members of the legal profession. One thing that we notice at the Ontario Lawyers' Assistance Program is that the reluctance to deal with and inclination to deny a problem means that lawyers often wait until

things have become a crisis (bankruptcy, legal issues such as criminal charges) before asking for help. Sometimes they are in a position with little choice because help is suggested, mandated or court ordered. Lawyers often seek help because the problem is no longer a secret, is affecting others and own their professional conduct (such as disciplinary action or addictive behaviour).

Characteristics & impact

Therapists and counsellors who work with lawyers must understand these common traits and look at the factors that influence lawyers. This applies to the recognition by the lawyers themselves and any professional or treatment regime that works with lawyers. These characteristics were documented by the Talbott Recovery Centre where there is a specific program for lawyers and other professionals.

It is important to understand the lawyer characteristics when a lawyer seeks assistance. Understanding on the part of the lawyer and the therapist makes for more effective communication and increases the possibility of positive change.

1. **Superior intellectual/verbal skills.** This means that lawyers can talk themselves and others out of the need for help. It also allows avoidance of unwanted feedback.
2. **Ability to see differences between person and circumstances.** This is part of what the lawyer does at work (it is a rape case not a person). Lawyers see themselves as different from others who may be in similar difficult circumstances due to the nature of their work and unique experiences.
3. **Difficulty acknowledging even minor personal shortcomings.** This fits with the aura and perfectionism that often is part of the lawyer personality. It is difficult to deal with emotions – especially one's own. It is easy to minimize consequences of behaviour. (Seeking help only when the consequences are unavoidable is part of this characteristic.)
4. **Preference for concise, logical reasoning.** This serves as a defense and lawyers can develop quickly the "right answers" from a text book perspective, but avoid personal involvement in any change process.
5. **Professional demeanor.** Lawyers often challenge staff and demand similar educational level of therapists or staff. This also serves to keep a distance between staff and the lawyer and slows the process of working toward change or solution.
6. **Need for validation from equals.** Lawyers need to know that other lawyers have experienced a similar situation and have made appropriate changes. Who but another lawyer could understand? This is why our peer volunteer program is so important.

Conclusion

Lawyers have high standards of behaviour and image to maintain. They are also human beings with emotions and important personal relationships. Finding a balance between logic and emotion is the challenge. Professor Hall states, "If we continue as a profession to give reverence to the traits of the attorney personality and minimize the importance of emotional and spiritual values …there will remain a void between what lawyers think and do and who they really are."

Balance is a critical element in the healthy personal and professional life. There is a "lawyer personality." When the personality traits are viewed in combination with the values of the individual, increased understanding and insight are the result. Acknowledging the strengths and weaknesses of these characteristics, along with individual values, allows for change and balance in the legal life.

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Steven Keeva, *Transforming Practices, Finding Joy and Satisfaction in the Legal Life*, McGraw Hill, 1999

Starzynski, John, *Do I think and Act Like a Lawyer or a Normal Person? Can they be the Same?* www.olap.ca

Talbott Recovery Campus, Atlanta, Georgia, *Critical Issues in Treating Chemically Dependent Attorneys.*

If you believe that you or someone you know would benefit from peer counseling and support, contact OLAP. You can reach program manager Leota Embleton at 1-877-576-6227 or volunteer executive director John Starzynski at 1-877-584-6227.

New LawPRO President & CEO, new Chairman announced

Kathleen Waters named LawPRO President & CEO

At its February meeting the LawPRO Board of Directors announced the appointment of Kathleen Waters as LawPRO's new President and Chief Executive Officer, effective March 31, 2008. Ms. Waters is currently Vice President of LawPRO's TitlePLUS program.

A former partner at the Toronto law firm of Torkin Manes Cohen Arbus LLP, Ms. Waters joined LawPRO in 1995 with a mandate to develop and build a lawyer-centric title insurance option and related technology tools for Ontario's real estate bar.

Under her guidance, the TitlePLUS program has grown into one of Canada's four largest and most "high-tech" title insurers. Ms. Waters also was instrumental in securing membership for LawPRO in NABRTI (North American Bar-related Title Insurers); LawPRO still is the first and only Canadian title insurer admitted to that organization, and Ms. Waters now serves as NABRTI's Secretary-Treasurer.

As a member of LawPRO's senior management team, she has also contributed to building LawPRO into a progressive, customer-focused, and financially sound insurance company.

She maintains strong links to the practising bar through her ongoing participation on the Executive of the Real Property Section of the Ontario Bar Association, the Working Group on Lawyers and Real Estate, and the Joint Committee for Electronic Registration. As well, she is co-chair of the Real Estate Fraud Committee, a multi-stakeholder committee comprising representatives from the insurance, government, and financial sectors.

Ian Croft named LawPRO Chairman

The Board also announced the appointment of Ian Croft as Chairman of the Board, replacing Kim Carpenter-Gunn who has been appointed to the Ontario Superior Court. Mr. Croft has been vice-chairman of the LawPRO Board since 1996.

A member of the Institute of Chartered Accountants of Ontario, Mr. Croft has extensive experience in the financial and insurance sectors. He is retired senior vice-president of the Woodbridge Company Limited, former director of Guarantee Insurance Co., and of St. Andrews Heritage Trust.

Transaction levy filing due dates

The Annual Exemption form and the first quarter filing for Real Estate and Civil Litigation Transaction levies for 2008 are due on April, 30, 2008.

Exemption filings

Lawyers who do not practise real estate can exempt themselves from quarterly transaction levy filings by completing the Real Estate Transaction Levy Exemption Form. Similarly, lawyers who do not practise civil litigation can exempt themselves from quarterly transaction levy filings by completing and filing the Civil Litigation Transaction Levy Exemption Form. Exemption forms must be filed by April 30, 2008.

To file these forms online, visit our website, www.lawpro.ca, and sign in using your Law Society member number or Firm Number and your e-file password (the same password used to file your insurance application online). Under the 'My Personal Account' menu, select the 'Transaction Levy Filing' tab.

First quarter transaction levy filings

Lawyers practicing real estate and/or civil litigation must complete and file the appropriate transaction levy form for the quarter ended March 31, 2008, by April 30, 2008.

2008 insurance premium payments

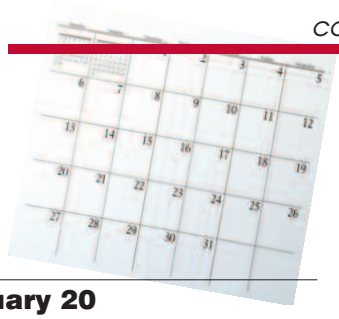
Insurance premiums for lawyers who have opted to pay their insurance premium in a lump sum (by cheque or pre-authorized bank account withdrawal) were due on March 5, 2008.

The next quarterly installment by preauthorized bank account withdrawal or credit card will be processed on April 15, 2008. Monthly installments by preauthorized bank account withdrawal or credit card are processed on the 15th of each month.

Final Sedona Canada E-Discovery Guidelines released

After a period of public consultation, the final version of the Sedona Canada E-Discovery Guidelines were released in January 2008. This detailed 53-page document contains helpful and practical information on the best practices for the discovery, review and production of electronic information. Copies are available at www.lexum.umontreal.ca/e-discovery/. An extensive and up-to-date digest of Common and Civil law decisions dealing with e-discovery related issues is also available on this site. Several e-discovery related precedent documents are available at www.oba.org/ediscovery.

Events calendar



Upcoming events

April 7
OBA's Recreational Real Estate
TitlePLUS sponsoring
Ontario Bar Association, Toronto

April 7
OBA's Boundaries: *Land Surveyors Tell You Where You Are*
TitlePLUS sponsoring
Ontario Bar Association, Toronto

April 9
LSUC New lawyer Practice Series: Corporate
Dan Pinnington presenting on claims and risk management
Law Society, Toronto

April 10
Legal Aid Ontario Spring Conference
60 Tips in 60 Minutes
Dan Pinnington, practicePRO presenting
London, ON

April 16-17
Real Estate Law Summit
TitlePLUS sponsoring
Law Society, Toronto

April 28
TitlePLUS for Lawyers & Staff Conference
Royal York Hotel, Toronto

May 7-9
ILCO Conference
TitlePLUS sponsoring, exhibiting
White Oaks Conference Centre

May 8-9
LSUC/OBA Solo & Small Firm Conference
TitlePLUS exhibiting
Dan Pinnington, practicePRO co-chairing & presenting
Toronto

May 9
IMBA Conference
TitlePLUS exhibiting
Toronto Congress Centre

May 12
OBA's Value Added Services to Enhance your Real Estate Practice
TitlePLUS sponsoring
Ontario Bar Association, Toronto

May 12-13
Toronto Real Estate Board Realtor Quest
TitlePLUS exhibiting
Toronto Congress Centre

May 27
Gowling Lafleur Henderson
Dan Pinnington,practicePRO presenting on risk management
Ottawa

June 2-3
OBA Conference Centre
Taking Care of Business… When Disaster Strikes
Dan Pinnington, practicePRO presenting
Toronto

June 3
The Annotated Agreement of Purchase and Sale for Residential Property
TitlePLUS sponsoring
Law Society of Upper Canada
Toronto

August 17-19
CBA Canadian Legal Conference & Expo
TitlePLUS exhibiting
Quebec City Convention Centre

Recent events

February 4-5
OBA 2008 Annual Institute of Continuing Legal Education
Metro Toronto Convention Centre
practicePRO & TitlePLUS exhibited

February 20
LSUC New Lawyer Practice Series: *Family Law*
Dan Pinnington, practicePRO presented on claims prevention and risk management
Law Society, Toronto

February 26
TitlePLUS Calgary Lawyer Event
Calgary Delta South

February 27
TitlePLUS Edmonton Lawyer Event
Edmonton Fairmont Hotel MacDonald

February 28
Ontario Real Estate Association Conference
TitlePLUS exhibited
Sheraton Centre Hotel, Toronto

March 4
Recreational Property Transactions – *Avoiding the Risks of Purchasing or Acquiring the Family Cottage*
Lisa Weinstein, TitlePLUS presented
Law Society, Toronto

March 14-15
ABA Techshow
Winning Ways with Spreadsheets, The Virtual Law Office, Managing Your E-Mail
Dan Pinnington, practicePRO presented
Chicago

March 27
LSUC
Simplify your Litigation Practice
Dan Pinnington, practicePRO presented
Toronto

For more information on practicePRO events, contact practicePRO at 416-598-5863 or 1-800-410-1013 or e-mail dan.pinnington@lawpro.ca

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