

Volume 10
Issue 1
Summer 2011

LAWPRO®

Inside: LAWPRO Magazine

- Administrative dismissals
- Twitter dos and don'ts
- And more



2010

Annual Review

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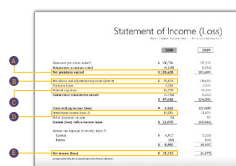
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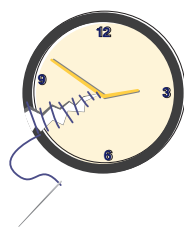
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LAWPRO
250 Yonge Street
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Putting LAWPRO's vision_{and} values to work – for you



I am pleased to present our second annual review of LAWPRO operations.

Unlike our [annual report](#) – which you can find on our website – this review is light on the financials and heavy on the kind of information you need to know: What's happening with claims and how does that affect premiums; how we're continuing to evolve our programs and services to better meet your needs; and how LAWPRO is working on your behalf in industry, regulatory and government circles.

To give added focus to these efforts, and to mark our 15th anniversary in 2010, the LAWPRO team developed a vision, mission and values statement – a high-level roadmap that helps us identify priorities, guides our activities, and provides a benchmark against which we measure ourselves. It also provides an ideal framework for comments on how LAWPRO meets its mandate to be efficient, effective and accountable – for the benefit of all insureds.

Professionalism

We take very seriously our role as stewards of the profession's resources, and to that end hold ourselves to the highest professional standards in everything we do – whether we are helping an insured with a claim, communicating with the profession or crunching the numbers and preparing our annual financial statements.

The very solid and stable results we reported for 2010 speak to this commitment to stewardship. The company reported a

net income of \$15.2 million as a result of which shareholder's equity – the investment the profession has in the company – grew to \$159 million. Our investment portfolio generated income of just over \$19 million and the company has assets of just under \$560 million.

This healthy bottom line is not the result of an improved claims experience. It is, however, an example of professionalism at work. Two years ago, our internal and external actuaries began an extensive review of the actuarial model which LAWPRO uses to project ultimate claims costs. The goal: models that would allow for more robust claims cost projections that reflect the unique nature of our E&O program, and draw on our more than 10 years of claims experience since the original models were adopted in 2001. Under the new models, we were able to release more than \$20 million of gross claims reserves, contributing to claims costs as reported in our financial statements of just under \$80 million.

But as professionals we focus not on this one-time solid result, but on the need to manage a claims portfolio that continues to nudge the \$85 million mark in annual claims costs. As documented on the following pages, we are working on many fronts to manage this challenge – from stepping up our risk management efforts to keeping a tight rein on general expenses (which at 18 per cent of the total budget compare favourably to the industry norm of close to 30 per cent) to exercising our

rights of recovery on claims in both our E&O and TitlePLUS portfolios, which could generate more than \$1 million in recoveries.

Integrity

Stewardship also dictates that our approaches reflect sound insurance business practices. As an insurance company we operate in an increasingly regulated and scrutinized market. In the interests of all policyholders, we keep our eye on both the bottom line and the critical benchmarks that regulators (we are licensed in all jurisdictions across Canada) and auditors use to assess our solvency and viability. Our focus is on the long-term survival of a financially sound insurance program (and by implication, the long-term survival of LawPRO's capital that has come predominantly from the members of the legal profession).

That is why, for example, we recommended a primary professional liability base premium for 2011 of \$3,350. Given the high level of claims costs and the relatively lower level of investment returns, a premium increase was inevitable – difficult and unpalatable a decision as it was. Guided by this commitment to integrity – to being consistent, fair and accountable – we “take the high road” of being fiscally prudent.

The long-term viability and integrity of the program is also uppermost in our minds when we say that the robust financial results of 2010 are exactly what the doctor ordered. A key benchmark against which our regulator evaluates our performance each year is the Minimum Capital Test (MCT) which at year end was 226 per cent. Pending changes to the way the regulator calculates the MCT could result in a significant drop in all insurers' MCTs – without the companies themselves making any changes to their underlying business. It behoves us to ensure LawPRO is positioned to cushion itself against this MCT fallout when it inevitably comes our way. For a more detailed explanation of MCTs,

see the [September 2010 issue of LawPRO Magazine](#).

Also challenging our bottom line will be new financial reporting standards for insurance contracts expected to be adopted by the accounting profession worldwide. As well as requiring more disclosure as of 2011, these new standards (which we explained in the [December 2010 issue of LawPRO Magazine](#)) could dramatically affect how we treat funds held in reserve to pay for claims in the future and ultimately shareholder's equity.

There are many other examples of how we exercise our commitment to integrity. Our principled approach to E&O claims management – which sees us defend to the highest level if appropriate, resolve claims expeditiously where there is liability and refuse to entertain economic settlements – is one that benefits the whole of the bar economically as well as professionally.

The same principled approach applies to our underwriting guidelines: For example, when it became clear that building compliance issues were a major source of loss in the TitlePLUS program, we implemented measures to help lawyers identify these issues – and help their clients avoid a claim altogether. A proposed pilot project in one Ontario municipality to automate this process as part of the TitlePLUS application will further enhance the information lawyers have at their fingertips when closing a real estate transaction – as well as mitigating our underwriting risk. This initiative could well prove to be a major breakthrough that benefits lawyers, municipalities and, of course, LawPRO.

Innovation

Like any successful organization, we will not rest on our laurels. To deliver on our values, we need to be constantly innovating. The review of our actuarial models described earlier is a case in point, as is practicePRO's AvoidAClaim blog. We are

applying the same rigor and forward-looking mindset to the need to convert to new international financial standards. Because technology underpins every aspect of our organization, we have also undertaken a major review of our systems and future needs and are developing a five-year plan that will ensure we continue to be in a position to lead by example on this front.

Service and Leadership

Later in this special annual review we discuss in some detail how LawPRO delivers on the service and leadership values. Sharing information and knowledge – whether on the phone, through our practicePRO risk management efforts, by educating lawyers in seminars or reaching out to the legal community and even the consumer public through other avenues – is integral to the way we think and act at LawPRO.

Final thoughts

One of the most difficult moments for us all in 2010 was the loss of our friend and colleague Caron Wishart, who passed away shortly before Christmas after a courageous battle with cancer. As Vice-President, Claims, Caron steered the LawPRO Claims Department from 1995 to 2010. In her honour, LawPRO established an endowment in Caron's name at her alma mater, the Faculty of Law at the University of Toronto. Many have donated to this cause. Thanks to the matching grants program of the Ontario government, that endowment now stands at \$100,000 and will fund one scholarship each year for a second-year law student. We are hopeful that this endowment will continue to grow as donations continue to roll in. Caron knew about this initiative and was thrilled.



Kathleen A. Waters
President & CEO

2010 financial results explained

A Net premiums (\$100.4 million)

Net LAWPRO revenues in 2010 stood at about \$100.4 million, about \$1 million lower than in 2009.

Premium revenues declined despite the increase in the base premium to \$2,950 and the \$15 increase in the real estate transaction levy surcharge to \$65 per transaction from \$50 for several reasons, key of which are:

- the 2009 income figure included a significant amount of retroactive premium under LAWPRO's arrangement with the Law Society to cover the accrual of the impact of the harmonized sales tax on the existing claims reserves as of December 31, 2009. In other words, the income line in 2009 was higher than usual for that "one-time" reason;
- continued flux in real estate markets resulted in lower TitlePLUS premium revenues.

B Net claims (\$79.9 million)

The decline in net claims costs in 2010 is not the result of fewer claims being reported, or because the cost of resolving claims has gone down. In fact the opposite is true – in 2010 lawyers again reported more than 2,200 claims which are expected to ultimately cost the program in excess of \$85 million.

Instead, the decrease in the net claims and adjustment expense line of our income statement is largely the result of a revision to the actuarial model LAWPRO uses to project ultimate claims costs, resulting in a reduction of loss reserves for older policy years.

	2010	2009
Insurance premiums earned	\$ 106,796	107,453
Reinsurance premiums ceded	(6,358)	(5,960)
Net premiums earned	\$ 100,438	101,493
Net claims and adjustment expenses (note 4)	\$ 79,876	108,686
Premium taxes	3,205	3,225
General expenses	16,239	15,434
Reinsurance commissions earned	(1,704)	(3,252)
	\$ 97,616	124,093
Underwriting income (loss)	\$ 2,822	(22,600)
Investment income (note 2)	19,254	11,873
Other (expense) income	(1)	83
Income (loss) before income taxes	\$ 22,075	(10,644)
Income tax expense (recovery) (note 7)		
Current	\$ 6,917	(3,268)
Future	(55)	(899)
	\$ 6,862	(4,167)
Net income (loss)	\$ 15,213	(6,477)

Accompanying notes are an integral part of the financial statements.

This model was implemented in 2001 – 10 years ago. Two years ago, our actuaries (LAWPRO has three actuaries providing input, directly or indirectly, on the mandatory program: our internal actuary, our external appointed actuary, and the consulting actuary who advises our auditor) decided that the model being used would benefit from a revision that would build on the 10 years of data available, and would bring additional clarity to premium-setting and reserving in the future.

Their work came together in a way that allowed the new refined model to be applied to the 2010 year end results. This review could easily have resulted in a very different result, requiring LAWPRO to increase reserves for unpaid claims.

As it was, LAWPRO was able to release more than \$18 million of claims reserves (pre-tax), contributing to overall claims costs in the 2010 financial statements of just under \$80 million.

C General expenses (\$16.2 million)

Despite the fact that LAWPRO – like individual lawyers and law firms – now has to pay HST on many items not previously subject to this level of taxation, the expenses for running LAWPRO increased only five per cent between 2009 and 2010 to \$16.2 million. Strong internal controls and a concerted effort by our employees to control costs where possible contributed to bringing expenses in under budget.

D Investment income (\$19.3 million)

A rebound in investment markets contributed to a solid performance for LAWPRO's portfolio of investments in 2010. Investment income was up by close to \$8 million to \$19.3 million from \$11.9 million in 2009.

The investment portfolio posted total (after tax) gains (realized and unrealized) of about

\$3 million. Returns of five per cent (after fees) exceeded LAWPRO's budget projection of four per cent.

E Net (loss) income (\$15.2 million)

Net income of \$15.2 million is largely the result of the release of reserve funds of about \$18 million (pre-tax) explained in B above and a solid performance by LAWPRO's investment portfolio as described in D above.

F Comprehensive income (\$18.2 million)

The strong net income result, combined with continued growth in the investment portfolio, contributed to solid growth in comprehensive income – an important financial yardstick that is a measure of the company's worth and stability.

LAWPRO's comprehensive income at the end of 2010 stood at \$18.2 million. In other words, the equity that our shareholder has in the company increased by \$18.2 million to just over \$159 million at the end of 2010 – tangible proof of the viability and financial strength of the investment that Ontario lawyers have in LAWPRO.

Statement of Comprehensive Income

Stated in thousands of Canadian dollars | For the year ended December 31

	2010	2009
Net income (loss)	\$ 15,213	(6,477)
Other comprehensive income, net of income tax:		
Net changes in unrealized gains on available-for-sale financial assets, net of taxes of \$1,797 (2009: \$3,256)	4,000	6,669
Reclassification adjustment for (gains) and losses included in net income, net of taxes of (\$437) (2009: \$3,446)	(973)	6,996
Other comprehensive income	\$ 3,027	13,665
Comprehensive income	\$ 18,240	7,188

Accompanying notes are an integral part of the financial statements.

Statement Of Changes In Shareholder's Equity

Stated in thousands of Canadian dollars

	Capital stock	Contributed Surplus	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Shareholder's Equity
Balance at December 31, 2008	\$ 5,000	30,645	108,417	(10,183)	133,879
Net loss	—	—	(6,477)	—	(6,477)
Other comprehensive income for the year	—	—	—	13,665	13,665
Balance at December 31, 2009	\$ 5,000	30,645	101,940	3,482	141,067
Net income	—	—	15,213	—	15,213
Other comprehensive income for the year	—	—	—	3,027	3,027
Balance at December 31, 2010	\$ 5,000	30,645	117,153	6,509	159,307

The aggregate of retained earnings and accumulated other comprehensive income (loss) as at December 31, 2010, is \$123,662 (December 31, 2009 – \$105,422).

Accompanying notes are an integral part of the financial statements.

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Key benchmarks

As a result of these solid financial results, LAWPRO continues to meet or exceed the Minimum Capital Test (MCT) benchmarks set by our regulators. The company's MCT for 2010 stood at 226 per cent – well within the preferred 220 to 230 per cent range set by the LAWPRO Board and management. This MCT level allows LAWPRO to absorb a degree of financial adversity going forward – and puts the company in a stronger position to weather coming changes that could well adversely affect our financial results.

Key among these headwinds are the following:

1. a pending change to the way the MCT is calculated that could result in a significant decline in the MCTs of all insurers – without the companies

themselves making any changes to their underlying business. LAWPRO expects this new method of calculating MCT in 2012 will likely push the MCT back down again (perhaps to the 210 to 215 per cent range, all other things being equal); and

2. evolving new financial reporting standards that are being adopted by the accounting profession in many parts of the world. The new International Financial Reporting Standards (IFRS) could dramatically affect how insurance companies treat funds held in reserve to pay for claims in the future.*

At the same time, to maintain its MCT (which requires LAWPRO to have a proportionate amount of capital beyond what is just needed to pay the year's claims), LAWPRO needs to add about \$5 to \$7 million to its equity every year. In other

words, as each year's claims are added to our claims liabilities our capital also has to grow by the relevant proportionate amount.

There are two ways to do this: By having net income on the Income Statement or Other Comprehensive income through unrealized gains. It is very difficult to predict the latter. Therefore, it is important that in most years, LAWPRO budget to expect a net income in the millions of dollars.

The company's return on equity (ROE) in 2010 was 10 per cent – similar to that of previous years. Since 1995, LAWPRO's average ROE has been 9.26 per cent.

* As of the end of 2010 the cost of current and previous year claims that are not yet resolved stood at just under \$382 million.

The new \$80+ million world of claims costs

In 2010, the number of errors and omissions (E&O) claims reported to LAWPRO exceeded 2,000 and associated costs topped the \$80 million mark for the fourth consecutive year – a clear sign that we have arrived at a new era in professional liability claims. This is a significant increase from the \$55 million to \$65 million in annual E&O claims costs that LAWPRO typically saw in the earlier part of this decade. We look at claims trends in the E&O program over the past decade, and at some possible explanations for why costs today are up close to 50 per cent in 2010 compared to the start of this decade.

The number of lawyers in practice is up – and they’re reporting more claims

Between 2000 and 2010, the number of lawyers in private practice and insured under the LAWPRO program increased close to 30 per cent to about 22,500 from about 17,400 – that’s 5,100 more lawyers in practice.

Not surprisingly, the number of claims reported has been steadily climbing: As graph #1 shows, since 2005 we have seen a consistent increase in the number of claims reported each year to LAWPRO. For example, between 2005 and 2010, the number of claims reported to LAWPRO increased 20 per cent to 2,231 claims in 2010 from 1,855 in 2005. The slight decrease in claims reported last year compared to 2009 was encouraging. But the question remains: Is this result a blip – or the start of a new trend that will see claims level off in the 2,000 range?

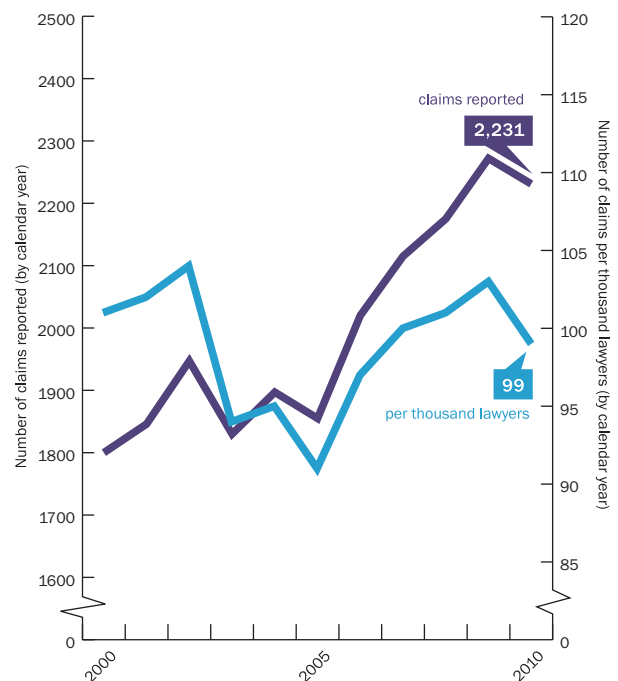
More telling is the consistent increase in claims frequency. As graph #1 also shows, the number of claims reported per 1,000 lawyers has trended upwards consistently over the past five years and now stands at 99 – compared to 91 in 2005. In other words, in 2010 we received 99 claims for every thousand lawyers in practice compared to 91/1,000 lawyers in 2005.

These increases also affect the number of files that LAWPRO must handle: Despite a concerted and successful effort on the part of our claims teams to close more files, the number of open files managed stands at 3,139 – the highest it has been in the last decade (see graph #2.)

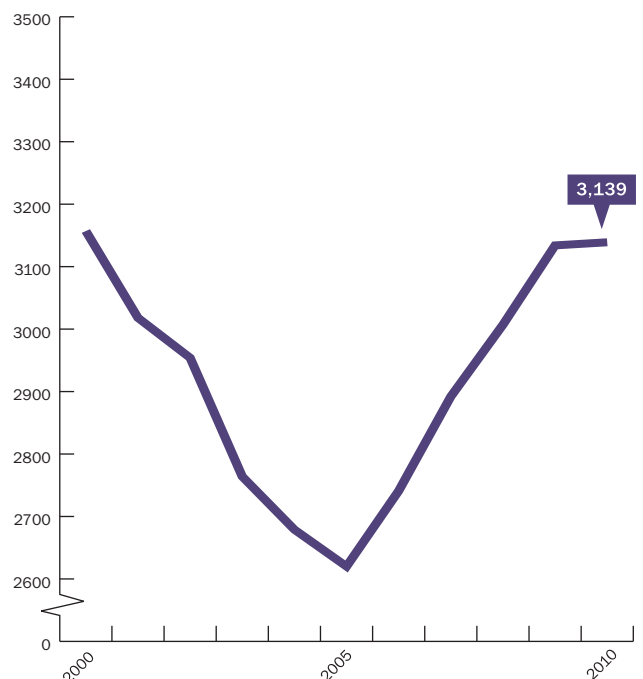
Claims are more costly – i.e., the average cost per claim has increased 21 per cent

A good indication of what is happening with claims costs is the average cost per claim file.

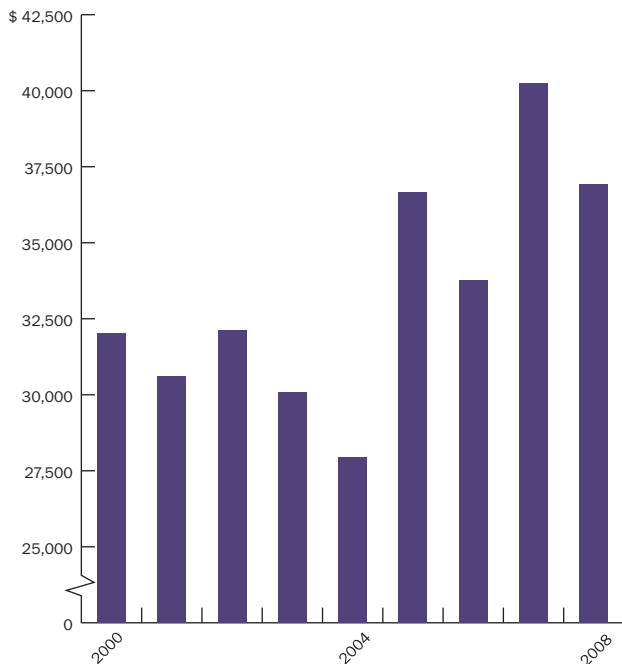
1. Number of claims reported & frequency
(by calendar year as at December 31, 2010)



2. Number of open claims files



3. Average cost per claim at 38 months after start of year in which claim was reported



As graph #3 illustrates, the average cost per claim file is also on the increase. In the first five years of the decade, the average cost of a claim was about \$30,500; for the years 2005 to 2008*, that average cost per claim jumped to almost \$37,000 – a 21 per cent increase.

Average defence costs over the same period – 2000 to 2008 – increased only 14 per cent.

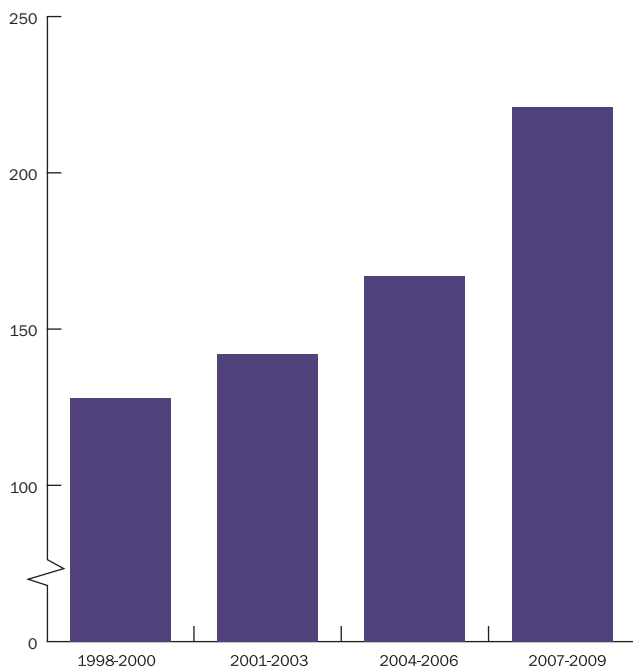
Claims are more complex – and cost more to resolve

One indication of the increasing complexity of claims is the number of large claims that cost more than \$100,000 to resolve.

As graph #4 shows, the number of these claims has increased more than 54 per cent since the start of this decade to 241 claims in 2008 that cost more than \$100,000 to resolve from 137 such claims in 2000. In 2009, there were 211 such claims – but 31 per cent of the more than 2,200 claims for this year are still unresolved. As it is the more complex and costly claims that take longer to resolve, the number of claims that top the \$100,000 mark in 2009 is likely to end up being higher.

When we dig deeper into these large claims, we see that the biggest increase is in claims in the \$100,000 to \$500,000 range. For example, between 2000 and 2008, the number of claims in this range went to 219 in 2008 from 116 such claims in 2000 – an 89 per cent increase.

4. Number of claims reported with a value greater than \$100,000 (as at February 28, 2011)



Costs are up in all areas of practice – but real estate leads the pack

As graph #5 on the following page demonstrates, real estate and litigation consistently account for the majority of claims costs in the E&O program.

For the past five years, real estate claims have represented more than 35 per cent of claims costs incurred; that number shot up to 42 per cent in 2010 – but as real estate claims tend to settle more quickly and the costs associated with these claims are paid earlier in a claims cycle compared, for example, to difficult litigation claims, we expect the proportion of real estate claims for 2010 to eventually be in the 35 per cent range.

However, some numbers are telling. The number of real estate claims rose to 681 in 2010 from 467 in 2001 – an increase of 46 per cent. The cost of real estate claims rose even more dramatically – to \$24.2 million in 2008 from \$11.6 million in 2001 – a 108 per cent increase.

* Note: because costs for 2009 and 2010 are management projections and because of the high number of open claims for these years it is difficult to determine actual average costs for these years: However based on current estimates of \$85 million in costs, the average cost per claim could top the \$40,000 mark in 2010.

The impact of rising house prices

Certainly rising house prices were a major contributing factor to the rising cost of real estate claims.

In the last year alone, the average price of a home in Ontario rose close to four per cent to \$360,000. In Toronto – where many real estate deals are done and claims reported – the average home price rose more than five per cent to \$454,000.*

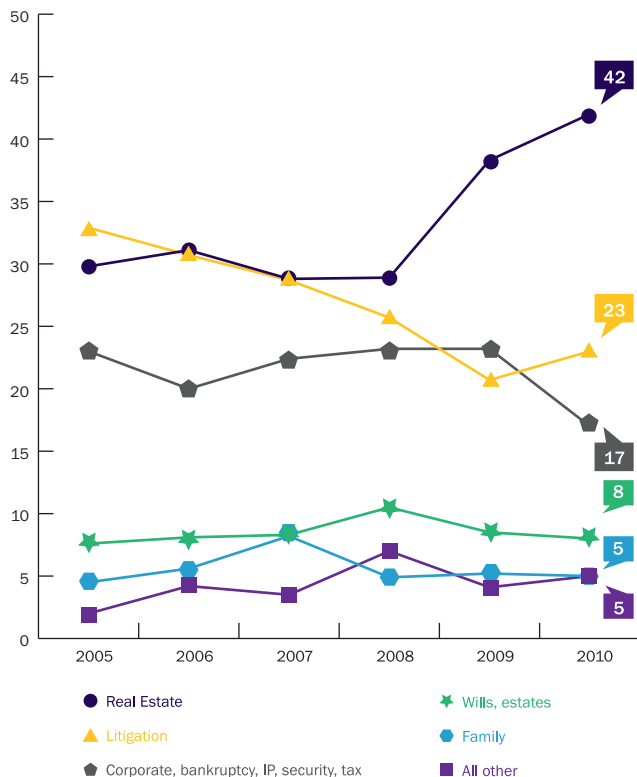
Between 2000 and 2010, the average price of an Ontario house went from \$180,000 to \$360,000 – a 100 per cent increase.

Claims trends in other practice areas

Litigation: Between 2000 and 2008 the cost of litigation claims increased to \$21.5 million from \$17.8 million – a 21 per cent increase.

Corporate-commercial: The cost of corporate-commercial claims (including bankruptcy, intellectual property, securities and tax law) increased to \$18.5 million in 2008, up from 15 million in 2000 – a 24 per cent increase.

5. Distribution of claims by area of practice
(% of gross claims costs as at February 28, 2011)



* Source: CREA statistics via www.livingin-canada.com/house-prices-canada.html

There has also been a definite upward trend in both the number and cost of claims in family law and will and estates law.

Family: The cost of family law claims jumped 110 per cent to \$4 million in 2008, up from \$1.9 million in 2000.

Wills and estates: The cost of wills and estates claims rose to \$8.4 million in 2008 from \$3.2 million in 2000 – a 162 per cent increase.

Metrics that matter: E&O claims

Claims at a glance

Number of claims reported (2010)	2,231
Gross claims case costs (2008)*	\$82.3 million
Number of claims files >\$100,000 (2000)	137
Number of claims files >\$100,000 (2008)	241

LawPRO's trial record in 2010

- won 12 of 13 trials
- successful on one matter taken to trial in 2009 but judgment released in 2010
- won seven of eight appeals (all appellants had lost their cases in the first instance)
- won 19 of 25 summary judgment applications plus on three claims claimants capitulated prior to summary judgment hearing date

LawPRO recoveries

Approximately \$1 million in recoveries in 2010

Survey of insureds

Results of our annual survey of LawPRO insured lawyers with closed claims:

- 98 per cent say they are satisfied with how LawPRO handled the claim;
- 88 per cent say they are satisfied with our selection of counsel;
- 86 per cent say they would have the defence counsel firm represent them again; and
- 84 per cent say LawPRO received good value for defence monies spent.

* Because more than 30 per cent of claims reported in 2009 and 50 per cent of claims reported in 2010 were still open as of February 28, 2011, when these numbers were generated, only projections for these two years are available. LawPRO expects claims costs in these years to be in the \$85 million range, based on current trends.

Frauds targeting lawyers in 2010: An update and a warning

Not a month went by in 2010 without news of one or more new fraud scams targeting lawyers. Activity seemed to peak at year end when we got wind of – and advised lawyers of – six fraudsters who were attempting to dupe lawyers in November/December alone.

Our fraud warnings – posted on our [AvoidAClaim](#) blog, emailed to lawyers through our electronic newsletters and relayed through our publication, [LawPRO Magazine](#) – generated more than 500 calls and emails from lawyers seeking guidance or advising us of yet another variation on the fraud scheme.

Most of the fraud attempts we saw in 2010 were bad cheque frauds.

At their simplest, these bad cheque frauds all work the same way. The fraudsters retain the lawyer to act on an otherwise legitimate-looking legal matter that creates circumstances to dupe the lawyer into quickly disbursing funds on a counterfeit certified cheque, bank draft or cashier's cheque that was deposited into the lawyer's account. The fraudster gets real money and the lawyer is left with a shortfall in the trust account.

In 2010 the most common bad cheque fraud scenarios we at LawPRO saw were:

- a payment from an ex-spouse on a spousal-support collection further to the terms of a collaborative family law agreement (by far the most common);
- a payment from the debtor on a business debt collection;
- a loan advance from a sham lender on a business loan or inventory purchase loan; and
- a bad cheque given as a deposit on a real estate deal that ends up being aborted, triggering a request to pay the deposit back to the purchaser or to a third party.

Some of the fraud attempts LawPRO saw in 2010 sent up red flags: poor spelling, bad grammar and/or completely untenable fact circumstances (e.g., multi-million dollar lottery wins or inheritances).

However, frauds are getting more sophisticated and the fictitious scenarios can look like legitimate legal matters. Both new

and experienced lawyers were fooled into working through file opening and the initial stages of matters before they had suspicions or determined they were the target of a fraud. Some Ontario lawyers were duped.

Ontario lawyers should not be complacent. These fraudsters go to great lengths to create scenarios that otherwise appear to be legitimate legal matters. Clearly, groups of people are collaborating on these fraud attempts. They are prepared to engage in extensive and ongoing communications over weeks and even months, usually by email, but also by phone, and on occasion, even in person.

The initial contact is frequently by email, but may also be a typed or handwritten note delivered by regular mail. It can be a short message of only a few sentences with virtually no details about the matter or a detailed message with extensive background information. Initial contact messages are usually generically addressed (e.g., “Dear attorney” or “Attention counsel”) as they are sent to many people via BCC, but they can be personalized and include a lawyer's first and/or last names.

We saw instances where the fraudsters were clearly taking steps to appear to be coming from a trusted referral source. Most frequently this is another local lawyer or real estate agent. Some initial contact messages claim to have found contact information on bar association or other online listings.

The fraudsters provided legitimate-looking fake identification, including foreign passports, U.S. state or other foreign country issued birth certificates or drivers' licences. On a few occasions we saw notarized documents from a non-existent lawyer at a real law firm in the United Kingdom falsely verifying identity information.

The fake cheques and bank drafts are of very high quality – even bank staff have been fooled. They are printed on high quality paper and can have watermarks, embossing and holographs.

To help Ontario lawyers recognize attempted frauds, LawPRO is posting examples of the initial contact messages and back-and-forth communications on the [AvoidAClaim.com](#) blog. In 2010, we posted 15 separate fraud updates – many of which included images of the fake supporting documentation the fraudsters

are supplying, including identification, bad cheques and bank drafts, and fabricated collaborative family law agreements and divorce decrees.

Remember that the essence of these frauds is to dupe you into refunding or disbursing money before a counterfeit payment has cleared the banking system. Tell all new clients that you have policies in place which govern the form of funds you will accept and the timeframe that will be applied to any refund requests – and hold firm, no matter how compelling the fraudster's story. Coming up with a convincing story is a core competency of a fraudster.

Additional fraud-prevention information and resources are available on the practicePRO Fraud page (www.practicepro.ca/fraud).

To receive immediate updates on fraud and claims prevention by email or RSS feed, go to LAWPRO's AvoidAClaim blog (www.avoidclaim.com)

Dan Pinnington is director of practicePRO, LAWPRO's risk and practice management program. You can reach him at dan.pinnington@lawpro.ca

How to handle a real or suspected fraud

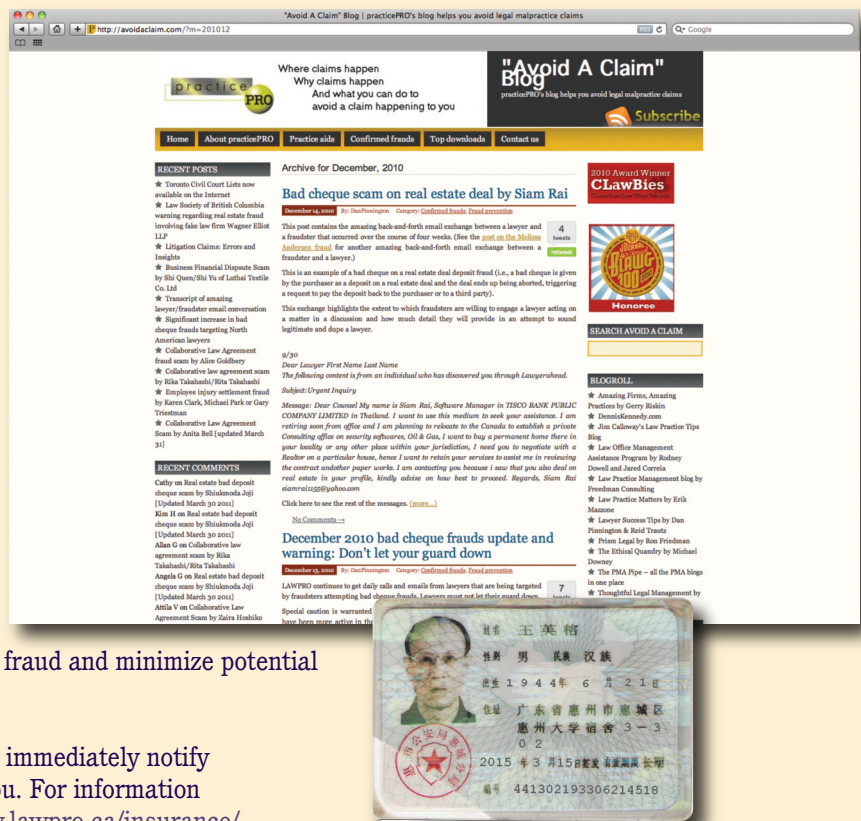
If you have been targeted by a fraud, please forward any of the emails you have received to fraudinfo@lawpro.ca.

For more immediate updates on fraud and claims prevention, subscribe to the email or RSS feed updates from LAWPRO's [AvoidAClaim](http://www.avoidclaim.com) blog.

If you are a LAWPRO insured, please call LAWPRO at 1-800-410-1013 (416-598-5899) if you suspect you are acting on a matter that appears to be a fraud. We will talk you through the common fraud scenarios we are seeing and help you spot red flags that may indicate you are being duped. This will help you ask appropriate questions of your client to determine if the matter is legitimate or not. If the matter you are acting on is a fraud and there is a potential claim, we will work with you to prevent the fraud and minimize potential claims costs.

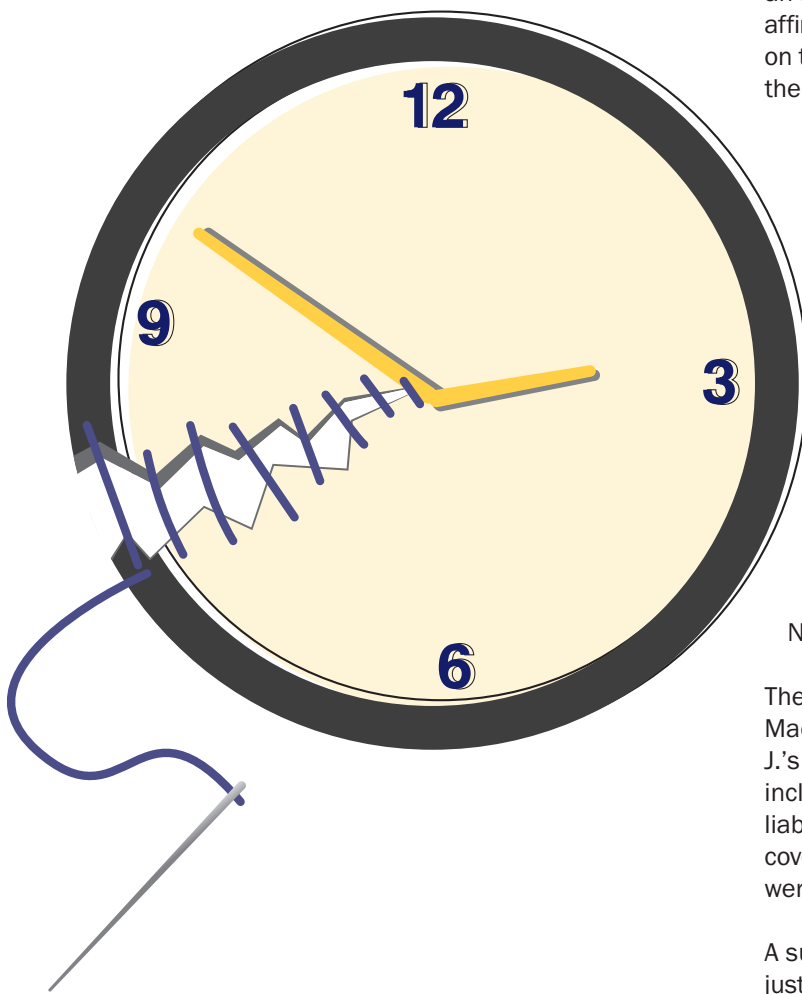
If you have been successfully duped, please immediately notify LAWPRO as there may be a claim against you. For information on how to report a claim, please go to: www.lawpro.ca/insurance/online_services/Report_Claim_01.asp.

Further fraud prevention information and resources are available on the practicePRO Fraud page (www.practicepro.ca/fraud), including the Fraud Fact Sheet, a handy reference for lawyers and law firm staff that describes the common frauds and the red flags that can help identify them.



Repairs: A stitch in time saves nine

LAWPRO takes this proverb to heart. Our timely efforts to “repair” errors committed by solicitors save the Ontario bar millions of dollars every year.



The Superior Court’s equitable jurisdiction

The Ontario Superior Court’s broad equitable jurisdiction has facilitated the “repair” of many solicitors’ errors.

*TCR Holdings Corp. v. Ontario*¹ involved the “unstitching” of an amalgamation. Newbould J. held, and the Court of Appeal affirmed, that the Superior Court may set aside an amalgamation on the basis of the Court’s general equitable jurisdiction, and on the basis of its power to relieve against mistakes.

The plaintiff, a company with substantial assets, amalgamated with several of its subsidiary companies. One of the subsidiaries included in the amalgamation, 420846 Ontario Limited (“846”), owed \$1.6 million to Henry Heidt and Angela Young. TCR’s solicitor forgot about 846’s indebtedness. After the amalgamation, Heidt and Young tried to collect the money owing to them from the plaintiff.

The plaintiff moved to set aside the amalgamation *nunc pro tunc*. The respondent Ontario, on behalf of the Director appointed under the *Business Corporations Act*, did not oppose the order sought. Heidt and Young obtained intervenor status, and opposed the application.

Newbould, J. set aside the amalgamation.

The Court of Appeal dismissed the intervenors’ appeal. MacPherson, J.A. found no basis for interfering with Newbould, J.’s conclusion that the plaintiff’s intention was that 846 be included in the amalgamation as a corporation without any liabilities. Heidt and Young never bargained for the plaintiff’s covenant, and they would receive a windfall if the amalgamation were not set aside.

A superior court has “all the powers that are necessary to do justice between the parties:” *80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd.*² More specifically, “superior courts have equitable jurisdiction to relieve persons from the effect of their mistakes:” *771225 Ontario Inc. v. Bramco Holdings Co.*³

Newbould, J. characterized the inclusion of the heavily indebted 846 in the amalgamation as “an inadvertent mistake” and, citing *Bramco* and *Attorney General of Canada v. Juliar*,⁴ concluded that there was no reason not to grant relief to the plaintiff under

its equitable jurisdiction to relieve against mistake. MacPherson, J.A. agreed.

The plaintiff was awarded costs before Newbould, J., and in the Court of Appeal.

Heidt and Young then brought a new motion, arguing that the costs orders of the Court of Appeal and Newbould, J. should be set aside, because LAWPRO had agreed to pay the fees of the plaintiff's lawyers, Blake Cassels and Graydon. They argued that because the plaintiff was not obliged to pay fees to Blakes, the plaintiff was not entitled to receive costs from Heidt and Young.

The Court of Appeal disagreed. The fact that LAWPRO was prepared to backstop Blakes' fees was irrelevant. Both courts were entitled to order costs against the real losing parties, Heidt and Young.⁵

Misnomers

If an action is governed by the *Limitations Act, 2002*, the old doctrine of "special circumstances" is no longer available to add parties to an action, where the limitation period against them has expired. Two recent cases demonstrate that "misnomer" can sometimes be used to accomplish this purpose.

Raymond v. Ontario Corporation Number 345404 (Bonik Incorporated).⁶

The Court of Appeal refused to interfere with the approach to s. 21(2) of the *Limitations Act, 2002* – the misnomer provision – taken by Justice I.S. McMillan in his unreported judgment of October 22, 2009.

The plaintiff slipped and fell on an apartment parking lot. Justice McMillan found that the plaintiff intended to sue the company which owned that property. Unfortunately, the plaintiff's solicitor failed to do a title search, and the wrong company was sued.

However, the company that was incorrectly sued was closely related to the company which actually owned the property. It had the same address and common principals. The plaintiff's claim came to the attention of the defendant within the limitation period. The defendant, through its principals, recognized that it was the target of the litigation.

The Court of Appeal dismissed the defendant's appeal.

Gray v. Olco 2010.⁷

The plaintiff slipped and fell at a gas station in Stouffville. He retained counsel immediately.

Counsel issued a statement of claim against Olco without doing a title search, a corporate search, or a business name search.

By the time new counsel did the appropriate searches, and learned the identity of the proper defendants, more than two years had passed since the accident.

Master Muir allowed the amendments on the basis that they corrected misnomers. He concluded that the "litigation finger" was clearly pointed at the defendant, and that a reasonable party in the defendant's position would know that the document referred to it.

The evidence did not disclose any non-compensable prejudice to the defendant. There was no credible evidence that the passage of time from the issuance of the claim until the present hampered the defendant's ability to investigate the claim.

Setting aside registrars' dismissal orders

Setting aside administrative dismissals is the number one area for LAWPRO's repair efforts.

In *Finlay v. Paassen*,⁸ LAWPRO counsel representing the plaintiff obtained an excellent result in the Court of Appeal. The Registrar's order dismissing the plaintiff's action was set aside.

The plaintiff's motor vehicle action had proceeded in a reasonably expeditious way, but for some unexplained reason, plaintiff's solicitor failed to set the action down for trial. The Registrar mistakenly failed to serve plaintiff's solicitor with a status notice. Some months later, the Registrar dismissed the action under Rule 48.14. Plaintiff's solicitor found out about the dismissal order the following month. He drafted a motion to set aside the order, but left the firm without serving it or setting it down for a hearing. He told no one at his firm about the dismissal. The defendants sent several letters to the firm, advising that the action was dismissed. The firm did nothing for two years.

When the firm finally moved to set aside the dismissal two years later, Justice Ramsay refused the relief requested. He focused mainly on the two-year delay in bringing the motion. He made no finding that the defendants had suffered prejudice.

The Court of Appeal allowed the plaintiff's appeal. Up until the time of the service of the status notice, the action had proceeded without any unreasonable delay; the plaintiff's law firm did not deliberately decide not to move the litigation forward. The failure to do so was attributable at worst to sloppiness in the law office during and after the time the lawyer in charge of the file left the firm.

The two-year period was not so long that by itself it warranted denying relief. The defendants did not point to any specific prejudice they would incur if the Registrar's order was set aside. Cumulatively, these considerations outweighed the two-year delay

in bringing the motion and justified setting aside the Registrar's order. It was in the interests of justice to do so. The court stated that: "Speculation about whether a party has a lawsuit against its own lawyer, or the potential success of that lawsuit, should not inform the court's analysis of whether the Registrar's dismissal order ought to be set aside."

The outcome in *Wellwood v. OPP*,⁹ was less fortunate for the plaintiff. The majority of the Court of Appeal upheld the Master's finding that there was unwarranted delay both in prosecuting the action, and in moving to set aside the Registrar's order.

Cronk, J.A. distinguished the court's judgment in *Finlay* on the basis that the delay in *Finlay* was not deliberate. She found that on the evidence in this action, the plaintiff's delay in proceeding with the action and moving to set aside the dismissal order was inordinate, unexplained and not unintentional.

In *Viola v. Tortorelli*,¹⁰ LawPRO counsel successfully relied on the reasoning in *Finlay* and *Wellwood*.

In 2006, the plaintiff sued the defendants for \$85,000 owing on a mortgage. In early 2008, the plaintiff changed solicitors. The second solicitor served, but inadvertently failed, to file a notice of change of solicitor. Because the notice of change was not filed with the court, the second solicitor never received the Registrar's notice of status hearing. The Registrar dismissed the plaintiff's action in December, 2008.

The second solicitor did not receive the dismissal notice, but learned of the dismissal in January, 2009. He brought a motion to set aside the dismissal in September 2009. Master Dash refused the relief sought.

The plaintiff appealed. LawPRO counsel became involved at this point.

Justice Herman, sitting as a single judge of the Divisional Court, concluded that Master Dash made an overriding error when he concluded that the plaintiff had not established inadvertence. Master Dash had, in fact, found that the second solicitor did not receive the status notice due to inadvertence, and that the failure to receive the notice led to the dismissal of the action. Evidence from the first solicitor about whether he did or did not receive the dismissal notice was not necessary.

In the interests of time and costs, Justice Herman substituted her own decision for the Master's. Inadvertence was established. The delays in this case – both with respect to proceeding with the litigation and bringing the motion to set aside the dismissal – were far from desirable. The plaintiff's failure to

move promptly after finding out about the dismissal of the action was particularly troublesome.

At the same time, the delays were not egregious. They were less than the five-year delay in *Marché d'Alimentation Denis Thériault Ltée v. Giant Tiger Stores Ltd.*¹¹ or the 27-month period between the date of dismissal and the serving of motion materials in *Wellwood v. Ontario Provincial Police*.¹² The examinations for discovery were nearly concluded.

Two other factors were key. First, the absence of prejudice will generally favour setting aside the dismissal order. There was no prejudice here. Second, in general, a party should not lose his or her right to proceed due to the inadvertence of counsel.¹³

After weighing the various factors, Justice Herman concluded that the just order was to set aside the Registrar's order dismissing the action.

Conclusion

Like everyone else, solicitors make mistakes. As is true with life generally, prompt remedial action can sometimes eliminate, or at least mitigate, the damage done. LawPRO's experienced repair counsel have frequently salvaged seemingly hopeless cases. In other cases, LawPRO's in-house claims counsel have provided helpful guidance to lawyers seeking to rectify errors. If you have a matter that could lead to a claim, call LawPRO sooner rather than later.

Debra Rolph is director of research at LawPRO.

¹ *TCR Holdings Corp. v. Ontario*, 2010 ONCA 233

² *80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd.*, [1972] 2 O.R. 280 (C.A.), at p. 282

³ *771225 Ontario Inc. v. Bramco Holdings Co.*, (1995), 21 O.R. (3d) 739 (C.A.), at p. 741

⁴ *Bramco*, supra, and *Attorney General of Canada v. Jular*, (2000), 50 O.R. (3d) 728 (C.A.)

⁵ *TCR Holdings Corp v. Ontario*, 2010 ONCA 888

⁶ *Raymond v. Ontario Corporation Number 345404 (Bonik Incorporated)*, 2010 ONCA 214, dismissing the appeal from the unreported judgment of I.S. McMillan, J., Court file C-10064107, Sault Ste. Marie, released October 22, 2009

⁷ *Gray v. Olco* 2010, ONSC 1015, Court File No 08-Cv-347509Pd3, released February 11, 2010 (Master Muir)

⁸ *Finlay v. Paassen*, 2010 ONCA 204, allowing appeal from Ramsay, J. July 2, 2009

⁹ *Wellwood v. OPP*, 2010 ONCA 386, reversing 2009 CanLII 1476 (Ont.Div.Ct.); [2009] O.J. No. 235

¹⁰ *Viola V. Tortorelli*, 2010 CarswellOnt 9219 (Div. Ct.), 2010 OnsC 6148; reversing 2010 ONSC 711, 2010 CarswellOnt 633

¹¹ *Marché d'Alimentation Denis Thériault Ltée v. Giant Tiger Stores Ltd.*, (2007), 87 O.R. (3d) 660 (Ont. C.A.)

¹² *Wellwood v. Ontario Provincial Police*, [2009] O.J. No. 235 (Ont. Div. Ct.).

¹³ *Marché d'Alimentation Denis Thériault Ltée v. Giant Tiger Stores Ltd.*, Supra, at para 28

Resolve: Plaintiffs push the envelope – LAWPRO pushes back

Throughout 2010, plaintiffs attempted to expand the scope of solicitors' liability for defamation, conspiracy, inducing breach of contract, and breach of warranty of authority. They also attempted to establish that novel duties of care were owed to non-clients. LAWPRO was substantially successful in resisting these claims. LAWPRO also enjoyed success in defending negligence claims which arose, in part, from solicitors' failure to fully document their files.

Letter to proposed witness privileged

In *522491 Ontario Inc. v. Stewart, Esten Professional Corporation*,¹ the Divisional Court dismissed a defamation action against Stewart, Esten. The defendant's client, a real estate developer, was involved in a dispute with a second developer about a parcel of land. The defendant sent a draft statement of claim on behalf of their client, with a letter attached, to a town planner. The planner later swore an affidavit which the defendant used to obtain a certificate of pending litigation against the disputed land. The statement of claim was issued the following day. The second developer sued Stewart, Esten for an allegedly defamatory statement contained in the letter.

The Divisional Court held that whether or not the letter contained gratuitously defamatory material, it was written on an occasion of absolute privilege. The decision to litigate had already been made when the communication was delivered, steps had been taken to prepare for the litigation and legal action was commenced shortly after the publication of the statements. The defendant made the communication in the course of its investigation of its client's case, with a view to litigation. The communication was directed to a limited audience, from whom the solicitors anticipated obtaining relevant information. Therefore, the alleged impropriety of the solicitors' motives was irrelevant and could not be the subject of judicial inquiry.

Letter to client's suppliers privileged

The Court of Appeal agreed that a defamation action against solicitor Hertzberger and his firm should be summarily dismissed.²

The insured lawyer's clients purchased a company from the plaintiffs, the Jamals. After closing, the clients believed that the plaintiffs were dealing with the company's suppliers, contrary to the share purchase agreement. The defendant wrote to those suppliers on behalf of his clients, stating that the plaintiffs had agreed not to deal with the suppliers, and asking that the suppliers document any of these dealings. The plaintiffs then launched their defamation action against the defendant.

Using the criteria set out in *1522491 Ontario Inc. v. Stewart, Esten Professional Corp.*, Justice Walters held that even if the defendant's letter were defamatory, it was written on an occasion of absolute privilege. The Court of Appeal agreed.

Scandalous allegations against solicitors punished by the court

In *New Solutions Extrusion Corp. v. Gauthier*,³ Justice Karakatsanis awarded substantial indemnity costs to solicitors wrongfully accused of conspiracy, inducing breach of contract, and interfering with economic relations.

In the underlying judgment,⁴ Justice Karakatsanis had summarily dismissed the plaintiff's action against these solicitors. The statement of claim included scandalous allegations about the solicitors including that they "deliberately and cynically decided to ignore all applicable law when hatching their plan, confident that their behaviour would never face judicial scrutiny." In cross-examination, the plaintiff admitted that it had no evidence to support these accusations; they were based on "assumptions" and were "embellished" by the plaintiff's lawyers.

Taking another firm's client is not actionable

The Court of Appeal agreed that an action brought by the law firm Heydary Hamilton against Hanuka and his firm Davis Moldaver (the defendant) was rightly dismissed (*Heydary Hamilton Professional Corporation v. Hanuka*, 2010 ONCA 881).

The Bawejas retained the plaintiff on October 19, 2007, to assist them with a commercial dispute. The Bawejas eventually terminated their retainer with the plaintiff firm, and hired the defendant, Heydary Hamilton.

The plaintiffs sued the Bawejas for the fees outstanding. They also sued the defendant, claiming damages for conspiracy, inducing breach of contract, unlawful interference with economic interests, and unjust enrichment. The plaintiffs alleged that the

defendant “clandestinely enticed and assisted the [Bawejas] to terminate the [October 19, 2007, retainer agreement] without paying the amounts due and payable to [Heydary Hamilton.]”

The motions judge struck out the claim against the defendant. The court relied especially on *Manning v. Epp*, 2006 CanLII 24126 (ON S.C.); affirmed by the Court of Appeal at 2007 ONCA 390, which supports the absolute right of a client to discharge a lawyer.

Breach of warranty of authority

*Attis v. Ontario (Minister of Health)*⁵ is an extraordinary judgment. It suggests that where a client authorizes a solicitor to commence litigation, but this authority is not fully informed, the solicitor has no authority to commence the litigation and is liable for breach of warranty of authority.

Solicitor B.J. Legge acted for the representative plaintiffs in a class action against the Ontario Minister of Health and the Attorney General for Canada arising from their failure to prevent the marketing and use of breast implants in Canada. This class action was dismissed by Winkler R.S.J., who ordered significant costs against the class plaintiffs. They incurred further cost liabilities to the defendants in their unsuccessful attempts to appeal this judgment.

The solicitor then advised the defendants that the plaintiffs were impecunious.

The attorney general sought an order that the solicitor pay the outstanding costs personally, on the basis that the solicitor breached his warranty of authority. Cullity, J. accepted plaintiff's evidence that the solicitor never explained to them that they faced personal exposure for the defendants' costs, should the class action fail.

Cullity, J. relied on Rule 15.02(4), and/or the inherent jurisdiction of the court in deciding that the solicitor should be liable for the defendant's costs. The plaintiffs had already commenced a negligence action against the solicitor, but Cullity J. said it would be unfortunate if they were required to prosecute a negligence action to get indemnity for these costs.

LAWPRO is appealing this judgment.

Landlord's solicitor not liable to tenant for alleged duress

In *Taber v. Paris Boutique and Bridal Salon; Ambrose (T.P.)*,⁶ the Court of Appeal upheld the motion judge's order striking out a tenant's third party claim against the landlord's solicitor.

The tenant alleged that the solicitor exerted duress on it during a lease dispute – she would not allow the tenant to re-enter the premises unless it signed the minutes of settlement and a promissory note.

The court held that the solicitor was doing nothing more than advancing her client's position. It was plain and obvious that the tenant could not succeed in elevating the solicitor's routine conduct to a level that the law regards as illegitimate.

Solicitor for grantor of power of attorney owes no duty to grantee

In *Barbulov v. Huston*,⁷ Newbould J. summarily dismissed the plaintiff's action against solicitor Huston. He held that the defendant, who prepared a power of attorney for the plaintiff's father, owed no duty of care to the plaintiff, the grantee of the power of attorney for personal care.

The plaintiff spent \$30,000 in legal fees unsuccessfully appealing a decision of the Consent and Capacity Board concerning his father's treatment plan. The plaintiff alleged that the power of attorney did not reflect his father's wishes, and that the defendant was responsible for these costs.

Newbould, J. held that a solicitor advising the grantor of a power of attorney owes no duty of care to the attorney. Such a duty of care could conflict with the solicitor's duty to the grantor. The defendant did not undertake to look after the plaintiff's interests; he was concerned solely with the interests of the plaintiff's father.

Newbould J. further stated there is no need to create a separate duty of care owed by the grantor's solicitor to the attorney. An attorney is entitled to reimbursement from the grantor for all expenses reasonably incurred by the attorney in the course of his duties. After reimbursing his attorney for these expenses, the grantor may sue his solicitor to recover them, if they were incurred because of the solicitor's negligence.

In any event, the court was not satisfied that the power of attorney did not reflect the grantor's wishes.

Duty potentially owed to disappointed beneficiary, but duty not breached

Justice Mulligan found that solicitor Riffert was not liable to the plaintiff Sarah McCullough, a “disappointed beneficiary,” where the testator, Robert McCullough, died without executing the will the solicitor had drafted.⁸

Robert McCullough died just 10 days after visiting solicitor Riffert to give instructions for a will, which would have left his entire

estate to the plaintiff, his niece. The issue in the plaintiff's claim against the solicitor was whether the solicitor was negligent in not obtaining the execution of the will before Robert died.

The solicitor met with Robert within one week of the plaintiff's requesting an appointment on his behalf. Robert walked into the solicitor's office and expressed no urgency other than a desire to complete the will before a proposed trip to Texas. Robert had not seen a doctor recently and there was no diagnosis that he was subject to a terminal illness.

Three days later a draft will was prepared and sent to Robert for review. The solicitor noted on the file that the will was to be signed by February 29, 2010, – about two and a half weeks after the initial interview. Robert's death on February 21, 2010, was completely unexpected.

Justice Mulligan held that there may be circumstances where a solicitor is obliged to prepare a will immediately. While visits to a hospital, nursing home or a palliative care centre will give rise to greater urgency, especially when the lawyer has medical advice that the client is terminally ill, Justice Mulligan was not satisfied that, on these facts, the solicitor fell below the standard of care.

Solicitors must protect themselves against their clients

In *Hall v. Watson*,⁹ the plaintiff Hall unsuccessfully appealed Justice Crane's dismissal of her negligence claim against solicitor Watson. The plaintiff transferred her home to the St. Joseph's Villa Foundation, but retained a life estate in the home. The defendant acted for her on this transaction.

The plaintiff alleged the defendant did not advise her of the nature of the transfer. The plaintiff claimed that she had no intention of transferring the property to the Foundation in her lifetime, but rather intended to make a bequest in her will.

Justice Crane concluded that the defendant was a conscientious and competent solicitor. The only fault Justice Crane found with the defendant's conduct, if it was a fault, was that he did not adequately protect himself against the plaintiff's change of mind. This observation was tempered by the fact that the plaintiff was a strong-willed, intelligent woman who knew what she wanted.

Lawyers must be prepared to defend their competence and integrity with documentation, including personally written memoranda, signed acknowledgements and instructions and directions from their clients. Even so, there are limitations to what the defensive practice of law can achieve – the plaintiff denied receipt of 32 documents delivered to her by Canada Post and the defendant.

Saved by third party witnesses

In *Dinevski v. Snowdon*,¹⁰ Dinevski unsuccessfully sued solicitor Snowdon who had acted for him on the sale of his property to Tim Hortons Inc, and on the lease back of part of it to the plaintiff. The property lease back contained a restaurant, Texas Grill, which the plaintiff had operated for several years before the sale.

The plaintiff complained that the lease back did not allow for a second, five-year renewal term at the same rent as the first term, and did not allow the plaintiff to assign the lease, which meant that he could not sell Texas Grill.

The court found that the defendant discussed these issues with the plaintiff prior to the sale, who understood them. The plaintiff had no realistic choice but to sell the property to Tim Hortons, since the property was heavily mortgaged, and the plaintiff owed substantial back taxes.

Tim Hortons was not prepared to maintain rent at the same level for 10 years. Tim Hortons intended to build its own restaurant, and wanted to see a high-traffic franchise next door to it. It wanted the Texas Grill wound down, not sold to another operator it did not control.

Evidence from Tim Hortons' solicitor and its real estate manager established that Tim Hortons' position on these issues was inflexible. There was nothing the defendant could have done to alter them. The court dismissed the plaintiff's claim.

Conclusion

In 2010, plaintiffs' efforts to create new bases for legal malpractice liability continued unabated, as did their efforts to exploit deficiencies in solicitors' file documentation. LawPRO demonstrated its determination to resist these claims, and enjoyed considerable success in doing so.

Debra Rolph is director of research at LawPRO.

¹ 1522491 Ontario Inc. V. Stewart, Esten Professional Corporation, 2010 ONSC 727 (Div.Ct.); reversing 2008 CanLI 63198 (ON.S.C.); leave to appeal to the Divisional Court 2009 CanLI 15656 (ON S.C. Div.Ct.)

² Jamal and Jamal v. Hertzberg, 2010 ONSC 2362; affirmed 2010 ONCA 794

³ New Solutions Extrusion Corp, v. Gauthier, 2010 ONSC 1897

⁴ New Solutions Extrusion Corp, v. Gauthier, 2010 ONSC 1037; appeal dismissed 2010 ONCA 348

⁵ Attis v. Ontario (Minister of Health), 2010 ONSC 4508

⁶ Taber v. Paris Boutique and Bridal Salon; Ambrose (T.P.), 2010 ONCA 157, dismissing appeal from 2009 CanLI 48500 (ON S.C.)

⁷ Barbulov v. Huston, 2010 ONSC 3088

⁸ McCullough v. Riffert, 2010 ONSC 3891

⁹ Hall v. Watson, 2010 ONCA 839

¹⁰ Dinevski v. Snowdon, 2010 ONSC 2715

Recoveries:

Leaving no stone unturned

LAWPRO may not be able to control the types and scope of claims reported by insureds. But we can, and do, actively pursue our rights of recovery on files, as the following summaries of some of our successful files from 2010 indicate.

A repair and recovery

The insured lawyer's clerk inadvertently sent documents of a confidential nature to opposing counsel. This triggered the underlying proceeding between two brothers over a shotgun provision in a shareholder's agreement. The insured, who acted for the defendants in that underlying proceeding, in effect repaired the situation by successfully pursuing summary judgment which was upheld on appeal. We paid the insured for that repair initiative. Costs of more than \$248,000 were awarded in favour of the defendants, which were recovered and paid to LAWPRO.

Recovering on a fraud

In this case, an insured lawyer was retained by a lender claimant in relation to a mortgage of \$740,000 on a piece of vacant land. The mortgage proceeds were issued to counsel retained by the purported owner of the property/borrower. Borrower's counsel then issued separate certified cheques to several numbered companies for the amount of the mortgage proceeds.

The borrower was a fraudster; the true owner of the property resided abroad and knew nothing about this mortgage. The mortgage broker who had arranged the financing did not complete his due diligence and arranged the mortgage after accepting only two pieces of identification and without confirming the borrower's identity.

The claimant discharged the mortgage (because a fraud was proven) in exchange for an acknowledgment that LAWPRO would pay its claim.

The insured in this case was liable because he had failed to ensure that the lender claimant's request for a title insurance policy was fulfilled in time. Had title insurance been obtained, the claimant's loss would have been covered by the title insurer.

LAWPRO paid out more than \$750,000 (\$740,000 plus costs and interest) to the lender claimant on behalf of the insured lawyer, and compensated the true owner of the property for costs associated with this fraud. LAWPRO successfully pursued the broker for the return of his \$20,000 fee, and has since recovered \$275,000 from two banks through which the cheques to the numbered companies were issued.

The case of the sick ship

An insured lawyer failed to issue a statement of claim within the two-year limitation period applicable as per the "Athens Convention." The claim was against a cruise ship owner for damages arising as a result of the cruise ship's failure to warn of an airborne disease in existence on the boat, resulting in lasting illness. LAWPRO paid out more than \$200,000 to settle the claim and took an assignment of the claimant's cause of action against the tour operators. The subrogation/recovery proceeding was settled at mediation with LAWPRO recovering 100 per cent of its indemnity and defence costs.

Estate taxes come back to bite

An insured lawyer acting on the administration of an estate gave the estate executor permission to make an interim disposition of the estate's assets; although the insured lawyer knew that there would be a significant tax liability because of the deemed disposition on death, the insured held back only \$12,000. The majority of the deceased's assets were in RRSPs. Subsequently the insured received the tax return prepared by the accountant which showed \$90,000 owing – plus interest and penalties. LAWPRO paid out just over \$103,000 but was able to recover more than \$76,000 from the overpaid beneficiaries.

Pursuing the fraudster can pay

An insured lawyer's client provided the lawyer with an altered certified cheque representing purchase funds in a transaction. The original cheque for \$160 became \$160,000. There was no mortgage financing and the insured's client had title to the subject property. Once the fraud came to light, LAWPRO arranged for a no-dealings indicator to be registered on title; working with the insured, LAWPRO also arranged to cover the shortfall in the insured's trust account. The fraudster sold the property and repaid the \$160,000 so that we were fully compensated (with the exception of LAWPRO expenses).

Pursuing the vendor

In this file, the insured lawyer, acting for a vendor in a real estate transaction, failed to discharge a mortgage and released the funds to his vendor client instead. LAWPRO settled with the title insurer on the transaction for \$55,000. LAWPRO also pursued the vendor and settled with that individual on a recovery claim for \$70,000.

Adapting to changing times: Service

E-filing history now available online

To address individual lawyer and law firm needs for more information on electronic filings, LAWPRO in 2010 expanded the data available online in the confidential [MY LAWPRO](#) section of the [LAWPRO website](#). Lawyer and law firm e-filing records for the past five years are now available through this section of the site, making it fast and easy to access filing data and verify filing obligations have been met.

High rate of online filing: No paper applications will be mailed for the 2012 policy year

About 97 per cent of lawyers' renewal applications (for 2011) were filed online through the MY LAWPRO section of our website in 2010. As a result of the wide-spread success of the online renewal program, LAWPRO will stop mailing out paper applications – which has cost the company approximately \$7,000 each year in mailing costs. Pre-populated application forms will still be available online for the 2012 renewal season. Lawyers who do not wish to file their application online will be able to print their pre-populated renewal application from the website to be emailed, faxed or mailed in.

Decreased call/correspondence volume attributed to more information online

Call volume into the Customer Service Department was down about seven per cent compared to 2009 (41,953 phone calls were made or received in 2010.) Our customer service representatives also sent out 23,645 pieces of correspondence (email, fax and regular mail) about a nine per cent decrease from the year before. At the same time, use of our website and its many self-help features is up about 10 per cent in 2010 compared to 2009. Additional initiatives in this vein are planned for 2011.

Enhancing our French-language resources

In 2010, our customer service and TitlePLUS departments worked hard to take advantage of our bilingual in-house staff. Efforts to serve lawyers in the language of their choice continue, and in 2010 French language versions of the Insurance Matters booklets (a series of booklets explaining coverage for lawyers on different forms of exemption) were released and are available online. For 2011, application forms for optional innocent party buy-up and run-off coverage will be made available in French. This will complete our commitment to provide all materials related to the mandatory insurance program in both official languages.



Greater promotion of Excess Insurance to small-to-medium firms

In 2010, LAWPRO expanded efforts to help lawyers determine their need for increased coverage – and to consider [LAWPRO's Excess Insurance](#) option as their preferred supplier.

A record 1,448 firms representing 3,768 lawyers elected LAWPRO as their excess insurance provider for 2010. As of January 1, 2011, the number of firms insured under the LAWPRO Excess program increased to 1,468, representing 3,772 lawyers.

Of 57 new firms opting to buy excess coverage from LAWPRO for 2011, 84 per cent did not previously carry excess coverage. LAWPRO's retention rate on excess business was 97 per cent for the second consecutive year, a clear indication that this program meets the needs of the market it is aimed at: small and medium-sized firms of fewer than 50 lawyers. LAWPRO's excess program insures, on average, 15 per cent of lawyers employed in firms of 50 or fewer lawyers.

Excess claims

To date, we have not paid any indemnity amount under LAWPRO's Excess program, a reflection of our ability to carefully manage costs within the insurance program's primary limits. However, a few of our Excess claims files have reserves on them. Prudent underwriting and solid claims management have helped ensure that our Excess program is a profitable line of business for the company.

Adapting to changing times: Coverage

The following changes to program coverage implemented in 2010 were covered in some detail in our 2009 Year in Review issue of LAWPRO Magazine. Highlights are as follows:

Limited overdraft protection for counterfeit certified cheques and bank drafts

To improve the protection against the increased use of fraudulent cheque scams targeting lawyers, LAWPRO in 2010 implemented – as part of its standard coverage – a limited overdraft protection coverage for lawyers' exposure arising out of counterfeit certified cheques and bank drafts. Attached to this coverage is a "best practice" requirement. LAWPRO continues to work with various parties to find ways to reduce lawyers' exposure to counterfeit certified cheques and bank drafts, and to facilitate access to the Large Value Transfer System (for more details see "Leadership and service at work" on page 26).

Mobility with Quebec

The insurance program was adapted to reflect the Barreau du Québec's ability to grant special Canadian legal advisor (CLA) permits to members of other Canadian law societies, which recognizes these lawyers as full members of the Barreau with restricted practice status. Ontario lawyers practicing in Quebec now have full coverage for their services as a CLA.

Lawyer misappropriation during mobility

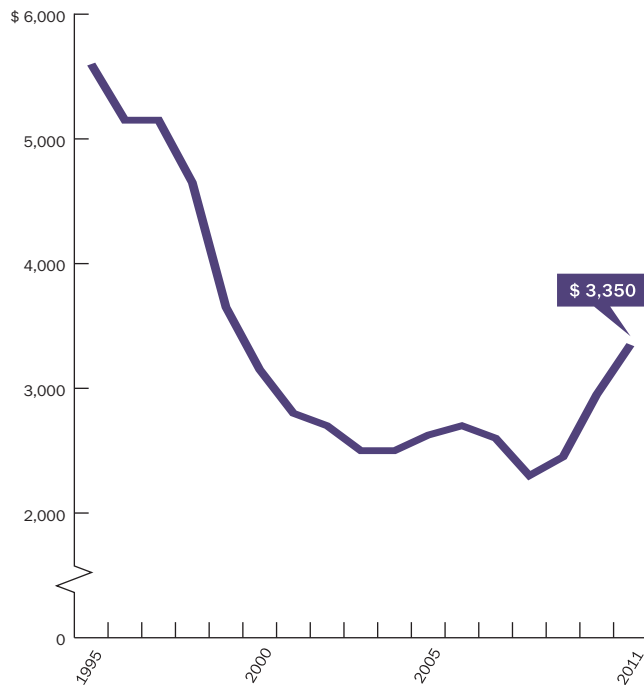
To satisfy new requirements under the National Mobility Agreement designed to better protect clients and others, we adapted the standard insurance program to provide coverage for misappropriation by Ontario's practising insured lawyers when exercising their temporary mobility rights in another Canadian jurisdiction.

Tailored Coverage Option

One of the hallmarks of the LAWPRO E&O insurance programs is its flexibility. As this chart shows, lawyers have many options to tailor their coverage to their specific needs. And every year more lawyers take advantage of these options.

Coverage Option	Feature	No. of lawyers participating (as of Jan. 31, 2010)	No. of lawyers participating (as of Jan. 31, 2011)
New call discount	10-40 per cent base premium discount for those called in the last one to four years	3,592	3,786
Part-time practice	40 per cent base premium discount for eligible lawyers	1,442	1,466
Restricted area of practice option	40 per cent base premium discount for immigration/criminal law practitioners	1,320	1,343
Innocent Party buy-up	Increase in Innocent Party sublimits up to as much as \$1 million per claim/aggregate	3,193 (based on \$249/lawyer)	3,268
Run-off buy-up	Increase limits for past services from \$250,000 per claim/aggregate to as much as \$1 million per claim/\$2 million aggregate	772	867
Real Estate practice coverage	Required for all lawyers practising real estate law. Sublimit coverage of \$250,000 per claim/\$1 million aggregate	7,093	7,171

Base premium per lawyer



Locums

LAWPRO updated its program materials to offer guidance on the insurance issues that lawyers and law firms should consider if hiring or acting as a locum. These changes were made in support of the Law Society's support of practice locums.

Premium changes

As indicated in the accompanying graph, the base premium for 2010 was increased to \$2,950 and a further \$400 to \$3,350 for 2011.

Premiums for Real Estate Practice Coverage were reduced to \$400 per lawyer from \$500 in 2010 – reflecting the projected claims experience for this coverage which is required for all lawyers practicing real estate and provides coverage for fraud by the lawyer.

The significant increase in real estate claims costs (see discussion on page 7 of this report) prompted an increase in the real estate transaction levy to \$65 per transaction, effective January 1, 2010.

Changes were also made to the e-filing and lump sum payment discounts, prompted by the consistently high level of online filing and the cost to the company of providing these discounts. The e-filing discount was reduced to \$25 and the lump sum payment discount to \$50 effective with the 2010 program year.

A \$450 per lawyer levy to make up the \$10 million shortfall that the harmonized sales tax would have imposed on LAWPRO's reserves was not implemented and will not be required going forward. Money to make up the shortfall flowed from the Law Society's E&O Fund under the retrospective premium provisions. In turn, the mid-year settlement of the Law Society's litigation with Ernst & Young and Tillinghast (related to services those firms provided with respect to the Law Society's insurance program between 1991 and 1994) helped to replenish the E&O Fund.



Mark your calendar now

Renewal applications for the 2012 Policy year will be accepted online starting on or about October 3, 2011.

No more paper applications in mail

Please note that LAWPRO will not be mailing out paper renewal applications for the 2012 Policy year. If you do not wish to file online, pre-populated renewal application forms will be available for download on or about October 3, 2011.

Risk management that's relevant



Top website downloads for 2010

Article or Item	Downloads
Sample Budget Spreadsheet	8,184
Business Plan Outline (from <i>Managing the Finances of Your Practice</i> booklet)	5,994
E-Discovery Reading List	4,647
General Retainer Letter Precedent	4,200
Limitations Act Comparison Chart	3,085
Managing the Finances of Your Practice Booklet	2,811
Employee Departure Checklist	2,587
Capacity Assessment Article by Judith Wahl	2,503
Essential Smartphone Apps for Lawyers	2,143
LAWPRO Fraud Fact Sheet	2,098

If there was one recurring theme for the practicePRO group in 2010 it was fraud – specifically helping keep lawyers abreast of the latest fraud scam.

Within minutes of updating practicePRO's AvoidAClaim blog with information on the latest fraud artist and his or her *modus operandi*, Director Dan Pinnington would field dozens of calls and emails from lawyers seeking guidance on whether or not they too were being targeted.

"It's becoming increasingly difficult to just stay on top of the many variations of the bad cheque collection fraud schemes now out there. And as they seem to be getting more sophisticated with better language and more realistic information, we're having to spend a lot more time helping insureds decide if these are indeed frauds or in fact potential legitimate clients," explains Pinnington. (For more information on fraud see "[Frauds in 2010: An update and a warning](#)" on page 9.)

But fraud is only one topic that practicePRO addressed in 2010 as part of its ongoing drive to keep lawyers abreast of the latest news and trends in risk management, practice management and legal technology news. And the blog is but one tool in the practicePRO roster of risk and practice management resources.

Presentations

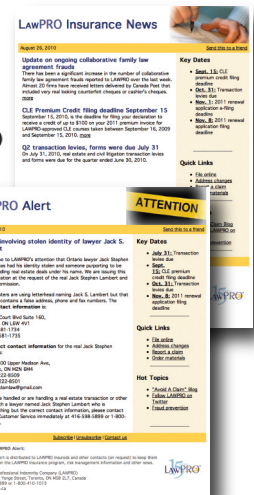
practicePRO also delivered 35 presentations on risk management topics to law associations, law firms and continuing professional development programs in Ontario, other provinces, and the United States. A popular initiative are firm-specific presentations on claims avoidance using the firm's own unique claims statistics. As well as sparking discussion on how to avoid claims, these sessions are an opportunity for partners, associates and firm staff to get a better understanding of LawPRO's

claims handling process. (To book a presentation for your firm, email dan.pinnington@lawpro.ca)

In his role as co-chair of the 2010 Canadian Bar Association annual conference and co-chair of the Law Society of Upper Canada/Ontario Bar Association's annual Solo and Small Firm Conference, Pinnington also ensured that the practicePRO risk management message was on the agenda. LawPRO also lent its expertise on claims and risk management to the CBA Conflicts of Interest Task Force and played a leading role in the development of a model file retention policy for large law firms. As well, its submission to the Law Society on the challenges of unbundled legal services addressed the potential liability issues that this new approach raises.

Publications

Complementing these activities are [LawPRO Magazine](#) – our flagship risk management publication which provides regular analysis of claims trends, claims risks in various practice areas and coverage for various practice trends (e.g., outsourcing, practice of foreign law); the [AvoidAClaim blog](#) which in 2010 featured more than 50 posts (15 of them on fraud); our electronic publications ([LawPRO Webzine](#), [Insurance News](#) and [Alert](#)) which keep lawyers up to date with all matter of insurance, practice and risk management information; and our increased use of social media channels such as [Twitter](#) and [LinkedIn](#).



CPD

During 2010 practicePRO accredited 184 programs for the CPD Premium Credit (formerly CLE Premium Credit) through which lawyers taking LawPRO-approved

CPD programs receive a \$50 per course credit on their following year's insurance premium (to a maximum of \$100 per lawyer). The programs were attended more than 24,000 times by lawyers.

Website

In 2010 the practicePRO website recorded just over 90,000 unique visitors. Lawyers downloaded more than 280,000 copies of our articles and resources, a 47 per cent increase compared to the previous year.

Tim Lemieux is practicePRO coordinator at LawPRO.

LAWPRO Magazine: Highlights of 2010

The following are summaries of the practical, topical risk and practice management information that LAWPRO shared with lawyers through its flagship publication, *LAWPRO Magazine*, in 2010. You can access these issues at www.practicepro.ca/magazinearchives.

May/June 2010 – Year in Review

Practice Tip

How to avoid confusion (and claims) when making charitable bequest and common real estate pitfalls to avoid.

Casebook: Absolute privilege

Debra Rolph, LAWPRO director of research, examined the defence of absolute privilege in advance of litigation.

September 2010 – Risky Business: Pitfalls in practice today

Practice pitfalls

LAWPRO's claims team shared insights into malpractice hazards in the different areas of practice.

A systemic approach to law firm risk management

A description of how a structured approach can help firms mitigate risk stemming from its two principal assets – clients and its own lawyers.

Danger signs: Five activities generally not covered by your LAWPRO policy

A look at the evolving activities that lawyers tend to engage in which do not fall within LAWPRO policy coverage.

Practice Tip

We looked at franchise law tenet (disclosure, disclosure, disclosure!) and the risks of title insurance sublimits.

Casebook: Limitations

Debra Rolph examined the *Limitations Act, 2002*, as a “catch-all” statute.

December 2010 – File retention

File retention: What and for how long?

Dan Pinnington provided direction on how long to keep files, and discussed why a file retention policy is a must for law firms.

Foreign law or lawyers: what is and is not covered?

A mobile, global society means lawyers are more likely to come up against situations involving dealings with foreign lawyers and foreign law. We examined the coverage implications and provided guidance on how to proceed.

Cross-border selection of lawyers

What happens when the lawyer you hire outside the country makes an error? Senior Claims Counsel Jennifer Ip examined the concept of negligent referral – and how to avoid being caught in the crossfire.

Title insurance: More than meets the eye

LAWPRO president and CEO Kathleen Waters outlined the challenges that title insurance presents.

Real estate claims and trends

We offered an in-depth analysis of the common errors that cause real estate claims and a look at why they exist in a title-insured world.

Separating fact from fiction on title insurance

LAWPRO claims counsel dispelled myths about title insurance.

Not the panacea lawyers had hoped for

Debra Rolph examined cases involving LAWPRO and title insurers and the agreement between title insurers and the Law Society to indemnify and save harmless.

Casebook: Fiduciary duty

We examined if lawyers owe a fiduciary duty to their office managers.



Getting the message out

With real estate markets still in flux for much of 2010, the TitlePLUS team focused on building the program's base and providing lawyers, lenders and realtors with a first-hand look at TitlePLUS technology and the benefits of the program.

The consultant team presented to more than 100 lenders and realtors, visited close to 2,500 law firms to reinforce to law clerks and lawyers the benefits of the TitlePLUS program, and hosted or exhibited at 135 events to build the TitlePLUS profile.

In addition, the consultants undertook close to 1,500 house calls to train, re-train and showcase TitlePLUS technology to subscribers and their staff. The goal: to ensure these firms are familiar with the TitlePLUS program and encourage their clients to choose TitlePLUS coverage more often.

Supporting the TitlePLUS consultants' efforts were an ad campaign in 35 publications and websites nationally, and a public education campaign that emphasizes the value of a lawyer in a real estate transaction – but also drives traffic to the TitlePLUS website. The campaign and related media coverage reached about one million households nationally, generating positive media coverage for the TitlePLUS program and real estate lawyers in major national print and electronic media as well as extensive coverage in community newspapers. (For details, see "[Leadership at work](#)" on page 26).

These efforts yielded mixed results, with the program posting solid results in some regions and in some areas (e.g., commercial properties) while posting weaker results in others. Overall, the program ended the year with a modest decrease in gross written premiums compared to 2009, and a slight decline in national market share.

However, efforts of the TitlePLUS team paid off on other fronts. The program ended the year with a subscriber base of more than 4,700 lawyers and Quebec notaries. TitlePLUS policies were issued for 790 lenders in 2010 – a solid base on which to build in 2011. And while the sales and marketing team is redoubling its efforts to build on this base for the coming year, the underwriting group is focused on developing new initiatives that will reign in claims costs.



Metrics that matter: TitlePLUS program (national numbers)

Number of subscriber lawyers	4,741
Number of new subscribers in 2010	216
Number of lenders using TitlePLUS insurance	790

Information/marketing presentations (to lawyers, lenders, realtors)	2,587
House calls (training and assistance to law firms)	1,475
Events, sponsorships, exhibits	135

Claims reported (2008*)	419
Claims costs (2008*)	\$5.12 million +
Claims paid ratio (since program start)	40%

** Because of the lag in time between when a TitlePLUS policy is sold and a claim on that policy recognized and reported to LAWPRO, claims statistics for the most recent years are incomplete; more reliable data is available for fund years that are at least 24 months old as of the end of 2010.*

+ Projected gross TitlePLUS claims case costs

Compliance claims a challenge



After purchase, a homeowner notices that the foundation of his house is settling badly. A city inspector determines that the previous owner's installation of a sump pump was done without a permit and was washing away soil each time it was used. Subsequent attempts at 'fixing' the problem apparently made the situation worse. Now the current homeowner is faced with a municipal work order to bring the property into compliance. The TitlePLUS investigation reveals there will be major costs for adjusters, contractors and accommodation for the displaced family. In the end, the full amount of the policy (more than \$150,000) is paid out.

This example will be familiar to those who read our analysis of [TitlePLUS claims trends](http://www.practicepro.ca/LawPROmag/titleplus_claims2010.pdf) (www.practicepro.ca/LawPROmag/titleplus_claims2010.pdf) in a recent issue of *LAWPRO Magazine*, as well as the article "[Reining in compliance costs](http://www.practicepro.ca/LawPROmag/TitlePLUSBuilding.pdf)" (www.practicepro.ca/LawPROmag/TitlePLUSBuilding.pdf) in which we discussed compliance claims in the TitlePLUS portfolio.

Building compliance claims continue to be the major source of claim costs in the TitlePLUS program. In 2010, these types of claims accounted for close to 50 per cent of all TitlePLUS claims costs, compared to 44 per cent of costs and 22 per cent of claims reported in 2009. Since 2000, the TitlePLUS program has recorded more than 850 building compliance claims, costing a total of \$13.1 million (payments plus reserves on claims in progress).

Fortunately, it remains true that about 90 per cent of TitlePLUS claims are resolved for less than \$10,000, with the average indemnity payment on a claim being only \$4,650. Most TitlePLUS claims are tax and utilities arrears that are closed for an average cost of \$1,400.

There is also good news on the fraud front. In 2009 and 2010 only a few claims with a fraud component were reported, representing a total cost of less than \$500,000. This result is significantly better than in the 2005 to 2008 period during which we saw more than \$4 million in costly fraud claims.

Vigilance also paid off in claims avoided: The TitlePLUS underwriting group declined to issue policies on four transactions suspected for fraud in 2010, avoiding potential losses of about \$440,000. As well, the insertion of a grow house exception in specific TitlePLUS policies reduced our potential claims exposure by more than \$1 million.

The decrease in fraud claims can be attributed to a determined effort by TitlePLUS staff to identify fraud flags and communicate this information to lawyers using TitlePLUS insurance. “Lawyers and their staff have been attentive and proactive with the information,” says TitlePLUS Vice President Ray Leclair. “Listening and adjusting law practice accordingly has made all the difference.”

Over the history of the TitlePLUS program, the claims-paid ratio (the ratio of claims paid to premiums) stands at 40 per cent.

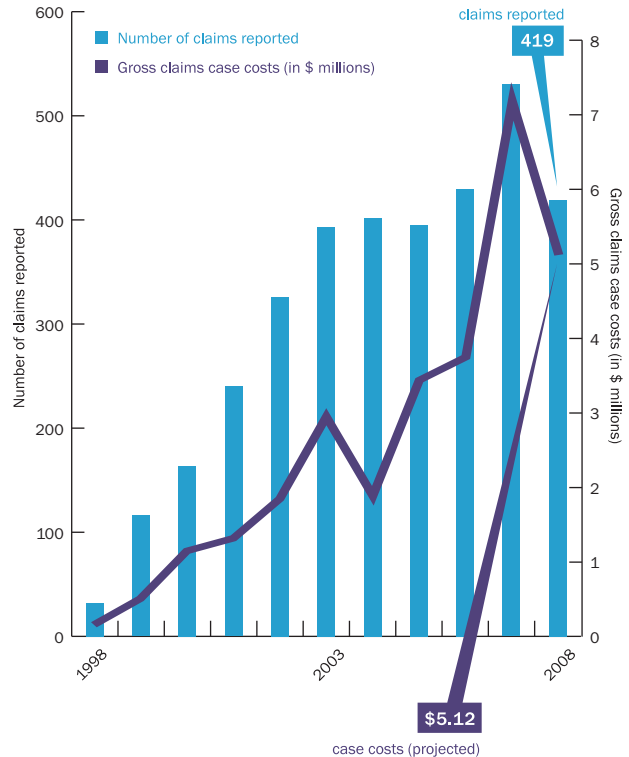
Compliance: a new approach to an industry problem

However, building compliance claims continued to affect the program to such an extent that certain underwriting changes were made to the program. After soliciting feedback from subscribers and users, changes were made to TitlePLUS underwriting that will make the program more appealing while at the same time addressing cost concerns. “It’s always a struggle between best practices versus an easy program,” says Leclair.

Other title insurers facing the same issue of escalating compliance costs chose to cap coverage by implementing a lower sublimit for claims arising out of compliance issues. “This is not the LawPRO approach,” says Leclair. “We view the building compliance claims problem as a multi-party issue: Clients don’t want claims; lawyers get blamed for not solving the problem beforehand; municipalities lament the lack of information provided to homebuyers; and we have to deal with the claims.”

The TitlePLUS way was to approach the problem on several fronts. A new pilot project to automate the process of identifying potential compliance issues is now being developed in one municipality. This initiative will get information from the municipality to lawyers (and their homebuyer clients) more quickly and earlier in the process, so that informed decisions can be made prior to purchase. “We prefer to take a leadership role to resolve this problem for all parties, and not just for ourselves,” says Leclair.

TitlePLUS claims (as at February 28, 2011)



As well, the TitlePLUS policy – which has always contained exceptional building compliance coverage not included in the policies of competitor title insurance companies – has been amended to bring the coverage into line with that offered by competitor title insurance providers.

The TitlePLUS application also has been streamlined to address issues that are no longer relevant (e.g., the elimination of the “whole of a lot definition”) or have proven to be problematic, such as questions related to renovations. “It was difficult for lawyers and their clients to respond to this question with any good solid information given the time constraints of a real estate transaction,” says Leclair.

The TitlePLUS department will be closely monitoring the effects of these changes and will continue to welcome feedback from subscribers and users. Additional underwriting changes may yet be made, and in the months to come there will be new initiatives to help lawyers provide their homebuyer clients even more value and protection through the TitlePLUS program.

As well, the TitlePLUS claims team has stepped up its recovery initiatives as well as salvage opportunities; about 100 claims in the TitlePLUS portfolio are in promising stages of recovery.

Tim Lemieux is practicePRO coordinator at LawPRO.

Leadership and service values at work

Service at LAWPRO means more than assisting lawyers on the phone or providing guidance to those with a concern or potential claim. For LAWPRO employees, service also means sharing our knowledge, expertise and experience – to help identify, prevent and solve problems. Closely related is the emphasis we put on leadership: We are responsible corporate citizens who strive to make the world a better place, and to that end, lend our energy and expertise to many communities.

How do we put these values to work? Through a many-faceted outreach initiative that, in 2010, included a strong presence at legal seminars, workshops and conferences; participation on task forces and other legal-related consultations; a ramped up government relations effort to ensure lawyers' voices are heard in regulatory circles; and continued support for a healthy and diverse bar and community.



Working WITH lawyers

To get risk management information to lawyers and keep a pulse on the issues facing the profession, LAWPRO employees chaired or spoke at dozens of events, panels and seminars in 2010. Our staff also are involved with more than 50 legal-related organizations, committees and task forces – an indication of the importance that we place on outreach to the legal community.

“Being involved outside the company is a great way to reach out to lawyers,” says Lori Swartz, TitlePLUS legal consultant. “We can keep current on the issues lawyers face and get risk management information to them.” Swartz, who co-chaired the Ontario Bar Association (OBA) Annual Institute program on real estate in 2010 added, “Many lawyers wouldn’t have any interaction with us otherwise.”

Other events in which LAWPRO participated in 2010 were the Canadian Bar Association (CBA) annual conference, the conference of the International Bar Association, the Law Society’s “Six-Minute” lawyer series, and various CBA and Ontario Bar Association seminars and conferences.

As a result of our work with these organizations, LAWPRO employees are viewed as a resource and often are invited to consult on projects designed to help the profession. This participation, in turn, ensures a strong

risk and practice management component is included in these resources. For example, Dan Pinnington, director of practicePRO, was asked to participate on the CBA’s Conflicts of Interest Task Force. Pinnington helped create the “Avoiding Tactical Conflicts” guide and “First Contact Screening Form,” both of which are included in the [CBA’s Conflicts Toolkit](#).

Through Pinnington, LAWPRO also played a major role in the development of a model file retention policy for large law firms, contributed to the Law Society’s [Guide to Retention and Destruction of Closed Client Files](#) and prepared a submission to the Law Society on the challenges of unbundled legal services.

Working FOR lawyers

LAWPRO continues to raise fraud awareness, and collaborate with others to find solutions to the issues raised by fraud. To that end, we have increased the anti-fraud campaign on our [Avoid A Claim](#) blog, in the [LAWPRO Magazine](#) and through social media. For more on this subject see *Frauds targeting lawyers in 2010: An update and a warning* on page 9.

As well, LAWPRO and the Law Society are working with representatives of a number of financial institutions and the Canadian Payments Association (CPA) on the issue of timely and safe money transfers. While the CPA’s large value transfer system (LVTS)

offers real-value and near real-time transfers, there are issues to be considered, such as:

- unavailability of LVTS for certain transactions,
- lack of consistent level of service across banks and branches,
- possible time lags between sending and receipt of funds, and
- associated bank fees.

For the past several years, we have been stepping up efforts to represent lawyers' interests in key government and regulatory circles.

Although our efforts in 2009 to obtain indirect tax relief for premium-paying lawyers on the implementation of a harmonized sales tax did not achieve the desired result, we did become recognized as a go-to source of information on matters affecting the bar – a profile that we continued to build in 2010.

LawPRO executive met with various members of the Ontario legislature and attended a select number of functions to strengthen our visibility. In 2011, we will continue these efforts to educate and inform government officials addressing, among other topics, the importance of real estate lawyers in small rural communities.

Our goal is to foster understanding of the pivotal role of the general legal practitioner in smaller communities – and of the critical role that real estate transactions play in making a general practice in these communities viable.

"It boils down to an access to justice issue," says Kathleen Waters, president and CEO of LawPRO. "If real estate is taken out of the equation, many lawyers won't necessarily be able to afford to keep their lights on, which could leave some communities without a lawyer at all."

TitlePLUS consumer education campaign

This message was not strictly directed towards government officials. Through our TitlePLUS program, we continued to raise awareness among homebuyers about the importance of using a lawyer when buying or selling property.

In 2011, LawPRO continued its two-pronged media campaigns to help educate consumers about the importance of working with a lawyer.

First, LawPRO produced a series of articles distributed via a news wire and picked up by dozens of community newspapers, real estate sites and general news websites; topics covered included: issues to consider when buying recreational (cottage) property; how lawyers can help when a client is refinancing; drawing up a power of attorney; buying from an estate; and real estate fraud.

Through this campaign, we reached more than six million French and English speaking Canadians, and the underlying message

was always clear: Working with a lawyer is the best way to protect your interests.

Complementing these articles were multiple media releases that featured Ray Leclair, vice-president of TitlePLUS, speaking on real estate fraud or the importance of building permits.

Media also regularly requested comment on a wider range of real property-related topics (e.g., home inspections, rental properties, land permits) – an indication of the credibility LawPRO and the TitlePLUS program now have with key media contacts nationally.

The campaigns generated coverage in major national newspapers and on the Web, and reached an estimated four million Canadians. See "How your lawyer can help: TitlePLUS public awareness campaign" on the next page for more details.

Working for the community

Anecdotally, lawyers in distress (e.g., from substance abuse, mental health issues, or other illnesses) are more likely to have a malpractice claim. With this in mind, LawPRO continues to fund the [Ontario Lawyers Assistance Program](#) (OLAP) which offers confidential, one-on-one peer support for the legal profession. As well as providing 50 per cent of OLAP's funding, LawPRO helps OLAP by providing two members of our executive team to sit on the OLAP board. Our OLAP contribution is the single largest charitable donation LawPRO makes each year.

Further, in honour of our late colleague, former Vice President of Claims, Caron Wishart, LawPRO sponsored the creation of an endowment fund with the University of Toronto, to offer a scholarship to a law student entering his or her second year. Through donations from the profession and the Ontario matching grants program, this endowment now tops \$100,000 and will provide one student each year a scholarship of about \$4,000.

LawPRO and/or its employees were also pleased to offer support to some other charities with legal-related mandates or organized by the Bar, such as the Legal Education and Action Fund, the Ontario Legislature Internship Programme, the Lawyers Feed the Hungry program at Osgoode Hall, the International Justice Mission and the Lawyers' International Food Enterprise.

But our community endeavours also reach beyond the legal community. We support – morally and financially – employee interest in fundraising for a few charities chosen each year by our staff. In 2010, this effort generated just over \$27,000 for organizations such as Canadian Feed the Children, Princess Margaret Hospital and Fanconi Canada.

Energy and expertise – truly the hallmarks of LawPRO's contributions to the many communities that our employees are proud to serve.

How your lawyer can help: a consumer education campaign

The following is a list of articles and media releases issued as part of the TitlePLUS consumer education campaign in 2010. For more details, see page 27.

Article title	No. of publications/ websites	Overview
Can you access your cottage dreams (Spring 2010)	14	Highlights access issues involved in cottage ownership and the importance of consulting a real estate lawyer to help navigate this tricky area of law.
Understand “reverse mortgage” issues (Spring 2010)	8	Provides information on the legal issues associated with reverse mortgages and the need to consult a lawyer at the beginning of a transaction.
If refinancing, get professional advice (Spring 2010)	10	Stresses the importance of using a real estate lawyer when refinancing a mortgage, to ensure that borrowers understand all the aspects of the transaction.
Powers of attorney deliver peace-of-mind when things go wrong (Spring 2010)	18	Explains what a power of attorney is, why and when to create one, and why to consult a lawyer.
The Caveat Conundrum (Spring 2010)	3	Discusses conditions in agreements of purchase and sale, and highlights the need to consult with real estate lawyers.
Understanding real estate fraud – Legal experts share tips for homeowners (Spring 2010)	22	Outlines the main types of real estate frauds, while providing tips to homeowners on how to protect themselves from real estate fraud, including not signing documents without first consulting a real estate lawyer.
Ask key questions before buying a home from an estate (Summer 2010)	11	Explains that although estate sales can seem like a good deal, they come with their own special considerations and can be complex, which is why they warrant involving a real estate lawyer.
Protect yourself from real estate fraud (Summer 2010)	11	Suggests simple steps to help homeowners protect themselves from real estate fraud.
Quebec moving season (Summer 2010)	10	Highlights the Quebec “Moving Day,” and the legal aspects of a condo deal.
The reality of home renovations: the importance of building permits (Fall 2010)	14	Provides information on building permit requirements in relation to home renovations and the importance of consulting a real estate lawyer.
Splitting your lot (Fall 2010)	16	Highlights the complex nature of severing a double lot.

LAWPRO magazine

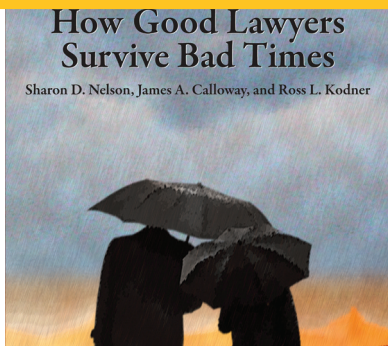
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Essential Dos and Don'ts for Twitter Users



Twitter may not be as contentious a subject as religion, guns, politics or sex – but people definitely have varied opinions about its utility and future. Those who love to use this nifty social media tool find it's a fun way to stay connected with all sorts of people. But as with everything, it behooves the user to know the rules of the game.

Even the so-called social media gurus (of which there seems to be an overabundance) give conflicting advice on using Twitter. At the end of the day, though, it really isn't that complex or mysterious. Twitter is just another way to connect and share with friends, clients, acquaintances and strangers. Different people will want to use it in different ways (or not at all – and that's fine too).

Is it even relevant to law firms? Definitely. I know of one firm that uses Twitter as an internal IM system to connect several part-time staff who work from home with the staff that work in the office. Wow – now that's thinking outside the box.


To a great extent, the type of information you will share simply depends on whether you want to use Twitter for personal or work reasons, or both. Many people see Twitter primarily as a channel for marketing purposes. In all cases, however, you should apply the same fundamental rules.


16 Commandments of Twitter for Lawyers:

✗ Don't take it too seriously. Don't live to tweet – tweet to have some fun. It's a great and easy way to share snippets of cool information with friends and strangers, and if it brings a client or two to your door, that's a nice bonus.


✓ Do consider the quality, not the quantity, of your followers. We all want to be popular, but ultimately the quality of your followers is more important than the quantity of them.


Followers who truly read and consider your tweets and, on occasion, retweet them to others are the brass ring.


 **Do put your name on your tweets.** Anonymous tweets (just like anonymous blog comments) are almost always total garbage. If you aren't willing to put your name on something, it's probably not worth tweeting.

 **Do write a clear description of yourself in your Twitter bio.** Help people know who they are following and why with a decent description of yourself.


 **Do tweet publicly and make it easy to follow yourself.** On your Twitter Settings page, uncheck "Protect my tweets." If this is checked, only people you approve can follow your tweets – that is, your tweets are private. Generally, this is not what Twitter is about – tweets are meant to be public.


 **Do be nice.** Your mother was totally right back when you were two years old, and she still is. What goes around comes around, and it doesn't matter if it's in person, in print or online. Be nice all the time because everyone is connected to everyone on the Web.

 **Don't post anything you wouldn't want your managing partner to read in the National Post.** What happens on Twitter stays on Twitter – forever. You shouldn't assume replies or DMs (direct messages) are private, either. And here's a closely related reminder that shouldn't be necessary: When tweeting you must at all times comply with your ethics rules.


 **Do inject some personal info, but not too much.** In both personal and professional spheres, social media connections are built on personal relationships. That means you need to share some personal information to better connect with your followers. But many things should stay in Vegas, the bedroom or the kitchen. An occasional restaurant recommendation is fine, as is a suggestion for a


good bottle of wine or Scotch (my personal favourite). However, most of your followers just don't care about your nightly dinner preparation and wine choice, and they certainly don't need to see pictures of it. I also don't need to know you go to Starbucks five times a day. In the language of texting, TMI (too much information)!

 **Do share ideas, news, links or information that your followers will find interesting.** Strive to send tweets that others will feel are truly worthy of reading. Send information that is practical, helpful, interesting or informative. Even funny things are fine.

 **Don't over-tweet.** Tweets should be weighed, not counted. Quality is far more important than quantity. The current consensus is no more than four tweets per day. Sending more than that makes it look like you have no work to do.

 **Don't send twam (aka Twitter spam).** We all get enough spam in our inboxes – so please don't send me tweets that are self-promotional, commercial junk. And please (and I know I will get grief on this one), go light on the retweet "thank yous." Saying thank you is a nice thing to do (your mother was right on this one, too,) but there is no need to say thanks to the whole world for each and every retweet of your tweets.

 **Do leave room for retweeters.** Part of the magic of Twitter is the ability to easily and instantly forward cool information from someone you follow to all of your followers. So, keeping this in mind, don't use all 140 characters in every tweet you write. Remember that retweeters will want to have their name in the retweet – leave them some room for that. Using one of the services that shortens URLs (e.g., tinyurl.com and bit.ly) can give you more space.

 **Don't automatically blast all your tweets to all your other social networks.** You should occasionally mention or link some of your tweets on your blog and your LinkedIn or Facebook pages. But don't bore us all by

telling everyone about everything concerning every single one of your tweets. As a filter, note that you can configure your LinkedIn account to display only tweets with the #in or #li hashtags.

 **Do use Groups or Lists and specialized Twitter tools to manage your tweets.** Let's be honest here, if you're following more than 25 people you can't catch everything that everyone says. To help filter your tweets appropriately, use Groups or Lists to categorize the people you follow into like groupings (e.g., friends, publications, must-reads, people that make me think, etc.). You can then use TweetDeck or other similar tools to track and read tweets in related groups. I consider TweetDeck an essential tool, as I find the multiple columns it displays really help me filter and find the tweets I am interested in.

 **Do send #FollowFridays.** To highlight your favourite tweeters, send FollowFriday tweets. Send these tweets on Fridays, include the #FollowFriday or #FF hashtag and list the Twitter names with the @ sign of a few of your favourite tweeters (e.g., [@DanPinnington](#)).

 **Do send "thanks for the follow" direct messages.** This is a great way to acknowledge and personally connect with your new followers.

So there you have it. Some simple rules to govern your use of Twitter. And remember, Twitter won't bring thousands of new clients to your office door, but it will allow you to connect and share information with all sorts of people. Go forth then, connect with your followers, and have some fun. Tweet, tweet, tweet! ■

Dan Pinnington is director of practicePRO, LawPRO's risk and practice management program. Follow DanPinnington on Twitter or reach him at dan.pinnington@lawpro.ca.

Administrative Dismissals Part 2

You have just settled a very complicated case on the eve of trial. The preparation leading to trial has left little time to work on other files, but fortunately the two weeks previously blocked off have now opened up. Time to catch up and start returning all those old phone calls and responding to those never ending emails.

You start reading an email from defence counsel on one of your personal injury files who has let you know that the Registrar dismissed your client's action for delay about six months ago and he is closing his file.

He reminds you that you did not answer his previous letters asking you to move the action along and deliver the pre-accident clinical notes and records of your client's treating doctors. When you review the file, you find underneath a copy of the police report, a status notice from the court warning of the pending dismissal, but you do not recall ever seeing it before.

Your first reaction is panic, but you then remember that this did happen to you before, and you recall having read an article in the July 2009 [LawPRO Magazine](#) on this very issue. That article stressed that these dismissal orders need to be taken seriously and you should call LAWPRO immediately and ask for help.

You recall that the claims counsel at LAWPRO helped you write the appropriate letter to your client, and vetted your draft motion materials, which were later served on opposing counsel. Fortunately, the action was restored on consent, but you knew that LAWPRO would retain counsel on your behalf should the matter proceed to cross examinations and then be argued on a contested basis.

When you first read the article and spoke with claims counsel, you were quite surprised to learn that a Registrar's dismissal order is not routinely set aside, and the case law is quite extensive.

You recall being advised that your materials were poorly drafted, and your affidavit lacked crucial details. You were stunned to find out that if you proceeded with the motion without contacting LAWPRO, you would likely have lost the motion and jeopardized your coverage. Any appeal was doomed to fail because all of the relevant material was available before the motion and there would be little hope of introducing fresh evidence.

Without delay, you begin writing your Claims Notice Report to LAWPRO.



Unfortunately, LAWPRO claims counsel deal with actions dismissed for delay by the Registrar every week. Many lawyers have busy practices, and mistakes are made because they fail to implement a procedure in which files are diarized for review and all staff are involved in bringing a Status Notice front and centre to the lawyer's attention. To avoid problems, the deadline dates should be recorded in the firm's tickler system.

You want to avoid dealing with a Registrar's dismissal in the first place by ensuring you have a good system in place. However, if you have to bring a motion to restore an action, the key is ensuring that the motion materials are done right.

Case law on dismissal orders

The law regarding setting aside dismissal orders pursuant to Rule 48.14 is now well settled. The involvement of LAWPRO counsel has been instrumental in developing the law and four key Court of Appeal decisions were argued by our counsel.

In *Scaini v. Prochnicki* (2007), 85 O.R. (3d) 179, the Court of Appeal stated that although there are a series of factors that should generally be considered in these motions, the court should not be restricted to a rigid application of a test involving only the four factors set out in *Reid v. Dow Corning Corp* (2001), 11 C.P.C. (5th) 80. Rather a contextual approach is to be used, which involves a review of all relevant factors with the ultimate goal of balancing the respective interests of the parties.

The four *Reid* factors remain the starting point for these motions, and need to be addressed in the affidavit material. Those factors are:

1. an explanation of the litigation delay from the start of the action until the deadline for setting the action down;
2. evidence that the plaintiff always intended to set the action down by the deadline but failed to do so through inadvertence;
3. promptness in bringing the motion to set aside the dismissal; and

4. a lack of significant prejudice to the defendants arising from the delay or as a result of the dismissal.

The plaintiff need not satisfy all four factors as such an approach would undermine the court's discretion to consider all relevant factors and attempt to balance the interests of the parties.

In *Marche D'Alimentation Denis Theriault Ltee v. Giant Tiger Stores Ltd.* (2007), 87 O.R. (3d) 660, the Court of Appeal confirmed the need to consider all of the contextual factors to make a "just" order in the circumstances. But it also pointed out that significant delay in moving an action forward undermines the public interest in promoting timely resolution of disputes and should not be condoned.

The *Giant Tiger* decision established that the principle of finality was an important consideration even in the absence of prejudice. In my view, the lower courts focused on the finality principle and often ignored that the court was also aware that justice favours the "goal of having disputes resolved on the merits."

Moreover, it was often forgotten that the court made a finding that the plaintiff's lawyer was unaware of the dismissal order because he had put his file in abeyance and "there was a deliberate intention not to advance the litigation toward trial."

Fortunately, our counsel was successful before the Court of Appeal in *Finlay v. Paassen* 2010 ONCA 204 in which the Court of Appeal stressed that the issue of prejudice "invariably is a key consideration on a motion to set aside a dismissal order." The Court of Appeal also stressed that courts should not be too quick to dismiss these motions on the basis that a plaintiff will then have a remedy against his own lawyer. A lawyer's potential negligence should not be a factor at all.

In *Finlay*, the motion's judge focused on the two-year delay by the plaintiff's lawyer in moving to set aside the Registrar's Order. On

appeal, Laskin J.A. stressed that this delay had to be "assessed in the context of the time frame preceding it — a timeframe in which the lawsuit proceeded reasonably promptly."

The court took notice that the action was moving reasonably well before service of the Status Notice, and contrary to what occurred in *Giant Tiger*, the lawyer in *Finlay* did not make a deliberate decision not to move the action forward.

After reviewing all relevant factors, the court stated that "cumulatively, these considerations outweigh the two-year delay in bringing the motion and justify setting aside the registrar's order."

The Court of Appeal in *Wellwood v. Ontario provincial police* 2010 ONCA 386, upheld the Master's finding that there was delay in advancing the action, in bringing the motion that was not adequately explained and that this delay was intentional. The majority also upheld the initial finding of a presumption of prejudice due to the expiry of the limitation period. As such, if the plaintiff rebuts the presumption, the onus shifts to the defendant to establish actual prejudice.

The *Wellwood* decision is commonly relied on by defence counsel opposing motions to restore the action, but the key is to provide a very detailed affidavit to explain any delays as to avoid a finding of intentional delay.

LAWPRO counsel who argued both appeals maintains that the decision of Laskin J.A. in *Finlay* remains unaffected. The majority in *Wellwood* distinguishes *Finlay* on the basis that the delay in *Finlay* was not deliberate. The majority decision in *Wellwood*, like in *Giant Tiger*, can be explained by their finding that on the evidence that the delay in proceeding with the action and in moving to set aside the dismissal order was inordinate, unexplained and intentional.

The court will have no difficulty in dismissing a motion for want of proper evidence being adduced.

As an example, one of our files involved a tort claim for damages as a result of a motor vehicle accident.

The insured lawyer argued the motion without contacting us and lost. The Master found that the evidence addressing the *Reid* factors to be “woefully inadequate.” The lawyer simply indicated he missed the deadline to set the action down due to inadvertence, but provided no further explanation.

The Master wanted to know if someone had failed to record a key date, or if there were any problems with the firm’s tickler system. The lawyer waited one year to bring the motion to restore the action, and again there was simply a “blanket referral to inadvertence,” and this is not enough. The lawyer had to be more specific about what happened after the dismissal order came to his attention. There was simply no evidence to rebut the presumption of prejudice.

Even if he was incorrect regarding prejudice, the Master went further and criticized the plaintiff himself for making a deliberate decision not to advance the litigation because he left the jurisdiction for a considerable period of time without communicating with his lawyers. Relying on *Giant Tiger* and *Wellwood*, the Master found that the intentional delay was fatal to restoring the action.

Based on the lack of proper evidence at first instance and the Master’s finding of intention delay on the evidence presented, there was no way to succeed on appeal. The costs of the action and motion were fixed at \$15,000.

Call LawPRO – immediately

When you realize that an action has been dismissed for delay, call LawPRO immediately. Don’t bring the motion without telling us first, and don’t advise us of the situation on the eve of the motion.

By involving LawPRO early, you can ensure that the motion materials are properly prepared, and there is a good chance that the motion will go on consent or unopposed. Alternatively, we can retain counsel for you to prepare and argue the motion. We have

been successful when we have time to respond. We are here to help. ■

Domenic Bellacicco is new claims unit director and counsel at LawPRO.

Take a fresh step... before it’s too late

In January, 2012, litigators may see a tsunami of “deemed dismissals” of stale actions. Note especially Rule 48.15(6)2:

Rule 48.15(6)

In the case of an action commenced before January 1, 2010, other than an action governed by Rule 76 or 77, the following rules apply, unless the court orders otherwise:

1. If a step is taken in the action on or after January 1, 2010, and before January 1, 2012, subrule (1) applies as if the action started on the date on which the step was taken.
2. If no step is taken in the action on or after January 1, 2010, and before January 1, 2012, the action is deemed on January 1, 2012, to be dismissed as abandoned on that date, unless the plaintiff is under a disability.
3. An action deemed to be dismissed under paragraph 2 may be set aside under rule 37.14 and, for the purpose, the deemed dismissal shall be treated as if it were an order of the registrar. O. Reg. 394/09, s. 21(2).

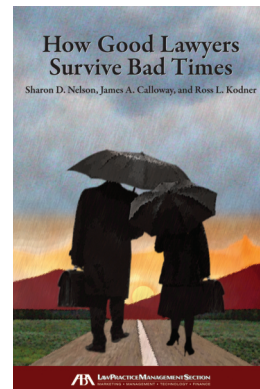
The “leading” cases on setting aside dismissals by the registrar are *Scaini v. Prochnicki* (2007) 85 O.R. (3d) 179 (C.A.); *Finlay v. Paassen*, 2010 ONCA 204, and *Welland v. Ontario Provincial Police*, 2010 ONCA 386. These are discussed at length in Domenic Bellacicco’s article “Administrative Dismissals.”

If you have a file that has gone nowhere in the past one and one half years, it is surely better to “take a fresh step” before the end of 2011, rather than to be forced to bring a motion in 2012, hoping that you can satisfy the Court of Appeal’s criteria for setting aside the dismissal of your client’s action.

Debra Rolph is director of research at LawPRO.

How Good Lawyers Survive Bad Times

By Sharon D. Nelson, James A. Calloway and Ross L. Kodner | Published 2009, 230 pages



It's been a rough few years for lawyers and law firms in the United States. According to the *ABA Journal*, 21,000 legal jobs were lost in 2009. Websites with names such as "Layoff Tracker" sprang up to tally the carnage. Entire firms disappeared overnight and some lawyers were reduced to posting resumes looking for "anything remotely related to the practice of law." While Canada may have been spared the worst of the recent recession, law firms here have faced a bumpy ride as well, and many are not yet out of the woods.

With that as a backdrop, *How Good Lawyers Survive Bad Times* makes compelling reading. It was co-authored by Sharon D. Nelson, president of a forensics and legal tech firm in Virginia, James A. Calloway, director of the Oklahoma Bar Association Management Assistance Program, and Ross L. Kodner, founder of a legal tech and law practice management consulting firm. The format of the book is short, easy-to-digest articles and tips grouped into three broad categories.

Part One is for lawyers who have lost their jobs or are afraid of losing them. The main message is to take stock of your situation and all the skills you possess (which you'll still have even if your job disappears) and develop a strategy. Keep your resume up to date, begin tapping into the networking connections you've established over the years, and if you haven't had to network much there are lots of tips here on how to get started.

Should you consider moving to a different area of law? A different firm? A different city? One interesting example provided is of big firm lawyers who have decided to become "big firm solos" – taking their knowledge in areas of law normally practised by big firms (e.g., securities) and going solo. They get the rewards (and challenges) of running their own firm, and can compete on a cost basis

by having much lower overhead than a large firm.

Part Two provides strategies for keeping your firm afloat in tough economic times. Simply cutting staff or lawyers to improve the bottom line is not necessarily an effective strategy. There are more creative alternatives such as taking a hard look at your clients and how fees are collected, coming up with more flexible billing arrangements to keep and attract clients, renegotiating contracts with service providers and banks and looking at cheaper office space. The idea is to "cut fat, not muscle" and retain as much of your firm's personnel strength as possible for when the economy rebounds. With that in mind you also don't want to simply slash the marketing budget, but rather find more innovative (and ideally cost-saving) ways of continuing to attract new clients.

Unfortunately, even after finding as many smart savings as possible, layoffs may still be necessary. The authors provide a lot of advice on how to do this in a way that is both humane to those being let go and mindful of the morale of remaining lawyers and staff.

Part Three looks at how to use technology to improve your bottom line. Some may think an economic downturn is the worst possible

time to invest in new office technology, but done smartly this can save your firm money now AND be a wise investment in the future.

The authors give the example of a "time bucket." This bucket is all the potential billable hours in a day, some of which is "spilled out" doing non-billable things (office management, staffing issues). Investing in a technology to reduce the time spent on non-billable work, thus freeing up more time for billable hours may be worthwhile. The book examines how firms can assess the various aspects of their operation and costs and how technology might help them add more productive hours to their "bucket."

A poor economy will hit lawyers and firms in different ways. Not all will face a situation as drastic as layoffs or the winding up of the firm, but everyone will likely find themselves re-assessing costs, strategies and their long-term situation. There is something in this book for everyone looking for help to ride out tough times. The message that comes through in all aspects of the book is to stay positive, remember your strengths and know that good times are bound to return again. The key is to find yourself in even better shape when they do. ■

Tim Lemieux is practicePRO coordinator at LawPRO.

More from the practicePRO Lending Library

The [practicePRO Lending Library](#) has many practice management titles to help firms guide their lawyers and staff.

- **Keeping Good Lawyers** is filled with easy-to-implement suggestions for training and retaining good lawyers and helping them maintain high levels of motivation and career satisfaction.
- **The Lawyer's Guide to Governing Your Firm** provides strategies for firms that want to change their culture, provide better client service and improve the working environment for lawyers and staff.
- **Strengthening Your Firm: Strategies for Success** provides insight and advice from a panel of experts on topics such as adapting to change, partnership challenges, dealing with financial problems, and improving leadership skills.

For full descriptions of these titles, including downloadable tables of contents, go to practicepro.ca/library



Unfortunately, many lawyers still struggle, despite their best efforts. The Ontario Lawyers Assistant Program (OLAP) is there for lawyers who need help.

Who are we?

OLAP is a confidential, 24-hour peer support and counselling program that assists lawyers, law students and their immediate families with issues of stress, burnout, addictions and mental wellness concerns. During business hours, OLAP case managers take calls directly, while after hour calls go to a counselling centre for intake by qualified counsellors. OLAP is available to all 44,000 lawyers, law students and their immediate families throughout Ontario.

The program is confidential as enshrined in the Commentary to Rule 6.01(3) of the Rules of Professional Conduct. This is the cornerstone of being able to offer assistance to the profession without fear that a call may trigger

a report to the Law Society or LAWPRO. Only statistical information is shared with the OLAP Board and the identity of all callers is completely private.

OLAP has a small staff, but it strives to employ knowledgeable people who are equipped to deal with the many issues lawyers may face. OLAP has two case managers on staff. They are both lawyers who have practised law and know how the profession operates. Our clinical team consists of two social workers with masters degrees in social work. Finally, the volunteer director, peer support and liaison is a retired lawyer who writes and speaks about his experiences and efforts to live a balanced life. OLAP relies on volunteers to be peer-to-peer counsellors to deliver its primary service: support.

Who do we help?

Fourteen hundred callers accessed OLAP in 2010. The program was used by approximately 55 per cent women and 45 per cent men. Generally speaking women tend to seek help before a crisis. Men often try to deal with problems without help, which can be some of the most challenging and pressing issues we deal with. Approximately 60 per cent of callers are sole practitioners or from small firms, who often don't have access to privately funded employee assistance services.

We deal most often with issues around work, addiction, relationship, family and situational problems. We see, and are equipped to help with, everything from alcohol and drug addictions, work conflicts, desire to change careers, family or marriage counselling, elder- and child-care issues, and personal health problems.

Most calls come from the Greater Toronto Area where the majority of lawyers practise. When OLAP is unable to connect a caller with a peer-support lawyer (and volunteers are always welcome,) we connect lawyers with free counselling service within their community. OLAP also can arrange out-of-town counselling, if lawyers feel uncomfortable seeing someone within that community.

How can we help?

OLAP peers are volunteer lawyers who have faced personal challenges and offer their experience along with a non-judgmental ear to provide ongoing support face-to-face or over the telephone. They give you the chance to talk to another lawyer who knows the lawyer-culture, the stresses of law and the personal impact of trying to live a balanced life.

Short-term counselling services are provided free of charge by a nationally-certified employee assistance company. These four-to-six week sessions help lawyers identify the issues, deal with them, or refer lawyers to longer-term counselling (which OLAP provides.)

Disturbing trends in suicide rates

The increase in suicide rates among lawyers is a disturbing trend. It is notable that in 2008, OLAP had seven serious suicide situations and two actual suicides. Six of the seven took place between October and December. Serious means not just suicidal thoughts, but situations that require intense support and perhaps medical intervention or hospitalization. In 2009 and 2010, we know we had 10 serious suicidal situations with four completed suicides. At press time, 2011 has seen eight serious suicide situations with three acts of suicide. The figure for going through with suicide is low; however, not all suicides are reported as such because sometimes doctors or families disguise death

as heart failure or some other cause to avoid embarrassment and stigma. While there is nothing wrong with that, it does mean the actual suicide rate is higher than the numbers suggest. We simply don't have the statistics available. This is an issue of concern requiring greater attention and awareness.

If you are feeling suicidal, whether with suicidal thoughts, planning or attempts, please immediately go to the emergency room of your nearest hospital, call your family doctor, call OLAP or call your local Distress Center line now. ■

John Starzynski is volunteer executive director with OLAP.

Crisis intervention, problem-solving and early loss prevention

OLAP is proactive in providing assistance to the profession. OLAP runs the following face-to-face meetings:

Women's work and wellness group luncheon meetings – Quarterly luncheons conducted in conjunction with the Women's Law Association of Ontario focus on issues relevant to women. Some past topics include: "shining the light on mental illness," "financial fitness" and "building your best law career."

For more details, to get on the mailing list or to register for an event, please contact Jill Keaney at 1-877-576-6227.

The lawyers' group – On the first and third Wednesday of every month from 5:30 p.m. to 7:00 p.m., lawyers who want and need support of other lawyers meet at the Ontario Bar Association offices at 20 Toronto Street, Toronto.

The portia group – On the second and fourth Wednesdays from 5:30 p.m. to 7:00 p.m. at the OBA Meeting Centre, there is a 12-Step Group for Women Lawyers for women at any stage of recovery.

You can contact OLAP by calling 1-877-576-6227 (In Toronto – 905-238-1740). The OLAP website at www.olap.ca has plenty of information and resources.

Taking stock



Take stock of your personal well being – no one but you can do it

Your taxes are in. A new government is in power. New benchers are sitting at the Law Society.

Now's as good a time as any to take stock of your personal and professional wellness. New mandatory professional education guidelines require three hours of professional and ethical courses, with free seminars offered by the Law Society. Continuing education is an important way to maximize your practice and develop professionally.

But of equal importance is your wellness and balance between work and personal life – and only you can account for that. Do you have a healthy balanced worklife? Need some help?

Pull out our healthy-living checklist and make sure to check something off each day:

1. Physically

- Take three deep breaths and then exhale when under stress and before speaking.
- Eat three balanced meals a day.
- Get eight hours of sleep a night.
- Exercise at least three times per week for at least one-half hour at a time.
- Cut out or cut back on smoking, caffeine and the consumption of alcohol.
- Drink lots of water.
- Laugh as often as possible.

2. Emotionally

- Have a good, trusted friend to talk to, confide in and laugh with.
- Get a pet – they are great non-judgmental listeners, get you out for walks and always are happy to see you when you get home.

- Read non-law literature out of office hours.
- Spend time with your family.
- Learn to say “No!” to demands that are too much and know what too much is.
- Get a hobby and do things you are passionate about.
- Do something nice for someone daily without them knowing about it and with no expectation of acknowledgement or reward.

3. Spiritually

- Laugh lots.
- Pray, if you are so inclined, to whomever or whatever is your higher power.
- Read daily affirmations or meditate.
- Kiss your spouse or partner often.
- Hug those close to you.
- Say “I love you” daily to those you cherish. ■

LAWPRO electronic newsletters

In addition to the print publication, *LAWPRO Magazine*, we periodically publish electronic newsletters that ensure LAWPRO gets information on claims trends, frauds, deadlines and other news into your hands quickly and efficiently.

In 2011 we have expanded the range of electronic newsletters to include a series of *Webzines* targeted at specific practice areas: The March *Webzine* on litigation claims, leading cases and other related news was distributed only to those practising litigation law; the April *Webzine* on family law matters went only to those practising family law. Coming up are *Webzines* aimed at the wills and estates bar, the real estate bar and those practising corporate/commercial law.

To ensure you receive your electronic news from LAWPRO, please whitelist service@lawpro.ca.

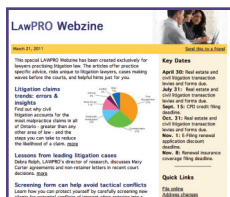
You can access the full content of any e-newsletters at www.practicepro.ca/enews.

E-newsletters - highlights



[Webzine] Family Law Webzine, April 26, 2011

We looked at cases making waves before the courts, current pension reform, and claims trends in family law, and offered tips and tricks for avoiding a costly malpractice suit.



[Webzine] Litigation Law Webzine, March 21, 2011

We looked at the rising cost of dealing with litigation claims, discussed conflicts of interest, and offered a quick reference to the CBA conflicts of interest toolkit.



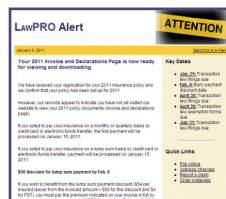
[Insurance News] 2010 Transaction levy overdue notice, March 14, 2011

A note sent to firms and lawyers with overdue transaction levy filings, reminding them of the key dates and that they were overdue in their payment.



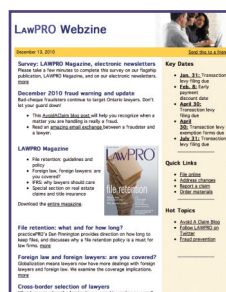
[Insurance News] LAWPRO Key dates, January 24, 2011

A list of key dates for filing throughout the 2011 year, sent to firm administrators.



[Alert] Your LAWPRO invoice and declaration page are now ready for viewing, January 6, 2011

A note to let lawyers, firms and firm administrators know their policy invoice was available online.



[Webzine] File Retention, foreign law, IFRS, title insurance, December 13, 2010

We examined how long you should keep your old files, the importance of a file retention policy, how changes to the IFRS standards affect LAWPRO, issues around retaining foreign lawyers and dedicated a section to risks in real estate, rising claims and title insurance.

newsBRIEFS

Jorgensen named LAWPRO CFO

Steve Jorgensen has been appointed LAWPRO's chief financial officer; the LAWPRO Board of Directors announced at its April annual general meeting. Formerly the company's vice-president – finance & treasurer, Jorgensen joined LAWPRO in 2009. He has extensive experience in auditing, accounting, regulatory, tax and compliance functions for insurance companies in Canada, the United States and the Caribbean, and is a member of the Financial Affairs Committee of the Insurance Bureau of Canada and treasurer of the Ontario Lawyers' Assistance Program (OLAP).

LAWPRO appoints senior staff members

LAWPRO was pleased to welcome Simon Bernstein as assistant vice-president, underwriting, and congratulates Dominic Bellacicco on his promotion to director of the new claims unit and counsel.

Bernstein, a graduate of York's Osgoode Hall, joins us after extensive experience as a practising lawyer and in the insurance sector. He's held managerial positions with a number of leading insurers, including London Guarantee Insurance Company and St. Paul Travelers Insurance company, where he was assistant vice-president, financial and professional services (in Canada.)

Bellacicco, a graduate of Western, has been with the LAWPRO claims department since 2004 and recently held the position of senior claims counsel. Prior to his career at LAWPRO, Bellacicco was a civil litigation lawyer at Battiston and Associates in Toronto.

In memoriam

Administrative assistant Pansy Weekes passed away May 4, 2011, after a hard-fought battle with cancer. Weekes was a valued member of the LAWPRO claims team, having joined the company in 2000. She will be remembered by her colleagues for her grace, professionalism and dignified demeanour and her fun-loving spirit.

Former LAWPRO Board of Director Bonnie Tough passed away Friday May 6, 2011, after a 22-month battle with cancer.

She had a distinguished legal career, with an LL.B. from Osgoode Hall and a Masters of Laws from Oxford University. Tough started her career at Blake, Cassels and Graydon and ended it at Tough & Podrebarac. She received the Ontario Bar Association Award for Excellence in Civil Litigation and an honorary Doctor of Laws from the Law Society of Upper Canada. LAWPRO was honoured to have her serve as a director from September 2008 to April 2010.

keyDATES

July 31, 2011 Real estate and civil litigation transaction levies and forms are due for the quarter ended June 30, 2011.

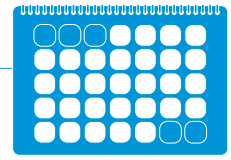
September 15, 2011 File your [CPD Declaration](#) by this date to qualify for the \$50 premium discount for each LAWPRO-approved CPD program (to a maximum of \$100) completed by this date.

Caron Wishart fund doubles in value to \$100,000

In late December 2010, LAWPRO established a scholarship award with the University of Toronto, Faculty of Law in memory of Caron Wishart, LAWPRO's former Vice President, Claims, who passed away on December 19, 2010.

By the end of April, through private donations and a small contribution from LAWPRO, the endowment fund reached approximately \$51,000. Through the Ontario government's Trust for Student Support (OTSS) program, which matches qualifying programs dollar for dollar, the Caron Wishart endowment fund doubled to just over \$100,000. While details for the actual scholarship are still being worked out, the award will fund a scholarship for a second-year law student of about \$4,000 annually.

events calendar



UPCOMING EVENTS

June 8

OBA immigration program

Ethics and Immigration: Tips and Traps

Dan Pinnington presenting

June 21

OBA Award of Excellence in Real Estate Gala

TitlePLUS Dept sponsoring

Toronto

June 24-25

Congrès annuel de l'AJEFO

TitlePLUS department exhibiting

Ottawa

June 28

Algoma District Law Association

TitlePLUS Dept sponsoring

Sioux Ste. Marie

August 2-4

NABE Meeting

Apps that make employees more efficient; BlackBerry User Circle

Dan Pinnington presenting

Toronto

August 4-9

ABA Annual Meeting

Disaster Planning

Dan Pinnington presenting

Toronto

August 4-6

National Conference of Bar Presidents

TitlePLUS department sponsoring

Toronto

August 14-16

CBA Expo

TitlePLUS department exhibiting

Halifax, NS

September 14

U of T Centre for the Legal Profession

Program on Professionalism

Common professionalism and ethics mistakes and how to avoid them

Dan Pinnington presenting

Toronto

October 5

OBA – LPM Section CPD on fraud

Recognizing and preventing frauds targeting lawyers

Dan Pinnington presenting

Toronto

October 15

ABA LPM Fall Meeting

Every Lawyer's Goal: Avoiding Malpractice

Dan Pinnington presenting

Cape Cod, MA

RECENT EVENTS

June 3-4

Law Society of Upper Canada Solo & Small Firm Conference & Expo

60 practice tips; Client ID and fraud; Mobile lawyer tools; Social media tools hands-on

Dan Pinnington chaired and presented

practicePRO and TitlePLUS exhibited

Toronto

May 30

Law Society of Upper Canada webinar

Worklife balance: myth or reality:

Time management and how technology can reduce stress

Dan Pinnington presented

May 26

Hastings County Law Association

Succession and Contingency Planning

Stephen Freedman presented

Belleville

May 19

Renfrew County Law Association AGM

Succession and Contingency Planning

Dan Pinnington presented

Pembroke

May 17

Hamilton Law Association

Professionalism Series

Professionalism, Practice Management, and Claims Prevention Tips

Dan Pinnington presented

Hamilton

May 16

OBA's "Renewable Energy Projects for Real Estate Lawyers"

TitlePLUS Department exhibited

OBA Conference Centre

Toronto

May 13-14

East Region Solicitors conference

TitlePLUS department exhibited

Montebello

May 12

Kitchener Waterloo Real Estate Board Expo

TitlePLUS Department exhibited

Kitchener

May 11-14

ILCO Annual Conference

TitlePLUS Department exhibited

Ottawa

May 9

LSUC

Professional Conduct and Practice in Ontario

Dan Pinnington presented

Toronto



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www.practicepro.ca



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liability insurance
www.lawpro.ca/excess

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www.titleplus.ca



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LAWPRO • 250 Yonge Street • Suite 3101, P.O. Box 3 • Toronto, Ontario M5B 2L7

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Editor:

Dagmar Kanzler dagmar.kanzler@lawpro.ca

Contributing editors:

Dan Pinnington dan.pinnington@lawpro.ca
Megan Haynes megan.haynes@lawpro.ca

Design & Production: Freeman Communications

Tel: (416) 598-5800 or 1-800-410-1013

Fax: (416) 599-8341 or 1-800-286-7639

www.lawpro.ca

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