

LAWPRO

magazine

2014 | Student Issue 2

special
student edition

Moving into practice



Common
practice pitfalls

What firms are
looking for

What I wish
I knew

NEXT >

What is LAWPRO®

And why should I care

LAWPRO, Lawyers' Professional Indemnity Company, is the Ontario insurance company chosen by the Law Society of Upper Canada to provide the professional indemnity insurance that the Law Society has deemed mandatory for Ontario lawyers in private practice.

The insurance coverage provided by LAWPRO helps to protect lawyers from the potentially catastrophic financial consequences of professional malpractice claims. It also indirectly supports the interests of consumers of legal services who may have a legitimate malpractice claim against a lawyer and are hoping there will be funds available to provide a settlement or to satisfy a judgment.

In the pages of this magazine, you will learn more not only about professional indemnity insurance and about LAWPRO, but also about the practicePRO program, LAWPRO's claims prevention program. The practicePRO team creates and maintains a wide range of practice management resources for lawyers at all stages of practice: for details see the practicePRO Resource Guide at page 11 inside.

Besides professional indemnity insurance, LAWPRO also offers title insurance via its TitlePLUS program. Title insurance is a product designed to protect property purchasers, owners, and mortgage lenders against losses associated with title problems.



AvoidAClaim.com



LAWPRO



@LAWPRO @practicePRO @TitlePLUSCanada



LAWPRO insurance
TitlePLUS Home Buying Guide – Canada

Isn't LAWPRO just a branch of the Law Society?

While LAWPRO is owned by the Law Society of Upper Canada, it is an independently operated company governed by the same industry regulation that applies to other insurance companies. To meet its claims obligations, LAWPRO funds itself by matching premiums to risks and by making investments. While the insurance program renewal is considered each year by the Law Society, the company is governed by its own board of directors and executive, and is required to operate according to established insurance principles.

Will I need to pay for professional indemnity insurance if I work in government or as in-house counsel?

Certain categories of lawyers are exempt from the requirement to carry mandatory insurance coverage. In general, government lawyers, in-house lawyers, legal academics who don't practise law and lawyers who have retired or withdrawn from practice (or who never practised) are exempt, unless they provide professional legal services to parties other than their employers. In addition, there is an exemption available for lawyers who do qualifying *pro bono* work. Once you have been called to the bar, you will receive more information about these exemptions.

How can I have a say about the mandatory insurance program?

The LAWPRO mandatory insurance program for each coming year is reviewed at the fall convocation of the Law Society. Benchers are given an opportunity to learn about the program, and ultimately to accept the offer for the following year. LAWPRO's Report to Convocation is posted at lsuc.on.ca at that time. Of course, we at LAWPRO would also love to receive your comments, questions and concerns directly, at any time of the year.

What can I do, once I'm in practice, to avoid malpractice claims?

LAWPRO has more than 15 years' experience receiving and defending claims. Our claims counsel and analysts have developed a detailed understanding of the factors and circumstances that tend to result in claims. For example, did you know that new lawyers generally have a LOWER rate of claims than do lawyers with eight or ten years' service? Or that problems with lawyer-client communications are the single largest source of claims? Visit our websites (lawpro.ca and practicepro.ca) for information on the most common pitfalls in each practice area and tips about how to prevent claims in your practice.

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Student Edition

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LAWPRO
magazine

President & CEO: Kathleen A. Waters

LAWPRO Magazine and LAWPRO Magazine's Student Edition are published by Lawyers' Professional Indemnity Company (LAWPRO) to update lawyers and students about LAWPRO's activities and insurance programs, and to provide practical advice on ways to minimize exposure to potential claims.

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Job market scoop: What do law firms look for?

Law students – like all students – are prone to anxiety about their career prospects. High-profile news about the employment challenges faced by new grads in the U.S. and changes in the articling requirements for Ontario have combined to create a climate of worry.

But worrying about trends and generalizations can obscure the fact that the employment relationship is, in essence, an interpersonal relationship. Each successful employer/employee match happens because an individual firm takes a chance on an individual lawyer for reasons that are not only unique, but also personal, and sometimes instinctive.

We spoke with law firms across the province about their recruitment strategies, priorities, and philosophies. What emerged from that discussion was the realization that there is considerable variety in the factors that inspire a firm to make an offer to a particular candidate.

Considering the limitless variety of law school graduates, we figure that's good news. Read the profiles that follow to see what some Ontario firms are looking for. Chances are, someone out there is looking for YOU.



Stephanie Willson
Chief Professional Resources Officer – McCarthy Tétrault LLP
Toronto

On recruitment

Whether we're hiring a law student – which is the primary source of new lawyers for firms such as ours – or an associate or a new partner, we look at what we call “buckets” of skills that help us determine if that individual will be a successful lawyer with McCarthy Tétrault. Depending on the level we're recruiting for, what we look for in each of those buckets will differ.

For example, with law students, who often have less work and life experience than candidates at other levels, our focus is on those qualities that you cannot train for. So we have a bucket of skills that fall into the “legal acumen” category: evidence of sound judgment, strong analytical skills, a demonstrated genuine interest in the areas in which our firm practises.

Similarly, we're keenly aware that we are in the business of serving clients, so we have another bucket of skills around “service orientation” – such as demonstrated good interpersonal skills, the ability to work as part of a team, good communication skills and the like.

These skills I have mentioned for the most part are hard to teach, so we need to focus on them in evaluating candidates before we hire them!

On retention

A large firm such as ours needs a focused, deliberate talent management strategy that responds to the fact that we have different people with very different needs. We've built a framework for helping us retain top talent that we've trademarked: McCarthy Tétrault Advance. It's a platform for talent development that has eight components such as coaching, work and opportunity allocation, compensation and recognition, and capability development. At any time, we have various initiatives underway nationally in each area.



Partner – Dewart Gleason LLP
Toronto

On recruitment

It is hard to put my finger on the single most important attribute we look for when we hire. There are a handful of “must haves,” such as a good legal mind, a strong work ethic and a personality that facilitates effective communications with clients, opposing counsel,

witnesses and judges. To be a good litigation lawyer, you must be able to read people, and make it easy for them to read you. You must also be willing to learn, which means being highly inquisitive, if not perversely curious. The most effective advocates make the fewest assumptions and ask the most questions. There is nothing more irritating than a know-it-all who jumps to conclusions and sees every file as a chance to show off his or her abilities.

If I had to pick out the most important criteria we look for when we hire, they would be integrity and fearlessness. The most important thing our clients buy from us is our reputation. If opposing counsel and judges can't be certain that they can trust us, we are useless to our clients. We need to be certain that any lawyer we hire will not compromise the firm's reputation in this regard. Fearlessness is the other side of the same coin and no less important.

On retention

Retaining good lawyers has not proven to be as much of a challenge as finding them in the first place. The key is to make their practices stimulating. We try to find a balance between training, and handing off as much responsibility as possible. It's far more interesting for lawyers to work on a file, or some part of a file, where they have primary responsibility and feel that they are answerable to the client and the court.



Partner – Lacroix Forest LLP
Sudbury

On recruitment

Brains. Passion. Integrity. It's not one but the complete package.

Brains because the practice of law is not what it used to be. Clients are sophisticated and expect the same high standard no matter what the task. There is no room for cutting corners or substandard work product. That means you need to be able to understand what's expected of you – and deliver. Just because you had the best marks in law school doesn't mean you have what it takes to be a great lawyer. Client satisfaction is the ultimate litmus test.

Passion because the legal profession is now more than ever a very stressful and unforgiving calling that has lost many of the professional perks that would otherwise temper the bad days. The reality is if you don't love what you do the drudgery will eventually bury you and you will end up resenting the profession and us.

Integrity because trust and civility are more important today than ever in law practice. We try to take a team approach on many matters. Trusting those who take carriage of a file when you are away is essential. We need to know that each of us is representing the firm with complete integrity, honesty, and civility. We are very fortunate in the north that the local bar has always and continues to share this view.

On retention

For a firm such as ours – a smaller, more local firm that is located outside a large major centre – though you sometimes fall upon a star looking to relocate, the reality is that we have to develop top talent internally. So we try to find bright young lawyers who are a good fit and work with them. We take our juniors and incorporate them into files right from the start: they share in the responsibilities, but also in the learning, the rewards and the credit. That willingness to share and work as a team has proven to be very effective and has developed their talents early and kept them engaged. We see students and new associates as the freshest legal minds we have... we are excited to work with and learn from them and draw on their energy and creativity.



Fred Hacker
Managing Partner – HGR Graham Partners LLP
Midland

On recruitment

In assessing talent for recruitment to our firm, the first quality we look for is character. We're looking for team players whose personal values are consistent with our culture. You can teach someone the fundamentals of practising law. You can't teach integrity.

On retention

To retain top talent, it's essential to communicate. And communication must be two-way. There must be consistent communication of the plans and prospects of the firm and the importance of the role of the individual in those plans. There must also be constant interaction to understand the state of mind, goals, frustrations, challenges and worries of the individual so those issues can be addressed before they become insurmountable.



Gerry Dust
Partner – Dust Evans Grandmaitre
Ottawa (Orleans)

On recruitment

In my 34 years at the bar I have managed everything from a sole proprietorship to a 25-lawyer firm, and I have done a lot of interviews. Right at the top of my list of "must haves" is people skills. Without them, there will be problems working with staff, colleagues, other players and clients. Next on the list would be something I would describe as "street smarts." It encapsulates a lot of essential attributes. I have interviewed many people who, while very intelligent and sporting excellent CVs, just did not get "it." You have to be able to put all the pieces together and know how the world works.

On retention

That boils down to paying them well, giving them interesting work and never taking them for granted.



Glen McCann
Partner – Sullivan Mahoney LLP
St. Catharines

On recruitment

As a firm located outside a major centre, we find there is no better indicator as to whether a lawyer will prove to be a good fit for the long term than his or her ties to the community. Toronto and Ottawa have obvious attractions to a variety of people from across the province. While we believe that there are many good lifestyle reasons for someone to want to practise in Niagara, we find that people who come and stay tend to be those who have a history here. Obviously there are exceptions but that is our general observation.

On retention

Make them a part of the team. Involve them in interesting work and make sure they understand their value (to the firm). Help them to take the long view. We sometimes forget that life as a young associate trying to build a practice is challenging; they need to understand the rewards that are there in the long term. It is always a little dispiriting to see someone pursue an option for a quicker buck when you feel they are making a mistake. Make sure that they feel that they belong and that belonging is a good thing.

Do you have what it takes to be a sole practitioner?

One-third of the more than 24,000 lawyers in private practice in Ontario are sole practitioners. As a solo, it's great to have the freedom that comes with being your own boss, but you also have full responsibility for all aspects of the operation of your law practice. Do you have what it takes to be a sole practitioner? See the self-assessment quiz to answer that question.

The chart helps identify your strengths and weaknesses and gives you a better idea of whether you're cut out for solo or small firm practice.

Ask yourself whether you possess some or all of the skills listed below. Rate your skills by circling the appropriate number, using a scale of 1-5, with 1 as low, and 5 as high.

Skills		Rating
Getting clients <ul style="list-style-type: none"> projecting confidence in your skills networking client service follow-up asking for referrals identifying client needs tracking competitors 		<div> <div></div> <div>→</div> <div>1 2 3 4 5</div> <div>LOW MEDIUM HIGH</div> </div>
Marketing <ul style="list-style-type: none"> advertising/promotion/public relations annual marketing plans marketing strategies advertising copy writing pricing 		<div> <div></div> <div>→</div> <div>1 2 3 4 5</div> </div>
Financial planning <ul style="list-style-type: none"> cash flow planning bank relationships management of credit lines monthly financial statements 		<div> <div></div> <div>→</div> <div>1 2 3 4 5</div> </div>
Accounting <ul style="list-style-type: none"> bookkeeping monthly profit and loss statements/balance sheets quarterly/annual tax preparation billing, payables, receivables 		<div> <div></div> <div>→</div> <div>1 2 3 4 5</div> </div>
Administrative <ul style="list-style-type: none"> scheduling payroll handling benefits administration 		<div> <div></div> <div>→</div> <div>1 2 3 4 5</div> </div>
Personnel management <ul style="list-style-type: none"> hiring employees motivating employees general management skills firing employees 		<div> <div></div> <div>→</div> <div>1 2 3 4 5</div> </div>
Personal business skills <ul style="list-style-type: none"> oral presentation skills computer skills fax, email experience written communication skills word processing skills organizational skills 		<div> <div></div> <div>→</div> <div>1 2 3 4 5</div> </div>
Intangibles <ul style="list-style-type: none"> ability to work long and hard family support ability to work alone ability to manage risk and stress ability to deal with failure ability to work with and manage others 		<div> <div></div> <div>→</div> <div>1 2 3 4 5</div> </div>
		TOTAL _____

How did you do?

- If your total is less than 20 points, you should reconsider whether owning a business is the right step for you
- If your total is between 20 and 25, you're on the verge of being ready, but you may be wise to spend some time strengthening some of your weaker areas
- If your total is above 25, you're ready to start a sole practice now

What I wish I knew in law school...



The first instalment of “What I wish I knew in law school”, an article by LAWPRO’s articling students and newest hires, was one of the most popular features in the inaugural student issue of *LAWPRO Magazine*. We decided a sequel was in order, so we asked our former articling students, Maurizio Artale and Andria Cramer, to reflect on their law school years.

Maurizio Artale

“... building long-term client relationships is a necessary part of private practice”



Legal writing matters

While he was a student, Maurizio participated in a study that canvassed board and tribunal members about perceived skills shortfalls. Number one on the list? Legal writing. While law students get plenty of opportunities to do essay writing, Maurizio recommends that students capitalize on rarer opportunities to practice writing pleadings, briefs, and facta.

Consider alternative articles

Maurizio feels that law schools could do a better job of informing students about alternatives to traditional law firm articling. He notes that non-traditional settings can offer a valuable learning edge: “the primary benefit of commencing your career at LAWPRO is that it offers a bird’s-eye view of errors and omissions that lawyers commonly make throughout the course of their careers.” Good articles will ideally offer an opportunity to learn about “best practices, professional conduct, and client relations” – areas often not well-covered as part of the law school curriculum.

Business of law

Finally, Maurizio felt that the law school curriculum lacked good introductory exposure to what he calls the business of law: “even if you pursue a career in government or in-house, dealing with clients and building long-term client relationships is a necessary part of legal work.” Because even very bright students sometimes struggle with client relations and business development, Maurizio would like to see law schools introduce business management and business communications courses tailored to the legal profession.

Andria Cramer

“

...once the bar exam is over, don't bury the materials in the backyard. Andria has found that those materials – along with her old summaries from law school – are an invaluable resource when she needs to look up a point of law...

”



basic understanding of the principles and case law underlying the materials.” She also noted that while evidence was not a required course at her law school, “everyone who doesn't take it will be at a huge disadvantage going forward.”

Keep your materials handy

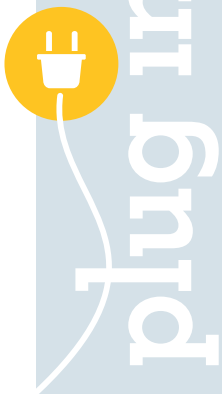
And once the bar exam is over, don't bury the materials in the backyard. Andria has found that those materials – along with her old summaries from law school – are an invaluable resource when she needs to look up a point of law. Andria stores her favourite resources on DropBox, an online document storage service, so that she can access them from anywhere.

Be resourceful before answering questions

Last year's crop of students noted that articling students should ask plenty of questions, but Andria adds a key caveat: “optimize other resources within your environment before bothering the lawyer you are working for,” she suggests, so that when you ask a question, it's the right question, at the right time. Andria notes that support staff, the department database, and even Google can help narrow down your search so that you can ask questions succinctly and get good clarification. And when receiving an assignment, the most important question to ask is: *what is the deadline?* Knowing the answer is essential to knowing how to prioritize your work. ■

Core courses “core” for a reason

While law students are often encouraged to choose law school courses based on their interests, no matter how esoteric, Andria recommends not going overboard. Upper year “core” courses are core for a reason – they cover areas in which lawyers are actually likely to find themselves working. They are also covered in detail on the bar exams. “Taking the core courses that are covered on the bar exams really helped me to pass,” says Andria, “because I had a



Want to know more? Plug in to helpful resources from LAWPRO

We at LAWPRO hope you enjoyed this issue of the Student Edition of *LAWPRO Magazine*.

Did you know that *LAWPRO Magazine* is published several times a year? Each issue contains practical information that can help you establish a well-managed practice and avoid claims. If you'd like to subscribe (it's FREE for law students and articling students!) send a request by email (communications@lawpro.ca).

Remember – practicepro.ca/newlawyers is a web page devoted specifically to the concerns of lawyers new to practice.

If you have any questions, comments or suggestions, we'd love to hear from you.

Connect with LAWPRO: [in](#) [t](#) [f](#)

Resolve to get your law practice off to the best possible start!



Professional liability claims can take the wind out of the sails of anyone's legal career, but can be especially demoralizing for a new lawyer. Your best chance at avoiding claims is to develop great working habits right from the start. The December 2012 issue of *LAWPRO Magazine* proposed dozens of New Years' resolutions for lawyers in every area of practice. We've reproduced a few excerpts relevant to newly-called lawyers here. Want more? Read the whole resolutions feature on the practicePRO.ca website (find it at practicepro.ca/Resolutions).

Want to avoid the most common claims in your particular area of law?
Try these resolutions...

...to avoid litigation claims

- I will enter target dates a few days early to avoid last minute complications.
- I will familiarize myself with the *Limitations Act, 2002*.
- I will avoid the administrative dismissal of proceedings for delay.
- I will talk to my clients more often and not rely on email so much.
- I will make sure to have written confirmation of instructions and advice.
- I will create more detailed docket notes.
- I will review my file before closing it to make sure every task is accounted for.

...to avoid corporate-commercial claims

- I will not dabble in areas outside my expertise.
- I will follow the firm's conflict checking system and take action on conflicts.
- I will take the time to catch all the details and do the job right.

...to avoid real estate claims

- I will ensure I meet with my clients in person at least once.
- I will remember that the lender is also my client in most residential transactions.
- I will make sure I take my instructions from the person with the true interest at risk in the transaction.
- I will document my conversations with and instructions from the client.
- I will not give my electronic registration password to my clerks or anyone else.

...to avoid family law claims

- I will make better use of reporting letters and checklists. (Check out LAWPRO's *Domestic Contracts Matter Toolkit* at practicepro.ca/FamilyToolkit).
- I will be aware of the limitations of my legal knowledge.
- I will proactively direct and control client expectations.
- I will learn to say "no" and not take on a potentially difficult client.

...to avoid wills and estates claims

- I will ask more probing questions when meeting with a client to prepare a will.
- I will not act for family members or friends.
- I will confirm as best I can the capacity of the testator and watch for undue influence.
- I will take the time to compare the drafted will with my notes.
- I will review the completed will with my client.

...to avoid criminal law claims

- I will take the time to ensure the client understands my recommendations.
- I will discuss with the client the potential consequences of pleading guilty (and document it).
- I will promptly notify LAWPRO of any appeals based on "ineffective assistance of counsel."
- I will meet with my client in my office whenever possible.

Want to run an efficient and successful (and hopefully claims-free) practice? Try these resolutions...

...for better case management

- I will complete a conflicts check before opening a file.
- I will open a file for every matter I handle (doing “off-books” work not only bypasses firm administrative procedures and checks, it often leads to short-cuts and mistakes).
- I will use a tickler system for limitations periods and time-sensitive tasks.
- I will have signed retainer agreements or engagement letters in all my files.
- I will send a final reporting letter at the end of every retainer.
- I will not handle matters I am uncomfortable with, because dabblers are more likely to face a malpractice claim.

...to avoid doing things that annoy clients the most

- I will promptly return phone calls and reply to emails.
- I won't make clients wait in reception.
- I will deliver on promises of performance.
- I will be prepared for client meetings.
- I will keep my clients informed during long periods of inactivity.
- I will not send large bills without warning or explanation.
- I will apologize if I fall down on the level of service my clients deserve.

...for stress relief, wellness and balance

- I will take a real lunch break.
- I will read a good book.
- I will get help if I need it.
- I will make time for exercise.
- I will go outside to improve my mental health.

...to better set and control client expectations

- I will carefully explain how the matter will proceed.
- I will avoid legal jargon when explaining things to my clients.
- I will give the client a realistic indication of how long the matter will take.
- I will provide the client with a full picture of all costs and disbursements.
- I will clearly explain to the client all possible outcomes or results.
- I will answer all my clients' questions to their satisfaction, and will confirm my advice in writing.
- I will immediately highlight for clients any unexpected changes that arise.

...to better document files

- I will document all important instructions, advice, conversations, and decisions in my files.
- I will be especially careful to document situations where my client wanted me to follow a course of action that I did not recommend or that could have possible negative outcomes.
- I will also be extra careful to document my files for difficult or emotional clients.
- I will get signed directions for major decisions on a matter.
- I will use written offers to settle.
- I will not document nasty or embarrassing views of my client or other parties.
- I will keep draft versions of documents in the file.
- I will keep a copy of the final version in the file.

...to capture more time, avoid fee disputes (and make more money)

- I will get a sufficient retainer at the start of a matter.
- I will ask clients to replenish the retainer before it runs out.
- I will bill my matters regularly, and stop work if I am not paid (subject to getting off the record where appropriate).
- I will use electronic timesheets and enter my own time as I complete tasks throughout the day, using standard billing codes and including explanatory details.
- I will record every minute I spend on a file, and make necessary adjustments later.
- I will docket all my administrative and other non-billable time.
- I will review detailed time and billing reports for my practice.
- I will use the reports in my accounting software to monitor retainer amounts, Work in Progress (WIP) hours and outstanding accounts.
- I will keep in mind that suing for fees may trigger an allegation of negligence.

...to improve my skills with the help of LAWPRO and practicePRO resources

- I will visit the *LAWPRO Magazine* Archives page (practicePRO.ca/MagazineArchives).
- I will visit the topical listing page (practicePRO.ca/TopicListing).
- I will borrow a book from the practicePRO Lending Library (practicePRO.ca/lendinglibrary).
- I will regularly use practicePRO checklists and precedents (practicePRO.ca/checklists).
- I will check the AvoidAClaim.com blog to confirm my fraud suspicions. ■

Dan Pinnington is vice president, claims prevention and stakeholder relations, and Tim Lemieux is practicePRO co-ordinator at LAWPRO.



Student to lawyer:

20 tips for a smooth transition

This is an abridged version of the LAWPRO article: “20 tips for a successful transition” – a guide for law students through the transition from student life to legal practice. See practicepro.ca/20tips for the full article.

- 1 Honestly assess your strengths and preferences to identify what makes sense for you in terms of the type of firm and area of law you want to practice.
- 2 Consider all the options: big firm, small firm, solo practice, government, in-house. Don't just pursue the opportunities everyone else is pursuing – reflect on what is the best fit *for you*.
- 3 Create and prioritize a list of your options (from your most desired choices, to alternatives you'd accept).
- 4 Identify what makes you unique and use that to sell yourself. See “Job market scoop: What do law firms look for?” at page 2.
- 5 Consider if you have what it takes to be a sole practitioner. Take our self-assessment quiz on page 5 to help you decide.
- 6 Be prepared to work within the realities of articling, the Law Practice Program (LPP) and the job market. Strive to be both positive and realistic.
- 7 Be prepared to deal with uncertainty. You can't control all the factors that influence your career path; but you can commit to making the best decisions possible under the circumstances.
- 8 Be ready to adapt to changing circumstances and external factors. Your vision of the kind of practice that's right for you will likely evolve as you gain experience. Be flexible and open to opportunities.
- 9 Prepare your resume and the supporting information you will use to sell yourself in interviews. Consider including writing samples and references – with appropriate permission.
- 10 Contact potential employers in the order in which you have prioritized your options. Research employers online – or even better: network with friends and family to learn about opportunities.
- 11 Don't have an existing network of contacts? Begin building one! A good first step is to polish your social media presence. Visit practicepro.ca for our article “The essential LinkedIn Dos and Don'ts for law students.”
- 12 Make a good impression at a job interview by preparing answers to the probing open-ended questions you're most likely to be asked. (See our list of sample questions at practicepro.ca/20tips).
- 13 Once you have a job, get delegated tasks done right by understanding parameters and deadlines and asking for feedback.
- 14 Good client communication is essential. See the Fall 2011 edition of *LAWPRO Magazine* for useful articles about communication.
- 15 Find a mentor who can help you improve your skills. There are mentoring programs available from the Law Society (lsuc.on.ca), the Ontario Bar Association (oba.org) and the Advocates' Society (www.advocates.ca).
- 16 Make time for ongoing marketing and client development efforts. For marketing tips go to practicepro.ca/20tips, to see the original “Student to lawyer: 20 tips for a successful transition.”
- 17 Be nice! The legal world is very small – you will meet the same people over and over again – and your reputation will get around.
- 18 Have a life outside of law to help deal with the stresses of the job. While at school, you can find help for serious stress from on-campus providers; and once you become a member of the Law Society, you can contact Homewood Human Solutions to access confidential member assistance services.
- 19 Take care of yourself physically and mentally to avoid burnout. See articling student Alexandra Kozlov's article “Stress management for law students (from a recent grad!)” on page 23 for some tips about how to cope with typical student stressors.
- 20 Trust your instincts, think long-term and be prepared for unexpected turns in your career. ■

Guide to resources

LAWPRO's practicePRO initiative provides risk management, claims prevention and law practice management information to Ontario lawyers. Our resources, precedents and checklists will help you take proactive steps to avoid a legal malpractice claim, and show you how to grow a successful and thriving law practice.



AvoidAClaim blog

Managing risk and preventing claims

- The latest claims prevention information
- Helpful tools and resources for avoiding a claim
- Fraud warnings and alerts
- Subscribe to get updates by email or RSS feed

avoidaclaim.com



practicepro.ca website

All of the risk management information that LAWPRO creates under the practicePRO banner is available on the practicePRO website.

- Information on the biggest claims risks
- Practice aids, precedents and checklists
- Past issues of *LAWPRO Magazine*
- Claim your LAWPRO Risk Management Credit and see a list of approved programs
- Most popular downloads (see page 14 for list)

practicepro.ca



LAWPRO Magazine archives and topical listing

Articles and supplemental resources from all past issues of *LAWPRO Magazine* are available online. Finding individual articles is easy as they are listed both chronologically and by topic/issue. The topical listings page includes more than 40 subject categories including fraud and identity theft, real estate and family law, electronic discovery, practice finances, winding up a practice, technology, and wellness & balance.

practicepro.ca/MagazineArchives
practicepro.ca/topiclisting

The “managing” series of booklets

These “how-to” booklets provide practical insights, precedents and checklists to help lawyers deal with specific law practice management issues. Titles include:

- Managing the Lawyer/Client Relationship
- Managing Conflicts of Interest
- Managing the Practice of Investing in Clients
- Managing a Mentoring Relationship
- Managing Practice Interruptions
- Managing the Finances of Your Practice
- Managing the Security and Privacy of Electronic Data in a Law Office
- Managing a Better Professional Services Firm



practicepro.ca/managingbooklets



Wellness and balance

Lawyers are exposed to high levels of stress on a daily basis. The results can be using, misusing, or even becoming addicted to drugs or alcohol, and challenges to physical or mental wellness. Reducing stress can help make you a more effective lawyer. practicePRO provides you with tools and resources to help you manage stress, and achieve a healthy and balanced lifestyle. These resources include:

- Links to third-party self-assessment tools to assess how well you cope with stress or addiction issues
- In-depth information on how to recognize and deal with different types of addictions
- A list of resources and treatment centres available to lawyers

practicepro.ca/wellness

- See lsuc.on.ca/map for information about the counseling, coaching, online resources and other services available through the Member Assistance Program for Ontario lawyers, law students, and paralegals.

practicePRO lending library

The practicePRO Lending Library has more than 100 books on a wide variety of law practice management topics. Ontario lawyers can borrow books in person or via email. A full catalogue of books is available online. Books can be borrowed for three weeks. LawPRO ships loaned books to you at our expense, and you return books to us at your expense. We have books on these topics:

- Billing & financial management
- Career issues
- Law firm management & administration
- Wellness and balance issues
- Marketing & client relations
- Solo and small firm issues
- Law office technology



practicepro.ca/lendinglibrary

Practice aids

There are many practice aids available under the practicePRO banner. These tools and resources provide you with practical information and advice for dealing with a wide variety of practice management-related issues.



Better client service

- Stronger lawyer/client relationships
- Dealing with difficult clients
- Better professional service
- Serving elderly clients
- Avoiding conflicts of interest
- Investing in clients

Precedents and checklist

- Retainer precedents
- ILA checklist
- Limitation period summary charts
- Generic law firm privacy policy

Technology

- Improving electronic data security
- Handling electronic discovery

Firm management

- Improving practice finances
- Retirement and succession planning
- Building mentoring relationships
- Preparing for practice interruptions

practicepro.ca/practiceaids

Avoid bad cheque frauds

Fraudsters are actively targeting lawyers with bad cheque scams. These frauds will look like legitimate legal matters: spousal support or debt collections, business loans or real estate deals. They will trick you into disbursing funds after you have deposited a fake cheque into your trust account – leaving you with a shortfall. Don't get fooled:

- See the AvoidAClaim.com blog for fraud warnings, the names of bogus clients involved with confirmed frauds and examples of the messages and documents they are providing to lawyers.
- Use our Fraud Fact Sheet to help you and your staff recognize the red flags of a fraud.

practicepro.ca/fraud



The practicePRO “Top 10” downloads

The following are the most popular downloads from the practicePRO website.
practicepro.ca/topdownloads

The top 10 LawPRO Magazine articles

- 1 'Beware the Dangers of Metadata' by Dan Pinnington
- 2 'Capacity and Capacity Assessment in Ontario' by Judith Wahl
- 3 'Critical Issues Facing the Legal Profession' by David Bilinsky
- 4 'Dealing with Difficult Clients' by Justice Carol Curtis
- 5 'Dos and Don'ts for Twitter' by Dan Pinnington
- 6 'Administrative Dismissals, Part 2' by Domenic Bellacicco
- 7 'How Long Should You Keep Your Closed Files?' by Dan Pinnington
- 8 'Practice Pitfalls' by Tim Lemieux and Norman McInnes
- 9 'Herding Cats: Revealing the Lawyer Personality' by Dr. Larry Richards
- 10 'The Biggest Malpractice Claim Risks' by Dan Pinnington

The top 10 precedents and checklists

- 1 Sample law firm budget spreadsheet
- 2 Law firm business plan outline
- 3 General retainer agreement
- 4 Employee departure checklist
- 5 Sample associate agreement
- 6 Sitting on a non-profit board: A risk management checklist
- 7 Independent legal advice checklist
- 8 Criminal law retainer agreement
- 9 Family law retainer agreement
- 10 Sample law firm privacy policy

The top 10 papers and supplemental resources

- 1 E-Discovery Reading List
- 2 LawPRO Fraud Fact Sheet
- 3 Managing the Finances of Your Practice booklet
- 4 Transition Rules chart: *Limitations Act, 2002*
- 5 Top 10 Technology Tools (and Tips on How to Use Them)
- 6 'Dealing with Difficult Judges' by Justice Carol Curtis
- 7 Managing the Lawyer/Client Relationship
- 8 Managing Conflict of Interest Situations
- 9 Managing a Mentoring Relationship
- 10 Managing the Security and Privacy of Electronic Data in a Law Office

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LAWPRO[®]

practicepro.ca

The practicePRO initiative is LawPRO's risk
and change management program

Student Issue #2

Planning to do real estate work?

A primer on title insurance and the TitlePLUS[®] program

If you're planning to do real estate work when you go into practice, you'll soon hear about a resource used by many real estate practitioners – title insurance. It's a type of insurance coverage that helps protect homeowners and mortgage lenders against some typical problems that might crop up after closing: problems that, in the past, might have led to the client filing a malpractice claim against the lawyer.

Several companies offer title insurance – including LAWPRO, through its TitlePLUS¹ title insurance program. This article provides a basic overview of the what and why of title insurance, how our TitlePLUS program is different, and where you can find more information.

What is title insurance?

As its name suggests, title insurance is an insurance policy for purchasers, mortgage lenders and existing owners of real property that provides compensation for losses suffered because of problems with title, surveys, zoning and other issues with the property – even if they are not discovered until years after the sale is completed.

Some of these issues are unpredictable or undetectable – such as forgery, fraud, missing heirs, and unregistered easements. Other problems that can affect a property covered under a title insurance policy include issues resulting from renovations done without building permits, construction liens, access rights and conflicting interests in a property.

When the lawyer in the transaction has secured a title insurance policy for the owner or mortgage lender, it is the title insurer –

and not the lawyer or client – who assumes the risk for matters covered under the policy and, if there are losses, pays compensation.

It is important to understand that title insurance does not replace the work of the lawyer in the transaction. The role of the lawyer remains just as important to ensure the client's interests are properly protected. In fact, depending on the issues, a client may prefer that the lawyer do a search to determine the status of a matter rather than depend on title insurance and the right to be able to make a claim to an insurer at a later date.

What's different about the TitlePLUS title insurance program?

LAWPRO's TitlePLUS program is different from other title insurance in several ways:

- 1. Title + legal services coverage:** With TitlePLUS coverage, the legal services that you provide are also covered by the policy² (this is not the case with most competitors' products). So, if as part of your legal services you make an error or overlook something (e.g., fail to register a document, remove an encumbrance, or incorrectly adjust items on closing), the TitlePLUS policyholder – your client – can seek compensation directly from us. In other words, the error will not result in a claim under your errors and omissions policy³ if you obtained a TitlePLUS policy for your client.
- 2. Online software that makes closings easy:** We make real estate transactions simpler by providing access to an online system that walks lawyers through a closing. That software lets you easily order a TitlePLUS policy for your clients,

Don't be duped – avoid becoming a victim of fraud with the help of LAWPRO's Fraud Fact Sheet



Learn to identify the common red flags for bad cheque and real estate frauds, how to avoid being duped by a would-be fraudster (including insiders – associates, clerks, or other staff), and what to do if you're suspicious about the legitimacy of a legal matter. Go to practicepro.ca/FraudFactSheet for a copy.

as well as providing access to a variety of sample forms, letters and reports.

3. It's all-Canadian: In fact, TitlePLUS title insurance is the only all-Canadian title insurance program on the market today.

4. We advocate for the real estate bar: Each year, under the TitlePLUS banner, LAWPRO undertakes an extensive consumer public awareness/education campaign about how a lawyer protects the interests of the public in various scenarios – from buying a home or cottage to drawing up a power of attorney to the perils of running a home-based business. In the past few years, this effort to put lawyers at the forefront has reached millions of consumers across Canada.

How can you find out more?

Go to titleplus.ca for information on the TitlePLUS program.

See titleplus.ca/rsreg for more information on some of the tools and resources for consumers available through the TitlePLUS program.

Go to practicepro.ca/Outreach for more on the advocacy efforts we've undertaken for the bar. ■

¹ Title insurance policies may vary. Refer to the policy for full details, including actual terms and conditions.

² Excluding OwnerEXPRESS policies and Quebec policies.

³ Please consult the requirements of your individual errors and omissions insurer.

Common practice pitfalls:



How to avoid them

Lawyers Professional Indemnity Company (LAWPRO) was created to insure lawyers against legal malpractice claims. Most (though not all) claims are brought by a lawyer's own client and include an allegation that the lawyer made a mistake or did not meet the standard of care expected of him or her when delivering legal services.

No lawyer is immune to a claim; in fact, our records suggest that four out of every five lawyers will be the subject of a claim at one point in their career. Malpractice claims can be stressful, can hurt your reputation, and can be costly (even if the only financial consequence to the lawyer is an increase in insurance premiums).

Understanding the most common causes of claims so that you can build risk management skills early in your career is your best line of defence.

What kinds of mistakes lead to claims?

Students in the midst of law school, with its mountain of reading on cases and substantive law, might be surprised to learn that “errors of law” are not the biggest pitfall to watch out for in the world of private practice. In fact, in the last ten years, only about 12 per cent of LAWPRO malpractice claims were caused by lawyers getting the law wrong (except in very complex areas like family or tax law).

So, if knowing the law isn't the problem, what *is* the danger that new lawyers should be on the lookout for? In a nutshell, you could call it “human error”: breakdowns in communication, poor calendaring and procrastination, and not digging deeply enough into a client's matter. These types of errors make up almost 70 per cent of the claims LAWPRO sees.

Students may not yet know what area of law they will ultimately end up practising, but the causes of claims are remarkably similar in all types of practice, firm size and geographic location. Here's an overview of the biggest pitfalls:

Client communication

No matter what the area of practice, the number one cause of claims to LAWPRO is a breakdown in lawyer-client communication. This ought to be the easiest type of error to guard against, but it is also the

most common and seems to be on the increase. Often these claims arise because the lawyer and client disagree on what was said or done – or not said or done, sometimes because communications are rushed. This is partly the result of lawyers being busier than ever, and partly due to clients who expect faster replies and more ‘round the clock’ responses from their lawyer.

However, there is much that can be done at every stage of the matter to prevent these types of claims. Right from the outset, a well-drafted retainer letter can set the client's expectations of how the matter will proceed and what the lawyer will (and won't) do for them.

As the matter progresses, it is important to document conversations with the client, your advice, and the course of action the client wishes to pursue. This documentation can be a lifesaver in the event of a malpractice claim. Clients may later say they asked the lawyer to do X and it wasn't done; or the lawyer may have done Y and the client claims he didn't authorize this course of action. If there is no documentation of lawyer/client conversations, the claim then turns on credibility, and the experience has been that courts are more likely to believe the client's recollections (the case is top of mind for the client, but only one of several for the lawyer).

It's an unfortunate fact that while email and other electronic media provide more ways than ever for a lawyer to interact with clients, all these lines of communication seem to result in even more misunderstandings. Clients or lawyers read things into emails that



70%

12%
errors of law

18%
other

aren't there, miss the meaning of what was said, or read between the lines and make assumptions. Face-to-face communication is the best way to ensure miscommunications don't happen. If meeting in person isn't possible, at least pick up the phone to avoid misunderstandings when important matters need to be discussed.

Clients whose expectations have been adequately managed are less likely to turn on their lawyers (rightly or wrongly) than those who are taken by surprise by the result of their case or legal fees. Visit practicepro.ca for our resources on managing lawyer/client relationships.

Inadequate investigation

This is a type of error closely related to poor communication and is best described as lawyers not taking the time to uncover all the facts or develop sufficient understanding of a client's matter. It can be considered a symptom of "smartphone legal advice": quick questions and quick answers by lawyers and clients who are both in a rush. These claims go to the very core of what lawyers are supposed to do for their clients – give legal advice – and involve the lawyer not taking extra time or thought to dig deeper and ask appropriate questions about the matter.

These claims can arise in any area of law. We see them most commonly in busy real estate practices, where rushed lawyers miss deficiencies in a condo status certificate, misread a survey, or don't find out what long-term plans a client may have for a property (so that they can ensure those plans are viable). In litigation it could mean not making a reasonable effort to identify all the parties to an action within the limitation period. In wills and estates law it could mean not inquiring into the capacity of an elderly client or failing to ask about the existence of previous wills.

The best way to avoid these claims is to simply slow down. Take the time to read between the lines so you can identify all appropriate issues and concerns. Ask yourself: What does the client really want? Does everything add up? Are there any issues or concerns that should be highlighted for the client? If something doesn't add up, dig deeper. See our article "Inadequate Investigation/Discovery: Now the #1 Cause of Claims" at practicepro.ca for more.

One way to ensure that the right questions are asked on a matter is to make use of the practicepro.ca articles and checklists. At

practicepro.ca/topiclisting you'll find checklists for domestic contract matters, commercial transactions, and independent legal advice, as well as claims prevention articles from *LAWPRO Magazine* arranged by particular areas of law.

Time management

It seems to be human nature to put off tasks until the deadline is looming (as any student pulling an all-nighter will attest). It's no different for lawyers, which makes missed deadlines a major source of LAWPRO claims. This is most common in plaintiff litigation, which has strict limitation periods and document filing deadlines to manage.

While every lawyer seems to have a dusty file or two in their office that they never quite get around to, time management claims are not always the result of simple procrastination. In some cases the lawyer fails to ascertain the limitation period on a matter, or even if they do know, fails to properly calendar the limitation period or act when it comes up.

There are a number of things you can do to avoid missing a crucial deadline. Familiarize yourself with the *Limitations Act, 2002* by using practicePRO's limitations resources at practicepro.ca/limitations, and LAWPRO's limitations casebooks. Use practice management software with tickler systems to alert you to approaching deadlines. Be aware of the danger of the registrar dismissing an action for delay under Rule 48 of the *Rules of Civil Procedure*.

Finally, building in a one- or two-day cushion can help prevent this type of error when there are unexpected problems that stop you from meeting a deadline for a filing (e.g. ice storm; or taxi in an accident on the way to courthouse on last day to file).

These are very general descriptions of the common causes of LAWPRO claims. If you want to learn more about malpractice claims in particular areas of law, you'll find a wealth of articles in *LAWPRO Magazine's* archives (arranged both chronologically and by topic at lawpro.ca/MagazineArchives). There are detailed examinations of claims causes in several areas of law, as well as articles featuring advice from LAWPRO's own claims counsel on the common mistakes they see lawyers making and how to avoid them. ■

Tim Lemieux is practicePRO co-ordinator at LAWPRO.

The dangers of social networking and how to avoid them

Although social networking tools offer lawyers many interesting new ways to interact with people in both personal and work spheres, there are some risks associated with using them. Before you venture into social networking, consider Section 5.5 of the Law Society's Practice Management Guideline on Technology ("Technology Guideline"). It states, "Lawyers should have a reasonable understanding of the technologies used in their practice or should have access to someone who has such understanding."

Don't talk to or about clients or their matters

Social networking tools have complex and confusing privacy settings and most people are not entirely sure who can see the content they are posting. And blurting out something about a client on any social network, in particular anything sensitive or confidential, is a bigger blunder than the proverbial comment on an elevator because hundreds or even thousands of people can potentially access the information. Keep in mind Rule 2.03 of the *Rules of Professional Conduct* which states, "Lawyers using electronic means of communications shall ensure that they comply with the legal requirements of confidentiality or privilege." This rule clearly applies to social networking activities. It is tempting, and potentially very helpful, to toss out a question or seek strategic advice on a social network, but remember, even generic questions or comments about a matter you are handling could be read and recognized by someone involved with the matter. At the more social end of things, confirming a lunch date is probably not a problem – unless the fact you act for the client is confidential. And in that case you shouldn't even be "friends" with the client.

Know and respect the marketing-related *Rules of Professional Conduct*

When using social networks make sure you comply with Rule 3 and the other guidelines which govern the marketing and advertising of legal services. Section 5.8.2 of the Technology Guideline states that, "Lawyers making representations in generally accessible electronic media should include the name, law firm mailing address, licensed jurisdiction of practice, and email address of at least one

lawyer responsible for the communication." This information is on most websites and blogs, but is often overlooked on Facebook pages and Twitter bios (and it won't fit in a tweet!). You are free to offer your services via social networking tools, but keep in mind the restrictions on contacting recovering or vulnerable potential clients, distributing electronic advertisements directly and indiscriminately to large numbers of people.

Avoid the unauthorized practice of law (UPL)

Lawyers need to appreciate that any content they post on the Internet can easily be accessed from anywhere in the world. Ontario lawyers practising law in other jurisdictions by providing legal services on the Internet should respect and uphold the law of the other jurisdiction, and not engage in the unauthorized practice of law. If you include the jurisdiction in which you are licensed to practise in your online content and posts, your clients will understand where you can and can't practise.

Avoid conflicts of interest

The very nature of social media makes you more vulnerable to conflict of interest situations. Much of the information posted on social networking sites is public, and people frequently use an email or online name that is shortened or different from their usual name when communicating online. To avoid conflicts of interest when using social networking tools, lawyers should take reasonable steps to determine the actual identity of people they are dealing with and be very careful about what information they share.

Don't give legal advice AKA avoid phantom clients

Providing legal information is fine, and indeed is helpful when you are looking to market yourself. However, you should be very careful never to give legal advice online. Unfortunately, the information/advice distinction can become quite blurred when a lawyer and non-lawyer communicate online, especially when the lawyer is providing answers to specific questions posed by a client. A lawyer-client relationship can be formed with very little formality. Be cautious about saying anything online that might be construed as legal advice. Include a disclaimer on your blog and within any information you post online. And remember, in Ontario the onus is on the lawyer who seeks to limit the scope of the retainer, and if there is an ambiguity or doubt, it will generally be resolved in favour of the client. Having a record of what was said or not said in a social networking exchange could help you defend yourself against a claim that you gave legal advice online.

Protect your identity

One of the hidden risks of social networking is identity theft. Social network profiles can include information such as your birth date, university, mother's maiden name, etc. This information is often the answers to standard challenge questions that banks, credit card companies and others use to verify your identity. Someone intent on stealing your identity could visit social networking sites and gather information about you. Having your identity stolen can have severe consequences. It's not only stressful to have to restore your true identity, but also takes time and money and can leave you with a bad credit rating. The lesson is clear: don't help a fraudster steal your identity.

// tech tip

Be polite and professional

With search tools such as Google, the vast Internet becomes a small town. With a few clicks your existing and potential clients can easily find almost everything that you ever said or posted on the Internet. It can be extremely difficult if not impossible to delete information once it is posted online. For these reasons you want to be civil and professional in all your online activities. Use proper spelling and grammar. Avoid using short forms for words. Exercise good manners and be polite. A good rule of thumb: Don't say anything you wouldn't say in person or that you would not want your mother to read on the front page of the newspaper tomorrow morning. And never ever start or continue a "flame war" – an ongoing sequence of hostile messages between two or more people. By their nature, flame wars attract a lot of attention, making it even more likely a client will find them. And be careful with social networks that post information about what you are doing online – see the adjacent sidebar.

Making the wrong friends

In the world of social networking, people you have never met will want to be your "friend." It's nice to be popular, but there are differences between real friends and virtual friends. Knowing more people is great when it comes to marketing, but as the degrees of separation increase from you, two connected people will know less and less about each other, and the potential for a referral also becomes less likely. Think strategically about whom you want to be friends with and be careful not to be friends with someone who could embarrass you. For example, if you are a litigator, you probably don't want to be friends with any judges or experts, as it wouldn't look good to your opposing counsel. Ethics panels in the United States have said it is not proper for lawyers to become friends with someone to dig up information about them for use in a litigation matter. To decide whether to accept an invitation to be a friend, you need

to consider the nature and purpose of the particular social network. It may be fine to cast a wider net on some networks. However, on more professional or personal networks, you will want to be more selective. Consider these general approaches:

- Invites from people you just don't know: Yes on Twitter; no on Facebook or LinkedIn.
- Invites from people you know by name only: Yes on Twitter and LinkedIn; no on Facebook.
- Invites from people you barely know: Yes on Twitter and LinkedIn; judgement call on Facebook.
- Invites from people you know but don't really like or respect (or want to be associated with): These can be awkward, but it is best to say no thanks or just ignore them.

Don't blur your personal and professional lives

When Facebook was almost entirely a personal social network, it was easier to keep your personal and professional online presences separate. Now that many social networking tools are becoming connected and taking on more of a commercial aspect, it is becoming much harder to have separate online identities. People are using different strategies to deal with this. Some refuse to have a personal presence on Facebook as they feel it is almost impossible to keep a private "personal" site. For the personal safety of family and loved ones, most criminal lawyers post nothing personal online. Others will lock everything up and only link to their close personal friends. And some are creating a personal site for only their closest friends, and a fan page for business or professional contacts. On sites that are more commercial or professional, people will put up business information and be careful about how much personal information they post. ■

Dan Pinnington is vice president, claims prevention and stakeholder relations.



Is Facebook secretly sharing what you are reading and watching?

During a recent phone call with one of my colleagues, we had a bit of a chuckle over a rather risqué video that one of our mutual friends had apparently just viewed online. Think clothing-optional antics by a celebrity in Vegas. As it happened, a few minutes before our call, we had both seen a Facebook update telling us that our friend had just watched a particular video. Our friend likely had no idea that the videos he was watching were being shared with the world via Facebook.

Some sites will automatically share your online activities (what you are watching, reading, buying, etc.) with your Facebook friends. These sites may warn you about this sharing the first time you visit them. This usually happens when you click through to look at an article or video that someone you know has shared. A little window will pop up with a vague warning before the article you want to read appears. You frequently consent to the sharing simply by proceeding to the article, although occasionally you will be asked to consent by clicking a checkbox. In most cases, this will be the one and only warning you get. From that point forward, an update will automatically be posted to your Facebook page with a description and link to every item you watch or read on that site. This is called "frictionless" sharing. The number of sites using frictionless sharing is growing and has included Amazon, Netflix, Spotify, Ticketmaster, Autotrader, TripAdvisor, Urbanspoon, Pinterest, and FourSquare.

Go to your Facebook Privacy settings page and review the list of apps you have installed and what they are sharing. And while you're at it, check the privacy and sharing settings on the other social media tools you use. Put a reminder on your "to do" list or calendar to review your permissions once a quarter or even monthly. Remember that checking your permissions helps protect your privacy.

What new lawyers need to know about LAWPRO's mandatory professional liability insurance

These FAQs answer some of the more common questions we hear from newly-called lawyers. The answers will help you determine if you need insurance coverage (or whether you're exempt) and which steps you need to take to get your LAWPRO insurance coverage in place.

What is professional liability insurance?

Professional liability insurance is designed to indemnify lawyers against the consequences of a lawyer's liability for a client's loss. For this reason, only lawyers in *private practice* are subject to the mandatory insurance requirement.



What is private practice?

Private practice, for the purpose of LAWPRO's insurance program, is the delivery of professional services (including advice) to anybody who is not the lawyer's employer. In general, lawyers in private practice perform professional services for clients for pay. Note as well, providing legal advice or help to family or friends, or providing free legal advice to *pro bono* clients also falls within the definition of private practice.

Do all members of the Ontario bar have to purchase professional liability insurance?

If you are engaged in private practice in Ontario, you will need to purchase coverage through LAWPRO. [See the left-hand text on the next page for more details on getting insurance from LAWPRO.](#)

If you are not in private practice and meet certain criteria, you are likely exempt from the mandatory insurance requirement. [See the exempt lawyer FAQ's on the right-hand side of the next page.](#)





Going into private practice.

How do I apply?

If you will be working as a sole practitioner, you will need to complete an application online. (You'll receive a mailing from us with instructions.) New lawyers can register at any time after receiving a Law Society number from the Law Society of Upper Canada (be sure to have insurance in place before you begin practising!). After the first year, you will be asked, each October, to renew your insurance for the following year.

If you'll be joining a firm, you may want to speak with the firm administrator or office manager before you apply directly, as there may be specific practice or payment options that need to be reflected on your application form.

How much will it cost?

Not every lawyer in private practice pays the same premium. LAWPRO offers discounts to certain categories of lawyers (including part-time practitioners, and lawyers who practise criminal and/or immigration law exclusively). The base premium for the year 2014 is \$3,350 plus PST.



Newly called lawyers receive a discount: Lawyers newly called to the bar in the current year receive a 50 per cent discount from the standard base rate in their first full year of practice. Additional discounts are available in the second, third, and fourth years (40, 30 and 20 per cent, respectively). These discounts reflect the risk profile of new lawyers. Because the maximum premium discount for any lawyer is 50 per cent, these discounts cannot be combined with other discounts.

Some lawyers pay more than the base premium. For example, there is additional premium required for the practice of real estate law (a higher-risk practice area, from a claims perspective). Also, lawyers for whom LAWPRO has paid claims within the previous five years may pay more for their insurance because of claims surcharges.

Not going into private practice.

What kinds of lawyers are exempt from the mandatory insurance requirement?

In general, lawyers working as in-house counsel, who are employed by the government, who work in education, or who work for a clinic funded by Legal Aid Ontario are exempt from the requirement to pay insurance premiums. Lawyers who do *pro bono* work that meets certain criteria, or who are on temporary leave, may also be exempt.



If I'm not going into private practice, can I just forget about insurance?



No. The Law Society of Upper Canada requires that ALL members of the bar (not just those in private practice) confirm their practice status every year. This means that you must either pay for insurance, or file an application for exemption from the insurance requirement.

LAWPRO's insurance application, exemption application, and other relevant forms can be found (and filed) online. See lawpro.ca/newcalls for more details.

What happens if...

I meet the general criteria for exemption, but later find myself providing legal advice to someone other than my employer, or handling a legal matter for a family member or friend?

Anytime you provide professional services, you expose yourself to a potential claim. Even if you are not in full-time private practice, if you contemplate providing even occasional legal advice or services, you will need to purchase insurance coverage (there are a few narrow exceptions, including one for certain kinds of *pro bono* work). LAWPRO has created a series of *Insurance Matters* booklets to help individuals who feel they are exempt consider potential areas of exposure. Check out these resources online at lawpro.ca, or get in touch with us to request copies.



HOW DO I FIND OUT MORE?

For more information, please visit our website at lawpro.ca and lawpro.ca/newcalls for information specific to new calls. You can also send an email to LAWPRO Customer Service at: service@lawpro.ca, or you can call us at: (416) 598-5899 or 1-800-410-1013.



Benjamin Hutchinson



Andria Cramer and Maurizio Artale

Why I chose a career before law school

While many students take the LSAT and if accepted, go to law school after completing a first degree, some choose a different path. Many law students take a few years off in between, for several reasons, including making sure this is the career they want.

Last year's LAWPRO articling students, along with one of LAWPRO's current articling students did just that. We sat down with Maurizio Artale, Andria Cramer and Benjamin Hutchinson to discuss the benefits of waiting a few years to go back to the classroom.

Maurizio did a masters in political science and while he was thinking about going to law school he wasn't 100 per cent sold on the idea. So, he worked for the Canadian government at Industry Canada and the Department of Northern Development and Indian Affairs. After working in government departments for almost five years, Maurizio decided it was time to head back to school and decided on Osgoode Hall Law School.

Andria first completed a law clerk and paralegal program. She was always interested in law school, but, similar to Maurizio, wanted to make sure it was the right decision for her career. So she decided to try working

in a law office setting and confirm if she was still interested. She was working as a legal assistant for Research In Motion (RIM) when she applied to law school. After being out in the workforce for a few years, she knew there was a new challenge out there for her and chose to attend the Faculty of Law of the University of Ottawa.

While some people may worry that being out of the classroom for a few years will make it hard to get back into the habit of study, there are many skills you can develop while working in an office setting that will help when you're back in school.

Like Maurizio and Andria, Benjamin completed other degrees (a masters in political science and a bachelor of education) before attending Osgoode Hall Law School. While Benjamin admits it can be a bit of a challenge to get back into school mode, learning soft skills (especially communication skills through teaching) before going back helped him succeed in law school.

"When you work in a fast-paced environment, you really learn time management skills, how to handle stress, and to control your emotions," says Andria, "all important

characteristics to learn before you attend law school, as they will definitely help ease the intensity of the program."

Maurizio adds that experience gained working in an office or volunteer setting can be a career asset. He volunteered with legal aid at Osgoode and was able to develop relationship skills for working with clients – a task that many first year students find intimidating.

If you do decide to wait before going to law school, these students have some advice for you. "While it might be more difficult to go back to school after taking a few years off, you will probably have a better sense of what you would like to do, you will be more mature, more prepared and a stronger student," says Maurizio. "It's a good idea to wet your feet a bit and reflect on what you want to do with your career."

Andria agrees and adds: "Use the time you take off before law school to the greatest extent possible. Whether it's volunteering or working in an office and making new connections, all of this will help develop personality traits crucial to success in law school and beyond." ■

Victoria Caruso is communications coordinator at LAWPRO.

Stress management for law students (from a recent grad!)



We all know what law school stress looks like. Come exam time, we see its physical manifestations: the law student, hibernating in the law library, subsisting on a diet of coffee and candy, sits surrounded by mountains of books, empty cans of energy drinks and an arsenal of highlighters. We recognize the bloodshot eyes and the anxiety-ridden knuckle cracking. Stress is synonymous with law school, but it's important to remember that stress is merely the interaction between a situation and the way we perceive it. You cannot eliminate all the stress from your life, but you can modify your reaction to it.

Situation: You landed an interview with the firm of your dreams. You visualize yourself summering and articling there and launching your legal career into the stratosphere. Sadly, during the interview, you were asked an unexpected question. You froze, your thoughts racing and heart pounding. After what seemed like an eternity, you stuttered something incoherent. You know that you blew it.

Solution: Reframe your thinking about this interview. Yes, maybe you did not get the job. However, instead of focusing on your disappointment and perceived weaknesses, which will only lower your self-esteem, concentrate on viewing this as a learning experience. Identify the reason why you struggled with the question, call the interviewer to ask for some feedback and work on improving your interviewing skills. (And check out our list of common interview questions in this article: practicepro.ca/20tips) Next time, you will be better prepared to handle tough questions and you will be one step closer to getting that offer.

Situation: You have just finished writing a tricky exam and you feel pretty confident. Over burgers, you and your friends start discussing the exam. They all thought that this exam was easy. In their answers, they identified more issues and discussed more cases than you did. You discovered that

you made several errors and you are now terrified that you will get a low mark.

Solution: Feelings of inadequacy are not uncommon when law students discuss the following: how much time and effort they devoted to an essay or exam, how deep their understanding of the course material is, the difficulty level of an exam, etc. Steer clear of these stressor conversations. Set boundaries with your friends. If your friends insist on discussing the exam, remove yourself from the conversation. Remember that conversations of this sort are never productive, you have already finished your exam and you cannot edit your answers. Additionally, just because your friends answered the questions differently does not mean that they were right. Law professors mark exams in mysterious ways. Before panicking, wait until you get the exam results. If you did underperform, focus your efforts on the next exam.

Situation: This is a hectic week and you are sure that you are on the verge of a nervous breakdown. You have a 20 page essay due, your moot factum is still unfinished, you are behind on all your readings and you are doing intake interviews at the legal aid clinic. How are you going to get through this?

Solution: For now, you have no choice but to take a deep breath, break each project into smaller tasks, stop procrastinating and get

to work. Take everything one small step at a time. In the future, try to spend more time with your non-law friends. They will help you maintain your mental health. Your law school friends are dealing with the same stressors you are, and commiserating over these challenges may exacerbate your anxiety. If you spend all your time with law students, you will eventually start believing that your entire self-worth depends on how many OCI interviews you got or how many course prizes you won. Non-law friends can take you out of your funk. They can show you a different perspective and remind you that there is a world outside of law. Find people who will look perplexed when you make a Lord Denning joke and make sure you spend some time with these people each week.

Finally, although most law school-related stress is manageable, if the stress in your life becomes overwhelming, be sure to seek help. Law students often don't realize that they are eligible to access the services provided by the Member Assistance Program (MAP) for lawyers – a program funded by the Law Society of Upper Canada and LAWPRO, and delivered by Homewood Human Solutions. Visit lsuc.on.ca/map for more about the MAP. ■

Alexandra Kozlov graduated from the Queen's Faculty of Law in 2012 and articulated with the Workplace Safety and Insurance Appeal Tribunal.

Articling & Beyond 2013

For the fourth year in a row, LAWPRO attended and exhibited at the Law Society of Upper Canada's "Articling & Beyond" program that took place on November 15, 2013. This event brings together prospective articling students and new lawyers with law firms from smaller communities looking to attract students and new hires. It's a great networking opportunity and a showcase for the practice of law beyond the big city. The attendees are a mix of law students, current articling students, newly-called lawyers and foreign-trained lawyers getting certified in Ontario.

LAWPRO attended for two reasons: to let people know we take on two articling students each year; and to promote our risk management

resources to students and new lawyers. We were encouraged to see that many more attendees in the past year were familiar with LAWPRO than even just three years earlier. Some had seen the student edition of our magazine on campus and others had heard a speaker from LAWPRO at their school or had come across one of our articles or practice resources.

This year, our current articling students Sarah Bedard and Ben Hutchinson, and former student (now LAWPRO claims counsel) Nadia Dalimonte were on hand to discuss articling at LAWPRO and to share their experiences in searching for an articling position.

LAWPRO's commitment to corporate social responsibility



At LAWPRO, employees see the value of establishing and executing a corporate social responsibility initiative. To support the broader Canadian community, LAWPRO employees nominate and elect five charities each year. Funds are raised through employee-led events and denim Friday contributions and

the company matches those donations. The elected charities for 2013 were: Anaphylaxis Canada, Alzheimer Society of Canada, Fanconi Canada, Good Shepherd Refuge, and The Humane Society. In 2013, LAWPRO raised a total of \$24,000 which was distributed between the five charities.

LAWPRO employees can also give back by requesting one "charity day" per year during which they work for a registered charity of their choice. In 2013, several of our employees took advantage of the charity day by helping the Lawyers Feed the Hungry Program, where they prepared over 300 sandwiches, helped set up for the evening and served dinner. We also had employees volunteer at other registered charities including Daily Bread Food Bank, International Justice Mission Canada and First Book Canada.

In addition, LAWPRO supports Canadian Cancer Society Daffodil Days, Casserole Campaign for the Homeless through the Good Shepherd Centre, and Partners for Blood Drive through Canadian Blood Services.

Outreach

The Caron Wishart Memorial Scholarship was established in memory of one of LAWPRO's devoted employees, Caron Wishart, who passed away in December 2010. She was vice president of the claims department at LAWPRO from 1995 until 2010. Donations were contributed from LAWPRO as well as Ms. Wishart's family, friends and colleagues.

This year marked the second issue of the scholarship, which is awarded each year on the basis of academic merit and financial need to a student entering their second year at the University of Toronto Faculty of Law. In 2013, the scholarship was awarded to Alison Mintoff, whose focus in school and community work is issues surrounding women affected by violence. She is also passionate about environmental and energy law – courses she is currently taking – and is the associate editor for the International Human Rights' publication *Rights Review*.



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