LawPRO magazine

SEPTEMBER 2014 VOL 13.2

The changing face of the profession

PLUS

- Understanding the Law Society's diversity statistics
- How title insurance benefits the primary insurance program
- Lawyer profiles reveal diverse paths to success
- Untangling the myths of excess insurance

upcoming events

September 25, 2014
Thunder Bay Law Association
Lawyers and fraud – spotting the dangers
Title Insurance and you: optimizing the lawyers role
Lisa Weinstein presenting
Thunder Bay, ON

October 17, 2014
Colloquium
Sudbury District Law Association
Cybercrime and law firms
Ray Leclair presenting
Subury, ON

October 20, 2014
Ontario Trial Lawyers Association
Fall Conference
Ethics for law clerks
Dan Pinnington presenting
Toronto, ON

October 21, 2014
Ontario Bar Association
Professionalism for business lawyers
Dan Pinnington presenting
Toronto, ON

October 31, 2014
Ontario Association of Black Lawyers
Annual General Meeting
Cybercrime and law firms
Ray Leclair presenting
Toronto, ON

November 6, 2014
Hamilton Law Association
Emerging Issues in Real Estate Seminar
Cybercrime and law firms
Ray Leclair presenting
Hamilton, ON

November 18, 2014
Middlesex Law Association
Annual Practice Management Seminar
Cybercrime and law firms
Ray Leclair presenting
London, ON

December 9, 2014
Law Society of Upper Canada
Real Estate Practice Basics Program
Title insurance & fraud
Ray Leclair presenting
Toronto, ON

recent events

August 15-17
Canadian Bar Association
Canadian Legal Conference
60 practice and tech tips in 60 minutes
Dan Pinnington presented
Fraud: How to spot and prevent it
Ray Leclair presented
St. John's, NL

August 21, 2014
Ontario Bar Association
Excelling at Articles and the Law Practice Program 2014
Tips for avoiding a malpractice claim
Yvonne Diedrick presented
Toronto, ON

August 27, 2014
Ontario Bar Association
Excelling at Articles and the Law Practice Program 2014
Professional and practice management: how to avoid trouble
Ray Leclair presented
London, ON

September 19, 2014
1000 Island Legal Conference
Frontenac Law Association
Cybercrime and law firms
Ray Leclair presented
Gananoque, ON

LawPRO and the practicePRO and TitlePLUS programs welcome invitations to speak about professional liability insurance, risk management, title insurance and other topics within our expertise. Interested in arranging for a speaker? Please contact practicePRO at practicepro@lawpro.ca, or call us at 416-596-4623.

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Embracing diversity in the legal profession

Departments

In practice

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LawPRO® (Lawyers' Professional Indemnity Company)

More than half of Canadians don't know their options if they can't pay their mortgage

We know the value of consulting a lawyer. To help increase that awareness outside of LawPRO and reach out to consumers, we commissioned a survey to assess the public's understanding of home ownership issues including the options available when they can't pay their mortgage, the role of co-ownership agreements, and the potential impact on an estate when an adult child lives with parents. The survey results led to media opportunities to promote the role of lawyers.

We want consumers to know the benefits of consulting a lawyer – not just when something has gone awry in a home purchase, or when finalizing a will. We suggest speaking with a lawyer in advance of many life events because lawyers help their clients avoid major missteps.

Our news release about the survey resulted in high profile coverage in the Financial Post, Yahoo Finance, and Mortgage Broker News. Remarks were featured in each of these articles by LawPRO's Ray Leclair, Vice President, Public Affairs.

Key dates

September 15, 2014

File your LawPRO Risk Management 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.

On or about October 1, 2014

LawPRO online filing of Professional Liability Insurance renewal applications for 2015 is expected to begin. If you wish to file a paper application instead, please note that paper renewal applications will not be automatically mailed out. However, it is expected that you will be able to download a 2015 pre-populated paper renewal application from our website on or about October 1, 2014.

October 31, 2014

We expect that real estate and civil litigation transaction levies and forms are due for the quarter ended September 30, 2014.

November 4, 2014

E-filing deadline: We expect that applications filed online by November 4 will qualify for a $25 per lawyer e-filing discount applied to the 2015 insurance premium.

November 11, 2014

Application filing deadline: We expect that 2015 LawPRO insurance applications filed after this date will be subject to a surcharge equal to 30 per cent of the base premium.

Employees put their charity day to good use

LawPRO lives its commitment to help the broader Canadian community. Several employees have been busy this spring taking advantage of the charity day LawPRO provides as part of its pledge to corporate social responsibility.

Employees volunteered at the Canadian Cancer Society's Daffodil Campaign in April – selling daffodils in the CBC building, and volunteered at Relay for Life – setting up during the day in anticipation of runners taking part in the overnight run to raise money for cancer research.

A small group of employees volunteered at Habitat for Humanity in June – starting the morning by insulating a basement, and quickly moving on to drywalling the main floor of the house. This house is one of the biggest Habitat for Humanity has ever built in the GTA!

Remembering Carla Falkeisen

It is with heavy hearts that we share the news that Carla, one of our Claims Counsel at LawPRO, passed away on June 2. Although Carla was only with LawPRO a year and a half, she made a big impact with her amazing work ethic, her courage, her upbeat personality and wry sense of humour. Carla Falkeisen was a generous supporter of a camp for children run by the Richmond Hill Community Church. In her memory, LawPRO is arranging to plant sugar maple trees behind the shoreline cabins to create shade around the dining hall. If you'd like to donate to the memorial, please contact victoria.caruso@lawpro.ca

E/Briefs

Webzines

Practice management tips for sole and small firm lawyers

July 24, 2014

Building networks, choosing practice structures and clarifying conflicts rules are all discussed in this webzine focussed on solo and small firms.

What kinds of errors get criminal lawyers in trouble?

June 26, 2014

At LawPRO we recognize that keeping up with the demands of a busy criminal practice can be a challenge. This webzine includes articles that will help you serve your clients and reduce the risk of a malpractice claim.

2013 Annual Review: Preparing for the unknown

June 5, 2014

In this issue we look back on our financial performance in 2013, report on claims trends, and offer insights into how lawyers, too, can prepare for the challenges they'll face in 2014 and beyond.

Insurance news:

Renew your LawPRO exemption status: File online now

June 24, 2014

This article reminded lawyers who are currently exempt from the payment of insurance premium levies under the Law Society of Upper Canada's insurance program to verify their status for professional liability insurance purposes for the coming year.

Transaction Levy Filings overdue

June 2, 2014

A reminder to insureds of the April 30th deadline for submission of levy filings relating to transactions completed between January 1, 2014 and March 31, 2014.

LawPRO magazine

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What does diversity mean to our profession?

As I look forward to celebrating in 2015 the 20th anniversary of LawPRO providing the Ontario bar's primary professional liability program, it is an appropriate time to reflect on the changes our society and profession have experienced during that time. This issue discusses the diversity that is now represented in our profession, how we are responding to change and how it is broadening our understanding of the world.

I was called to the bar in 1987 and at that time many of us never thought, from a professional perspective, of there being a world beyond Ontario. There was no easy mobility for lawyers throughout Canada and rarely did one meet a lawyer who had studied at a law school outside Canada (except, perhaps, the high flyers who pursued post-graduate degrees at "ivy league" institutions to the south). An exotic foreign client was someone across the border in the state of New York.

However, the composition of the bar and of its client base has changed immeasurably since those days (for a summary of the Law Society's most recent round of research into lawyer diversity, see "The changing mix of lawyers in the Ontario legal profession" on the next page). Ontario lawyers, who may have started life and/or pursued legal education anywhere on the planet, think nothing of acting for clients based all over the world, as technology has shrunk the size of the globe.

LawPRO's staff composition increasingly reflects the diversity of our society. But at LawPRO, as in the broader legal community, diversity isn't just a matter of ethnicity or national origin: gender, language, sexual orientation and a plethora of other qualities make up the world that is LawPRO. For a practical approach to embracing the diversity within your own firm or organization, see "Cultural competence: an essential skill for success in an increasingly diverse profession" on page nine.

> Gender, language, sexual orientation and a plethora of other qualities make up the world that is LawPRO

By the time I entered the profession, there were many women in law school and great female role models already practising. I am of the generation that sometimes has to be reminded that we need to pay attention to the impact of gender, but the work of the Law Society over recent years has brought home to us that the experience of all women in the legal profession is not the same, and not necessarily the same as that of men. I have every confidence that the work of the Law Society will continue to deliver insights as the diversity of the bar flourishes.

LawPRO's role as insurer is to provide information that doesn't ignore our country's and profession's multitude of differences, but instead offers ways to accommodate and develop the rewards of a diverse and distinctive bar, so that clients are better served and lawyers are more satisfied in their working lives. That is surely a goal that will keep us going for another 20 years.

Kathleen A. Waters
President & CEO

Past 40 years marked by a changing mix of lawyers


Josée Bouchard

Ontario's legal profession has experienced significant changes over the last 40 years. In the mid-1970s a critical mass of women began joining the profession in record numbers. Then, in the 1980s, lawyers from Aboriginal, Francophone and equality-seeking communities began entering the profession.[1] Today, the province's legal profession continues to grow and evolve at a rapid rate.

As part of its commitment to promote equality and diversity in the legal profession, and to ensure that the Ontario community is served by a representative profession, the Law Society of Upper Canada conducts research and collects data on the composition of the profession.

Since 2009, lawyers have been asked to indicate in the Lawyer Annual Report whether they identify as members of equality-seeking communities, including Francophone, Aboriginal, racialized, lesbian, gay, bisexual or transgender (LGBT), and whether they have a disability.

The Law Society also relies on Canada Census data and quantitative and qualitative research to identify trends and develop policies, resources and programs to support lawyers.[2] This article provides some insights into how the composition of the profession has changed over the last four decades.

[1] *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, 1997).

[2] For example, see Professor Fiona Kay, *Leaving Law and Barriers to Re-entry* (Toronto: A Report to the Law Society of Upper Canada, 2013) and Professor Michael Ornstein, *Racialization and Gender of Lawyers in Ontario* (Toronto: A Report to the Law Society of Upper Canada, 2010).

A terminology primer

There are various terms used to describe members of equity-seeking communities. While these terms are widely used, not everyone may be familiar with their definitions. The term Aboriginal includes First Nations, Inuk or Inuit, Métis, Status Indian, or Non-Status Indian. The LGBT community also includes transsexual, intersex, queer, questioning and two-spirited communities.

The term 'racialized' expresses race as the process by which groups are socially constructed, as well as modes of self-identification related to race, and includes Arab, Black (e.g. African-Canadian, African, Caribbean), East-Asian (e.g.Japanese, Korean), South-Asian (e.g. Indo-Canadian, Indian Subcontinent), South-East Asian (e.g. Vietnamese, Cambodian, Thai, Filipino) and West Asian (e.g. Iranian, Afghan) persons. It is preferable to use racialized instead of "visible minority."

Gender

As mentioned above, women have been entering the legal profession en masse since the mid-1970s. In 2012, 52 per cent of the lawyer licensing candidates were women. However, women still account for only 40 per cent of lawyers in the profession, 33 per cent of lawyers in private practice and 22 per cent of law firm partners.

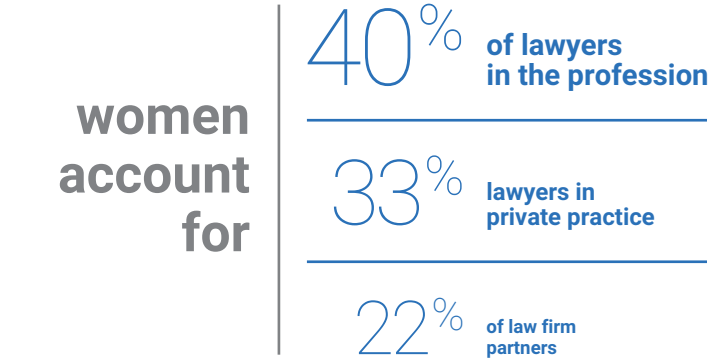
Although the legal profession is adapting to the entrance of women in the profession, research findings show that women lawyers leave private practice in larger numbers than their male counterparts. One of the most immediate issues for women in private practice appears to result from childbirth, parenting responsibilities and the lack of flexible work hours and work arrangements.[3]

Racialized, Aboriginal and Francophone lawyers

While 23 per cent of Ontario's population was racialized in 2010, just 17 per cent of the legal profession was composed of racialized lawyers. The highest representation of racialized lawyers included members of the South Asian, Chinese and Black communities.

Today, the representation of racialized lawyers continues to increase as the numbers of racialized licensing candidates are now more in proportion with racialized members of the general population.

Interestingly, Ontario's Aboriginal lawyers are representative of the population they serve, with between one and two per cent, compared with two per cent of the Ontario population that is Aboriginal. As professor Michael Ornstein notes "[…] for Aboriginals who graduate from university the legal profession is a preferred destination."[4]

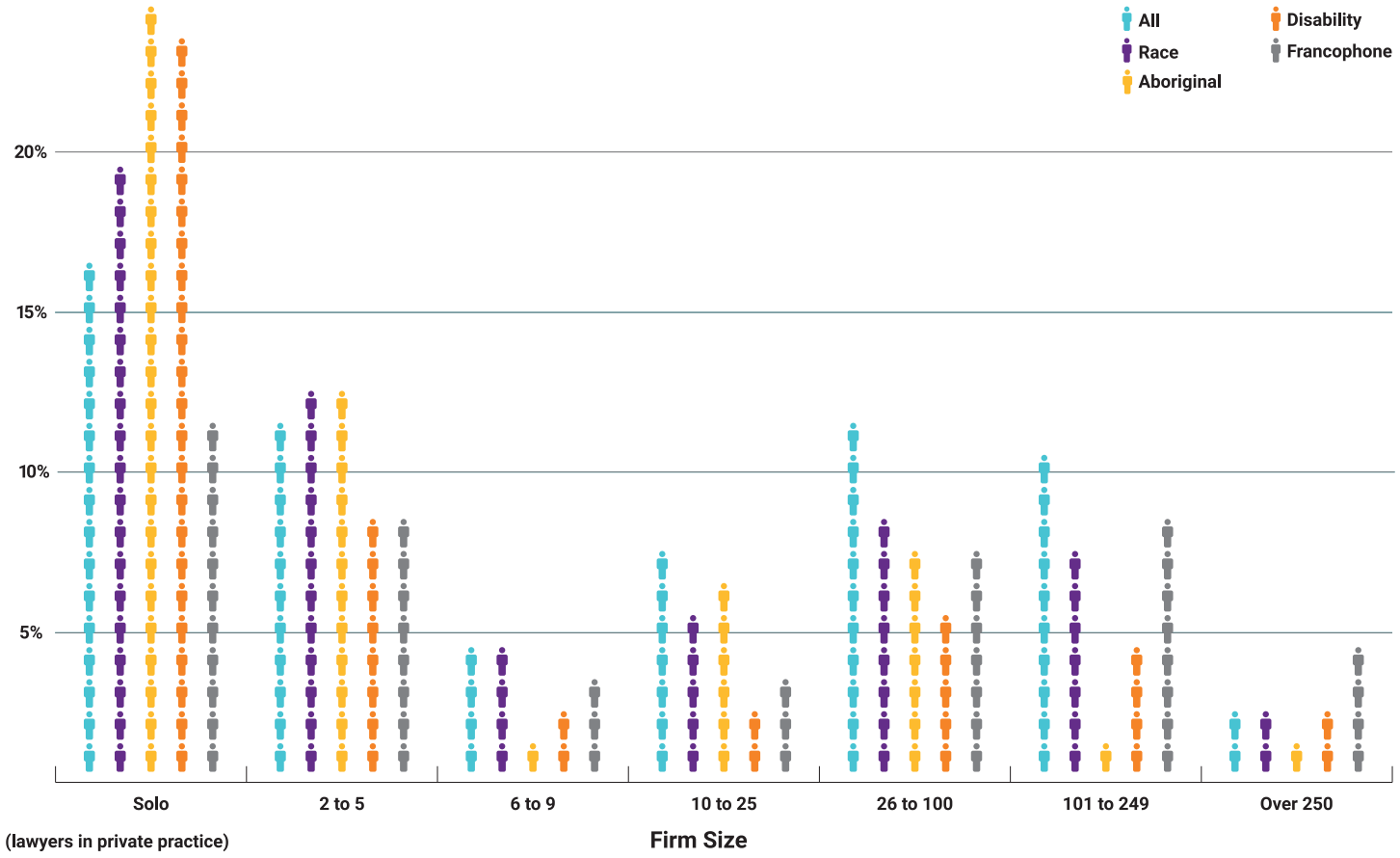


Francophone lawyers are represented in greater proportions than the Ontario Francophone population. In fact, seven per cent of Ontario lawyers self-identified as Francophone in the 2010 Lawyer Annual Report, compared with Ontario's Francophone population of 4.8 per cent. In addition, 13 per cent of Ontario lawyers indicate they can communicate and provide legal advice to their clients in the French language.

[3] *Final Report of the Retention of Women in Private Practice Working Group* (Toronto: Law Society of Upper Canada, 2008).

[4] Professor Michael Ornstein, *supra* note 6 at 8.

Diversity by firm size – in percentages



Practising in sole practice and small firms, years of call and areas of practice

Since these communities began entering the legal profession only fairly recently, the majority of racialized, Francophone and Aboriginal lawyers were called to the bar less than 20 years ago.

Aboriginal lawyers, racialized lawyers, and lawyers with disabilities are also more likely to practise in sole practice and small firms.

This is also the case for men as compared to women lawyers – 70 per cent of sole practitioners are men and 30 per cent are women. Licensing candidates admitted via the National Committee of Accreditation process – administered by a standing committee of the Federation of Law Societies of Canada to accredit lawyers trained abroad for practice in Canada – are also more likely to become sole practitioners.

The Law Society has also conducted qualitative studies of the changing face of the profession. Professor Fiona Kay, for example, conducted a survey with the legal profession and found that women are more likely than men to practise family law, while men are much more likely than women to practise real estate law and slightly more likely to practise civil litigation. Racialized and non-racialized lawyers have approximately the same likelihood to practise civil litigation and corporate commercial law, but racialized lawyers are slightly more likely to practise criminal law, immigration law and poverty law.[5]

A Law Society study of the Aboriginal bar noted that the main areas of practice for Aboriginal lawyers are criminal law, employment and labour law, administrative law and "other."[6] At the time of the study, the category of Aboriginal law was not included in the choices of areas of law.

[5] Professor Fiona Kay, *The Contemporary Legal Profession in Ontario* (Toronto: A Report to the Law Society of Upper Canada, 2004).

[6] *Aboriginal Bar Consultation* (Toronto: Law Society of Upper Canada, 2009).

Interestingly, the average law school debt at graduation is $55,000 and that figure is similar for men, women and racialized lawyers.

LSUC initiatives that respond to diversity

The Law Society of Upper Canada has adopted a number of initiatives to continue to monitor trends in the profession and to ensure that it responds to the increased diversity. An Equity Initiatives Department is responsible for promoting equity and diversity in the legal profession and for providing expertise to the standing committee of Convocation – the Equity and Aboriginal Issues Committee. Some additional Law Society initiatives are listed below.

Reflecting the population

The legal profession's increasing diversity makes it more reflective of the public it serves. It is important for law firms, legal organizations, legal associations and others to recognize the changing demographics of the profession. This will help them be more responsive to the needs of the diverse communities that make up the profession, and will also help with access to justice for the people and institutions which the profession serves. ■

Josée Bouchard is Director, Equity, Law Society of Upper Canada.

Partial list of Law Society of Upper Canada diversity initiatives

Retention of Women in Private Practice Report
Recommendations included the creation of a career coaching program for women in sole practice or small firms to help them plan and transition effectively into a maternity, parental or compassionate care leave and return to practice.

The Justicia Project
Created with the participation of 57 law firms of all sizes and throughout Ontario to develop resources to assist in the retention of women in private practice.

The Parental Leave Assistance Program
Assists sole practitioners and partners in firms of five lawyers or fewer with financial assistance for maternity, parental or adoption leaves for those who have no access to financial parental benefits under public or private plans.

Contract Lawyers' and Paralegals' Registry
An online list of lawyers and paralegals from across the province who are available to provide legal services on contract.

Equity and Diversity Mentorship Program
Helps lawyers and paralegals find experienced legal professionals to provide advice about their careers.

Aboriginal Bar Consultation
Expansion of the Lawyer Annual Report to include a practice category for Aboriginal law and led to the development of mentoring and networking programs for Aboriginal law students, licensing candidates and lawyers.

Continuing Professional Development courses and the development of a Certified Specialty in Aboriginal Law
For lawyers and paralegals who provide legal services to Aboriginal clientele.

Challenges Faced by Racialized Licensees Working Group
Consulted with stakeholder groups, researched best practices for creating an inclusive profession, held interviews and focus groups, and conducted an online survey to develop strategies for inclusion at all career stages. It is expected that in the fall of 2014, the Law Society will consider recommendations to enhance service.

Cultural competence:

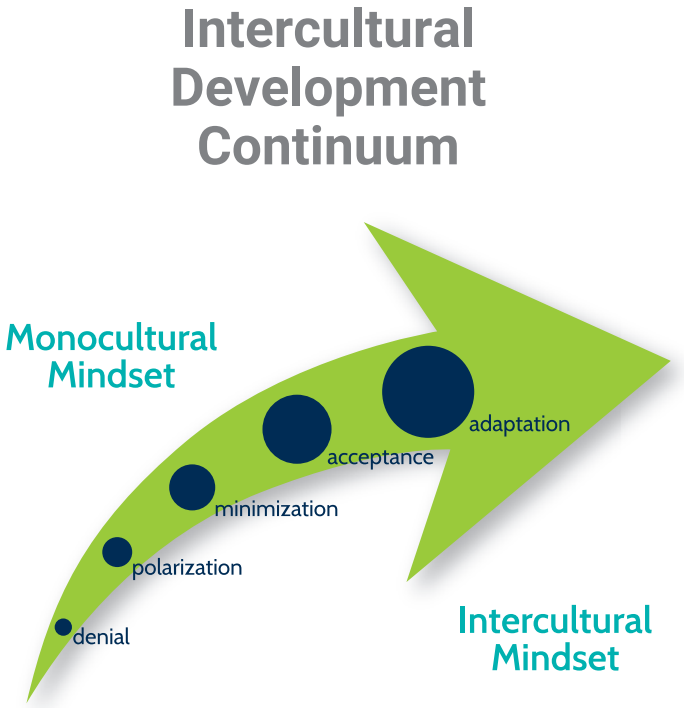
an essential skill for success in an increasingly diverse world


Ritu Bhasin

With each passing day, the legal profession becomes ever more diverse. That diversity brings challenges and opportunities. LawPRO turned to diversity specialist Ritu Bhasin, Founder and President of bhasin consulting inc., for practical advice about the steps that lawyers and firms can take to welcome lawyers regardless of their personal and cultural identity characteristics, and to foster productive and creative collaboration.

What is cultural competence?

Bhasin defines cultural competence as "how we connect with people who are different from us." Cultural competence is the ability to relate to others comfortably, respectfully and productively. Being able



"Intercultural Development Continuum" used with permission from Mitchell R. Hammer, Ph.D., IDI, LLC.

to effectively connect with people who are different from us – not only based on our similarities, but also with respect to differences – is the hallmark of cultural competence, and requires, as a prerequisite, the building of "cultural awareness."

When asked what someone's "culture" is, most people think of ethnicity. But when speaking in terms of cultural competence, culture is defined much more broadly and describes those aspects of a person's values and behaviour that are connected to his or her personal identity characteristics. Beyond ethnicity, these characteristics may include gender, sexual orientation, age, religious beliefs, physical and intellectual abilities, and other characteristics.

While a firm can encourage lawyers to increase their cultural competence, success will depend on each lawyer increasing his or her own cultural awareness. Bhasin explains that most Canadians have been raised to intentionally ignore culture differences and to "treat everyone the same." This "minimization" approach to culture, she notes, is less effective than approaches that strive for conscious acceptance of cultural differences, and active adaptation. The Intercultural Development Inventory, or IDI, developed by Mitchell Hammer, Ph.D., is a cross-culturally validated assessment of intercultural competence that measures cultural competence across five primary mind/skill sets that range from denial, through polarization, minimization, acceptance and adaptation.

When asked to explain what cultural competence looks like in practice across this continuum, Bhasin describes a lawyer who can identify, understand, and adjust to cultural dimensions of others' behaviour. Learning how to do this requires not only knowledge of behavioural predictors, but also a willingness to actively learn and adapt.

Instead of trying to be "culture-blind" (a common strategy of minimization), a culturally competent lawyer should strive to build a working knowledge of behavioural predictors: cultural dimensions of behaviour that are shared by the majority of individuals within a cultural identity. Unlike stereotypes, behavioural predictors are grounded in science (for example, anthropology or sociology) and allow the user to assess a person's behaviour against cultural generalizations.

Don't ignore differences

Instead of just aiming to "ignore" differences, lawyers can improve their working relationships by taking active steps to adapt to people from diverse communities. Bhasin recommends that lawyers who encounter a cultural challenge try the following steps:

1. **Put on your cultural lens** by pausing to consider whether there is "something cultural going on," in the sense that culturally-based

beliefs or behaviours – whether yours or someone else's – are influencing your interaction.

2. **Ask questions to learn more** about the other person's culture so you can better understand their expectations, behaviours, and assumptions.
3. **Reflect on your own reactions** by considering whether you are making negative judgments about others' differences, or about culturally-based behaviour. Are you making assumptions or associations instead of actively trying to understand?
4. **Adjust your behaviour** to challenge your assumptions and the negative judgments that flow from them. Strive to understand the situation from the other person's perspective, so that you can better appreciate their approach. Adapt your own behaviour to facilitate communication.

What might this mean in practice? Consider, for example, that your firm has admitted a new partner, a lawyer with 15 years' experience in environmental law, who also happens to belong to a minority ethnocultural group. The hire resulted from a determination that the firm, which has begun representing large real estate developers, had a knowledge gap in this area. You are used to seeing senior-level newcomers work to "make their mark" by actively speaking up, and even challenging junior lawyers in early meetings. This new hire, however, has been quiet – he never speaks unless spoken to. You can't help but wonder if he may not be as qualified as you've been led to believe.

But if you approach the situation with cultural competence, you would remind yourself that the new partner may belong to a culture in which, when joining a new company even at a senior level, deference and "paying dues" are valued more highly than "making your mark." Knowing this, you can adjust by actively inviting the new partner to share his opinion in meetings, instead of waiting for him to speak up.

For many people, the second step in this procedure – asking questions to learn about culture – is the most difficult. If you are not accustomed to asking questions that are somewhat personal, you may feel that you are being intrusive. Bhasin suggests developing a few phrases with which you are comfortable to ease into the conversation. Say, for example, "may I ask you a personal question about your culture?" or "sorry if this comes out wrong or sounds offensive, but may I ask…"

Reminding yourself that you are asking questions to achieve a more accurate understanding of the other person (and to avoid making false assumptions) may help you overcome your initial discomfort. You will likely also find that others respond well to your sincerity. "Get out of your comfort zone," Bhasin urges; "because unless you interrupt your fear of offending, you will limit your opportunities to learn about people."

If you are a leader at your firm, you can encourage a diversity-friendly culture by modelling your adaptive behaviours (for example, asking for feedback from "quiet" meeting participants) for others to see. In adapting to others' preferences, you demonstrate your support for a range of communication styles, which may prompt more junior lawyers or law firm staff to do the same.

"Layers" of difference

While behavioural predictors can be a useful place to start when seeking to understand people from diverse communities, not all individuals will behave the way the predictors suggest. Each individual is a blend of cultural behaviours and his or her own personality, and in some cases, personality traits "outweigh" cultural identity behaviours.

Also, people may belong to more than one culture – remember, "culture" is broader than, for example, ethnicity. A person may conform to some of the behavioural predictors of multiple cultures: for example, a lawyer who is young, South Asian, female, a lesbian, and non-religious will have what Bhasin refers to as "layers" of cultural identity. Each layer may influence how she interacts with other lawyers. Expecting her to behave "like every other South Asian person I've ever met" will likely not produce a useful understanding of her values, work style, and working life needs. Instead, by observing a person more carefully and by asking questions, Bhasin explains, "you can determine where he or she falls on the cultural difference spectrum for each layer."

Common cultural differences at law firms

Bhasin, a lawyer herself, thinks there are three cultural differences that commonly impact the way lawyers work together: high/low hierarchy values, indirect/direct communication styles, and group/individual focus. Let's look at each of these in more detail.

High vs. low hierarchy cultures

In a high-hierarchy culture, authority is ascribed to particular identity characteristics (for example, age, gender, workplace seniority) and encourages deference to those who possess them. In some cultures, for example, women defer to men; in other cultures, increasing age confers automatic status. While the characteristics associated with authority may vary from culture to culture, most high-hierarchy cultures expect that junior level employees will defer to those with more seniority. Deference may mean many things: not challenging ideas, speaking less in meetings, asking permission to express an opinion, and other behaviours. "The majority of the world's cultures," says Bhasin, "are high-hierarchy. Canada, the US, and the UK are all exceptions."

Low-hierarchy cultures are not completely lacking in rules about deference, but they do tend to make positive judgments about

individuals who challenge authority. For example, an associate who speaks up in meetings and speaks with senior partners as though they are equals may be praised as a "go-getter" in a low-hierarchy culture; however, the same behaviour might be criticized as insubordinate in a high-hierarchy culture.

Low- and high-hierarchy values can coexist within societies. For example, in Canadian society – which is generally low-hierarchy – women are much more likely than men to display high-hierarchy behaviours like declining to express a contrary opinion unless invited to share it.

Indirect vs. direct communication; high context vs. low context

Another area in which cultures differ is in how directly they communicate ideas and opinions. A culture that favours high-context communication allows shared cultural assumptions, norms and experience to "fill the gaps" in communication. This often promotes an indirect style of communication rich in metaphor, storytelling, and unspoken assumptions. In these cultures, stating things directly or explicitly can seem crass, or can identify the speaker as an outsider.

Ethnically homogenous cultures are more likely to share a communications context, and therefore favour indirect communication. As a culture becomes more diverse (Canada is an example of a very diverse culture), members share increasing less context, and feel the need to express themselves more explicitly and directly.

People who come from high-context cultures may use more metaphors, leave more things unsaid, and may rely on stories to communicate meaning while building relationships and a common understanding within the group. A person from a low-context culture who tries to communicate with high-context individuals may feel like he or she is missing something, or that speakers are being deliberately obtuse or secretive.

In the workplace, the clash of high- and low-context styles can complicate communication. Low-context individuals may perceive a lack of openness or clarity, and high-context individuals may be uncomfortable with what they perceive as pressure to "show their hand" before interpersonal trust has been established.

Group vs. individual focus

Finally, working relationships can be affected by cultural differences in the value ascribed to group versus individual interests.

Most world cultures, says Bhasin, are group-focused: members deem it important to make decisions based not only on their own preferences, but on the interests of the group as a whole (the relevant group may be a family, town, tribe, and in the business context a company or even a law firm). North American culture places a much stronger than average emphasis on *individual* interests, even when individual interests conflict with the interests of the group.

In a group-focused culture, consensus-building, consultation, and collaboration are very important – sometimes as important as the results themselves. Agreement and social cohesion are highly valued.

An individualistic culture, by contrast, values, expects, and encourages self-promotion. Often, the ends are considered to justify the means (even if the means required ignoring others' interests or opinions). Raises and promotions flow to those who demand them; quietly waiting to be noticed on the merits of one's work may mean being passed over.

Within North American individualistic culture, there are, of course, individuals (of both genders) with strong group values; and women, as a gender, tend to be much more group-focused than their male peers.

Where do law firms fall on the culture spectrum?

Most Canadian law firms – even more than Canadian businesses in general – have what Bhasin describes as a "white-Canadian-male-centric" culture: low-hierarchy, direct low-context communication, individualistic. For lawyers who have different values (which means lawyers from most other parts of the world, and many Canadian women), law firm culture can be uncomfortable. For these individuals, success in a law firm environment may require changing one's behaviour (even the aspects that would confer an advantage) to match the majority culture. Inability to convert to the firm culture may mean being assigned less important work, a longer path to promotion, and even the departure of members who feel uncomfortable.

Likeness bias and "blind spots"

Of course, most lawyers in positions of power do not *intend* to limit the career prospects of people from diverse communities. Bias is very often unconscious.

Our brains, explains Bhasin, are hardwired to prefer interactions with people we perceive as similar to us. The "likeness bias" that results colours the way we feel about people and interactions, even if we believe that we are not consciously racist, sexist, homophobic, ableist, or otherwise prejudiced. Our biases also create blind spots that prevent us from seeing that we treat other people differently based on their identity characteristics.

For example, if you believe that maleness and gray hair are associated with doctors and you are referred to a specialist who is female and 20 years younger than you, you may interact with her differently from other doctors in ways that are quite subtle: for example, you may be more likely to request additional tests. You may be conscious of your desire for more evidence to support her conclusions, but *not* conscious that your desire for more tests flows from a lack of

What are the implications of cultural differences for developing firm leaders?

An entrenched "white, Canadian, male" law firm culture can be a barrier to the development of leaders who exhibit behaviour that falls outside the expected culture. There are expectations in most law firms (and other businesses) about what leaders look like and how they behave. But requiring all leadership candidates to conform to these expectations means that organizations may forgo certain strengths (for example, collaboration) at the leader level. A conscious attempt to foster leaders from diverse communities can lead to a more balanced leadership that will, in turn, attract diverse candidates.

How low cultural competence impacts recruiting and retention

Most firm managers are aware that there are benefits to building a diverse workforce. However, even if a firm is committed to diversity in hiring, recruitment efforts may be hampered by a lack of understanding that the list of qualities deemed desirable in candidates is rarely culturally neutral.

While it has long been taboo to prefer male candidates over women "because women always leave to raise children," hiring managers may not hesitate to emphasize their preferences for lawyers and articling students who are, for example:

- ambitious go-getters
- straight shooters
- a good fit with our existing staff
- assertive
- hardnosed or
- bold advocates

All of these characteristics reflect mainstream male North American culture. When they are expressed as *desirable attributes*, the implication is that the converse characteristic (for example, "sensitive" as contrasted with "hardnosed") is undesirable. While it may no longer be okay to discriminate actively against women on reproductive grounds, disqualifying a candidate for being too sensitive, cautious, task-oriented, or conciliatory is still acceptable in many organizations, and hiring managers may be completely unaware that these "shortcomings" are not culturally neutral.

Even if a candidate from an underrepresented group is recruited, he or she may progress slowly through the ranks because of similar judgments. Consider for example a lawyer who, instead of adopting an aggressive adversarial stance in response to a lowball settlement offer, redoubles his efforts to communicate with the opposing party to find common ground. If senior lawyers characterize his approach as "lack of backbone" rather than "building rapport," they may hesitate to assign similar files to the lawyer in future, which may limit his opportunity to achieve successes that support the value of his approach. Lack of access to work deemed important by the firm may in turn limit his prospects for advancement.

These management choices – which appear neutral when managers' cultural lenses are not considered – may become barriers to the retention of lawyers whose values and behaviours don't mirror those of their superiors.

faith in her competence. If so, you have a "blind spot" with respect to your judgment of her competence.

Identifying your biases and blind spots

If our biases are unconscious and we are blind to our blind spots, how can we overcome them?

Besides regularly asking ourselves the question "is something cultural going on?", Bhasin recommends the use of self-assessment tests, such as the "Project Implicit" bias self-assessment developed by researchers at Harvard University. Test-takers may be surprised to discover that this test, which is designed to reveal unconscious bias, suggests that they do have biases even in areas where their conscious values are egalitarian. See the adjacent sidebar for more information on this test.

When thinking about blind spots, it can also be useful to reflect on the blind spots others may have toward *us*, so that we can be proactive in interrupting them. Bhasin, for example, finds that audiences sometimes misjudge her age, and are expecting a speaker who "looks more experienced." To compensate for this, she finds that being introduced formally with her bio helps make the audience aware of her credentials and experience before they meet her.

Embracing cultural diversity is a service quality and business development imperative

Bhasin makes it clear that firm leaders who equate "managing diversity" with avoiding conscious discrimination are already falling behind their competitors. Where lip service is paid to tolerance but no effort is made to understand how cultural differences affect how people work, workplace culture remains prescriptive: firm members must adapt to the majority culture if they want to be leaders, or to have equal advancement opportunities.

This kind of prescriptive culture makes it difficult for members from diverse communities to bring their natural strengths to bear when searching for creative solutions for clients. Good listeners are forced to speak up; collaborators are forced to compete; and the firm does the same old things in the same old ways. But rather than expecting the same results, firms that resist the expansion of acceptable work styles can now expect to lose ground.

Assess your social attitudes with an online test

Project Implicit, a multi-university research collaboration, was created in 1998 to study implicit social cognition. One of the tests created under the Project Implicit label is the Social Attitudes test, which is designed to test subjects' conscious and unconscious attitudes towards individuals with various personal identity characteristics.

The test works by assessing the speed of the test subject's associations between words and images (for example, "thin"="bad", "gay"="good"). It can provide useful insights into individuals' unconscious biases, and may be useful as a training tool as part of an in-firm cultural competence development program.

Visit implicit.harvard.edu/implicit/selectatest.html to test your attitudes.

Not only are firms' competitors evolving, their clients are becoming more demanding. Law firms may find that some of their clients – spurred on by their own management, shareholders, and regulatory requirements – are now disqualifying firms on the basis of diversity demographics and track records. The legal marketplace is moving toward "embrace diversity or die." The good news? A culturally competent firm culture is the ideal environment in which to grow the creativity that the profession will need to adapt and survive. ■

Ritu Bhasin is Founder and President of bhasin consulting inc.; Nora Rock is Corporate Writer and Policy Analyst at LawPRO.

Paths to success

as varied as the lawyers who follow them

"Diversity" describes the characteristics of a group. When we examine how diversity influences the profession as a whole, it's easy to lose sight of the experience of being an individual lawyer, with specific identity characteristics, practising law in Ontario. While cultural sensitivity benefits all lawyers, what is it like to practice law when, at least with respect to some aspect of your identity, you are in the minority?

We posed that question to the four lawyers profiled in the following pages. While their stories are very different, all four agreed that success depends on building meaningful relationships – whether with mentors, colleagues, or the young lawyers who will eventually follow in your footsteps.

Nora Rock is Corporate Writer and Policy Analyst at LawPRO.

Seeing beyond challenges with discipline, honesty, honour and courage

Ernst Ashurov
Barrister & Solicitor
Criminal law and litigation

Ernst Ashurov is an experienced criminal lawyer who also handles selected litigation matters. He was called to the bars of Ontario and New York State in 2000 after graduating from the Faculty of Law at Queen's University, with undergraduate studies at Moscow State University. Ashurov, who serves clients in English, Russian, and Hebrew, has appeared before all trial and appellate levels of court in Ontario and before the Federal Court of Canada. He has had significantly impaired vision since childhood, and has been functionally blind since 2006.

On an early vocation

Growing up in the former USSR (now Baku, Azerbaijan), Ashurov was forced to cope with discrimination due to being blind and Jewish, in a country where human rights were not respected. He decided early in life that he wanted to be a lawyer so that he could stand up for others against injustice. Getting into law school required a good academic foundation, so at age 13, he traveled to Moscow to study at a school for the visually impaired. After graduation, he spent two years studying law at Moscow State University before immigrating to Canada via Israel.

Once in Canada, he worked as a legal assistant before being admitted to law school at Queen's University. "Growing up, being a lawyer meant, to me, being a *criminal* lawyer. Under communism there is no private property, so there was no civil litigation or corporate law in the sense that we have here." But even after a Canadian legal education, Ashurov knew he wanted to be in the courtroom.

How he copes with his vision loss

Although Ashurov is functionally blind, he doesn't mention his impairment in his marketing materials or website, and some clients don't realize that he can't see even after meeting him in person. "I don't hide my vision loss, but I don't advertise it, either. I let people make up their own minds about my competence." He has found, however, that Canadians (including those who came here from Russia) are less likely than the Russians of his childhood to equate a visual impairment with a cognitive deficit. His interactions with opposing counsel have also been comfortable, especially once he has gotten to know his regular opponents. In court, however, he makes some adjustments: since he can't see facial expressions or tell when a judge is making notes, he asks in advance that the judge interrupt him when necessary. "I also never attend court without my assistant – my wife of 25 years. If the judge looks confused, displeased, or distracted, I get an elbow to the ribs."

TECH TIP

Read about the technological supports Ernst uses in the Tech Tip on page 34.

On being "an inspiration"

Ashurov acknowledges being called an inspiration by some, both within the legal profession and in his personal life, but he believes that it goes both ways. "Positive feedback inspires me back. One of the best things about Canada is that it is possible to succeed here on your merits. People will give you respect if you earn it." And he credits his wife, Irina, with making his work possible: "I would never have achieved the success that I've had without her help."

He also admits that he has been motivated, in no small measure, by defiance. He long ago rejected the suggestion that being blind exempted him from making a contribution to society. The same impulse to defy expectations has driven his efforts in the martial arts: Ashurov is a second-degree black belt in aikido, and has also studied judo, kung fu and karate. "With martial arts, you need to be in the moment, and you need to be creative. It requires focus, which is a refreshing break from work, and relieves stress." More than just exercise, Ashurov says that his martial arts studies have instilled values that he carries with him to work: discipline, honesty, honour, and courage. ■

Experiment and be open to opportunities when building your career

Katherine Koostachin
Associate, Willms & Shier

Katherine Koostachin practices Aboriginal, environmental, and natural resource law with Toronto boutique firm Willms & Shier. A graduate of the University of Ottawa Faculty of Law, she also participated in the Intensive Program in Aboriginal Lands, Resources & Governments at Osgoode Hall Law School. She completed a clerkship with the Pueblo of Isleta Appellate Court in Albuquerque, New Mexico and an internship with the Aboriginal Litigation Management Group at the Department of Justice, the former Indian Claims Commission, the Canadian Human Rights Tribunal, and the Department of National Defence Ombudsman's Office, Legal Unit. Koostachin articled with the University of Ottawa Community Legal Clinic.

On her journey to becoming a lawyer

Koostachin grew up on a reserve in Attawapiskat, and went to high school in North Bay. After working in the Canadian Forces, she joined Canada World Youth, an international development organization. She had always wanted to travel and see the world. She found that she adjusted easily to work in developing countries (including Cuba and Guatemala), in part because the "third world" conditions she encountered – like problems with access to clean water and sanitation systems, and lack of other infrastructure – were not far removed from the conditions in Attawapiskat. "I adapted easily," she says. "And I found that local people quickly became comfortable with me."

Koostachin also felt free, when traveling outside Canada, to define her own identity. Outside Canada, she was unhampered by others' culture-based preconceptions about her. She returned to Canada with newfound self-awareness and confidence, and a determination to make the transition from grassroots development work outside her own country to a more strategic, policy-based focus on improving the lot of people in Canadian Aboriginal communities.

While studying international development and political science at the University of British Columbia, she was urged by a mentor to consider law school.

On practicing Aboriginal law

While Koostachin enjoys practising Aboriginal law, it's not her only area of practice. "There's this automatic assumption that if you're Aboriginal, you will practice Aboriginal law. I know some lawyers with many years of experience in, for example, Bay Street corporate-commercial law, and even *they* report that people automatically assume that they specialize in Aboriginal law. But Aboriginal law – in the sense of, for example, the interpretation of treaties – is a fairly narrow area." People living in Aboriginal communities, she explains, have the same legal needs as everybody else: they need representation in family, personal injury, criminal, and commercial law. Lawyers looking to give back to their own communities can make a difference by serving these general legal needs.

Koostachin's own work includes supporting consultation with members of Aboriginal communities about new resource development projects on their lands. "The Crown, Industry, and Aboriginal communities need to engage with each other, but there are profound differences about how each party operates when it comes to addressing Aboriginal consultation issues." For example, "at times Industry may treat an Aboriginal consultation matter as just another business transaction hurdle to go through, but this can be problematic. Corporations have to remember that they are not dealing with another corporation, but communities with diverse backgrounds, history, social, cultural and economic needs. This in part, is also why the Crown needs to take a more proactive approach on dealing with otherwise complex consultation matters. From the Aboriginal community's perspective, real engagement means to be regarded and treated as an equal to be able to make resource development decisions and building a relationship that means more than just a business partnership." This is not an easy task, but Koostachin works to mediate and explain each party's perspective to the other to help resolve and move consultation issues forward.

Her advice to new lawyers? Be open to opportunities

This kind of active "cultural translation" is far removed from the career Koostachin imagined while in law school. "I expected to be working in policy development. That was where I saw myself. But here I am, in private practice." When asked what advice she'd give to new lawyers, Koostachin recommends being open to opportunities, even when life takes you in an unexpected direction. "Experiment and be flexible," she says. "Don't pigeonhole yourself, and don't let anyone pigeonhole you. There are many different ways to make a contribution." ■

Find yourself a champion – then pay it forward

Dania Majid
Staff Lawyer
Advocacy Centre for Tenants Ontario

Dania Majid became one of the founders of the Arab Canadian Lawyers Association (ACLA) after she was called to the bar, building on her experience in establishing the Arab Law Students Association at Osgoode Hall Law School. While carrying a full-time caseload at the Advocacy Centre for Tenants Ontario, she represents ACLA on the Equity Advisory Group (EAG) of the Law Society of Upper Canada, and organizes the Toronto Palestine Film Festival.

On co-founding ACLA

Majid was a law student at the time of the September 11, 2001 attacks in the USA. The increase in anti-Arab sentiment and rhetoric that followed those events created an uncomfortable climate at the law school. "There were relatively few Arab students, and we were feeling isolated." She responded by founding the Arab Law Students Association, and in the school years that followed, students would approach the association's booth on club days, grateful for the reminder that they weren't alone.

After graduation, Majid realized there was little organized support for Arab members of the profession or legal resources for the Arab community, and so she co-founded the Arab Canadian Lawyers Association (ACLA) with other lawyers, most of whom were in the early years of their career. "We soon found," she says "that more senior lawyers of Arab heritage were willing to support us and get on board with ACLA." While an early aspiration to create a specialized legal aid clinic was stymied by lack of funding, ACLA now serves as an important bridge between Toronto's Arab community and the profession, offering a lawyer referral service, information about legal aid, legal workshops and general legal information resources.

Mentors help lawyers handle culture-specific challenges

Besides providing resources for the public, ACLA matches new lawyers with experienced mentors who can offer insight into what law practice is like for Arab lawyers. "Research from the Law Society and others suggests that minority lawyers face additional challenges in getting into law school, getting articling jobs, and getting jobs after graduation. But the events of 9/11 and the ongoing conflict in Palestine add an extra layer of difficulty for Arab lawyers. New grads were asking questions like 'should I *avoid* mentioning my volunteer experience on my resume, since it was with Arab community organizations?'" This kind of decision, Majid notes, is a matter of personal choice, but being able to discuss challenges with more established practitioners can arm new lawyers with strategies for overcoming discrimination. Majid credits her own mentors with helping her handle her own career transitions, for example, the move into clinic practice.

On her commitment to advocacy

While Majid has the sense that, at least in major centres like Toronto, anti-Arab discrimination may be abating somewhat, it tends to resurface in response to media coverage of events in the Middle East. ACLA seeks to improve the lot of all Arab lawyers by participating on EAG and the Diversity Committee of the Toronto Lawyers Association and presenting Arab lawyers' perspective on reports and policies affecting equity-seeking legal professionals, in order to address discrimination and inequities within the profession. "We know – for example, from the 2010 Ornstein report – that racialized women have a harder time than any other category of lawyers: they have access to fewer articling positions, struggle to find full-time jobs and end up in lower-earning practice areas. Some are even forced into sole practice when that would not have been their natural inclination."

In addition, ACLA also seeks to advocate on behalf of the broader Arab community in Canada by commenting on laws and policies that affect the community. This includes, for example, hosting lectures and roundtables, as well as preparing "backgrounder" packages for the Ontario and Federal governments and for the media on foreign policy matters and position papers on domestic laws.

It's time-consuming work, explains Majid, who also tends to be very busy every year organizing and programming the Toronto Palestine Film Festival. Issues like the Palestine conflict are very complex, and "of course, there is incredible diversity in the Arab population internationally and here in Canada. There are many issues that are important to the community and it's a challenge to address them all." However, Majid believes that as the Arab legal community grows, so too will the number of Arab lawyers who can help serve the community.

Her advice for new lawyers

Majid believes that new lawyers can access valuable support through membership in cultural legal associations. However, building individual relationships is also very important. "Talk to everyone and anyone in your areas of interest," she says. "Networking has become something of a cliché, but if you are trying to build a career, do whatever it takes to find a champion who believes in you and who will speak up for you." And once you've made it? "Pay it forward. Remember where you came from and who helped you along the way, and be willing to give back to your community and do the same for the lawyers coming along behind you." ■

Be yourself, and build relationships

Paul Jonathan Saguil
Counsel
Legal Department, TD Bank Group

After beginning his career as a litigator in the Toronto boutique firm of Stockwoods LLP, Paul Jonathan Saguil joined the legal department of TD Bank Group. Paul attended law school at York University's Osgoode Hall Law School, and clerked with the Honourable Justice Phelan of the Federal Court before being called to the Ontario bar.

Saguil is very active in the broader legal community. He is the chair of the Ontario Bar Association's Sexual Orientation and Gender Identity Law section, and a past Director and current member of the Federation of Asian Canadian Lawyers. He has served as Faculty Advisor to Osgoode Hall Law School's Philip C. Jessup International Law Moot team, and acted in the inaugural production of Nightwood Theatre's Lawyer Show. Saguil is also on the Board of Directors of Pride Toronto, and was involved in the planning of this year's World Pride celebration.

On his reasons for making the time for community engagement

Despite a busy career, Saguil devotes considerable time to legal professional associations, as well as non-profit organizations and groups outside the legal community. "The most important benefit for me," he says, "is the opportunity to build relationships. Lawyers can take solace – and I do – in the intellectual challenges of our work; but on the toughest days, there is no better way to gain perspective and clarity than to discuss issues, professional and personal, with a friend or colleague."

Saguil makes the effort to continually renew his social and professional connections "because you can't go to the same person for every kind of issue." While time and energy management seem to come easily for him, he credits his volunteer activities with helping him develop the patience and flexibility to adapt to others' different priorities, paces, and work styles.

He explains that developing the reputation for being willing to serve means that new opportunities often come his way: "how do you get a reputation for saying 'yes'? By saying 'yes'." He notes that his volunteer work opened doors and may have made him a more attractive candidate for his current job, but that community engagement is less of a means to an end than an end in itself. "I studied philosophy before law school, and that brought home to me the importance of finding meaning and value in life."

On the perspective that comes from a life beyond the law

A belief in the underlying causes of the organizations he supports helps provide that meaning, but he looks for fulfillment outside the law as well: he has studied martial arts for several years and competes in Brazilian jiu-jitsu. "Martial arts forces you to check your ego at the door and to live in the moment." But it provides insights relevant to legal work, too: "we're taught what it means to have 'the heart of a warrior,' but jiu-jitsu reminds me that my legal work is *my client's* fight, not mine. It gives me perspective."

On talking about race and sexual orientation

As a gay lawyer with a Filipino heritage, Saguil is regularly asked to comment about diversity issues. "I was not political about being gay or Asian, when I was growing up," he explains. But as he gained recognition on the merit of his accomplishments, he grew more comfortable commenting on his personal identity. "I realized that if I was going to be given a soapbox, I had a responsibility to think about what to say. Being willing to comment means that readers get a more integrated picture of you as a person."

When you're perceived as belonging to an identifiable minority, he notes – whether by virtue of ethnicity, sexual orientation, or otherwise – "people will project certain expectations onto you." Saguil believes that the best way to resist the ones that don't fit is to take ownership of the way in which you are defined. He, for example, never seriously considered keeping his sexual orientation private. "If you want to be able to cope with the stresses of practice, you need to reflect, while you're in school and throughout your career, on who you are and what you want in life. Having that core of groundedness in your own identity will help you make confident choices. At TD, we have an expression: "Bring your whole self to work." If you know who you are, and you know what being a successful lawyer means to you, you will project that, and people will be attracted to the real you."

His advice for new lawyers

Besides advising making an effort to find meaning in life, Saguil's advice is simple, and will resonate with *all* lawyers. "Work hard at building relationships. Work hard at your career. Know what you are wired for, and know where the exits are. Always remember that you have a choice." ■

Manage malpractice risk

by recognizing cultural diversity

Lorne Shelson

In the social realm, cultural differences can be awkward for those on both sides; but in the context of legal services, cross-cultural misunderstandings and other culture-related factors can occasionally lead to malpractice claims against lawyers. The good news: claims with a cultural component are easily preventable as they tend to reflect certain recurring themes.

One category of claims arises where a lawyer is unfamiliar with the culture of his or her client or is not comfortable asking questions about culture, and so makes false assumptions or ill-advised communication "adjustments" that lead to misunderstandings and mistakes.

In a subset of this first category of claims, lawyers acting in commercial transactions based on the traditions of particular communities may be criticized for not communicating the extent to which such transactions are enforceable under Ontario law. Where the transactions

involve parties outside the particular community, the lawyer must be on guard for the interests of all clients. Likewise, regardless of cultural norms related to agency, a lawyer practising in Canada will be held to the prevailing standard of care about from whom to take instructions, and will not be able to rely, as a defence, on the traditional practice of a particular community.

The second category of problems that we have seen occurs when some newcomers to Canada and lawyers from diverse communities inadvertently suffer marginalization due to cultural background, age or foreign legal training. These lawyers may have difficulty obtaining quality articles and proper mentorship, might not participate in mainstream CPD programs, and may end up as sole practitioners without adequate support from colleagues in the profession. Based on our experience, they are vulnerable to being preyed upon by fraudsters who seek to take advantage of and trade upon a common ethnic and/or religious background.

Lawyers who were trained in another country may also, in some cases, be less familiar with Canadian property rights concepts such as mortgages. Alternatively, they may be members of hierarchical cultures that require heightened deference to elders, causing them to be overly trusting of other lawyers based on seniority alone.

The following scenarios are loosely based on real claims we have seen at LawPRO.

Scenario 1: Reliance on cultural norms leads lawyer to act without full instructions

A man retained a lawyer to commence a medical malpractice lawsuit. The man believed that his wife had died because she had been not properly diagnosed with a heart condition. The lawyer commenced an action on behalf of the man and his daughter against the doctor and hospital.

Unable to secure helpful expert reports to support his claim, the lawyer recommended to the man that the action be settled on the basis of a dismissal without costs. The lawyer took instructions from the father only, who was a member of a patriarchal community where fathers commonly spoke on behalf of female family members. In consideration of the clients' cultural background, the lawyer had not confirmed with the daughter that her father had her authority to provide instructions on her behalf. The daughter, who had not been consulted about the settlement, later refused to execute the settlement documentation. The doctor and hospital obtained an order enforcing the settlement.

The daughter made a claim against the lawyer for acting without her instructions.

Scenario 2: Failure to properly balance cultural practices and Canadian commercial standards casts suspicion of fraud over lawyer

The lawyer belonged to a tight-knit community where loan transactions were rarely documented. Community members generally relied on the word of others with respect to repayment of loans. The community was also generally distrustful of financial institutions, and completed large transactions without involving banks.

It was also commonplace for one community member to support others by giving them money to assist in purchasing property. The money was typically repaid on the sale of the property, all without any written agreement. Consequently, undocumented funds would be paid from the lawyer's trust account on real estate transactions between community members. The lawyer, who was ultimately exonerated, fell under suspicion of being involved in value frauds because he had not obtained proof for the mortgagees that the deposits stipulated in various agreements of purchase and sale had in fact been obtained. The case illustrates the risk a lawyer faces in failing to balance the needs and traditions of a given cultural community with the expectations of local business enterprises. A less risky approach would be for a lawyer who is familiar with the particular financial practices of a community to make efforts to educate institutional clients about those practices. By doing so, the lawyer may be able to meet the needs of both the lawyer's community and local institutional lenders, in turn facilitating the community's ease of access to these lenders.

Scenario 3: Failure to be on guard

A lawyer was both a member of a racialized community and first licensed as a lawyer in her late 50s. She had difficulty securing employment with a law firm, and so established herself as a sole practitioner offering real estate services. The lawyer, who had immigrated to Canada, assumed due to the openness of Canadian society, that people living in Canada were trustworthy. She further assumed that real estate law in Canada was the same as in her country of origin, where property rights were unrestricted and mortgage lenders extended funds at their own risk.

The lawyer approached a paralegal acquaintance who shared her cultural and religious background. The paralegal appeared to the lawyer to be a devout and caring person, and invited the lawyer to family gatherings. Because of their shared background and faith, the

lawyer unquestioningly trusted the paralegal and began working for her.

The paralegal provided the lawyer with an office and 'referred' real estate files to the lawyer. However, the paralegal and her staff processed all of the documentation, including effecting registrations using the lawyer's electronic land registration account and disk. The transactions turned out to be fraudulent. The lawyer was subjected to claims at the instance of the various mortgage lenders. She was ultimately compelled to resign as a licensee, having allowed herself to be duped by the paralegal.

Scenario 4: Need to respect a client's cultural traditions

A lawyer appeared on behalf of a client on a criminal matter. During a break in the proceeding, the lawyer made a flippant comment related to the client's background in an ill-conceived attempt at humour. The client, on learning what his lawyer had said about him, lost faith in the lawyer's ability to represent him and discharged him. The comment was included in the official record of the proceeding. The client sued the lawyer for both negligence and defamation.

Scenario 5: Failure to communicate barriers to enforcement of terms of preferred lending practice

A woman needed to refinance her home to raise funds for her business. Due to her religious beliefs, she wanted to finance the loan through the Islamic mortgage system rather than with an interest-based mortgage. The lawyer agreed to act for both the woman and lender on a Sharia-compliant loan transaction.

Unbeknownst to the lawyer, the woman had conspired with the mortgage company's representative to falsify her income to obtain approval for the loan. The mortgage went into default.

A dispute arose between the first and second mortgagee. For a mortgage to be Sharia compliant, no interest can be charged. Instead, the borrower makes periodic payments characterized as rent.

The second mortgagee took the position that by paying the principal balance owing under the mortgage, it had assumed the position of first mortgagee. The second mortgagee refused to pay the portion of the balance characterized as rent. Likewise, the borrower alleged that no "rent" was payable to the claimant as she did not "rent" anything other than the money under the mortgage.

The lender sued the lawyer alleging that although she instructed the lawyer to complete the legal work for a Sharia-compliant mortgage,

she had always intended to make a return on her investment, and if the "rent" provisions of the mortgage were not enforceable under Ontario law, then the lawyer was negligent in structuring the mortgage transaction and in failing to warn the lender of an inherent risk. The lawyer disputed the lender's claim, noting that any such risk was well known to those providing Sharia-compliant loans. (The claim, which was founded primarily on other allegations, eventually settled.)

Risk management lessons

When working with clients from cultures different from yours, it's important to treat the differences you encounter with sensitivity. However, protection of your clients' interests (and your own) means that you cannot use sensitivity as an excuse for not meeting your professional obligations by asking relevant and detailed questions about transactions, instructions and parties.

In cases involving culture-specific legal and finance practices, it is essential to communicate fully about Canadian legal and financial industry norms, and to review areas in which the client's expectations may not be enforceable under Canadian law. This is especially important where the parties come from different cultures.

Lawyers newly arrived in Canada need to be aware that LawPRO has seen newcomers expressly targeted by fraudsters, including individuals from their own culture who seek to take advantage of the newcomer's trust, or gaps in knowledge of Canadian law.

The bottom line? Learn about and be respectful of culture and cultural differences, and make sure that the services you deliver meet or exceed relevant standards of care and are consistent with Ontario and Canadian laws. ■

Lorne Shelson is Litigation Director and Counsel in the Specialty Claims Department at LawPRO.

Inquiring minds want to know:

Does title insurance bring benefits to the primary professional liability program?

We all know that notwithstanding the rise of title insurance in Ontario, claims arising from real estate practice are still a large (and in many years, the largest) exposure for the primary professional liability program that LawPRO provides for the Law Society's lawyer-licensees (the "E&O program"). We have explored why in other articles and settings. For example, consider the fact that title insurance is less uniformly used in commercial transactions. Also, the ambit of traditional title insurance does not necessarily overlap exactly with the scope of a real estate lawyer's duty of care – the realm of lawyer's negligence will normally cover some exposures that fall outside the scope of title insurance.

But the opposite also applies: in some cases title insurance covers losses that the E&O program would not cover. A review of the fraud exposure in real estate transactions demonstrates how this works, and how title insurance can and does benefit the primary program.

Title insurance will typically protect against the invalidity of title due to fraud or forgery. That means, for example, where the fraudster impersonates the landowner in order to obtain a mortgage (and the proceeds thereof), title insurance will usually come to the rescue of the innocent lender for whom the lawyer was acting. If the lawyer in acting for his/her lender-client fell below the standard of care (for example, did not ask for identification and/or did not spot glaring red flags in the transaction), it is to the benefit of the E&O program that a title insurer cover that loss.[1]

However, the essence of a good fraud is not getting caught. So, when the customary standard of practice for real estate lawyers is applied in some cases, the lawyer acting on both sides of a residential mortgage may not be held responsible under the law of negligence for failing to catch an identity theft in progress: the fake ID was too good and the fraudster too accomplished in impersonating the true landowner. In this case, it is great that the lender is protected by

[1] Title insurers in Ontario have entered an agreement with the lawyer-licensees of the Law Society, wherein they agree to indemnify and waive subrogation, except in cases of fraud or gross negligence. LawPRO has previously reported on this arrangement: "Title insurance: not the panacea solicitors had hoped for" (*LawPRO Magazine*, December 2010) available at practicepro.ca/LawPROmag/title_insurance_casebook.pdf. Otherwise, such costs could yet end up in the E&O program.

the title insurance, but it isn't necessarily a benefit to the E&O program, as it was not exposed anyhow.

What about the impact of value fraud? In most cases value fraud is not covered by title insurance. Remember that in a value fraud, the title to the mortgage, or the binding of the security on the land, is good – the property just isn't worth as much as the lender was led to believe, causing the lender to advance more money than the available security (i.e., the value of the land) could justify. However, it is certainly an issue of potential lawyer negligence, once again, if there were red flags that the lawyer for the lender should have spotted.

Title insurance with legal service coverage is where the benefits to the primary program can really start to add up. Here we mean legal service coverage that covers an error or omission in providing legal services for the transaction for which liability is imposed by law, without any caveat that the error must affect the title to the property or the right to the use and enjoyment of the property. Where such caveats affect coverage, it is much less clear that a value fraud would be covered.

Consider the following scenario that LawPRO experienced in recent years. The insured lawyer had acted for the lender-client on many mortgage transactions. For some of them, the lawyer had purchased TitlePLUS® title insurance with legal service coverage and for some, title insurance with other insurers or no title insurance. Once many of the borrowers defaulted and enforcement proceedings were commenced, it became clear that the original loan transactions were not as the lender had been led to believe and the lender was not going to be able to recover the monies owing due to the true (lower) value of the properties. Fortunately for the insured lawyer, and the E&O program, enough of the loss was borne by the Title-PLUS program under legal service coverage that the part left to the E&O program could be absorbed without opening as many E&O claims and without hitting the insured's $2 million aggregate for the year. It is important to remember that the mortgages effectively bound the subject properties, so title was good. But the insured's failure to warn the lender-client about various issues (to the extent that the insured was communicating directly with the lender at all) gave rise to exposure under the negligence standard of care. So, the million dollar loss absorbed by the TitlePLUS program was a benefit for the E&O program. Given that legal service coverage without the caveats described above is not widely available, it is unlikely this exposure would have been removed from the E&O program if the lawyer had bought other title insurance.

But while we acknowledge that title insurance can bring benefits to the E&O program as a whole, don't forget that its widespread adoption has also given rise to claims for failing to recommend title insurance in certain circumstances. Such claims were unheard of in Ontario before the last decade or so. The fact that the law of negligence continuously evolves is greatly to the benefit of the public whose interests need protecting as the environment changes. ■

Kathleen Waters is President and CEO at LawPRO.

Cybercrime and fraud: don't be a victim

On a daily basis, LawPRO hears from lawyers who are being targeted by cyber criminals and others trying to commit various types of fraud. While many lawyers spot these frauds and avoid them, some fall victim and suffer trust account losses, sometimes in the hundreds of thousands of dollars. As part of its claims prevention efforts, LawPRO has created resources to help lawyers understand and avoid cyber risks and fraud.

The "Cybercrime and law firms" issue of *LawPRO Magazine* describes the cyber dangers that threaten lawyers and details the steps firms can take to protect data and bank accounts from cyber-attacks. It provides practical advice about the proper use of passwords and how to avoid phishing scams. It also contains dozens of easy-to-implement "Quick tips" that will help you secure your devices and systems. The issue is available at practicepro.ca/magazinearchives for download.

LawPRO's popular Fraud Fact Sheet (practicepro.ca/fraud) explains how bad cheque scams and real estate frauds work. It also lists the common red flags for these frauds, provides tips about how to avoid them, and explains who to contact if you have a file that raises suspicions. Download the Fraud Fact Sheet at practicepro.ca/fraud or to obtain hard copies for your lawyers or staff, please contact Tim Lemieux at practicepro@lawpro.ca

Untangling the myths of excess insurance

Unfortunately, far too many lawyers do not appreciate their full exposure to claims and how excess insurance could be of benefit to them. Excess liability insurance is intended to provide additional limits over that provided by the underlying (primary) liability policy. For lawyers in Ontario, the underlying insurance which all practising lawyers (not on exemption) carry is the Law Society of Upper Canada's mandatory insurance program, which has limits of liability of $1 million per claim and $2 million in the aggregate.

This article addresses some of the common myths about excess insurance, and will help you determine if you should purchase excess coverage or increase the excess coverage you already have.

MYTH: "We work on smaller matters, and don't generally handle large sums, so we don't need the excess insurance that other firms carry."

If this is what's stopping you from looking into excess insurance options, you might be in for a surprise. Your firm's risk of having one or more claims that could exceed $1 million in a given year is likely higher than you think. While it's probably true that smaller firms don't need to carry $200 million in excess insurance for possible mistakes members of the firm could make, excess coverage limits don't have to be sky-high. If your firm thinks your reasonable exposure is $1 million more than what you currently have under the Law Society program, you can contact LawPRO or discuss with your insurance broker or agent whether lower limits, like $1 million or $2 million per claim in excess of what the lawyers in your firm already carry, is available and appropriate to meet your needs. Depending on the size of your firm, the areas in which you practice, and your claims history, you may be pleasantly surprised at how reasonable rates are for excess insurance.

Small firms are the workhorses for a lot of the legal work done in this province. Your offices may be small and your staffing streamlined, but the value of the work you do for your clients should not be underestimated. You may have competitive pressure to charge a low rate for real estate deals, but if a mistake occurs (and title insurance wasn't purchased or won't respond) then you could be on the hook for the value of a house, or the value of a mortgage. Likewise, you may prepare wills for only a few hundred dollars. But if a drafting mistake is made, or if you failed to make what turned out to be an essential inquiry about the testator's dependents or assets, the claim value can be wildly disproportionate to the amount charged for the service.

MYTH: "The only firms that need to carry excess insurance are those that offer real estate services."

While it is certainly true that conveyancing firms can have larger claims exposures due to the value of real estate in Ontario, almost all legal work can have exposure to large value claims. For example, while you may not practise real estate law, if you're a family law lawyer, wills & estate lawyer or a corporate/commercial lawyer then odds are that the files you work on have a real property aspect to them and mistakes made could result in large claims relating to that real estate's value. Do your files involve insurance or accident benefits? Actions that are dismissed for delay, missed limitation periods or "improvident settlements" can be costly claims for litigators. Don't forget that pre- and post-judgment interest can add a significant amount to a judgment. And lawyers who give advice on how to structure matters to be most tax effective – and later realize that the Canada Revenue Agency will not allow the tax benefit – can be subject to not only large individual claims, but, in a worst case scenario, a class action relating to all clients given the same advice.

MYTH: "Even if I am sued for more than $1 million, the damages sought are always so inflated – there's no way I'd ever have to pay that amount."

That's an optimistic view of things. It fails to take into account that it's not just the damages award, but also settlement and/or repair costs and interest that will eat away at your coverage limits. Remember that when something goes wrong, plaintiffs will usually sue everyone who might be responsible for contribution. A lawyer who has even a minor connection to a file can end up being one of

many defendants. If a settlement can't be reached or the action dismissed, that lawyer is going to have little ability to stem costs or speed up the process as the matter moves towards trial. That can mean years of costly litigation, with the potential of a negative costs award at the end.

MYTH: "My practice is low risk. I've never been sued. The underlying value of the files I work on is small and claims rarely occur in this area. While one of the lawyers I work with has a higher-volume practice that involves real estate and civil litigation, this shouldn't affect me because our files are kept completely separate."

Lawyers who practice together, or who may hold themselves out as practising together, can be vicariously responsible for the acts or omissions of other lawyers. While you may never be sued by one of your clients, there are a lot of ways in which other lawyers' clients may think you share responsibility for their files. Examples include: the other lawyer reports to you; you step in to act as a witness when documents are signed; you referred the client to the other lawyer, etc. Your insurance should reflect what the exposure is for all members of your firm and lawyers you work with.

When considering the exposure of other lawyers, your firm may also want to periodically review the claims history for all of the lawyers in the firm. Having claims made against you in the past doesn't necessarily mean you're going to have claims made against you in the future, but you are statistically more likely to have another claim made against you. Even if you have a spotless claims history, what about that new hire? Does his or her claims history indicate that there might be something to worry about? Exposures can change over time and your firm should be aware of increased risks. You can gain a clearer picture of your needs by completing the "Test Your Exposure" questionnaire on our lawpro.ca website.

When shopping for excess insurance, firms should pay close attention to the coverage being offered. Excess liability policies are generally intended to provide limits that exceed the underlying policy, but there may be exclusions that mean the policy is not as broad as the Law Society program policy.

If you are interested in getting more information about excess insurance, please contact LawPRO customer service at service@lawpro.ca or by phone at 1-800-410-1013 or 416-598-5899. Or you can discuss this with your firm's insurance broker/agent to find out what insurance is available and would meet your firm's needs. ■

Victoria Crewe-Nelson is Assistant Vice President, Underwriting at LawPRO.

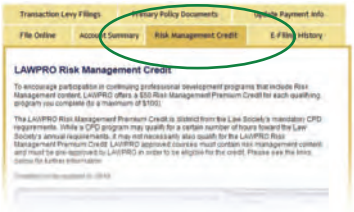
NEW features on MY LawPRO:

Making it easy to log in on lawpro.ca and find what you need

Below are two new features and directions on the site to declare your Risk Management Credit and Certificate of Insurance.

Risk Management Credit tab gives summary of credits you have received

The tab allows you to review all your Risk Management Credits – declared and applied – for 2014, 2015, and beyond.



The page will display the name and date of the course, as well as the date your Risk Management Credit declaration was filed on the LawPRO web site. Other convenient information links are provided as well, including the link to file a new credit declaration.

Note that only the first two qualifying credits will be applied to next year's Professional Liability insurance premium. Though you may attend a number of qualifying CPD courses in a year, the maximum credit is $100.

Get Certificates of Insurance and other documentation

You can easily request a Certificate of Insurance to provide evidence of your Professional Liability insurance coverage using the **Primary Policy Documents tab**.

In most cases, your Declarations Page (issued along with your original Professional Liability insurance invoice) provides sufficient proof of coverage limits and period of coverage. Access your Declarations Page any time by clicking on the Primary Policy Documents tab and downloading your 2014 Premium Invoice & Declaration page.

If your Declarations Page is not sufficient, or is otherwise unavailable to you, submit a request using the automated form provided. You will be notified by email when your Certificate of Insurance has been issued, and may be downloaded from the Primary Policy Documents tab.

A Certificate of Insurance may only be requested for the current policy year, and only if proper Professional Liability insurance limits are currently in place.

Warning: Insurers can "contract out"

of the *Limitations Act, 2002* in "non-consumer" policies

The law of limitations applicable to insurance claims has entered a period of uncertainty, arising in part from insurers' ability to "contract out" of the *Limitations Act, 2002 (LA 2002)* where the insured is not a "consumer." Claims on group long-term disability policies may prove especially hazardous. This article discusses this new development, and touches on why certain attempts by insurers to contract out of the *LA 2002* are impermissible, and how this knowledge might save your client's claim, and your deductible.

This discussion is technical, which cannot be helped. Please bear with me.

The specific exemptions

The *LA 2002* applies to all court proceedings not specifically exempted in section 2 of the *Act* or in the Schedule referred to in section 19. Of the many limitation periods which existed in the *Insurance Act* prior to January 1, 2004, only three were preserved in the *LA 2002*:

1. Fire insurance claims (*Insurance Act* s. 148, condition 24 (one year from the date of the fire));
2. Claims for damage to automobiles and their contents (*Insurance Act* s. 259.1 (one year from the happening of the loss or damage));
3. Accident benefit claims: s. 281.1 of the *Insurance Act* provides that court proceedings shall be commenced within two years after the insurer's refusal to pay the accident benefits claimed.

The "business agreement" vs. "consumer" distinction

Do you think that if you remember these three exceptions, you are home free, and can blithely apply the *LA 2002* to any other insurance claim?

Think again! Sections 22(5) and 22(6) of the *LA 2002* allow insurers to contract out of the *Act* where the insurance contract can be characterized as a "business agreement," which in effect means that the insured is not a "consumer." "Consumer" is defined as "an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes."[1]

Consider this situation: a police association obtains a long-term disability policy for the benefit of its members. The police association is named as policyholder. Would this policy be a "business agreement" or a "consumer agreement?"

According to a recent Superior Court decision, it is a business agreement.[2] This case did not involve a LawPRO claim, but it is a warning to practitioners that disability insurers are free to contract out of the *LA 2002* where a company or an association is a policyholder, even though the policy is for the benefit of the company's or association's employees or members. Such an insurance contract is a "business agreement."

M.G. Ellies, J. held that the plaintiff's claim for long-term disability benefits was NOT statute barred, because the insurer had failed to properly contract out of the *LA 2002*. The insurer was free to contract out of the statute, because the subject police association as policyholder was not an "individual acting for personal, family or household purposes." Luckily for the plaintiff, the insurer failed to properly contract out, because the limitation period it sought to enforce was not written in clear language. The policy tied the limitation

[1] For a brief period of time – January 1, 2004 through October 19, 2006 – no contracting out was allowed.

[2] 2014 ONSC 1523

period to one year from the date proof of claim forms were required, but the booklet accompanying the policy tied the limitation period to receipt of forms. Plus, the policy provided for "appeals." Because of the potential confusion these conflicting statements created, the insurer's attempt to contract out of the *LA 2002* failed. The two-year limitation period under the *Act* did not begin to run until the appeals process was exhausted.

The court relied on an Ontario Court of Appeal decision[3] where the Court of Appeal held that the insurer was entitled to contract out of the *LA 2002* in an "all risks" policy given to a corporation. In that case, the claim was for damage to corporate property.

LawPRO has learned that at least one large disability insurer is amending and simplifying its policy wording to provide for a one-year limitation period computed:

1. where the insurer has made no payments, within one year of the time at which the initial submission of proof of claim is required by the terms of the policy, or
2. where the insurer has paid disability benefits, no more than one year after the last date for which disability benefits were paid.

Implications for unwary lawyers

The effect of s. 22(5) and (6) is troublesome because:

1. many practitioners would assume the two year limitation period under the *LA 2002* is available, because disability contracts are not "exempted" under the Schedule to s. 19 of the *Act*;
2. many would not think that an insurance contract providing benefits to flesh-and-blood employees is a "business agreement" rather than a "consumer agreement;"
3. many practitioners would believe that a clear denial by the insurer is necessary to start the limitation period running for disability claims; or
4. many would expect that limitation periods for disability benefits "roll." It is, in fact, unlikely that these limitation periods will "roll" in the sense that each monthly failure to pay gives rise to a fresh cause of action.

There is nothing to prevent insurers from contracting out in every insurance contract where the insured is not a "consumer." Therefore, when bringing an insurance claim, practitioners must consider whether the insured is or is not a consumer. If the contract is a "business agreement," the limitation provisions must be very carefully scrutinized and complied with.

Not all attempts to contract out are valid

Conversely, where the insured is a consumer, or where the insurance contract was entered into between January 1, 2004 and October 19, 2006, lawyers should beware of insurers' impermissible attempts to contract out of the legislation. The Superior Court held,[4] and the insurer did not dispute on appeal, that the Ontario Policy Change Form (OPCF) 44R insurer could not enforce the limitation period in s. 17 of the OPCF 44R endorsement. Section 17 provides that an action against the OPCF 44R insurer must be commenced within one year from the time the insured ought reasonably to have known that his or her claim exceeded the $200,000 statutory minimum. The insurer argued that although s. 4 of the *LA 2002* applies, "discoverability" should be interpreted in light of s. 17 of the OPCF 44R endorsement, not in accordance with s. 5 of the *LA 2002*. The Court of Appeal rejected that argument, and held that the two-year limitation period ran from the day after the insured requested payment from the OPCF 44R insurer. The insurer is currently seeking leave to appeal to the Supreme Court of Canada.

What's next?

The next area ripe for "contracting out" litigation may be uninsured motorist coverage. Regulation 676, s. 8(3) under the Ontario *Insurance Act* provides that the limitation period for a claim under uninsured motorist coverage is two years from when the cause of action arises. This Regulation was not repealed when the *LA 2002* came into force, but neither was it exempted from the application of that *Act*. There is no good reason why the reasoning in the above-noted case on OPCF 44R should not apply in uninsured motorist cases where there is no permissible and effectual "contracting out" by the insurer.

Lessons for lawyers

When considering the timeliness of an insurance claim, ask yourself:

1. Is this claim governed by one of the three provisions of the *Insurance Act* listed in the Schedule to the *LA 2002* (and therefore exempt from the statute's general application)? If so, carefully adhere to the relevant limitation periods.
2. If not, was the insurance contract entered into between January 1, 2004 and October 19, 2006? If "yes," the *LA 2002* governs, and no contracting out is permitted.
3. If the contract was entered into after October 19, 2006:
   a) Is the contract a "consumer contract"? If so, no contracting out of the *LA 2002* is permitted;
   b) Is the contract a "business contract"? If so, the insurer may vary the *LA 2002*, provided the substituted limitation period is stated clearly and unequivocally. Examine the contractual terms very carefully. When in doubt, issue the claim at the earliest possible moment. ■

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[3] (2013) 116 O.R. (3d) 56; 2013 ONCA 298

[4] 2014 ONCA; (2014) 118 O.R. (3d) 694

When waiving a search comes back to haunt you

How a client perceives a lawyer's role in a transaction often depends on the client's experience. At one end of the spectrum, a new homebuyer may believe that the lawyer will not only navigate the process, but will also personally shield the client from all risks. At the other extreme, a sophisticated businessperson may urge a lawyer to "rubber stamp" a deal the client has brokered. The wise lawyer will, however, refuse to be *either* insurer or pawn.

When it comes to doing due diligence – and specifically, making decisions about searches – the safest approach is follow the client's ultimate instructions, but only after having invested the time to ensure that those instructions are fully informed and documented.

The cases

"I hereby vaguely waive whatever"

A purchaser hired a lawyer to handle the purchase of a business from family members. The vendors gave the purchaser verbal assurances, and one vendor swore a "*Bulk Sales Act* Statement as to Seller's Creditors" indicating the vendor had no creditors. The purchaser instructed the lawyer not to do any searches on the business. As it turned out, the business had an outstanding tax bill for more than 10 times the price the purchaser paid for the business. The purchaser sued the lawyer. The lawyer produced an "Acknowledgement and Direction" signed by the purchaser, but not only was the waiver vaguely worded – it acknowledged that the lawyer had not "conducted any searches against the existing business to ascertain whether there are any liens against the business" – but it bore no date. A six-figure indemnity was required to settle the claim.

Legal or business decision?

The corporate purchaser of a shopping mall required an environmental assessment to secure financing. The vendors provided three separate assessments to the purchaser directly but not to the purchaser's lawyer. The purchaser provided the first assessment, which showed no environmental concerns, to the lawyer and the lender, and the lender extended a financing commitment. The two other assessments, which the purchaser did *not* share with the lawyer, reported groundwater contamination on the mall site. The lawyer recommended that the purchaser obtain its own assessment. The purchaser declined, and instructed the lawyer to waive the environmental conditions in the Agreement of Purchase and Sale.

The parties completed the deal, and shortly afterward, the purchaser was sued by a neighbouring business over groundwater contamination. The purchaser settled with the neighbour, but continued its third-party suit against the lawyer. The trial court found that the lawyer was not negligent, holding that the purchaser's decision not to obtain its own assessment and to proceed with the deal despite its knowledge of the contamination was a business decision. The lawyer had met the standard of care in advising the purchaser to obtain an independent assessment. The court noted, however, that it would have been preferable for the lawyer to have obtained written confirmation of the client's decision to proceed without further investigation of the environmental issues. The purchaser appealed to the Ontario Court of Appeal, but the appeal was dismissed.[1]

Who handles what?

The Court of Appeal found, in the mall-purchase case discussed above, that a client can be found to have assumed responsibility for some aspects of purchaser due diligence. However, lawyers should remember that the same court made it clear, the year before (see 2013 ONCA 526 (CanLII)) that where the client has not explicitly agreed to handle appropriate investigations him or herself, the lawyer may be found negligent for failing to recommend or conduct those investigations.

This case involved the purchase of semi-developed land. A law firm failed to discover, prior to closing, that the property was subject to the new purchaser's obligation to pay substantial "cost recovery fees" to release a municipal reserve over a strip of land bordering the property. The municipality had established the reserve as a mechanism to secure contribution from eventual owners for their share of the cost of building access

[1] 2014 ONCA 415

roads. The vendor was aware of the reserve and contribution obligation, and included a rather subtle mention of it in the Agreement of Purchase and Sale. The purchaser's lawyers misunderstood this description of the reserve, and wrongly assumed that obtaining a release would cost a few hundred dollars when in fact the municipality eventually demanded a few hundred *thousand* dollars. In opting not to investigate or obtain a release of the reserve, the lawyers relied on the purchaser himself (or a representative thereof) to handle the "development aspects" of the transaction.

The court noted that since the existence of a reserve can affect the title, dealing with reserves falls squarely within the ambit of "legal work" and the lawyer's duty of care. The lawyer was found to have fallen short of the standard of care both in not dealing with the easement, and in failing to ensure "…that the lines of responsibility as between the law firm and the client regarding the legal and the development aspects of the transaction were clear."

The risk management lessons

A waiver is not a waiver if it is not understood

Many clients instruct lawyers to forgo relevant searches; some even sign written waivers. But by definition, a waiver is not effective (is not a waiver!) unless the person exercising it understands what he or she is declining. It is the lawyer's duty to insist that the client listen to an explanation of the purpose of any waivers that the lawyer sees fit to recommend. Taking the time to recommend relevant searches and to describe their purpose is your prerogative *qua* lawyer, and is a key way in which you can define your own role in the transaction. (And don't forget that you must do a proper intake of the client and the file before you can determine which searches are relevant.)

Don't assume the client understands the purpose of a search just because she knows the name of it

Some clients may have been advised, by friends or associates, "not to bother" with, for example, a survey for a home purchase, or a *Personal Property Security Act* search for the purchase of a small business. They may communicate their desire to forgo a search as part of their instructions to you. However, it is risky to assume that because your client knows the name of a search, he or she is fully familiar with the purpose of the search, or understands the relevance of the search to the particular transaction. It is up to the lawyer to assess the client's level of understanding of what they are seeking to waive and to supplement that understanding with further explanation where necessary (and it is in the lawyer's best interest to document having given that explanation).

Be skeptical of the client's reasons for waiving a search

When a client persists in his or her request that you skip a search, there is nothing inappropriate about asking why, documenting the reason given, and raising "challenge" points. For example, a client may tell you that since he knows the vendor personally, there is no need to obtain a retail sales tax certificate, since his friend would never conceal debts from him. You might counter by pointing out that the vendor may not even be aware herself of a newly-arisen tax liability – especially if she hires an outside accountant to handle her business taxes. As a lawyer, you are being paid to consider all potential scenarios, whether likely or remote, and to make recommendations about appropriate due diligence. Unquestioning acceptance of the client's own risk analysis does not add value worth paying you for.

Don't assume that the client's familiarity with one search reflects knowledge of *all* searches

Identifying relevant legal due diligence options is the lawyer's job – a client can't waive searches he or she doesn't know about. Good client communication means describing all relevant risk-mitigation options. To be able to do this, you need to maintain a thorough and current knowledge of the searches available in your jurisdiction, and their application. Transaction-specific checklists can help you keep this information at hand.

Use a waiver form that contains details of what's being waived

In some cases, a general form of "Acknowledgment and Direction" can be used, with details of the specific searches waived inserted, and a statement that the lawyer has explained the potential risks to the client and that the client understands and assumes the risks. In other cases, the lawyer may want to use a form designed specifically to address a particular assumed risk. For example, where a real estate purchaser client is waiving title insurance, it can be useful to use a form that details the client's potential exposure. A good example of such a form is the "Purchaser's Waiver of Title Insurance" available on the titleplus.ca website.

A checklist can make your advice seem more "objective"

To avoid having clients become impatient with communications about searches, or to avoid appearing to "patronize" relatively sophisticated clients, it can be useful to work with a checklist. Telling a client that you use a deal checklist *for your own benefit* can make your communications about topics that the client purports to understand seem less personal and more objective. For example, you might thank the client for his or her patience as you work together through "these routine issues I raise on every deal." This approach may encourage the client to think twice about waiving a search that is positioned as a "standard" aspect of transaction due diligence. The practicePRO program's commercial transactions checklist is available for free download on the practicepro.ca website.

Put retainers in writing

Finally, it's always good practice, at an early stage in the matter, to send the client a letter confirming the terms of the retainer, including a description not only of the work that the lawyer has agreed to do, but also the details of relevant steps that the lawyer has NOT been retained to undertake for the client. ■

Nora Rock is Corporate Writer and Policy Analyst at LawPRO.

Title insurance coverage is like a box of chocolates – no two policies are the same

"The lawyer should be knowledgeable about title insurance and discuss with the client the advantages, conditions, and limitations of the various options and coverages generally available to the client through title insurance," states Rule 2.02(10) of the *Rules of Professional Conduct*.[1]

This obligation was brought home in a recent malpractice case where the lawyer did not properly address the protection title insurance would afford the client and did not fully investigate the issue at hand.[2]

In this case, a city-owned laneway ran through a lot being purchased and underneath a long-standing (86 years) building. The lawyer indicated to the client that it was a minor issue, quickly resolvable after closing and that title insurance could cover it.

The title insurer provided a policy on a "forced removal basis" only. This required the title insurer to respond only in the event the city requested the building removed. Instead, the city wanted to be paid fair market value for the lane, an additional cost that diminished the property's value. This was not covered by the policy the lawyer obtained, but might have been taken care of by a full coverage policy.

The lesson? Not all title policies are created equal.

What's really covered?

Understanding specific policy coverages is imperative for advising clients on all potential issues. Only with all the required information can the client decide to accept the limited coverage or direct the lawyer to undertake other searches or due diligence measures to understand the extent of the issue or remedy the matter.

Failure by the lawyer to advise the client in this instance was determined by the court to be negligence. Interestingly, if the lawyer had obtained a TitlePLUS policy on the same terms, both the client and lawyer would have been protected. The TitlePLUS policy, in addition to all other coverage analogous to the other competitor's policy, has legal services coverage. This legal services coverage directly

Tailor the policy to the transaction

One title insurer may cover an item but another insurer may not. Providing the client with a recommendation on which title insurance to use in their specific transaction is an important part of the unique role of the real estate lawyer.

When considering which title insurance policy to recommend, consider the following:

- Why are the clients purchasing a certain property?
- What is the intended use?
- Which features are important to them?

The answers to these questions will be different for every client, property, transaction and set of circumstances. One client may not care about building compliance issues because they intend to demolish the buildings and build a completely new structure. Another client may plan to live in or use the property as-is, and knowing there are building compliance issues that could entail significant time, effort and money to render compliant, is significant.

[1] As of October 1, 2014, refer to Rule 3.2-9.4

[2] 2014 ONCA 215 (CanLII), canlii.ca/t/g67xn

indemnifies the client for any loss resulting from the lawyer's negligence regardless of whether or not the loss falls under one of the covered title and compliance risks. There is simply no circumstance in which a purchaser or lender protected by a TitlePLUS policy should be forced to sue their lawyer to obtain compensation for a loss suffered in relation to the transaction where the lawyer was negligent at law.

In another case[3], the sophisticated client had instructed the lawyer that he would handle the development issues, but the lawyer was found negligent when he failed to advise the client on the importance of the issue. The lawyer noted a one-foot reserve identified as part of the title search, advised the client of its existence, and did not undertake any further due diligence as it had been agreed the client would deal with these types of issues. As it turned out, the one-foot reserve was a greater obstacle than it normally would be, being much more costly for the client and affecting the viability and profitability of the project. This lawyer was found to be negligent in failing to emphasize the extent of the title issue and its possible consequences. The title insurance policy did not cover this issue, but here again, TitlePLUS legal services coverage would have provided the client (and lawyer) with other options.

Title insurance is not a magic bullet

Title insurance has never been a panacea for lawyers or their clients, nor is it meant to replace all due diligence. Residential policies are standardized and the various insurers have similar offerings. Commercial policies, however, run the gamut from all-inclusive coverage, to a stripped-down policy with endorsements for the specific requirements of the particular parcel of land and transaction. In addition, insurers may provide insurance to fully cover the lender, and partial or no coverage for the purchasers. They may also offer limited recovery coverage in the event of an identified and negotiated issue. Lawyers need to know and understand the differences and they need to ensure that they fully explain the advantages, conditions, and limitations of the particular policy to their clients.

It is in your best interest to ensure all intended clients are protected. TitlePLUS insurance offers one policy to cover both the purchasers and lender, to varying degrees. Other title insurers offer separate policies for purchaser and lender. Ask yourself, have all policies been obtained? Are all purchasers named as insureds? Is the lender named as an insured?

Know what's excluded

Lawyers should be cognizant of the exclusions found in a title insurance policy. Generally, there are five standard exclusions; government action, environmental issues, aboriginal title issues, other uses of the property, and matters which the purchaser has created, accepted or consented to. This latter exclusion can be fairly broad and can include any matter which the client learns of during the negotiations or viewing of the property, even if the lawyer has no knowledge of it.

Finally, the lawyer needs to understand the extent of coverage that the policy provides. Even in the fairly standardized world of residential policies, insurers' policy definitions vary.

Each property is unique. Real estate is an area of law that requires particular attention to the client's intentions, circumstances and the nature and status of the property in question. Even if the house next door is perfect, the one in question may be saddled with issues the client does not anticipate and may result in a claim against the lawyer when it is later discovered – even if title insurance was obtained. The lawyer's role remains as important in the real estate transaction today as before, and maybe even more important, now that transactions are becoming more complicated and property values have risen sky-high. ■

Ray Leclair is Vice President, Public Affairs at LawPRO.

New "how-to" video series by the TitlePLUS program

The TitlePLUS program has ventured into the exciting world of multi-media content with short instructional videos. These videos will help TitlePLUS subscribers and their staff get the most out of the TitlePLUS application website – titleplus.lawyerdonedeal.com.

The videos will address the common questions we receive from subscribers completing a TitlePLUS application and will offer shortcuts and tips to help save time and avoid data entry errors. The first in the series are:

- how to remove a defect from the Action List
- how to enter a condo plan in an Ontario purchase application
- how to enter registered easements in purchase applications

You can access the how-to series of videos on titleplus.ca.

Are there topics or tips you would like to see videos on? Email your suggestions to titleplus@lawpro.ca

[3] 2013 ONCA 526 (CanLII), canlii.ca/t/g06wv

Subdivision control under the *Planning Act*: What do you need to know?

This is a shortened version of an article that appeard on August 1, 2014 in the TitlePLUS Today newsletter. *See the full version at practicepro.ca/SubdivisionControl*

The subdivision and part lot control provisions of section 50 of the *Planning Act* are lengthy and complex. It can be difficult to sort out the parts that apply to a transaction, or the extent of the abutting lands search that is needed to confirm that no contravention occurred in the past. The consequences of contravention are dire: if a transfer, mortgage or other dealing with land does not comply with the section or a predecessor, it does not create or convey an interest in land. Because of this, the section is a significant source of malpractice claims.

The basic prohibition in section 50 is straightforward: a party may not deal with real property in Ontario where he, she or it retains abutting lands, unless the transaction falls within an exception. Subsection 50(3) imposes the prohibition where no registered plan of subdivision is in place; subsection 50(5) does the same where the land is part of a lot on a registered plan of subdivision. The prohibition applies to transfers, mortgages, leases, grants of easement, grants by will and all other dealings that have the effect of granting the use of or right in land for more than 21 years. All real estate transactions should therefore be approached with the presumption that a search of the title to lands that have (or previously had) a boundary in common with the subject property (an "abutting lands search") should be done, to determine whether:

a) the present grantor owns abutting lands, and therefore cannot give a valid interest in the property to the lawyer's client; or

b) any past dealings with the property contravened the section, resulting in the present grantor not having a valid title.

Exceptions

Section 50 contains several exceptions. Below is a list of those that are most commonly applicable to transactions where the lawyer represents the purchaser, mortgage lender or other party acquiring an interest in the land.

- Past and present grantors do not/did not own abutting land
- Property is a whole lot or block on a registered plan of subdivision
- Property is the remaining part of a whole lot or block on registered plan of subdivision, the other part of which was acquired by a body that has the right to acquire land by expropriation
- Property is a whole condominium unit and/or common interest in condominium
- Part lot control exemption by-law applies to present or past transaction
- Land converted to Land Titles Conversion Qualified ("LTCQ"), if title states that the land is not subject on first registration in LTCQ to subparagraph 44(1)(11) of the *Land Titles Act*
- *Planning Act* statements in transfer signed
- Consent to current transaction granted
- Prior consent to conveyance granted
- Where consent granted, property is whole of remainder parcel
- Grantor retains abutting lands that are a whole lot or block on registered plan of subdivision, and property is whole of remainder parcel

The following types of transaction are exempt from the application of the section. However, unless one of the exceptions above applies, you may wish to do an abutting lands search to confirm that past dealings with the property did not contravene the section, resulting in the granting party not having a valid title.

- Grantor is a federal or provincial government or municipality
- Party obtaining interest in land is a federal or provincial government or municipality
- Term of lease or right to use is less than 21 years
- Grant of use of part of a building or structure
- Agreement is subject to an express condition that Section 50 has been complied with (agreement is valid, but condition does not remedy transfer or other dealing if there is a contravention upon registration)

Section 50 has a vibrant history and the exceptions and exemptions set out above are not necessarily as simple as they look. For further commentary and tables with details on the exceptions and exemptions, please visit practicepro.ca/SubdivisionControl to see our full article. ■

Lisa Weinstein is Director of National Underwriting Policy, TitlePLUS at LawPRO.

Tools and strategies for lawyers with vision impairment

Toronto lawyer Ernst Ashurov was born with limited vision, and an eye injury in childhood left him almost completely blind; yet he runs a criminal and general litigation practice. In the first few years of his career, he was able to read print using extreme magnification glasses; but by 2006 he could no longer read. These days, he relies on two key software products to work with documents and to conduct internet research. Since software has its limitations, he has also developed a personalized set of strategies for dealing with the specific demands of court attendance, and for working with images and video.

JAWS® screen reader

JAWS, an acronym for Job Access With Speech, is a screen reading program from Freedom Scientific®. When installed on a computer (there are versions for both PC and Mac®), it allows the user to have text and numerical content read aloud to him or her. For users who prefer Braille to audio, or who also have a hearing impairment, JAWS can also provide output to the user in the form of Braille (via a special Braille reader).

More than just a reader, says Ashurov, "JAWS superimposes itself over the operating system, and lets the user navigate between Microsoft® Office programs – even if the user can't use a mouse."

How does it work? Users learn keyboard "shortcuts" (similar to the more limited set used by sighted keyboard users; for example, control-c for "copy," control-p for "paste"). Says Ashurov: "It's very much like the way computers used to work under the DOS operating system" that predated mouse-powered Windows® and Mac OS. Learning the long list of shortcuts was not difficult, says Ashurov, who navigates programs about as quickly as a sighted user. "You do have to be good at remembering file names," he concedes, as well as being organized when you develop your filing system.

JAWS also allows users to navigate the Internet, and is designed to read content in the order of priority that a sighted researcher would choose to read it, and to distinguish between a page's core content and secondary areas, like banner advertisements.

When typing on a computer that is running JAWS, the program reads the user's work back to him or her, which allows for correction of any mistakes.

Kurzweil 1000™ scan-to-audio software

When he needs to read hardcopy documents, Ashurov relies on Kurzweil 1000, a software product from Kurzweil Educational Systems®. Kurzweil allows Ashurov to scan hardcopy documents into a special format for audio reading (documents can also be converted to Braille). The program can also open PDF documents – traditionally challenging for text-to-audio software – and convert them into text for audio.

Portable technology for the courtroom

In the past, explains Ashurov, for courtroom appearances he needed to rely on a special portable recorder into which he could download selected audio files from his office computer. "Now that computers are so much lighter and smaller, there's no need for that." He can now listen to audio directly from his computer (after explaining to the judge why he's wearing headphones!).

When questioning witnesses about prior statements, instead of showing the witness entries from police notes, he plays excerpts from an audio recording of the notes ahead of time.

Working with images

In some trials, of course, a certain portion of the evidence is visual: objects, photographs, and video may form part of the evidentiary record. While Ashurov has heard of a special digital camera that can convert a photo into a voice description, for the moment he relies on the help of his wife, who has worked as his assistant for his entire legal career. In preparation for trial, she records descriptions of physical evidence and photographs. "When there's a video involved, we sit together and she describes it to me frame by frame. We record the descriptions, and I listen to the recording several times before trial."

The takeaway? A disability need not prevent you from practising law. Take the time to research and test the technologies available, figure out how they can support the way you like to work, and develop a system of strategies – which will likely include the help of a trusted assistant – that suits your needs. When you encounter a new challenge, be resourceful and creative in overcoming it, and share your solutions with colleagues who have similar needs. ■

Ernst Ashurov is a Toronto criminal lawyer and general litigator; Nora Rock is Corporate Writer and Policy Analyst at LawPRO.

Short reads for better practice management

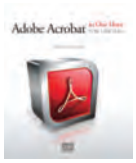
Many of the most popular recent additions to the practicePRO Lending Library have been from the ABA's "One Hour" series. These books present practice management and technology topics in a format that can be read in (more or less) an hour. We've added three new titles to the Library.

Legal Project Management In One Hour for Lawyers is by Pamela Woldow, a partner at a global legal consulting firm, and Doug Richardson, a former large firm litigator who now writes and coaches on law firm leadership. Their goal in the book is to explain just what "legal project management" (LPM) is, why clients want it, and how firms can begin to apply basic LPM principles.

The authors describe LPM as being about two core things: performing legal work more efficiently and managing uncertainty. It is *not* the same as project management in other fields (e.g. manufacturing or technology), which aims to produce identical and predictable outcomes. Rather, it is a system to give clients more predictability and accountability within the scope of the tasks clients have retained a law firm to perform.

Why are clients increasingly demanding LPM for their work? Financial pressures. The budget for "legal spend" has been slashed in many companies, and so they are looking for firms who can offer the same services with greater efficiency, value and predictable timelines and costs. Firms that have shown the willingness to respond to this new environment are proving attractive to these clients.

The book provides a high level overview of the various stages of LPM: determining the client objectives, planning the project, executing the legal work, monitoring progress and doing post-project reviews. The processes are easy enough to explain; the challenge is implementing the ideas in the firm and getting buy-in from lawyers who have traditionally done things "their way." Throughout the book there are real-world anecdotes that demonstrate how firms have adopted LPM practices. The authors wrap up with a chapter on how to begin the process of implementing LPM in your firm.



Adobe Acrobat in One Hour for Lawyers gives a detailed look at a program many in the legal profession use, but which isn't often taken full advantage of in terms of features. Most assume it's used mainly to display documents in a PDF format, but it's capable of so much more. The author is Ernie Svenson, a commercial litigation lawyer who speaks on tech-related subjects and runs the PDFforlawyers.com website.

There are free programs that let you create and view PDFs, but this book focuses on the features that justify the costs of purchasing Adobe® Acrobat® X and XI Standard or Professional. The chapters are divided into Basic (viewing, navigating and creating PDFs) and Intermediate (creating bookmarks, commenting, redaction text recognition and more). A quick browse through the chapters will unlock features you may not have known were at your fingertips.

Finally, *Android Apps in One Hour for Lawyers* provides some great ideas for apps that can be used on any device that runs Android™, whether it's a phone or tablet. The author is Daniel Siegel, a lawyer who writes and speaks on technology and consults with firms to improve their technology practices.

There are 600,000 apps in the Google Play™ store and this book distills that number down to the best to get more out of your device. While Android devices don't have as many specific legal apps as Apple® ones do, there are still a lot worth checking out.

After showing novice users where to find apps, and how to install and update them, the book breaks down the suggested apps into different types. There are those that store data in the cloud, productivity apps, document editing apps, apps designed for law offices and those that increase the power of your device through dictation, remote access and file management. Even if you just skim the chapters, you are bound to find something to make your device even more useful.

Tim Lemieux is practicePRO Coordinator at LawPRO.

Does your firm have a social media policy?

So your firm has one or more social media accounts they use to deliver its message. But do you have a social media policy for your employees to use? In this day and age, many of your employees have personal (Facebook) and professional (LinkedIn) accounts that may be effectively associated with the firm, based on the employee's sharing of information. It's best to have a general guideline to help the lawyers and staff at your firm know the risks and to guide them through how their online activity may affect their professional lives.

A few points to consider when creating a policy or guideline:

1. Firm culture
   - Keep in mind the culture that has been built in your firm over the years. Instill messages in the document that are consistent with the firm vision, values and mission. Review other firms' social media policies when doing your research.
2. Partner/executive and department input
   - Once the drafting process has begun, ask your partners, executive team and departments for any input they may have from their experiences.
   - Have a meeting with other employees in your company as you start to get the process rolling. You may not be able to have everyone involved, but larger firms should be sure to have HR, communications and IT present.
3. Personal vs. professional
   - Remind lawyers and other staff to be good online citizens and to be mindful of what they post, especially when their accounts name the firm as their place of employment.
4. Make it short
   - Keep your policy short and easy to read. Remember this policy is for all members of the firm, who will have different levels of experience with social media. If it's too long and complex, it will cause confusion for your readers and will be ignored.
5. Clarify policy rules
   - Remind employees of the privacy policies implemented at your firm. If your goal is to have more employee engagement and active voices on social media being clear helps.
6. Train employees on the policy
   - Now that your social media policy is in place, it's time to hold a training session for lawyers and staff. Run through why you've created this policy, the contents of it and where they can find it. This will help motivate employees to get started and give them clear expectations up front. ■

Victoria Caruso is Communications Coordinator at LawPRO.

Social media profile: Mahwash Khan

Mahwash Khan

Training and Communications Counsel

Time at LawPRO: Nine years

Mahwash has been active on LinkedIn, Twitter and Pinterest for the past two and a half years.

She also manages our TitlePLUS social media channels: @TitlePLUSCanada on Twitter and the TitlePLUS Home Buying Guide – Canada Facebook page since inception two years ago.

Target audience:
- Real estate lawyers and professionals
- Consumers in the home buying and mortgaging processes
- Lenders and banking institutions
- Consumers interested in renovations, maintenance and DIY projects around the home

Topics of interest:
- Real estate issues
- Copy editing and grammar
- General issues of balancing work and home life
- Feminist issues
- Inspirational and thought provoking articles

When asked how social media has shaped her career, Mahwash notes:

> With such busy schedules, it's a great way to get caught up with the world and to find out about things that interest you in a short period of time. It's also a fun way to share and learn.
>
> As a legal and communications professional, I find my job has changed significantly over the past two years – creating and managing two social media channels means we can share news as it happens. A message can be shared at the click of a button directly to the palm of people's hands.

Questions about renewing your insurance?

LawPRO will bring its annual report to Convocation in September seeking approval of the 2015 insurance program. Assuming the process goes as expected, we thought we'd answer some common questions that our Customer Service Department receives when the rush to file renewal applications heats up.

What happens if I don't file by the application deadline?

Lawyers in private practice in Ontario who do not submit their renewal application by November 11, 2014, can expect to be issued the mandatory program coverage based upon standard options, with a "no application" premium surcharge equal to 30 per cent of the base premium. By filing online before November 4, 2014, you can expect to receive a $25 e-filing discount on your 2015 premium.* Although deadline reminders are communicated in various ways, paper applications are not automatically sent out by mail, so it's important that you set a reminder in your calendar that it's time to renew your LawPRO professional indemnity insurance in October of each year.

How do I get the $25 e-filing discount?

File online by November 4, 2015 to receive the $25 e-filing discount on your 2015 premium.*

Do I have to pay when I renew my policy coverage or can I wait until 2015?

You do not have to pay your 2015 premium when you file your renewal application in October/November 2014. Upon successful filing, you can expect that an invoice will be issued which reflects the payment instructions you selected on the application form. Premiums for this policy coverage will not be due until 2015. If, at the time of filing, you are unsure of how you want to pay your 2015 premiums, simply select the option to pay "lump sum by cheque" on the renewal application and then send revised payment instructions in writing to the Customer Service Department if you wish to revise your selection.

How do I get the $50 early payment discount?

Pay your 2015 premium in full by cheque or by pre-authorized bank account withdrawal by February 5, 2015, to receive a discount of $54 ($50 premium and $4 PST) on your 2015 insurance premium.*

Is updating my contact information the same as renewing my policy?

Reviewing and updating your contact information online (as needed) is only part of what is required during the insurance renewal process. To renew your coverage for 2015, you must check to ensure that all of your contact information is correct PLUS complete and submit the renewal application form.

How do I know that my insurance coverage has been renewed for 2015?

When filing your renewal application online, successful submission will result in a confirmation number that begins with the letter "P." If you receive a confirmation number that begins with the letter "R," this means you have only updated your contact information and you need to return to the online renewal application to complete your filing and get a confirmation number that begins with the letter "P." Keep your confirmation number for your records. When your renewal application has been processed, you will receive an email from LawPRO providing a web link to download your policy documents. As such, it's important that we have a valid email address on file for you.

* Based upon the existing mandatory program.

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