

LAWPRO®

Toronto Lawyers ASSOCIATION 

Managing the second wave:  
CPD and resources on mental health and resilience

February 5, 2021

# Program materials



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# Managing your mental health through COVID

*Shawn Erker*

We are experiencing what our email inboxes repeatedly call “unprecedented times”. Many Canadians are facing lost employment and financial strain; many are taking on a large number of new responsibilities as they act as home-schooling teacher and caretaker for their children; and all Canadians face the new anxieties and fears now associated with shopping for food and necessities during a pandemic. Physical distancing policies have turned our world upside down, and it is challenging for many of us to stay isolated within our homes. These new stressors are sources of anxiety, stress, and uncertainty, and can have serious deleterious impacts on our mental health.

Earlier this year, we published an issue of [LAWPRO Magazine focussing on mental health concerns](#) and treatment for lawyers. We never could have guessed how immediately relevant much of the content and our resources would become. Here’s how those resources can help you adapt to our new status quo and stay mentally and physically healthy.

## **Lawyers: Know thyself**

Even in ordinary circumstances, mental health issues take a serious toll on many Canadians. According to the Centre for Addiction and Mental Health (CAMH), in a given year, one in five Canadians will experience a mental illness such as depression, severe anxiety, or stress disorders. By the time Canadians reach 40 years of age, almost half will have or have had a mental illness.

These problems are even more common among lawyers: The American Bar Association has found that the likelihood of depression is 3.6 times higher for practising lawyers. These pre-existing risks are exasperated by the novel stresses brought about by COVID. Our article on “[Understanding mental health in the legal profession](#)” explores the long history of lawyers’ increased susceptibility to mental health problems.

It may all feel overwhelming— this is understandable. Some lawyers may be experiencing an increased workload during the pandemic; some may see much of their work dry up. Regardless, we aren’t going back to “before times”, and we will all need to adapt.

It’s important for lawyers to know that their mental health concerns are common, and there is no shame in experiencing a mental health issue. We are all human and are all susceptible to the psychological impacts of the pandemic.

## **Embracing change with the Member Assistance Programs**

When it comes to working under physical distancing conditions, the [practicePRO website has collected a series of articles](#) on adapting your practice to the new normal. But working from home and embracing appropriate technologies to assist in practicing law during physical distancing is only part of the

transformation. We must also adapt our mindset and lifestyles to stay healthy and effective during this period.

That's where the [Member Assistance Program](#) comes in. In Ontario, the MAP is co-funded by the Law Society of Ontario and LAWPRO to provide mental health and wellness assistance to lawyers, paralegals, students, and, crucially their families as well. It provides numerous resources aimed at improving mental health and wellness.

The MAP can be used by lawyers as part of their efforts to adapt to our new times.

For example, the MAP provides articles and e-learning courses on subjects such as “Embracing Change” and strategies for dealing with high-stress lifestyle changes. [These e-courses qualify for LAWPRO's Risk Management Credit](#) and can be completed at each lawyers' convenience.

The MAP also provides assistance at no cost to lawyers through peer-to-peer support; professional counselling for depression, trauma, and other mental health concerns; childcare and eldercare resources; and lifestyle coaching for subjects such as smoking cessation.

[Our full article on the MAP](#) provides additional information on each resource and an interview with one of the peer-volunteers providing one-on-one support.

### **Law firms: Know each other and know the red flags of mental health concerns**

Stressful extenuating circumstances are certain to negatively affect our mindset and affect our attitudes. This is normal, and it's important to give each other and ourselves additional latitude with our own efficacy and actions. To some extent, we all may be bearing the symptoms of deteriorating mental health conditions. However we still need to attend to the warning signs of anxiety, stress, or depression when they arise.

For example, colleagues may have difficulty completing basic tasks, even if they have more free time. Some may be obsessing over anxieties about the future to the point that it impacts their abilities to complete obligations. These problems can grow if not properly addressed.

[Review our article on mental health “warning signs”](#) and how firms can look out for the well-being of their employees. Law firms can help employees by setting supportive workplace cultures. Check in with those working remotely to ensure they are supported, and have access to assistance if they are experiencing difficulties. Set an example for co-workers and employees by discussing your own concerns, stresses, and mental health, and the steps you are taking to protect your resilience during these times.

### **Taking a break from your practice**

[LAWPRO is striving to provide increased flexibility and accommodations to lawyers during this time.](#)

Financial stresses besides health concerns may limit your ability to maintain your practice at the levels previously established.

If you feel the best course of action for you at this time is to take a personal leave of absence from your practice, for personal health professional reasons, you may qualify for a temporary exemption from insurance. Exemptions are available for those who will not be practising (with some exceptions) for at least 30 days but are planning to return to practice within five years. To ensure your practice is adequately protected, [see our article on taking a leave of absence](#) before stepping away from your responsibilities.

### **Keeping social while social distancing**

Maintaining your health is part of maintaining your practice. Physically, that may mean finding new ways to exercise or get fresh air while still physically distancing from others. Psychologically, that may mean finding new ways to retain your work routine and work-life balance even while working from home.

Perhaps most important of all, don't forget to reach out to co-workers, friends, or family, to maintain social connections during this time. Virtual water-cooler discussions can go a long way to restoring a sense of normalcy to our days, and remind us that even if we're isolated, we're not alone.

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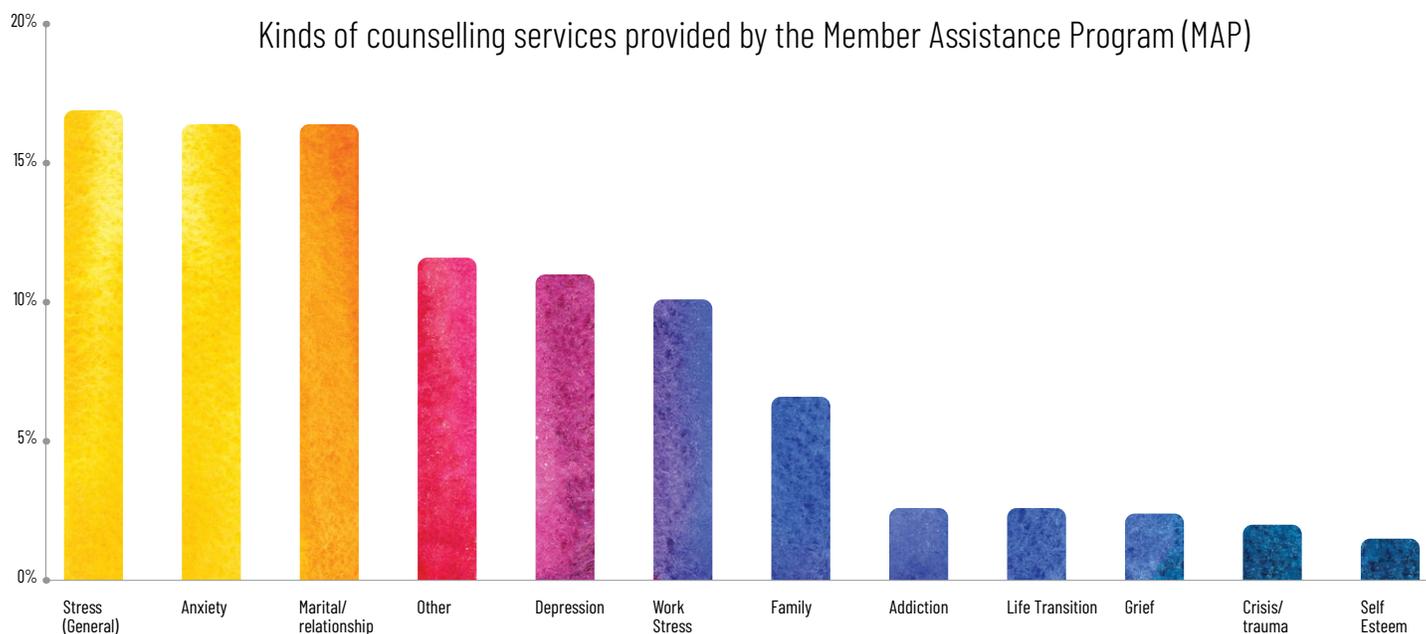


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# Understanding mental health in the legal profession

Herman Melville wrote that the legal profession is one where “misery hides aloof, so we deem that misery there is none.” In Melville’s story of *Bartleby, the Scrivener*, a solicitor watches this silent misery slowly consume and destroy his copyist, Bartleby. Although Melville wrote his tragedy about depression in the legal profession in 1853, it is a story that is still all-too familiar.



The mental health challenges of a career in law have been ignored for many years. Unaddressed, they can affect both quality of life for the lawyer and quality of legal service received by clients. These challenges can be a contributing cause of malpractice claims. But recent efforts to shine attention on wellness and mental health bring the promise of positive change in the future.

According to the Mental Health Commission of Canada, in any given year, one in five Canadians will struggle with mental illnesses such as depression, severe anxiety, or stress disorders. While elevated wealth or status ordinarily decreases the risk of mental illness, the opposite is observed in the legal profession. The American Bar Association (ABA) found that almost a third of practising lawyers in the United States were struggling with some level of depression, and between 21 and 36 per cent qualified as problem drinkers. According to a recent study conducted at the University of Toronto, not only are lawyers in Canada and the United States more likely to suffer from mental illness than the public at large, but, paradoxically, lawyers with higher paying and higher status jobs are more likely to self-report depression and poor health than lawyers with lower-status positions.<sup>1</sup>

These consequences often manifest early in a legal career. The Member Assistance Program (MAP), which provides mental health services to Ontario legal professionals, sees demand highest from those in their 20s and 30s. As shown in the pie chart on the next page, the successful up-and-comer is often the one struggling with many of these issues.

There's evidence that the elevated income associated with a legal career only partially mitigates the deleterious health consequences of being overworked, overstressed, and burdened with the sometimes substantial work-life conflict that comes with it. The health consequences are wide-ranging and often serious. The MAP sees demand in the legal profession for counselling services relating to a variety of psychological issues, as the bar chart above illustrates.

The severity of these mental health afflictions can range from manageable to life-threatening, but a lawyer does not need to be in crisis before their mental health can have a serious negative impact on their life.

### Bringing lawyers' mental health into the light

In 2016, the Law Society of Ontario (LSO) adopted a new Mental Health Strategy intended to address the importance of mental health to the ability of lawyers to meet their professional responsibilities. The report prescribed a comprehensive communication strategy for addressing issues of stigma related to mental illness and addictions and the possible systemic causes of such within the legal profession. Similarly, the Canadian Bar Association recently partnered with Bell's "Let's Talk" public awareness program in an effort to address the harmful negative culture associated with mental health issues, particularly in the legal profession. It's these efforts to normalize treatments directed at mental illness that are seen as key to addressing health problems in the legal profession.

<sup>1</sup> Jonathan Koltai et al, "The Status-Health Paradox: Organizational Context Stress Exposure, and Well-being in the Legal Profession," *Journal of Health and Social Behavior*, 2017

The LSO, the ABA, and other similar organizations now explicitly acknowledge that self-care and wellness are part of a lawyer's obligation to provide competent services to the public. But entrenched cultural norms, embarrassment, and fear of discrimination often hold lawyers back from taking steps to treat mental illnesses before they get out of hand. Usage statistics from the MAP suggest that legal professionals in Ontario currently seek mental health assistance at a rate that is approximately *half* that of other professions. This has serious consequences. A report prepared for the New York State Lawyer Assistance Trust estimated that 40 to 70 per cent of attorney discipline proceedings and malpractice actions are linked to alcohol abuse or a mental illness.

Allowing oneself or others to suffer in silence is not acceptable from either a humane or professional perspective. The legal profession has matured slowly but substantially since the days of Melville and Bartleby, and today more lawyers recognize that mental health problems can and do affect a substantial number of their colleagues, and potentially themselves. It is not uncommon, it is not shameful, but it is serious. And it is necessary to address these problems with self-care and treatment through resources like the MAP.

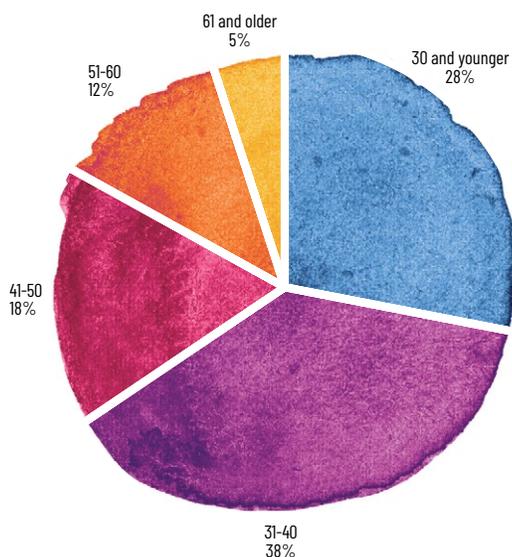
## The benefits of asking for help

Although some may act invincible, lawyers are still human. Yet despite the substantial educational pre-requisites to practise law, most lawyers have little or no education in managing self-care and mental wellness. Acknowledging that help may be needed is simply acknowledging that one is not an expert in mental health. Too many lawyers neglect self-care and allow their quality-of-life and practice to suffer.

Doron Gold, a senior clinician who has been with the MAP since its creation in 2013 suggests the following self-reflection: "You are your own best judge of whether your life is going as you want—whether you feel like your life is on a good track and is in control. And if there's a deviation from that, if you're finding that you're not performing as well at work, or you're finding it hard to get out of bed or get your work done, maybe you shouldn't have to put up with that."

He hopes that lawyers realize that "they are one of a few tens of thousands in the profession, all of whom struggle at a given time and sometimes need help." The fact is, "if you can reach out for help and not worry that somehow it will reflect badly on you, there's a very good chance that you're going to heal, get back to fully functioning, and get some relief." ■

Use of MAP resources by age range in 2018



# Debunking the 'lone sufferer' myth once and for all

Conventional wisdom in our society about lawyers is that they're high achieving, productive, successful, disciplined, pulled-together people. They're 'pick themselves up by their bootstraps' types. For prospective clients, it's reassuring to think that the person you rely on to negotiate your deal or fight for your rights in court is solid and true, unfettered by the petty personal problems that plague the average Joe or Jane. Also true is that members of the profession themselves readily buy into this stereotype.

Undoubtedly, legal professionals are achievers. You cannot get into law school, let alone graduate, complete articles, get called and practise, without significant fortitude and ability. Running that gauntlet is no small feat, especially when you take into account that life is not only about professional endeavours but also involves personal pursuits such as marriage, raising children, caring for aging parents, keeping healthy and leisure.

And so, there's no question that we're an impressive bunch. It's no accident then that non-lawyers are almost always impressed when they discover a specific person is a lawyer – even if they view the profession generally in a negative light. More than one member of the bar has heard an individual waxing indignant over the transgressions of the legal profession – lawyer jokes included – only to then, once advised as to the listener's vocation, utterly gush over that person's admirable professional status. It can all be very confusing.

Still more confusing is the assumption that legal professionals are immune from personal distress. Take, for example, the family lawyer engaged in a pitched battle with opposing counsel over every issue that arises in a matter. While many counsel keep it civil and are even professionally friendly with the other side, many more attempt to maintain a veneer of emotional detachment and super-control. They're on top of every detail and fear nothing. To quote Sun Tzu: "Invincibility is in oneself, vulnerability is in the opponent." When in battle, to some it makes only good sense to put up a strong, invulnerable front. It intimidates. It demoralizes. And it deprives the adversary of ammunition.

## The reality behind the façade

Without question, many lawyers live healthy, productive lives. When they come across as 'together', it's because, by and large, they are.

But what of the other significant segment of these professionals? What of the litigator who boisterously plows through adversary after adversary in court, but can't find a way to stop herself from finishing a bottle or two of wine on her own once she reaches home at night, with all of the attendant destructive consequences this poses to her health, family and career? What of the articling student who can't seem to find a job no matter how many interviews he gets, with the spectre of the Call quickly approaching? He can't help but fear that

all of his work was for naught because the big bad legal profession won't let him in, and he's got loans to pay off and a family to support, not to mention a career to build. What about the associate who needs to keep it together and meet her billing targets while suffering from debilitating depression and anxiety that make it hard to even get out of bed in the morning?

These vignettes are not anomalies in an otherwise idyllic system. Each day, the Ontario Lawyers' Assistance Program (OLAP) fields calls from lawyers, judges and members of their families across Ontario struggling with various forms of stress and distress.

We're not understating the situation when we say that issues such as depression, addiction and anxiety disorders, among many others, are more the rule than the exception throughout the Ontario bar. As hard as it is for many to believe, we have among us heroin addicts, those with bipolar disorder, gambling addicts and those paralyzed by fear and anxiety. They suffer terribly. More disturbingly, they usually suffer alone.

The inspiration for the topic of this article is the shockingly consistent strain that runs through the experience of most of the lawyers suffering these divergent challenges: They think they're the only ones out there like them. Like clockwork, OLAP staff wait for the question and more often than not, it comes: "Is there anyone else out there going through this?"

OLAP can field 20 calls from those who suffer depression and 15 of them may separately proffer this query, oblivious to the malady they share with so many others like them. And so, they suffer alone, convinced that they're weak, wrong, bad and with irretrievably flawed characters. After all, as was noted earlier, lawyers are bootstrap picker-uppers. They run gauntlets and survive. They defeat powerful enemies. "Then why can't I stop crying?" "Why am I letting my life disintegrate over this damn pill that I can't keep from taking?" "Why am I terrified to open that file?" "I'm a complete failure."

### Why does this happen?

Many reading this will wonder if it's even true. It comes across as so unusual. "Just talk to someone!" or "Just get help!" is the default attitude.

The problem with that is two-fold. First, people have trouble self-diagnosing. It would not be unusual to hear a person declare that he is tired all the time, has lost interest in things he used to love doing, has trouble sleeping and often feels hopeless. Then he'll confidently declare: "But I'm not depressed."

The same holds true for addictions and even abusive situations. Have you ever come across a person in a physically and emotionally violent relationship who refuses to let you call it 'abuse'? The label is scary and unnerving. To many, it connotes failure. If you don't label it, maybe that's just the way life is.

The second problem is that once a person realizes she is at the end of her rope and

just can't do it on her own, she may be too ashamed to reach out for the much-needed assistance. A lawyer who is used to figuring things out on his own and being a self-starter in his practice, vehemently resists the concept of reaching out. He muses: "I got myself into this, I can get myself out of it."

The problem is that in the throes of depression or addiction, one's reserves of resiliency are depleted. Besides, depression, addiction and other such diseases – and they are diseases – powerfully distort the perception of the sufferer. Minor challenges become pressures that are so overwhelming that for some, suicide seems the only escape. That's a distorted reality. That's what the disease does to a person.

Further, often you'll find a lawyer suffering from a condition that renders him or her terribly sad; and instead of getting treated or even simply being kind to him or herself, he or she will add a layer of self-abuse to an already painful circumstance. These people may heap frustration and abuse on themselves for what they perceive as failure or weakness. At the very time that they desperately need care, acceptance and the total absence of judgment, they judge themselves more harshly than anyone else would. It's a self-sustaining system and in all of it, they convince themselves that they're the only one of their peers going through this.

### Let the myth die here

From the perspective of a helping professional able to see the larger picture, the irony of 20 people suffering the same

affliction all believing they're the only one might be amusing, were it not so utterly sad and debilitating. That belief keeps those individuals from reaching out for help when that help is readily available and undeniably effective. They're ashamed. They need to know that they're not the only one. They haven't identified their dearth of character, they've illuminated their humanity. All of us, from time to time, face challenges that seem insurmountable. That's not failure, it's life.

So let's put this 'Lone Sufferer' myth to bed once and for all. We in the profession share not only our professional pursuits and accomplishments, we share also a humanity that allows us to sometimes be vulnerable to disease or hardship without it connoting a personal failing. We share not only keen intellect but also the emotional resiliency to face down personal distress – with the help of others – and to reclaim the lives we've worked so diligently to build. No one need suffer on their own, so long as they know they're not alone.

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*Doron J. Gold is a case manager at the Ontario Lawyers' Assistance Program. In addition, having previously practised law, he is now a Certified Personal Coach with a private coaching practice working primarily with lawyers. He can be reached at the OLAP offices at (toll free) 1-877-576-6227 or in the GTA at 905-238-1740.*



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## Online Resources

Access [www.myassistplan.com](http://www.myassistplan.com) anytime for e-learning, interactive tools, health and wellness assessments, and a library of health, life balance, and workplace articles.

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- Legal
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### Health



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- Smoking Cessation
- Nutrition

### Career



- Career Planning
- Workplace Issues
- Pre-Retirement
- Shift Work

MAP is a confidential service funded by and fully independent of The Law Society of Upper Canada and LawPRO.

## Who can access the MAP?

- ✓ Lawyers
- ✓ Paralegals
- ✓ Judges
- ✓ Licensing process candidates
- ✓ Ontario law school students
- ✓ Students at accredited paralegal colleges

*Includes spouse and children*



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# Using the MAP to find a healthier way

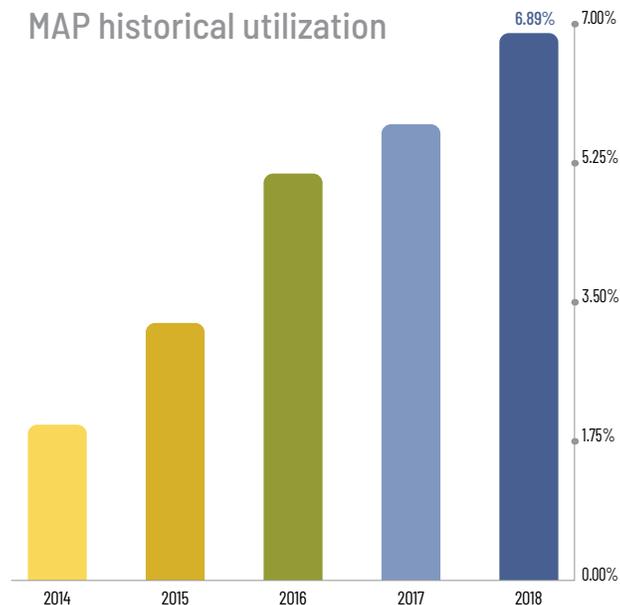
Although compromised mental health within the legal profession has historically been a widespread and deeply rooted problem, increasing awareness and new resources are building a healthier, more resilient, and stronger profession. That's where myassistplan.com from the Member Assistance Program (MAP) comes in.

The MAP provides Ontario lawyers, paralegals, law students, judges, and family members, with free and confidential counselling, coaching, online resources, and peer volunteer assistance directed at issues related to career, family, finances, addiction, mental or physical health, and other fundamental aspects of their lives.

Operated by Homewood Health, an independent program provider, it is co-funded by the LSO and LAWPRO for the purpose of increasing lawyer wellness, productivity, job performance, and career satisfaction, and decreasing health-related practice disruptions and errors. In 2018, the MAP was recognized with the Employee Assistance Society of North America's *Corporate Award of Excellence*.

Registering online allows you to access the MAP's health library, including articles and interactive e-learning courses; receive lifestyle coaching on nutrition, smoking cessation, career planning, finance, retirement; or, schedule confidential counselling or peer-to-peer support sessions that can be held in-person, by phone, or online. See sidebar on page 11 for an overview of the resources the MAP offers.

### MAP historical utilization

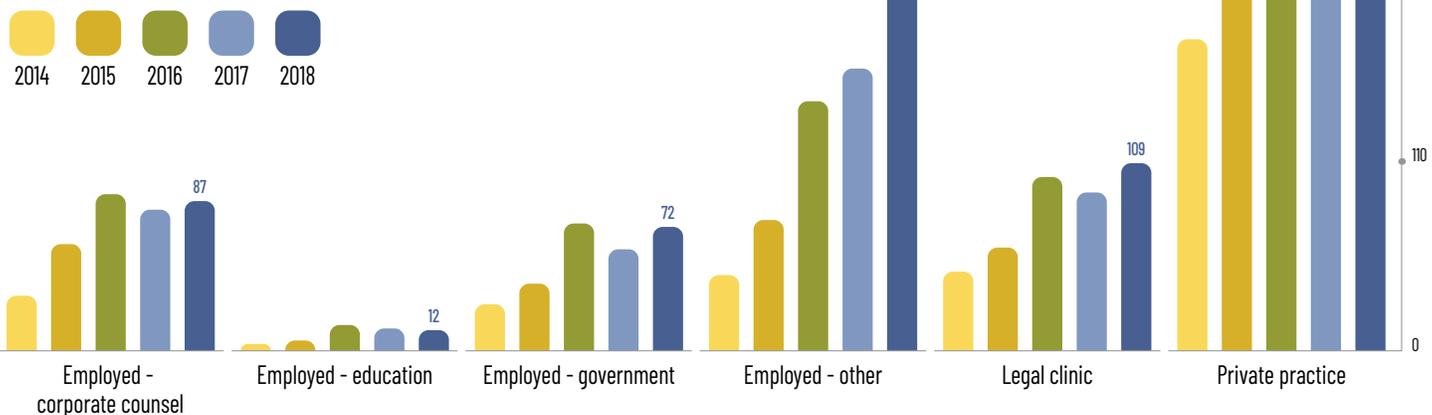


### Growth and impact of the MAP

The true measure of success for the MAP and its resources is the increase in its use by the profession. In the five years it has been in operation, use of the program has more than tripled from approximately two per cent to almost seven per cent of lawyers, paralegals, and students in Ontario (see the graph on MAP historical utilization, to the right).

Increased usage of MAP resources since 2014 can be seen among all practice types, as shown in the graph below. Homewood Health expects usage to continue growing, eventually reaching approximately 10 per cent, which would be consistent with benchmarks from other industries and professions.

### Distribution of lawyers using the MAP



## PROFILE IN PEER SUPPORT

The MAP's peer support program pairs volunteer lawyers and paralegals with individuals calling for support. It can be scheduled in addition to or in substitution for traditional counselling services. Like every other aspect of the MAP, the peer support program is entirely confidential.

Distinct from the LSO's Coach and Advisor Network, which provides lawyers and paralegals with access to advice on substantive or procedural questions in their careers, the MAP's peer support program is aimed at guiding members through mental health struggles and the emotional impact of a legal career.

The purpose of the peer support program is to provide every struggling lawyer, paralegal, or student with a volunteer from the profession who can model recovery while providing empathy and understanding. These volunteers have also lived with mental health and wellness issues in the past and have continued to maintain successful and fulfilling careers.

One such volunteer is Beth Beattie, senior counsel with the Ministry of Health. Beth has been a peer volunteer since 2017, and she says the program is invaluable: "It truly is beneficial to be able to talk to a sympathetic ear, an ear that is experienced and can give perspective."

Beth's experience is twofold. First, as a lawyer with 24 years of experience in private practice and with the Government, and second as a woman with 15 years of experience dealing with a diagnosed mental illness.

"I have bipolar disorder, and I was closeted about it for 14 years. I didn't have a role model. I didn't know anyone else who had bipolar disorder. I just thought it would be so damaging to my career if word got out. So I kept it quiet for 14 years."

For Beth, the MAP's peer support program is an opportunity to provide hope and confidence to others struggling in the profession: "If I had a role model 15 years ago, I would not have lived so many years in angst, because I would have realized that people can have very successful outcomes despite having a major mental illness."

There are over 40 peers like Beth volunteering with the program. Members seeking assistance are matched to volunteers who have personal experience with subjects like substance abuse, depression, anxiety, or other mood disorders. Attributes like gender, age, race, and other criteria are taken into account when finding a peer with similar experience and with whom a member can identify, confide, and seek advice.

Once matched, the relationships are ongoing and indefinite. Beth speaks by phone with those she is matched with once every two weeks. "I was on the phone with a mentee for an hour and half yesterday," she says. "You cover a lot of ground. It's very practical things like putting together a to-do list, or things like office dynamics, or just general health. We talk about things like exercise and diet and medication—I really encourage them to do all of that."

Beth says she sees the benefit that the peer program provides: "When they're young, lawyers can get caught up in minutia—like 'oh my god, I didn't get that letter out as quickly as I was supposed to' or 'I missed that filing deadline'—and I'm able to say 'look, 95 per cent of things can be fixed. You're going to be able to fix this.' You put things in perspective. And I know that it helps them."

Beth sees positive changes being made in the legal profession when it comes to addressing mental health, but feels that much more work needs to be done: "As a profession, it's important for us to talk in our workplaces about mental health: how to get it, how to maintain it, where to go for help, and getting assistance from peers and colleagues. The most effective way to combat stigma is for people in the profession with mental illness to speak out."

**"It truly is beneficial to be able to talk to a sympathetic ear, an ear that is experienced and can give perspective."**

## The importance of strict confidentiality

While use of the program continues to grow, one of the biggest barriers to accessing assistance for many members is their concerns about confidentiality. Doron Gold, a senior clinician with the MAP, takes these concerns very seriously. His response to hesitant lawyers worried that information provided to the MAP could be passed on to the Law Society, LAWPRO, or a third party is simple: “That simply does not happen.” Stigma, embarrassment, and concerns about confidentiality are all reasons given by members not to call the MAP. For Gold, these are reasons why he and his team “reiterate, and reiterate, and reiterate the sacrosanct nature of client confidentiality.”

Confidentiality is built into the structure of the MAP since there is no direct interaction between Homewood Health and the LSO or LAWPRO. All MAP-related communications occur through a third-party broker, and the only information provided to the LSO or LAWPRO by MAP administrators are aggregated and anonymized statistics. All personal information and records remain the property of Homewood Health and will not be released absent permission from the member, a court order, or a threat of harm to the member or others. ■

## OVERVIEW OF MAP RESOURCES

The MAP offers a wide variety of online free resources available at [myassistplan.com](http://myassistplan.com), along with in-person professional assistance.

### Short and longer-term counselling

Confidential short-term and crisis counselling is available in-person, online, or over the phone from experienced therapists who specialize in issues such as stress, anxiety, substance abuse, depression, burnout, and other personal and mental health issues.

The MAP provides secure and private online counselling sessions, either through private and confidential message exchange, where a counsellor will respond to a private message within two business days, or through real-time interaction in a private chatroom environment via a secure web board, where all communications are confidential and private.

Longer-term counselling – up to 20 sessions – is available for members seeking treatment for depression or trauma related issues.

### Peer-to-peer support

Designed specifically for members of the Ontario legal profession, the MAP’s peer-to-peer support service connects members with a peer who has experienced and overcome the same issues they may be experiencing. For more information on the peer support program, see the sidebar titled “A profile in peer support” on page 10.

### Lifestyle coaching

The MAP’s “Life Smart” resources provide coaching on a variety of subjects such as childcare and parenting, elder and family care,

financial and legal issues, nutrition and smoking cessation, as well as career, retirement, and workplace issues.

### Self-directed e-Learning courses

A large online library of health and wellness assessments and self-directed learning resources, including videos, articles, podcasts and e-courses designed to improve personal health and well-being are available at [myassistplan.com](http://myassistplan.com). Resources can be accessed on any desktop or through the mobile app.

Homewood offers licensees the ability to create an individual profile and receive guided, personalized content and recommendations, including a self-paced online cognitive behavioural program called “i-Volve.” Members can easily access articles on subjects such as anxiety, PTSD, grief and loss, mindfulness and meditation, understanding and treating depression, and myriad other topics, or take online courses that can be completed in a single sitting aimed at taking control of anger, career, stress, and other aspects of their lives.

### 12weekstowellness.com

Homewood also provides an online, goal-oriented wellness resource under the banner of “12 weeks to wellness.” Individuals set their own goals regarding lifestyle habits, weight, peace of mind, self-esteem, and other wellness aspects, and receive coaching while tracking their progress through assessments and a personal profile.



## It's 10:00 p.m. Do you know where your associates are?

A lawyer's life can be a lonely one. Long hours spent in an office — reviewing documents, drafting letters, researching obscure points of law — can create a sense of isolation, even for lawyers practising in firms. This isolation can be harmful to a lawyer's mental health, and it can also prevent colleagues from realizing a problem exists and stepping in when a lawyer becomes overwhelmed.

Too often, a lawyer overwhelmed with professional and personal stress is left alone while files suffer, tasks remain unaddressed, deadlines are missed, and errors are made. In some cases, the overwhelmed lawyer's health suffers to the point of needing to step away.

## When firms discover large clusters of claims

Martine Morin, Unit Director & Counsel with LAWPRO, has encountered situations where firms are forced to report clusters of claims after an overwhelmed colleague has stepped away from the files. She says this often appears to be the result of firms not responding to the needs of their associates. Overwork and lack of support from colleagues can create a snowball effect, where small problems start to multiply and grow, causing anxiety or stress, which in turn causes files to be left unattended.

Morin says that while these clusters of claims do arise in medium and large firms, they occur most often in smaller firms, where lawyers usually work alone on a particular file and therefore are not required to update colleagues on a regular basis. She stresses that firm partners need to remember that they may be responsible for the liability of their associates, and that a lack of oversight can create substantial costs down the road, including deductibles, claim surcharges, and levies.

Morin's advice is to ensure that lawyers are checking-in on each other. Partners, associates, and staff should be prepared to recognize red flags that suggest a lawyer has taken on too much or is otherwise struggling, and offer assistance or take steps to mitigate the stress on the colleague. Red flags can include: regularly failing to return phone calls or emails; leaving files to linger over long periods of time; "freezing" and being unable or unwilling to complete small and simple tasks; regular and unexplained absences; and, changes in personality or mood. Colleagues displaying these sorts of warning signs are often in need of assistance and may need encouragement to seek out wellness resources and speak to outside parties such as Ontario's Member Assistance Program ("MAP").

## The dangers of not talking about mental health

One thing that prevents struggling lawyers from seeking assistance or notifying colleagues of problems as they develop is the stigma

# Why it's important for lawyers and firms to be proactive about mental health

**When lawyers ignore their mental health and fail to act on warning signs, they not only harm their quality-of-life and job satisfaction, they leave themselves open to a claim, or even a cluster of malpractice claims.**

surrounding mental illness within the legal profession. Many lawyers will refrain from seeking assistance or even acknowledging a problem because they are concerned about negative repercussions and potential judgment from co-workers and management.

## Not just talking the talk

Some firms have made great strides in building a healthy and resilient environment. Many are now encouraging their employees and lawyers to take advantage of services like those offered by the MAP, the LSO, or other organizations (see page 15 for more details).

According to Doron Gold, a senior clinician who has been with the MAP since its creation in 2013, those positive changes need to come from the top: “Once I did a webinar for the Law Society, and one of the questions was from a young lawyer who said ‘our firm has a yoga room, and I’m afraid to use it.’ The question was, ‘so what can the firm do to help with that?’ I said, ‘the managing partner needs to take up yoga.’ You need to have the buy-in from the highest

levels, demonstrating tangibly that it’s not just lip-service—they mean it.”

## Supporting mental health supports lawyers’ practices

Encouraging an honest and open approach to communicating about mental health is not just good for peace-of-mind, it’s good for client satisfaction. A positive and supportive working environment that avoids mental health stigma will flag potential health problems before they become file problems and may even prevent health problems from arising in the first place.

If you see a colleague or friend struggling with stress, anxiety, depression, or other mental health problems, it’s important to reach out. The first step to creating a healthier environment for everyone is dismantling the stigma and barriers that entrench isolation and prevent healing. ■

## Three things you or your firm can do to help prevent large clusters of claims

- 1 Encourage positive communication about warning signs**  
 Colleagues and support staff may be best situated to know if certain files are being left to linger or a lawyer is not responding to calls or important correspondence. Building a positive culture that responds to stress and mental health problems without judgment can prevent dangerous silence as claims pile up unbeknownst to colleagues.
- 2 Implement a claims notification policy**  
 In both smaller and larger firms, management can put a policy in place to be notified whenever a claim is made against an associate or a potential claim is discovered. Inquiries can be made at that time as to whether this claim is symptomatic of larger problems, such as excessive workload or other issues.
- 3 Promote mental health resources for lawyers**  
 Building a healthy workplace is a team effort. Lawyers, staff, and management can all choose to be open about the importance of mental health. Senior lawyers and management can set an example by taking advantage of lifestyle or health benefits offered by the firm. Even if a firm doesn’t subsidize lifestyle expenses or offer health benefits, lawyers can encourage one another to take advantage of the confidential assistance provided to all Ontario lawyers through the Member Assistance Program. For additional online resources available to Ontario lawyers, see page 15.

# Online non-MAP wellness resources for lawyers

## Mental Health and Wellness in the Legal Profession: [cba.org/CBA-Wellness/Home](http://cba.org/CBA-Wellness/Home)

An online self-learning program created for lawyers, judges, and law students through a partnership among the Canadian Bar Association, the Mood Disorders Society of Canada, and Bell Let's Talk. It is designed to educate professionals on symptoms, treatment options, and prevention strategies for depression, anxiety, addiction, stress, and other mood disorders. It is accredited in all Canadian jurisdictions for CPD Ethics/Professionalism hours.

## Well-Being Toolkit for Lawyers and Legal Employers: [americanbar.org](http://americanbar.org)

A collection of information and resources compiled by the American Bar Association directed at promoting the well-being and health of lawyers, including an 8-step action plan for legal employers in developing and pursuing a wellness initiative.

## Other Law Society of Ontario resources

The Law Society of Ontario provides members with additional assistance and aid that can complement the resources offered by the MAP. For lawyers seeking assistance, the following services are available:

### Law Society of Ontario's Coach and Advisor Network (CAN): [lsuc.on.ca/coachandadvisor](http://lsuc.on.ca/coachandadvisor)

A mentorship program available to Ontario lawyers and paralegals that addresses short term substantive and procedural legal questions. Members are encouraged to contact the CAN for guidance and advice on resolving issues that arise in their practice. If a lawyer or paralegal is struggling with one or more problem files, the practice advice accessible through the CAN is complementary to the mental health and wellness support accessible through the MAP's peer-support program [see page 10 for more information on the peer support program].

### Law Society of Ontario's Discrimination and Harassment Counsel

A confidential service that offers advice and support in circumstances where a lawyer has experienced or witnessed discrimination or harassment on human rights grounds. Support can include reviewing the available legal options or mediating

a resolution. Discrimination violates the Ontario *Human Rights Code*, the Law Society's *Rules of Professional Conduct*, and the Paralegal *Rules of Conduct*, and the Discrimination and Harassment Counsel provides assistance in filing complaints with the Law Society of Ontario or with the Ontario Human Rights Tribunal.

Discrimination includes unwelcome comments or actions that relate to a person's personal characteristics, such as race, gender, sexual orientation, and age. Harassment is a form of discrimination and includes unwelcome comments or behaviour when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to another person. Typical examples include name calling, racial slurs and jokes, demands for sexual favours, sexual suggestive comments or gestures, and sexist jokes.

The Discrimination and Harassment Counsel may be reached on a confidential basis at 1-877-790-2200, or email: [assistance@dhcounsel.on.ca](mailto:assistance@dhcounsel.on.ca)

## Emotional intelligence: the essential skill for the workplace and life

By Mahwash Khan, Communications Counsel and Chair EDI Advisory Group, LAWPRO



The concept of emotional intelligence isn't new but has seen exponential growth over the years and is said to be **the** essential skill in the workplace and in our personal lives.

We've all heard about the dichotomy of the heart and mind – it is at the centre of the concept of emotional intelligence. Stopping to think about what we are feeling prevents emotions taking charge of our behaviour.

Benefits of good emotional intelligence skills

- navigate social complexities and manage conflict
- overcome challenges
- empathize with others
- lead and motivate others
- improve overall physical and mental health by reducing stress and anxiety
- communicate effectively and forge stronger relationships

### Building emotional Intelligence: 5 Practice Tips

Growing your emotional intelligence will take time, critical self-reflection and intentional effort. But the journey can be transformative.

Daniel Goleman, the leader in the field, sets out a number of EI components\*:

1. Emotional self-awareness – awareness of one's own feelings, and an understanding of how those feelings can impact others
2. Self-regulation – managing one's own emotions and predicting their effects before acting on them
3. Empathy – sensing and understanding the emotions of others
4. Motivation – persevering through obstacles, with a growth mindset
5. Social skills – managing relationships, inspiring others and eliciting favourable responses from them

Everyone can continuously work to enhance their EI skills. Here are 5 tips that you can practice.

#### 1. Enhance self-awareness

Pay attention to your emotions with mindfulness. If you are feeling a strong emotion, name the emotion and ask yourself why you might be experiencing it; what's causing it? By identifying emotions, you can lessen their power over you and manage them better. By acknowledging feelings, you can think logically about solutions.

**How this helps your legal work:** If you find yourself avoiding a file, dig deeper and try and think about what the reasons might be, and how you can approach the work. For example, are you nervous because you are afraid that the client won't be satisfied? Afraid to start because you don't understand the instructions? Avoiding the file because you are having difficulty

managing your client relationship? Avoiding work on a file may lead to missed deadlines. Having a checklist with a tickler system can help with completing tasks on time.

## 2. Focus on self-regulation

The way we think and feel are intertwined. Thoughts can help regulate emotions, and balancing emotion with logic can help curb the instinct to act upon a strong emotion. Compare what your emotions are driving you to do against what logical reasoning is concluding. Are emotions clouding your judgment or are there holes in the logic?

Also, when feeling upset, take a break to calm yourself down and be very aware of how you act. Practice deep breathing - it tricks the brain to calm down.

**How this helps your legal work:** Before sending a heated response to opposing counsel, pause and reflect on whether such a response would be productive, and in your or your client's best interests.

## 3. Build empathy

We interact with people in many aspects of our lives. Putting yourself in someone else's shoes, actively listening to them and thinking about their perspective can help you examine your own perspective.

To empathize with someone doesn't mean you have to completely understand them - it's about accepting them for who they are – *especially* when you don't understand them. You learn to value their existence. When you empathize with other people, you can evoke a more positive response.

**How this helps your legal work:** Actively listening without making assumptions or judgments can help you better understand your clients concerns and help with formulating follow up questions to fill in any gaps.

## 4. Practice self-motivation

Emotionally intelligent people think more positively with a growth mindset and practice resilience during challenging times. This helps to stay motivated while also motivating others.

It's important not to underestimate the power of attitude. Our attitudes affect the people around us and can be infectious.

People who convince themselves that failures are due to something they can change don't give up easily. They continue to try and learn and believe that success depends on their own actions.

Practising gratitude can boost your happiness and increase your positivity.

**How this helps your legal work:** Seeking out mentors and networking with others in your community provides many benefits during challenging times. You and your families also have free access to the [Member Assistance Program](#) ("MAP") - a confidential service to help you achieve your health and wellness goals.

## 5. Managing relationships

Understanding your own emotions and what drives your behaviours is a step towards working well with others. Body language and nonverbal communications can also play a role in relationship management. Your body language should match your words. Conversely, if you learn how to read other people's nonverbal communication, you can plan your response accordingly.

Conflict is inevitable and can arise in any relationship. Resolving conflict in a constructive way can help build trust and strengthen relationships. When disagreeing with someone, point out exactly what you think should have been done, but also highlight what was done well. When conflict isn't perceived as an attack, it fosters creativity.

**How this helps your legal work:** When communicating with clients, be transparent and empathetic. A detailed retainer letter setting out what you will (or will not) do is a good tool to manage your clients' expectations. The same principles of constructive communication apply to other members of your firm.

### **How stretching your emotional intelligence muscles can make you a more effective lawyer:**

1. Examining any strong emotions and slowing down before reacting leads to more efficiency and lessens the chance of misunderstanding
2. Self-awareness can help counter procrastination, resulting in not missing deadlines
3. Empathy and active listening can help you understand your client's concerns more deeply to provide tailored solutions
4. Clear and transparent communication helps set expectations, leading to less disappointments/misunderstanding
5. Focusing on gratitude and positivity improves overall health and well-being, which is beneficial for you and your clients

Take a look at some resources available for free from the Member Assistance Program such as eCourses on resilience, responsible optimism, resolving conflict, and taking control of your mood.

### **Curious about your EI and skills you can build? Explore some of these tests**

1. Mind tools (free; under two minutes)  
<https://www.mindtools.com/pages/article/ei-quiz.htm>
2. IHHP (free; two minutes)  
<https://www.ihhp.com/free-eg-quiz/>
3. Psychology Today (45 mins; receive a free snapshot report, with the option to purchase a detailed report for \$9.95 USD. The full report sets out strengths, limitations and action steps)  
<https://www.psychologytoday.com/ca/tests/personality/emotional-intelligence-test>

4. 6seconds.org - Brain Brief profile (10 minutes; \$10 USD, gives you a snapshot of your brain's current style for processing emotional and cognitive data, and comes with a free "Brain Brief Interpretation Guide," an e-book about Brain Styles)  
<https://www.6seconds.org/tools/sei/profiles/brain-brief-profile/>

\* Daniel Coleman, *Emotional Intelligence*, 10<sup>th</sup> ed (New York: Bantam Dell, 2006).

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# Putting the fire out:

## Dealing with the stress of a malpractice claim

**There is simply no doubt about it: making an error or having an action commenced against you is stressful, even for the most successful lawyers. And because almost half of Ontario lawyers in private practice will face a malpractice claim at least once in their career, at some point this stress will be a reality for many lawyers.**

From my years of handling professional negligence claims, I have seen lawyers react to this situation in different ways including fear, anxiety, embarrassment, and even anger.

The initial call with a lawyer is one of the most rewarding parts of my job. I am often meeting someone for the first time, learning about their practice, their firm, their clients and their current issue. For my part, I try to assess whether there is a problem that can be fixed or made to go away quickly. For the insured's part, once they get over their initial fear and anxiety and realize they will be helped through the claim and defended as appropriate, they usually feel more comfortable.

### Embarrassment

Many insureds experience anxiety over the potential of people finding out about the error or alleged error at issue. This can be tough, for example, in a major litigation file where the insured's error (or potential error) might be discussed in an endorsement or reasons. Worries over losing the client, unsupportive partners, or judgmental peers can be hard to balance with the ongoing practice of law – all while being named a defendant in a negligence action.

If it is some consolation... remember, almost everyone makes an error at some point. Given the statistics, insureds who are willing to confide in colleagues will likely find that they are not alone in having a claim.

## Anger

Some insureds are angry that they have been sued or that there is a suggestion that they have made an error. This is especially the case in situations where, in fact, no error has been made. Most insureds get over this anger fairly quickly, but some remain intensely angry throughout the life of the claim. This makes, not only the initial call, but all subsequent calls, challenging. The relationship with the insured usually balances out once they realize that the matter is moving to a resolution and, angry or not, we will assist them.

However, this kind of reaction to a claim emphasizes why it is so important to report a claim or potential claim to LAWPRO. Anger can lead to bad decision making such as retaliatory steps or aggressive letters that might actually undermine the insured's position. Reporting the potential claim and allowing another professional to deal with the situation enables the insured to step back and take a break from the confrontation. Keep in mind that having a claim made against you does not mean it is a *valid* claim. In fact, almost 40 per cent of claim files are closed with no payment at all (including defence costs).

## Fear

I have also worked with insureds who are so overwhelmed by the situation that they can barely relay the facts. Take Carol (name has been changed), for example. She negotiated the settlement of her client's divorce proceedings which included each spouse retaining equal share of their holdings in a company they owned together with another party. Only after the final Order was signed did Carol learn that, because the class of her client's shares was different than that of her husband's, there would be an unequal tax effect of \$750,000 each year going forward. Carol had \$2 million in insurance coverage, including excess insurance – far less than the many millions in potential damages. I could barely hear Carol at the end of our initial call when she whispered, "I am going to lose my house."

Carol was often in my thoughts over the next few weeks. I wondered whether she was getting any sleep at all, and whether she had someone to confide in. In the end, there was good news: the matter was repaired and the file closed without any damages having to be paid and without Carol losing her house. That is another rewarding part of my job: telling an insured that their matter has been resolved.

## Denial/Avoidance

All too often, I see cases in which insureds are so stressed about an error, that they can't bring themselves to report it at all or have waited a significant period of time before doing so. These insureds simply cannot deal with the situation. Once a report is made, some of these insureds avoid dealing with the matter and will not return our phone calls or correspondence. This, of course, makes an already difficult situation worse. The delay in reporting may result in circumstances where it is too late for LAWPRO to repair an error or defend an action. Failing to cooperate may also result in a breach of the insured's obligations under the Policy. Both situations can result in a denial of coverage.

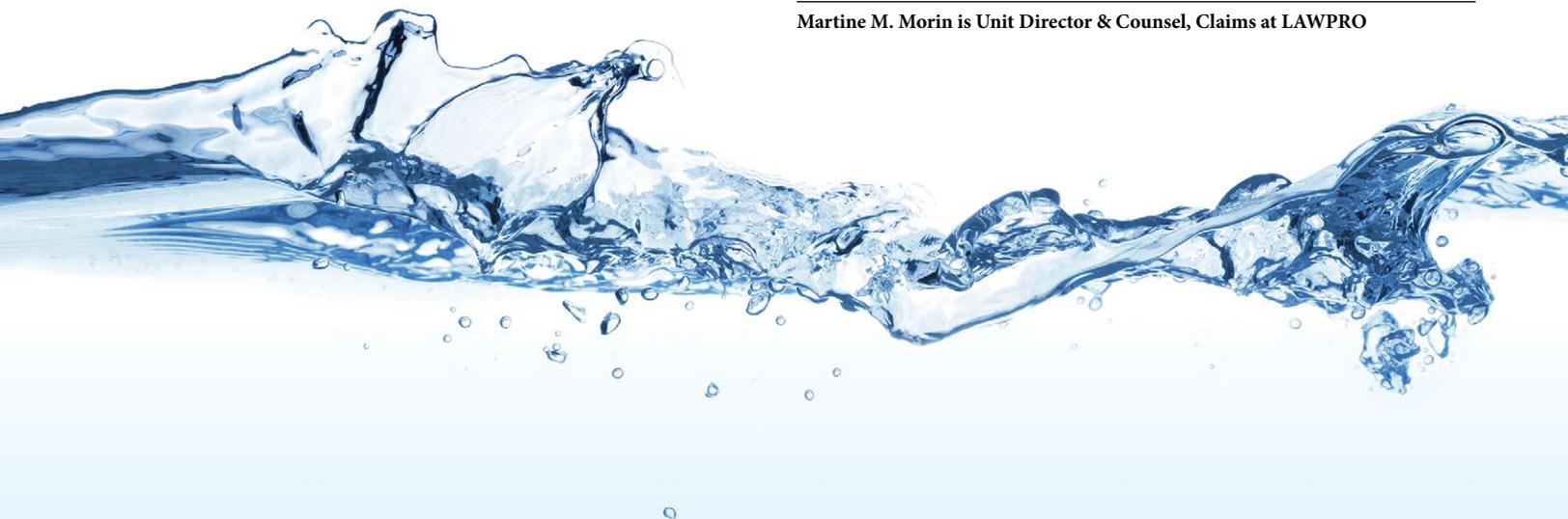
Remember, no good will come from a delay in reporting a claim. Reporting a claim as soon as possible allows LAWPRO to provide early intervention and your best defence.

## Making it through

The good news is that 83 per cent of LAWPRO's claims are closed with no finding of liability or indemnity payment. While dealing with a claim is stressful, we are here to help. If you are feeling overwhelmed by an error or a claim against you, consider taking the time to check in with a trusted friend or colleague. If you do not feel comfortable sharing your situation with someone you know, the Member Assistance Program provides confidential peer counselling. ■

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Martine M. Morin is Unit Director & Counsel, Claims at LAWPRO



## SPEAKER BIOS

### *Orlando Da Silva, LSM*



Orlando Da Silva was appointed Chief Administrator of the Administrative Tribunals Support Service of Canada (ATSSC) on October 28, 2019. The ATSSC is responsible for providing support services and facilities to 11 federal administrative tribunals by a single, integrated organization.

Prior to joining the ATSSC, Mr. Da Silva served for nearly 25 years as a trial lawyer—most recently as a Senior Crown Counsel for the Province of Ontario’s Serious Fraud Office—a specialized, expert team of police and crown attorneys responsible for investigating and prosecuting serious financial crimes, corruption, and bribery cases. He is also a former partner of one of Canada’s largest law firms and former leader of the Corporate-Commercial Litigation team and member of the Indigenous Litigation Team for the Ontario Ministry of the Attorney-General.

In 2019, Mr. Da Silva was a Bencher (Governor) of the Law Society of Ontario, which regulates Ontario’s 55,000 lawyers and 12,000 paralegals. From 2014 to 2015, he served as President and CEO of the Ontario Bar Association. During this tenure, he championed a Canada-wide mental health and wellness campaign targeted at the legal profession, speaking publicly about his own experience overcoming depression that has led to a successful and rewarding professional and personal life.

Mr. Da Silva is a recipient of a Law Society of Ontario Medal, the Ontario Bar Association’s Distinguished Service Award, the Lexpert Zenith Award for Change Agents, the Deputy’s Award of Excellence, the Tom Marshall Award of Excellence for Public Sector Lawyers, and the Transforming Lives Award from Canada’s Centre for Addiction and Mental Health. He has also been recognized by Canadian Lawyer Magazine as one of the “Top 25 Most Influential” lawyers in Canada.

## *Teresa Donnelly*



**Teresa Donnelly** was elected as Treasurer by the Law Society’s governing body (Convocation) on June 26, 2020. The Treasurer is the top-elected official of the Law Society, which regulates Ontario’s lawyers and paralegals in the public interest. She is the fifth woman Treasurer in the 223-year history of the Law Society. Treasurer Donnelly was elected as a bencher in 2015 and 2019. She has served as Chair of the Audit & Finance Committee, Chair of the Human Rights Monitoring Group (Equity) and Chair of the Program Review Task Force. She also served on numerous other Law Society committees, task forces and working groups. She is on the faculty of the National Criminal Law Program, Federation of Law Societies of Canada.

As a Prosecutor with the Ministry of the Attorney General for 26 years, Treasurer Donnelly has dedicated her career to providing access to justice for victims of domestic and sexual violence – the majority of whom are women and children. As the West Region Sexual Violence Crown with the Sexual Violence Advisory Group with the Ministry, from 2015-2020, she was one of seven prosecutors in the province dedicated to enhancing the quality of sexual violence prosecutions and the victim’s experience in the criminal justice system.

Treasurer Donnelly is a member of the Huron Law Association, the Ontario Association of Senior Crown Attorneys, the Advocates Society, the Women’s Law of Ontario Association and the Southwest Region Women’s Law Association. In 2018, the Sexual Violence Advisory Group that she was a member of, won the Excelsior Award for Innovation and Transformation. In 2014, she was named the Most Inspiring Women in Huron and in 2012, she received the Deputy’s Award for Excellence in the Aftermath of the Goderich Tornado. She has received several other awards and honours from the Ministry of the Attorney General during her career. She was called to the Bar of Ontario in 1991 after receiving an LLB from the University of Toronto (1989). She also holds a B.A. (Hons) from McGill University (1986).

Contact the Treasurer at [treasurer@lso.ca](mailto:treasurer@lso.ca)

## *Doron Gold*



Doron Gold is a Staff Clinician at Homewood Health, the provider of the Ontario legal profession's Member Assistance Program. He is a Registered Social Worker, Certified Professional Coach and psychotherapist, as well as having previously practiced law for 10 years, primarily as a family and civil litigator. Since 2006, Doron has assisted lawyers, paralegals, law students, judges and their immediate family members with personal and professional issues such as addiction, depression, anxiety and career stress. Doron's role at Homewood Health includes psychotherapy with clients, assisting with the ongoing management of Homewood's peer volunteer program as well as providing workshops and presentations to various groups in the community.

Doron has written and been quoted extensively in publications such as Lawyers' Weekly, Law Times, Canadian Lawyer and LAWPRO Magazine on various topics related to lawyer distress and wellness. As well, Doron has written a regular "Lawyer Therapist" column in Law Times. Doron has been asked to speak to various groups throughout Ontario on topics as varied as Work-Life Balance, Lawyer Stress 101, Retirement, Vicarious Trauma and Compassion Fatigue. He is the co-author of the Canadian Bar Association's "Mental Health and Wellness in the Legal Profession" online course and is the recipient of the 2016 CBA Wellness Forum Award of Excellence.

## *Mahwash Khan*



Mahwash is Communications Counsel at LAWPRO, and Chair of the Equity, Diversity & Inclusion Advisory Group. She has a Certificate in Leadership and Inclusion, and is working towards a Certificate in Adult Learning and Development.

Mahwash grew up in nine countries on five continents. She is an internationally trained lawyer (UK) and was called to the Ontario Bar in 2003. She practised real estate and family law prior to joining LAWPRO. She is a member of the Ontario Bar Association, South Asian Bar Association and Federation of Asian Canadian Lawyers. Mahwash has given various presentations on diversity and inclusion, and real estate law.

Mahwash's race is human. She believes in being different together and loves talking about equity, diversity and inclusion - a popular topic at the dinner table with her husband and three teenagers. Her pronouns are she/her/hers.

## *Juda Strawczynski*



Juda manages and promotes practicePRO, LAWPRO's innovative claims and risk management initiative, including identifying emerging claims and risk, resource creation, and outreach to the profession.

Prior to joining LAWPRO, he served as a Policy Counsel at the Law Society of Ontario, where he provided strategic counsel with respect to key issues facing the legal profession, including access to justice, professional regulation, governance and legislative issues. Prior to that, Juda practised litigation, and served as a Fellow at Physicians for Human Rights in Cambridge, MA, as President of Canadian Lawyers for International Human Rights (CLAHR) from 2013 to 2018, and as a Director of the Canada Millennium Scholarship Foundation. Juda has a Bachelor of Arts from McGill University in Humanistic Studies and International Development Studies, and a Juris Doctor from the University of Toronto.