



When You Get a Call About a Will You Drafted... What Is Your Next Step?

Juda Strawczynski and Simona Ristic

You're sitting at your desk on a typical weekday afternoon when, out of the blue, you get a call related to a will file. As soon as this happens, be wary. Your first instinct may be to try to help. But calls around wills you've prepared raise issues around confidentiality and privilege. Trying to recall particulars over the phone without first consulting the file would also be a dangerous step. At times these calls are ways people fish for information that they are not entitled to have. And whatever you say in the moment could end up being used in estate litigation or even against you down the line. So, when these calls (or email or other correspondence around a will file) come in, be on high alert.

Thankfully, there are two simple steps you should take:

1. Tell the caller you can't talk about the matter.
2. Contact LAWPRO.

We're here to help. We make sure that necessary steps are taken to protect you. LAWPRO can help ensure you properly consider your duties of privilege and confidentiality when discussing a file, or when contemplating releasing part or all of a client's file. These duties to the client remain after the client is deceased, and LAWPRO can make sure they are met while handling any will related matter. If you're required to produce your file, or need to be examined, we provide you with representation. We make sure that there's a Court order where one is necessary to permit disclosure and help determine what materials you need to produce.

It doesn't cost you to report this situation. LAWPRO doesn't ask for a deductible when notice of a claim is reported. We'll examine the matter and help you if the matter escalates.

Don't try to do it yourself. You never know why someone is calling to ask about your work. Maybe someone is looking for a copy of a will. Maybe someone is contemplating challenging the will. There are all sorts of reasons (both stated by a caller or lying beneath the surface) why someone may be calling about a will you prepared. Regardless of the circumstance, your next steps are always the same – advise the caller that you're unable to discuss the matter and contact LAWPRO immediately.

You can report the matter here: https://my.lawpro.ca/insurance/online_services/report_claim.asp

By reporting the matter early, LAWPRO can investigate, assess and help ensure that you're protected. And if you're ever in doubt about whether to contact us, just reach out. We're here to help.

Make a Stressful Situation Less Stressful

LAWPRO understands the psychological and emotional stress and pressures that may accompany reporting a claim, even if only a potential one. As noted in "[Putting the fire out: Dealing with the stress of a malpractice claim,](#)" lawyers may experience a variety of emotional reactions when they make an error or anticipate an action being commenced against them – everything from fear, to anxiety, to embarrassment, and sometimes even anger. If you are feeling overwhelmed or stressed by the prospect

of a claim against you, consider talking to a trusted friend or colleague or confidentially sharing your situation with a counsellor at the [Member Assistance Program](#).

But remember, one of the best ways to mitigate against any future emotional stress is to report the potential claim early. It's quick and easy to report a matter, and will help you reduce your stress.

This resource is provided by Lawyers' Professional Indemnity Company (LAWPRO®). The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.

© 2021 Lawyers' Professional Indemnity Company (LAWPRO). All rights reserved.
* Registered trademark of Lawyers' Professional Indemnity Company



lawpro.ca
Tel: 416-598-5800 or 1-800-410-1013
Fax: 416-599-8341 or 1-800-286-7639
Email: practicepro@lawpro.ca