

LAWPRO

magazine

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After

COVID-19:

RISKS, OPPORTUNITIES
AND INNOVATIONS

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magazine

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LAWPRO adapted to the changing times and many of the presentations we did this year are available as on-demand CPD. They are free and you can claim the LAWPRO Risk Management Credit for watching any of our CPD presentations, and many also qualify for Law Society of Ontario professionalism hours.



▶ Avoiding the wire fraud nightmare – what you need to know to protect yourself and your clients

Fraudsters have developed several ways to convince lawyers and law clerks to wire funds out of law firm trust accounts to fraudsters' accounts.

Learn about the latest wire scams and how to stay a step ahead. Find out about tips to help prevent wire fraud and other cyber dangers. This is a must-view program for lawyers, their clerks and staff to understand and combat wire fraud.

▶ Preparing for Pro Bono: Tips for Successfully Delivering Pro Bono Services

LAWPRO brings you this webinar, initially presented for Pro Bono Students Canada volunteers, to help lawyers successfully deliver pro bono services

▶ Claims risks for commercial lawyers acting on the purchase or sale of a business

LAWPRO and the Hamilton Lawyers Association present a webinar about the risks when acting on the purchase or sale of a business

▶ La fraude et cybercriminalité

Présentateur: Raymond Leclair,
Vice-président, Affaires publiques

▶ Fraud prevention and cyber security

Understand why lawyers are targeted for fraud and learn to recognize the common types of frauds faced by lawyers

▶ Working Together, Remotely – Managing and Leading Through COVID and Beyond

Leading lawyers and expert law practice advisors share lessons learned and tips to date from our rapid shift to virtual practice, with a focus on how we can make our practices work better for ourselves, our teams and our clients

▶ Thursday Tips with LAWPRO and TLA. A free risk management series including: Family Law Tips, Tips for Advocates, Tips for wills & Estate Lawyers

Live or recorded, each session is eligible for 1.5 professionalism hours and a LAWPRO risk management credit.

▶ Common claims and how to avoid them

Understand the leading common claims and when they occur, with examples of specific risks by areas of practice

▶ A Discussion: Continuing to Manage – Mental Health, Resilience and Resources

A continued conversation about managing our mental health. This session will address a range of issues, including how we can keep connected, find our mentors and supports, and tips and resources

▶ Real estate fraud: Keeping up the fight

Join Nadia Dalimonte, Manager, TitlePLUS Claims and Counsel, as she reviews various types of fraud, and provides tips and resources to help you avoid them

▶ Managing the Second Wave: Mental Health, Resilience and Resources

As the COVID-19 pandemic continues to take its toll, we are all feeling the stress of "work/life blur" and pandemic fatigue. In this program, hear from leaders in the legal profession on how to move through the second wave

▶ Diversity, Inclusion and Cultural Competence to Reduce Risk

Learn about the importance of diversity, inclusion and cultural competence for the legal profession, and how issues related to a lack of cultural competency can contribute to a claim

▶ Managing your practice in the time of COVID-19

LAWPRO, NCA Network, and Toronto Lawyers Association bring you a timely and informative webinar that looks at the the particular claims risks during COVID and how to avoid them, technology and working from home, and more

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Cultivate Your Innovation Mindsets

to Build Your Future Practice Today

The legal services sectors are experiencing a period of rapid, significant change. With the COVID-19 pandemic shining a spotlight on the shortcomings of antiquated parts of our justice system and legal practice models, courts and law firms quickly shifted processes and practices throughout 2020. There's no turning back. To help you plan for the future of your practice, you can embrace innovation mindsets, which are different ways of thinking that help us create processes and ideas that improve our lives.

Here are 20 innovation tips to:

- get you in an innovation frame of mind;
- help you find your innovation inspiration;
- give you practical tips to succeed in any innovation project; and
- equip you for long term success.



Getting into the innovation frame of mind

Choose your own adventure

You get to choose your adventures in law. You decide how you want to practice and who you wish to serve.

Especially when you're busy, it's hard to remember that you have agency over your tasks and priorities in your practice, and your personal life too. It can be hard to be honest about what you want to do, and what it may take to get there, but you get to choose. By taking ownership of your practice and where

it will go, you empower yourself to effect changes for the better. By embracing agency over passivity, we become open to change.

Reflect on where you want to go

You're busy – but set time to reflect on your practice, including where you are, and where you want to be heading, including your innovation journey. Set time each month for self-reflection and self-assessment regarding your practice goals.

Self-reflection

What are your goals for:

- Client development
- Client pipelines and business development
- Client management
- The progress of your cases
- Your legal skills, practice management and innovation goals
- Your personal management

Self-assessment

For each area, how are you doing? For example:

- How did you apply your legal skills to a recent challenging situation?
 - ▷ What was the situation? What were pressures making this challenging for you?
 - ▷ How did you react?
 - ▷ How did you proceed?
 - ▷ What other options were available?
 - ▷ How *might* you proceed differently in similar situations?

- For your legal innovation journey
 - ▷ What's working?
 - ▷ What's an area you may wish to further refine?
 - ▷ What are areas you may wish to work on next?

Use your diverse skills to drive change

A good lawyer doesn't just know the law - they use a host of skills to serve clients. The "lawyer mindset" is not just about understanding and applying the law - skills in business development, people and project management, leadership, emotional intelligence and empathy all play a part. Recognize the diverse skills and mindsets you use as a lawyer as described by the Canadian Centre for Professional Legal Education.

Harness all of your skills to advance your innovation mandate. If you're worried that some areas are not where they should be, that could be a sign there is room for growth and improvement.

Innovation inspiration

Take inspiration from other sectors

It's often said that imitation is the highest form of flattery. Lawyers should take inspiration from other sectors. If no-shows for client intakes are an issue, you can consider how doctors and dentists reduce the risk of no-shows for appointments through simple changes like calling the patient to confirm, to smart-phone apps that simplify and automate the confirmation process. Other service sectors are a great source of inspiration, and imitation.

Get inspired by your clients: Focus on their experiences

Law practices exist to serve clients, and in today's markets clients have more choice than ever. To find clients, retain them, and grow your relationships, it's important to consider the client's perspective. Listen to them, as they are a great source of ideas for what changes will help most.

When thinking about your client and prospective clients, consider:

- How a potential client might first learn about your services (or why they might not learn about you at all)?
- The prospective client's first touchpoint with your firm? The initial impression?
- The client intake experience - What kind of client onboarding experience do you provide? How do you prepare clients before their first meeting? How do you work towards building trust from the outset?

- How does the client feel about when and how they receive communications from you?
- Are fees clear, and are clients able to understand their bills? Will the client feel like they received value for service, or at least not be surprised by your bill?
- What's the offboarding experience like for the client? How do you leave the client satisfied where possible?
- Do you keep in touch with former clients? Why? How? Do clients feel connected to you and your practice through these touchpoints?

Daring to dream: Moonshots and minimum viable products

You might be at a point where you're dreaming big, or you have an idea whose time may have come. Everyone fears failure, but we should sometimes allow for moonshots.

If you aren't sure whether your idea could reasonably become a reality, try to model it out using the concept of the minimum viable product ("MVP"). Think about the service you would hope to provide and the need it would meet or problem it would address. Then ask yourself:

- Who would be the target market for the service?
- The minimum reasonable expenses to launch?
- The minimum number of clients / average fee per client required to make the practice viable?

Perhaps now more than ever, lawyers can explore new ways of delivering legal services. With the ability to deliver services remotely, the traditional geographical limitations on providing services have been eroded, which enables lawyers to attract clients from both near and further afar. Remote practice opportunities also reduce overhead associated with traditional bricks-and-mortar law offices.

These changes also allow for super-specialization. Until recently, a small-town lawyer might only have been able to serve clients within a reasonable drive to and from the lawyer's office. That same small-town lawyer may now serve clients from all over the world.

Finding your clients by gaining inspiration from the "1,000 Fans" concept

Given these opportunities, there are lots of ways to develop your MVP or otherwise test your moonshot. Kevin Kelly's 2008 essay on the concept of 1,000 True Fans is a helpful starting point. A lawyer with 1,000 dedicated clients, each paying \$100 for services, generates \$100,000 in revenue. A solid client base of 10, each spending \$10,000 on legal services, also generates \$100,000. Depending on your practice, the number of clients and spend per client will vary. The point is that you can consider how many clients you would ideally serve, and at what average price point per client to get a sense of your firm's niche, its "true fan" client base, and your ideal revenue model.

Solo and small firms are well positioned to build services to service niche markets and have direct, meaningful relationships with clients. As just a few recent examples, there are lawyers focused on assisting with:

- Student debt related problems
- Issues related to horse ownership ("equine law")
- Protecting the rights of loved ones in long term care homes
- Surrogacy and other complex family law issues
- Developing new cryptocurrency payment solutions, wallets and navigating the cryptocurrency shifting regulatory landscape.

Finding new markets: Responding to the access to justice crisis

It is clear there are significant unmet legal needs in North America. Whether it's proactive legal protections such as having an employment contract reviewed, a small business struggling to comply with its regulatory duties and compliance, or a DIY litigant looking for some general guidance, there are lots of underserved markets where, with the proper business modeling factoring in technology and innovation, legal services could be provided at affordable rates to help underserved legal markets. A lawyer or firm in private practice need not solve the access to justice crisis; it just takes opening up one untapped market for a firm to find success while helping meet unmet legal needs.

Finding your dream clients: Using client personas

Do you have dream clients? Who are they? Get closer to a practice filled with only dream clients by reflecting on what a dream client is to you.

Consider developing client personas as ideal client archetype(s). Push yourself to really try to get to know what that ideal client looks like. Think about things like:

- Who have you enjoyed working with? What made this client a dream client?
- What kind of sector is the client in?
- Who would be the person instructing you?
 - ▷ Describe them in 1 sentence
 - ▷ How would they want to keep in contact with you?
 - ▷ What frustrates them? What inspires them?
 - ▷ What keeps them up at night?
 - ▷ What are the pain points for them? How can you help them solve them?

Innovation in action:

Tips for implementation

Innovation as a project

An innovation project is like any other project. At the core of it, any innovation project involves:

- Conducting an environmental scan to see what's going on;
- Defining the issue you're going to address;
- Considering your options and choosing your solution;
- Planning for and launching your solution;
- Seeking feedback to continuously improve on your solution; and then
- Starting on the next project.

There are lots of project management and design thinking models you can use to map out the steps for your innovation project. While project management tools can help, creating a simple project plan identifying key steps, timing, and who needs to be involved can help you move forward.

Start with one project

In your scan for problems, you will likely find more than one area where you could improve or lots of things you'd like to try. Pick one project. When you tackle innovation projects one at a time, they add up, and make your practice better with each change. It's also far less stressful to take small steps than trying to make everything happen at once.

As Atomic Habits author James Clear notes, the effects of our habits multiply over time. There is power in working continuously towards incremental improvements. By focusing on one step at a time, and continuously working on improving your practice, you're compounding your gains.

In the process, you're not only benefitting from the innovations you roll out, but also transforming your practice into one that embraces continuous improvement. When the next challenge arises, you will have the processes in place and confidence to embrace it and meet it head on. Innovation and continuous learning and improvement become part of your practice mindset. Minor setbacks become learning opportunities rather than full-blown crises.

Call in your dream team

At the heart of it, innovation is about people. It may lead to changes in processes, or how services are delivered, but it starts with people and is about improving people's lives. Having a range of people on board

can help you build diversity of thought and keep you open to new possibilities. To spark innovation, call in your team. In a law firm setting, this includes all staff. Whether you are in a large firm or true solo with no staff, ask for input from suppliers, clients and colleagues.

Innovate to identify and fix your pain points

Whether you're a solo lawyer or in a large firm, to get started you need to get started. Explore your current terrain and focus on your pain points. Bring in your dream team to determine what the key pain points and user-needs are for your practice.

If you're a solo, ask any staff and clients. If you're in a law firm setting, bring in your entire team and clients willing to give candid feedback.

For your "internal users," ask yourself and your team:

- If I could change one thing about my practice, what would it be?
- What's the most aggravating thing in my daily practice?
- What's one task that seems to cause frustration and/or delay?

Similarly ask your clients:

- What's one thing you wish we'd done differently for you?
- What's something that would have made things easier for you?

Take the time to properly define

Spend as much time as you can getting to know the issue. Ask follow-up questions from your clients and staff to make sure you will end up focusing on a root cause rather than a symptom of a problem. Clearly define the problem or issue you're trying to address before you jump to trying to solve it.

Solutioning tip: tech isn't always the answer

Too often we rush how we will solve the problem. There are usually many options available to address a pain point. While there is often technology that can help, it may not be the easiest, most efficient or cost-conscious solution. If the problem does require a tech solution, think carefully about how different tech options can best work with your existing processes, workflows and technology.

Implementing change: Don't forget training

There is a risk of mistakes being made any time a new process or technology is introduced in a workplace. You can reduce your risk by making sure that your rollout plan includes training. Budget for it (be it dollars, time, or both). Build in early-stage quality assurance checks, and assume training may need to happen in stages, with refreshers as required. Support your team and you'll get there faster and easier.

Embrace continuous feedback loops

The innovation journey is never-ending. Gains lead to further gains. For each new shift in process, build-in opportunities for real-time feedback and debriefs about what worked and didn't work on both your innovation and your process for getting there. Ask everyone who was involved in the rollout and include opportunity for comment from any users. By embracing continuous feedback loops you can learn as you go, detect and prevent mistakes, correct mistakes at earlier stages, and improve both your products and processes. In adapting this approach, you'll also be embedding an openness to innovation, creativity and collaboration within your practice, which further accelerates opportunities for positive change.

Celebrate wins

Legal practice has its ups and downs, so it's important to celebrate wins. It's a win when you introduce changes in your practice that make life better. Celebrate it. Make it a ritual to celebrate your successes. It may not be scientifically proven that law firms are more productive when there are cupcakes to celebrate milestones, but it couldn't hurt to have some.

Tips for the long run

Take your breaks and find supports when you need them

The practice of law is a marathon, not a sprint. It's important to take your breaks, both daily and throughout the year. During the day, don't forget to stretch. Go for walks, listen to music, or otherwise find your breaks that help you recharge and help enhance your overall productivity. Plan vacations in advance to have something to look forward to.

The practice of law can expose lawyers and staff to high levels of stress, and to the risk of vicarious trauma and burnout. It's important to recognize and understand the mental health stresses in the legal profession. Lawyers and law firms can encourage open discussions about mental health and promote mental health resources. We are all human and can all use help.

You can also explore what resources are available to you to proactively manage your stress, or to support you through difficulties. The Member Assistance Program provides a confidential service to help lawyers, family members of lawyers, law students and others. It provides a range of supports, including online resources and e-courses, counselling services and a peer support program.

Set a learning plan to keep exploring and keep innovating

Keep exploring to find your inspiration.

At least once a year create a learning plan that will focus on areas in which you wish to improve based on your self-reflection and self-assessment (see Tip #1). While it will be important to keep up with changes to the law, consider the other skills you need to develop, including skills to harness legal innovation. There are many ways to continue building your skills, including:

- Attending local bar association conferences, continuing legal education and technology conferences such as ABA TECHSHOW to learn more about innovation and practice management.
- Taking courses, reading practicePRO articles, or setting aside time each week to learn how to maximize the use of your everyday technology supports, such as Microsoft Outlook, Word and Teams.
- Exploring and building skills through executive education programs, or from lower-cost online learning platforms such as Coursera and Udemy.

Finally, while some of this learning will happen at the individual level, you can always learn with a buddy, or with colleagues in your firm or local bar association. Having a study buddy can keep you on track for your learning objectives and keep it fun.

Best of luck on your journey and building towards your future practice. ■

Juda Strawczynski is Director, practicePRO at LAWPRO

+ There are also lots of places to keep reading to fuel your innovation dreams. As a starting point, here are a few resources that can help you continue to explore:

Articles, blogs and podcasts

- 57 Tips for Successful Innovation in Law (Dennis Kennedy)
- Attorney at Work
- Avoidaclaim.com
- From the Center Blog, North Carolina Bar Association (Catherine Reach)
- Practicepro.ca – Risk management, claims prevention and law practice management resources provided by LAWPRO
- There are lots of great podcasts focusing on legal innovation. For a sampling see our article here.

Books

- Jordan Furlong, Law is a Buyer's Market: Building a Client-First Law Firm (link to free PDF of the book)
- Jack Newton, The Client Centered Law Firm
- Richard Susskind and Daniel Susskind, The Future of the Professions, Oxford University Press, 2015
- Sharon D. Nelson, et al., The 2020 Solo and Small Firm Legal Technology Guide, American Bar Association
- Mike Whelan Jr., Lawyer Forward, Finding Your Place in the Future of Law

A woman with dark hair and glasses is looking down at a laptop. The image is partially obscured by a dark blue overlay on the left side.

WORKING TOGETHER REMOTELY

A real life conversation about managing teams through the “New Normal”

The COVID pandemic forced the legal sector to leap forward decades in a matter of days. More change happened than many people thought possible but there has also been huge amount of stress. How will we work in the “Next Normal?”

LAWPRO’s Juda Strawczynski (JS) was joined by Hong Dao (HD) of the Oregon Professional Liability Fund, Karen Dunn Skinner (KS), co-founder of Gimbal Canada, and Kirsti Mathers McHenry (KM) of Mathers McHenry & Co, to talk about how the pandemic has changed the way we manage our teams and what the “Next Normal” might look like for Ontario law firms.

The following are edited highlights from that conversation.

HOW are law firms working together and serving clients in the current environment?

KS: We've been working for years trying to get lawyers to change and think differently about the way they practice. But seeing the shift that people were able to make last year was phenomenal and bodes well for how we can change the way our profession functions and delivers client services going forward. Right now, there is movement in the larger firms to shift some people back to the office, but not everyone. We are seeing firms focus on how they can build hybrid models. They are structuring it so they have a certain proportion of the workforce that rotates through at any one time to maintain social distancing. But I feel like we're going to see a boomerang, where people are excited to get back to the office and see their colleagues again. However, the inconveniences we've all forgotten about may suddenly raise their heads once they do.

HD: With even the small firms, non-essentials are going back on a voluntary basis. No-one is forcing them to return to the office, but some employees do anyway. The separation of work and life may make it easier for them to do their work in the office and then go back home. For the solos though, a lot of them feel more comfortable working at home in the remote environment. I got a few phone calls from lawyers and associates where they foresee a two-tiered system where there are people who come in the office more often and may get more projects. They wonder if their workload will increase just because they are there. There is a concern that there will be an unfairness to that system. That's something that management will have to consider if they go to a more permanent hybrid plan.

KM: There's a substantial portion of the workforce that is really happy working from home and is going to be resistant to changing. On the other hand, some people literally never want to work at their home again. Some demographic differences play into that. You've got empty nesters, people who are single, people who perhaps paid a lot of money to live close to the office and have less space. As we start to think about the next normal, we need to reconcile these divergent experiences and bring them together in a principled way to get to a fully functioning model that works for each firm. It's not going to be one-size-fits all.

One of the "hidden wins" from this experience has been humanizing the firms. When I was starting out in a big law firm, I wouldn't have talked about my family life, I certainly wouldn't have wanted my kid wandering around in the background. I think we've all become much more forgiving and accepting of the fact that we are all human beings, we have these lives, and these lives are important to us.

Karen Dunn Skinner
Co-founder of Gimbal Canada

HOW can leaders manage their teams remotely in a work-from-home setting?

KM: We've implemented a workshop meeting every week where the lawyers can come if they've got a bit of a challenging file where they can collaborate with the group and they can use each other's expertise. And I think that part is great for the files, but it also knits together the team. It reminds people that they're not alone, that there are other people doing the same work and that they can count on. Training is also a great way to bring people together. It might seem like people are too busy or overwhelmed right now, but training gives everyone a shared experience and a point of conversation as something they've done together. Being deliberate about finding opportunities to bring people together to work as a team, and not just socialize, is important if you're going to build a cohesive team in this moment.

KS: We happen to use online whiteboard tools like Miro quite a bit. I think it's a really great solution and putting two or three people on a project that you might otherwise have put one person on pre-COVID, just to get people thinking together, is a hugely valuable experience for them.

JS: What you're both talking about, about empathy and about collaboration, it works on the staff level, but if you're a sole practitioner, these tips work for your client collaboration as well. If you can show a client the map of a journey, and show them a visual that takes them through each step, it improves the client relationship and reducing risks of misunderstandings along the way.

HD: I've heard from associates complaining about having to submit weekly reports to their superiors, but then no-one follows up afterward. That lack of communication is a breakdown, and it makes it hard to build necessary trust. It's important to have that one-on-one communication.

KM: As well, share with your team what information you are looking at to make decisions about the next normal or the normal after that. This hopefully avoids situations where you are planning a return to the office but you find out that six of your staff have houses in Windsor now, and how is that going to work? Tell your team what models you're entertaining and not entertaining.

KM: It is a good idea for firms to take some time right now and wrap their heads around an end-state and think about what's on the table and what's not, in terms of the model that might be in use for your firm going forward. I think surveys can be really helpful, certainly in a larger organization. There are interesting things that can come up when you see ten people's responses to a question all at once. Interviews also have their place and allow you to dive deep into what people are thinking. Cohorting may be an attractive model for your organization, but it's important to get clear about the purpose.

I think this is a great time for people to do something like after-action reviews. Think about what you did Pre-COVID: What worked well, what didn't work well, and why. What do you want to keep and what do you no longer need to keep? And then do the same thing for this period during COVID, and have, essentially, an after-action review of your pandemic work habits.

Karen Dunn Skinner
Co-founder of Gimbal Canada

HOW can firms maintain or shift their values and culture in a remote setting?

HD: A lot of people think that culture is confined to a physical space, like it's the company picnic, but it's not. You can think about culture as how an organization makes decisions, and how employees feel about their experience at work. Do they like their job? Do they feel safe, not physically but psychologically? Do they feel valued? Do they look forward to waking up and going to work? Culture affects engagement, motivation, and productivity, and when you don't intentionally create a positive culture, the culture tends to be toxic. Firms talk about their Mission, Vision, and Values, but I think a lot of values are directed towards clients, and not to employees. Now is a good time for firms to rethink their values and set values that build a foundation for their interaction with employees as well.

KM: Every time you have a change, every time you buy a new piece of technology or hire a new person, you're saying something about your values and culture. It's about how you practice, how you live, how you treat each other. It's not hard to discover your values if you pay attention and you look back at some of the decisions you made recently. What were the animating factors? Why did you do what you did? As soon as you can answer that question, you have some insight into what your values are.

WHAT tools and processes can empower firms to thrive in the "Next Normal"?

KS: You have processes in your firm, even if they're not written down, you have them. But what you need to do at this point is capture a lot of those processes that you know are happening but are stuck inside people's heads. When you have a process that is stuck inside your head, you can't empower anyone else to do it. We have an approach that we teach people, which is: Just start by tracking what you do. Pick one thing that you do regularly, and the next time you have to do it, think about the steps involved. Then the next step is record all of that information. Just write it down. Then third, test it by following your own instructions. Can you follow your process? Then tweak what needs to be improved. Finally, teach the process to someone else.

KM: The challenge is getting buy-in from people who are not process nerds. It's difficult, but you do it by showing them that you make their life better. Start with a process within the firm that is painful or irritating. Listen to people when they complain about a piece of their work, and then fix it for them. And if you can show them that this kind of initiative can make their life better, they will become your champions who are now telling other people about these process improvement techniques.

You can really grind people down by taking great people with great ideas and making them run through really stupid processes that are just not effective. So even though it feels like a massive investment of time, you can make everyone's life better.

KS: Often, many team members aren't even asked for their ideas on how to make processes better. Perhaps they've created work-arounds for some broken processes, but no one has ever asked them how they can make it better. So, when we do a process mapping exercise, where we look at improving a process, we say to each member of the team: "what are you doing now, and how would you do it if you could do it differently?" And when the ideas are coming from the people who are stuck grinding away in that process, the changes come from the ground up. All you have to do as a leader is support them and give them the tools, they will come up with the process improvements for you. Then it is their idea, they own it, and they're much more likely to buy into it.

JS: We could spend like days talking about process and how you can reimagine your firm. Each person knows their clients and colleagues best and that will determine how a practice will evolve in the new normal.

To watch the full CPD discussion which is eligible for 1.5 hours of LSO professionalism and LAWPRO's risk management credit visit the practicepro.ca CPD page. ■



A living
example of

Innovation at LAWPRO

When considering the future of TitlePLUS, we asked ourselves if the service was still living up to its original principles and – perhaps more importantly – whether those principles were still valid.

Companies know their products need to evolve with the needs of their customers and the marketplace. If a product changes too fast, customers may feel disoriented and lose interest. If the product doesn't change enough, it risks becoming irrelevant and obsolete.

When an outside perspective is a good idea

Much has changed in the 25 years since the inception of the all-Canadian title insurance known as TitlePLUS, but the product didn't keep up with changing times.

As TitlePLUS was originally a home-grown product created in-house, there was a certain attachment to the current way of doing things. After 25 years of caring and nurturing a product, there can be a danger of loving it too much and losing the ability to objectively see its benefits as well as face its shortcomings.

It is at this point that outside perspective is valuable. In the case of TitlePLUS, Mike Seto was hired to build a technology platform that supported new workflows and an improved user experience.

LAWPRO also hired Paradigm Public Relations, led by Michael Abbass to consult on market research and communications to help understand the brand perception and what needed to change based on what lawyers and law clerks wanted.

The innovation dilemma

When is the right time to change? Will change be cost-effective? Who has enough perspective to know what should be done?

“In the simplest sense, if you're not growing, you're dying. Innovation keeps companies moving forward and if they don't move, they will get passed. It may be the technology you use to interact with clients, or new solutions to old problems. It can come in small pieces or one big project,” said Abbass. “The world wants to move ahead, and being an innovative company attracts talented employees who want to be part of the cutting edge, and customers who want to know they are associated with a company ahead of the curve.”

As the Innovation Mindsets article earlier in this magazine states: Reflect where you want to go, find inspiration on what you want to be and take action to live the dream.

Identify your strengths and use them – then get out of the way

TitlePLUS has a long and important history in Ontario real estate law. It was a solution by lawyers for lawyers that supported the importance of clients getting legal advice when they were involved in a real estate transaction.

The market research confirmed that this history continues to be valued by lawyers throughout the province. A survey of 349 real estate lawyers and 49 real estate law clerks indicated that lawyers and clerks generally trusted the product, were impressed with the coverage, and appreciated the value of a completely Canadian-owned company. However, on ease of use, TitlePLUS was lagging far behind its competitors.

Admitting what's not working

The research meant it couldn't be denied any longer. The perception was that TitlePLUS was difficult to use, the technology was out of date, and there were simply too many hoops to jump through to order a policy.

Once the problem was identified and accepted, the next steps followed more easily. The first challenge was to help people internally think in a new way. That is, challenge themselves not to focus on recreating the same workflow in new packaging, but instead, to wipe it all clean and start from scratch.

Lisa Weinstein, Vice President, TitlePLUS was determined not to fall into the trap of repeating old mistakes. "We began knowing that we wanted separate policies for owner & lender. The changes even went so far as to how the policies were organized. Each step of the way, we reminded each other to remain open to new ways of doing things," she said.

"Each step in reviewing the underwriting was approached from the point of view of what will make ordering a policy easier and understandable and what our customers want."

Seto, who led the technology redevelopment plan of the new TitlePLUS and who is a practising lawyer, also wanted to approach the process in a new way: "We tried to be small, agile, and to bring a different culture and environment from a technology perspective. The tech stack was in serious need of refreshing to meet current standards. I thought it would be a fun challenge and at the same time, I saw the project as an opportunity to contribute to the profession. We shouldn't forget that ultimately the reason TitlePLUS exists is to support lawyers in protecting their clients."

From a communications point of view, the question was whether the experience of the product was reflective of the expectation. "Your brand isn't what you say it is, it's what your users say it is," Abbass explains. "A brand is more than a logo and a name. It's really the promise that you make to the stakeholders through your services." With the perception of being difficult to use, the TitlePLUS brand was in trouble.

A new future – the new TitlePLUS

It was clear that TitlePLUS was in a place where change was critical to its success.

So, changes were made:

- ✓ **Improved technology:**
A new, intuitive website that runs on all modern browsers
- ✓ **Admit what's not working:**
Introduced TitlePLUS Legal Counsel Fee and removed roadblocks
- ✓ **Improve processes:**
Easier sign-up, separate policies for owners and lenders, integrated with conveyancing platforms such as Unity and no need to enter common title matters
- ✓ **Keep the strengths:**
Same unparalleled coverage as always, including legal services on most policies

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Keeping on track

When analyzing any large project and whether it is time for change, figuring out the root problem that needs to be solved is the first step. Returning to that focus any time the project starts to veer off track will help stop unproductive tangents. In the case of TitlePLUS, focusing on the lawyer's process without increasing the risk guided every decision.

Living up to the change

The re-strategizing of TitlePLUS was a two-year project that involved an innovative approach to every aspect of the business. That means the technology, underwriting, processing of workflows, and the user experience were all stripped down, evaluated and created anew. It was important that the feel of the product reflected the depth of change. Seto describes the opportunity as, "the core purpose was present in the 25 year old product but this was an opportunity to grow and innovate to be stronger if we focused on all sides – business, technology and service."

There is more to come...and soon. The mindset at TitlePLUS has changed too. It's one of not settling for doing things the way they've always been done. It's now about incremental and persistent innovation. ■

Naomi Dummett is Director, Communications at LAWPRO



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Persistence and precision bring long needed changes to the **Planning Act**



Comments from Ontario Attorney General Doug Downey

As Attorney General I have made it my business to jump start and accelerate access to Ontario's outdated justice system. The work to move the system forward by decades in mere months began before the COVID-19 pandemic, and by working in new ways with our partners we have managed to break down longstanding barriers, overhaul processes, move more services online and ultimately better meet people's expectations for how justice can be done in 2022 and beyond.

Our government has built new muscle memory around how we solve old problems, and we have moved to a culture of asking how we make change rather than why we can't. But before saying yes to moving justice forward in this role, I called on a career's worth of experience to help bring Ontario's planning legislation into this century in my role as an MPP.

Over the years I had worked with thousands of clients who faced unnecessary obstacles as a result of Ontario's outdated planning legislation, and I knew that each delay they faced impacted the lives and livelihoods of many more people in their communities. Change rarely happens unless it is championed with persistence and precision. I knew swift action was needed.

After calling on the expertise of other real estate lawyers who shared their experiences helping clients navigate the *Planning Act*, I began working on Bill 88, *Planning Amendment Act, 2019*.

The insights and perspectives of Sid Troister and Ray Leclair were particularly helpful. They had been advocating for changes to the legislation for 20 years, and they had many practical reforms to propose to help improve the legislation and the ways Ontarians interact with it. The terminology we used when identifying pitfalls of the legislation was "traps" that had been inadvertently created over the years, even with the best of intentions.

These traps may have had a use at one point, or for someone, but their day had passed. They complicated transactions, ran up costs for clients, and created situations that helped no one.

The legislative drafters I worked with told me it was the most complex private members bill they had ever seen, which was a testament to how much work was needed to begin transforming

such outdated legislation. I introduced the Bill 88 knowing it was a beginning point, and that the legislative process and its opportunities for consultation would help to refine and improve it.

After the bill was tabled I received hundreds of letters of support from real estate lawyers, planners and municipal staff from across Ontario. In addition, I received letters of support from a wide range of organizations affected by peculiarities in the *Planning Act*.

However, my appointment as Attorney General in 2019 posed an obstacle for the future of the bill as I could no longer steer its path through the legislature now that I had joined the Cabinet. As the *Planning Act* is the responsibility of the Ministry of Municipal Affairs and Housing, Minister Steve Clark picked up the initiative, and engaged Sid Troister as a formal advisor to the Ministry.

Under the leadership of Minister Clark, the bill's key reforms made it over the finish line and were passed by the legislature as in Schedule 23 and 24 of Bill 276, *Supporting Recovery and Competitiveness Act, 2021*.

Following its passage, regulations are being completed and are expected to be in force by January 1, 2022. There are dozens of significant improvements, simplifications, and practical adjustments.

It would be difficult to run through all the changes here, but it is worth noting the impact of the changes impact beyond real estate lawyers. Estate planning lawyers should also familiarize themselves with some of the changes. For example, if your client purchased two adjacent properties (sometimes a cottage, farm or investment), to make sure the two properties were and stayed separately conveyable, title would be taken in the name of one person for one property (John) and in the names of two people (John and Mary) as joint tenants for the other property. If Mary died, the two properties would be merged under common ownership and could only be separated with a consent, if one was permitted under current rules at all. If John died, there would be no merger. The Act will now provide that there is no merger if it results as a result of the death of a joint tenant.

I mentioned earlier that driving change requires persistence and champions who will work together toward the same precise goal. I was fortunate to count on the leadership and collaboration of Minister Clark, Sid Troister, Ray Leclair, and many others who helped to move Ontario's planning legislation forward by decades through the impacts of one private member's bill. Ultimately, we were able to make practical changes for people across our province, and I encourage members of the legal profession to learn more about how these improvements can make a difference for their clients. ■

The Top 10 Changes to the **PLANNING ACT** you need to know about and why

The anachronistic provisions of the Ontario *Planning Act* (the “Act”) and the red tape they created have frustrated lawyers and property owners for many years. The government has listened, and after consultations with many stakeholders over the last two years, long overdue changes are finally here.

We believe these changes will save the public time and money, and from LAWPRO’s point of view, they will reduce the pitfalls lawyers face in many real estate transactions.

All the changes can be found in two pieces of legislation, Bill 213, *Better for People, Smarter for Business Act, 2020* – Schedule 20 and Bill 276, *Supporting Recovery and Competitiveness Act, 2021* – Schedule 24.

While there are too many changes to summarize in a single article, we’ve pulled out the key changes that lawyers will more commonly see in their real estate transactions.

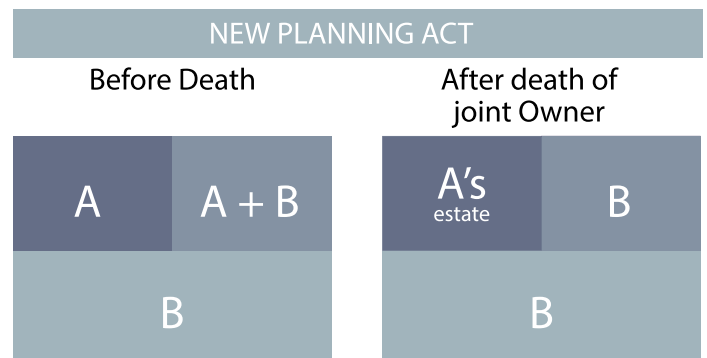
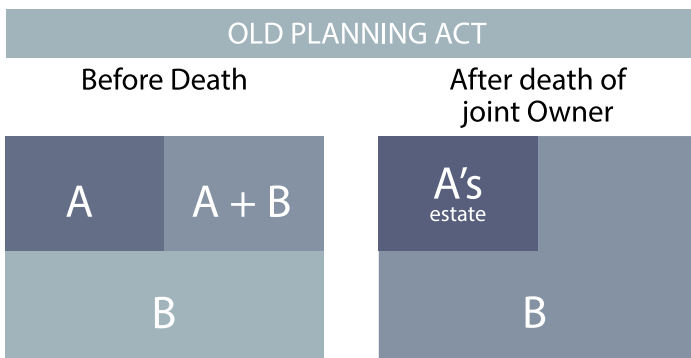
1. Abutting properties no longer merge on death of a joint tenant

The separate status of a property remains the same whether abutting properties are owned jointly or not because the death of one party does not merge the properties (s.50 (3)(a.1) & s.50 (5)(a.2)).

Historically, related owners would hold abutting lands in different names or tenancies to keep parcels separate. This change eliminates the need for those tactics as spouses can now hold abutting properties as joint tenants without the risk of parcels merging on the death of one of them.

2. Chargees and purchasers may now apply for consent

This will help lenders enforce their security and improve transparency by avoiding the fiction of the owner applying for a consent on behalf of a purchaser or the purchaser acting as the owner’s agent. Until the recent changes, only an owner or their agent could apply (s.53 (1)).



3. In-progress consent applications can be amended

It is now possible to amend in-progress applications for consent (subject to terms) which will save time and money. Previously, some authorities required an applicant to restart the entire process if they discovered the need to amend their application after it was submitted (s.53 (4.2.1)).

4. Time to satisfy conditions extended to two years

The time to satisfy conditions before the consent expires has been extended to two years, reducing the need for duplicate applications for the same property. In addition, the time to satisfy conditions will be suspended during any appeal, and the two years run from the date of the order of the tribunal. (s.53 (41))

5. Cancel a consent certificate

An owner or owner's agent can now apply for a consent to be cancelled saving time and money. Previously, there existed no ability for applicants to cancel a consent other than changing the property description e.g., conveying a small portion of land (e.g., 1 foot) to create a new parcel, one that did not have the benefit of a consent (s.53 (45)).

6. Acchione case workaround no longer required for retained lands

Retained lands can now get their own consent on request (s.50 (3) (b)(iii) & s.50 (5)(a)(iii))

The practice established under the Acchione case is no longer required as a workaround. The applicant can request a consent certificate for the retained lands together with the certificate for the consented lands. (s.53 (4.2))

7. Codifying case law broadens "Part of building or structure" exemption

Part of a property that is not in the building can now be dealt with without contravening the Act. For example, a lease for a restaurant in part of the building can now also convey an exclusive use to allow the restaurant to set up an outdoor patio (s.50 (9)).

8. Return of expropriated energy line lands to abutting owners

When land is expropriated, it can now be reconveyed to the owner of the abutting lands when the expropriating authority no longer needs the property and wishes to return it (s.50 (3)(g)).

9. Obtaining validation certificate

The basis on which to determine if a validation certificate can be obtained has been clarified to be the same test as to obtain a consent (s.57 (6)).

10. Phased Condominiums simplified

Land within a Condominium Plan will now have an exception equivalent to a Registered Plan of Subdivision. This will greatly assist with phased condominiums and with the conveyance of easements and rights of ways or similar interest in abutting lands (s.50 (3)(b)(ii)).

There are many other changes of a more technical nature and we refer you to Bill 213, *Better for People, Smarter for Business Act, 2020* – Schedule 20 (proclaimed December 8, 2020) and Bill 276, *Supporting Recovery and Competitiveness Act, 2021* - Schedule 24 (to be proclaimed tentatively on January 1, 2022). Please take the time to review and understand all of the pending changes to the Planning Act.

These changes are going to be very helpful for members of the public and lawyers as they make real estate transactions simpler and less prone to problems and red tape. LAWPRO commends the government for listening to the recommendations that we and other stakeholders provided. ■

Ray Leclair is Vice President Public Affairs at LAWPRO

Where to find the Planning Act changes mentioned in this article

1. No merger resulting from the death of a joint tenant – new exception (s.50 (3)(a.1) & 50 (5)(a.2))
2. Purchasers, or their appointed agents, will now be able to apply for a consent to sever land (s.53 (1))
3. Can now request an amendment to a consent application at any time before the consenting authority grants or denies the consent (s.53 (4.2.1))
4. Two years to meet conditions imposed when obtaining a consent to sever (s.53 (41))
5. Can now cancel a certificate of consent (s.53 (45))
6. Abutting lands created by a consent have their own exception now (Acchione scenario) (s.50 (3)(b)(iii) & 50 (5)(a)(iii)) and retained lands will now be eligible to have their own consent certificate (s.53 (4.2))
7. Part of a building or structure exemption equally applies to part of the property if use or right is ancillary to the use of or right in the part of the building or structure (s.50 (9))
8. Expropriated energy line can be reconveyed to the existing owner and not only the expropriated owner (s.50 (3)(g))
9. A validation certificate can be obtained under the same test as a consent (s.57 (6))
10. Land within a Condominium Plan is now exception equivalent to a Registered Plan of Subdivision (s.50 (3)(b)(ii))

A hand holding a pen over a calculator and a notebook with glasses.

10 TIPS

to Adapt to the New Contingency Fee Regime

On July 1, 2021, Ontario's contingency fees became subject to significant changes, with amendments to both the *Solicitors Act* and the Law Society of Ontario's *Rules of Professional Conduct* coming into force. The changes will affect how contingency fees are calculated and will impact how contingency fee matters are managed from marketing and new client intake through to client offboarding.

10 practical tips to help you adapt to the new contingency fee regime.

1

Get familiar with the new requirements now

Under the new regime, lawyers and paralegals will need to:

- Consider how to set contingency fees given changes to how they may be calculated under the *Solicitors Act* and heightened transparency requirements.
- Post their maximum contingency fees online, or if they do not have a website, inform potential clients of this maximum fee when first contacted.
- Provide potential clients with a new Law Society guide entitled *Contingency Fees: What You Need to Know*.
- Use a prescribed form of contingency fee agreement in most cases. The agreement is available [here](#).
- Provide written estimates of the approximate net amount a client will receive from a settlement, including a breakdown of the legal fees, disbursements and any other deductions from the amount the client will receive.
- When billing, unless the fee has been approved by a court, provide a statement that shows the total settlement or award and the net amount including itemized disbursements, fees, and taxes, and that explains the reasonableness of the fee.

Start by consulting the Law Society's contingency fee resources including:

- Contingency Fee Reforms
- Contingency fees
- Frequently Asked Questions about Contingency Fees

Follow the Law Society of Ontario instructions and checklists to meet new contingency fee retainer agreement requirements:

- Checklist – Standard Form Contingency Fee Agreement
- Checklist – Non-Standard Form Contingency Fee Agreement

If you have further questions, contact the Law Society's Practice Management Helpline for guidance.

2

Treat this as a chance to enhance your client's experience, which can help reduce your risks

Beyond making clients unhappy, confusion or disputes over fees and disbursements frequently lead to allegations of negligence and malpractice claims. Effectively implementing these changes can help make sure your clients better understand how fees will be charged, thereby reducing the likelihood of an unhappy client and a malpractice claim.

3

Bring in your team to get the changes right

These changes require all hands on deck. When firms have to rapidly change processes, mistakes can be made and a lack of understanding of new roles and responsibilities can lead to errors.

Bring in your team to determine how the new requirements will fit into your processes from client intake to client off-boarding, or how certain processes will need to be changed. Use your staff and other professionals to identify the changes and implement them effectively.

Staff: Your staff needs to know how these reforms will change your firm's processes and their particular responsibilities. Work with them to understand how these changes will affect workflow at all levels and develop new workflows as necessary. Train your staff on the new requirements and their new responsibilities.

Other professionals: If you work with IT and/or marketing professionals, work with them to update your website and client intake processes to meet the new requirements.

Remember – it's up to you to guide your staff and contractors, such as website content marketing professionals, to make sure that your website meets the new fee marketing and other requirements.

4

Market to get the clients you want

a) Have answers for prospective client's questions

The Law Society's consumer guide includes a section with questions that consumers can ask legal professionals as they search for legal representation. There are a range of questions related to the legal professionals' expertise, what contingency fee will apply, how disbursements will be paid etc.

Review these questions, and prepare standard starting point responses. Consider posting answers to these questions on your website. Train your intake staff to be ready to answer these initial prospective client inquiries. Consider how you can answer these questions honestly and candidly and in a way that reflects your approach to cases and client communication.

You can use these prospective client inquiries to show your expertise and value proposition to attract the clients you want.

b) Marketing your maximum rates, and beyond

As required, post the maximum contingency fee you charge. Take the opportunity to explain when this maximum amount is charged.

At the same time, consider listing caps by area of practice. You may have different fee caps by type of matter – fees for a slip and fall case may differ from a medical malpractice case, for example. By posting this detailed information clients can:

- gain a more complete and accurate understanding of the fees that could apply to their case;
- be less likely to be deterred by the highest general cap (which may not apply to their type of case); and
- have a greater understanding of the highest fee range they can reasonably expect for their type of case, which reduces the risk of fee disputes later.

You can also take the opportunity to describe your experience by area of practice. This will help prospective clients get a better sense of who you are, your experience, approach, and value proposition.

5

Use the consumer guide as part of your onboarding

The Law Society of Ontario's consumer guide needs to be shared with prospective clients – use this opportunity to bring your marketing and client onboarding to the next level.

There are different ways you can share the guide. Consider emailing it to prospective and new clients to give them a chance to review it before you meet with them. This will give them a chance to read it and help them prepare for their initial meeting with you. Or you can provide the document to them as part of your initial client package.

Use the guide as a starting point for further discussions with prospective clients and with clients when you meet them on intake. Take the time on intake to review questions they have.

6

Tailor your retainer letters to clarify the scope of services

The standard form retainer letter has certain prescribed parts, and parts which can be tailored. Consider tailoring your retainer letters to:

- *Provide a detailed description of the scope of the retainer:* For example, for a personal injury matter, consider including the date or approximate date and location of the accident, and what services will be provided regarding the incident.
- *Expressly state what services are not being provided:* For example, in a motor vehicle accident case, a prospective client could have several issues – a claim for SABS benefits, a tort claim, an employment dispute arising from time off required to recover from the accident, and perhaps other legal issues. Consider expressly including in the retainer agreement which matters are within the scope of the retainer, and which are not.

7

Retainer Letters: Keep the key terms in the retainer agreement and the agreement summary consistent

The standard form contingency fee agreement is available in Microsoft Word and contains both the agreement itself and a summary of the key terms called “Your Agreement Summary.”

The agreement does not automatically populate the summary section with key terms from the contingency fee agreement. While document automation software providers may develop versions of the standard form agreement that will autofill the summary with terms from the agreement, at the moment, the summary needs to be manually inputted.

Take care to properly reflect the key terms of the retainer agreement in the summary section, as differences between the agreement itself and the summary could lead to misunderstandings, disputes with your client, and a report of a potential claim to LAWPRO.

8

Settlement Discussions – Put it in writing

Under the new *Rules*, when a contingency fee agreement is in place, a lawyer should provide details about proposed settlements in writing (new *Rule* 3.6-2.1, Commentary [4]). Provide the client with a written estimate that:

- Gives the approximate net amount the client will receive.
- Breaks down the lawyer’s fees, disbursements, and any other charges that will be deducted from the amount the client will receive.

When lawyers document key client discussions such as settlement offers in this manner, it protects both the lawyer and the client, and helps reduce the risk of misunderstanding.

To develop the habit of providing detailed settlement estimates in writing, consider:

- Creating a standard “settlement offer” reporting form or reporting letter where you can insert the detailed estimate. Consider using such a form to email clients with settlement offer information or to complete during negotiations at mediation.
- Updating any file master checklists or file specific to-do lists to include this requirement.
- Setting a note in your calendar when scheduling mediations to remind you of this requirement.

9

Use your final reporting letter to help create a great client offboarding experience

The new fee transparency rules require that a detailed statement of account is provided to the client unless the fee has been Court approved. The final account will need to explain the reasonableness of the fee referring to the common law factors.

Use this as a final self-check to make sure that you believe that the final fee you are charging your client is reasonable. Consider the time spent on the matter, the complexity, results achieved and risks you assumed in taking on the case.

- If you conclude that the fee is reasonable, use your final reporting letter and detailed account to highlight the success. Consider meeting with your client to review the final settlement and make sure that the client understands the results, and even celebrate the resolution of their legal matter where appropriate.
- If you aren’t sure if the fee is reasonable, consider asking a colleague for their assessment of whether the fee is reasonable.
- If you conclude that the fee is not or is unlikely to be viewed by your client or an assessment officer as reasonable, lower it to an amount you believe is reasonable when the factors are considered. Clients often appreciate when fees are marked down. It can reduce friction when there may be disagreement about whether a fee is reasonable.

The final account is one part of a successful client offboarding experience. It can be used to help make sure that the client understands the settlement and the value of your services.

10

If things don’t go as planned, contact LAWPRO

Sometimes lawyers make mistakes. Sometimes clients do not understand or are dissatisfied with the results. In such cases, let LAWPRO know by reporting a claim. Report when you learn a client is dissatisfied or you realize you may have made an error. If you aren’t sure whether to report or about timing to report, just report. It’s always better to let us know right away. We can work with you from there. We often help with repairs that can help prevent a claim from occurring, or minimize the damages if one does occur. And remember, reporting a real or potential claim does not trigger the payment of a deductible. We’re also here to help before issues arise. For general risk management questions, contact us at practicepro@lawpro.ca ■

Juda Strawczynski is Director, practicePRO at LAWPRO

Recent changes to wills, powers of attorney and succession law

The government has enacted four important changes regarding wills, powers of attorney (POAs) and to the administration of an estate with Bill 245 – *Accelerating Access to Justice Act, 2021* which received Royal Assent on **April 19, 2021**. (See amendments in Schedule 8 – *Substitute Decisions Act, 1992* and Schedule 9 – *Succession Law Reform Act*.) Some of these changes have a significant impact and change parties' rights and entitlements. Lawyers need to be aware of and advise their clients of these important changes.

1. Virtual signing of wills and powers of attorney (POA) made on or after **April 7, 2020**, provided one of the witnesses is a lawyer or paralegal, was made permanent and no longer under Emergency Orders during the pandemic.
 - One may sign traditionally in-person, or virtually using audio-visual communication technology using counterparts of the will or POA.
 - Specifically, the practice of circulating the original will or POA and seeing it executed in multiple virtual meetings was **not** continued after **April 21, 2021**. All signatures now have to be contemporaneous.
2. Section 16 was repealed on **January 1, 2022**. Marriages entered into after this effective date do not nullify an existing will.
3. Separated Spouses are treated more like Divorced Spouses: Separated spouses of a person who died on or after **January 1, 2022**, can be treated in certain circumstances as predeceasing the testator in the administration of that will. Section 17 will exclude separated spouses if:
 - they lived separate and apart as a result of the breakdown of their marriage for a period of three years, if the period immediately preceded the death,
 - they entered into an agreement that is a valid separation agreement under Part IV of the *Family Law Act*,

- a court made an order with respect to their rights and obligations in the settlement of their affairs arising from the breakdown of their marriage, or
- a family arbitration award was made under the *Arbitration Act, 1991* with respect to their rights and obligations in the settlement of their affairs arising from the breakdown of their marriage; and
- at the time of the person's death, they were living separate and apart as a result of the breakdown of their marriage.

A new section 43.1 is added to provide that the spousal entitlements – under Part II of the *Succession Law Reform Act* if a person dies intestate in respect of any or all property – will not apply if the person and the spouse are separated, as determined under the section (see above), at the time of the person's death. A complementary amendment is made to section 6 of the *Family Law Act*.

4. The Superior Court of Justice is given authority, on application, to make an order validating a will (not POA) that was not properly executed or made under the *Act*, if the Court is satisfied that the document or writing sets out the testamentary intentions of a deceased or an intention of a deceased to revoke, alter or revive a will of the deceased (new section 21.1). ■

Ray Leclair is Vice President, Public Affairs at LAWPRO

Practice tips:

- 💡 Advise clients of relevant changes, especially if you are dealing with an estate, or succession planning matters for a client or individuals who have separated.
- 💡 Consider any changes you should make to your practice, whether in will and POA drafting, family dispute discussions, or to previously drafted wills.
- 💡 Consider how you virtually sign wills. Counterparts are clearly recognized. Circulating the will or POA is not allowed.
- 💡 Do not relax any will signing protocol in view of the courts new authority to validate an improperly signed will! While the new changes move away from strict compliance to substantial compliance, it remains to be seen how the courts will exercise that authority based on the evidence available.
- 💡 With these changes to the law, consider writing former clients to invite them to review their current wills, POAs and estate plans.
- 💡 As always and especially when signing remotely, be alert to undue influence and capacity concerns and make notes to your file of how they were addressed.

You transferred funds to the wrong account what now?



Fraudsters try to trick lawyers into wiring funds to an account that the fraudster controls. Sometimes, they succeed, and the funds get into the hands of criminals. What do you do then?

Below are some examples that have been reported to us:

1. A lawyer's office received a last-minute redirection of monies payable on the sale of a property, which was a spoofed email from fraudsters.

Without verifying the legitimacy of the redirection (other than by email with the fraudsters through the firm's law clerk), the funds were wired to the account of the fraudsters.

It was later determined that the email account of the law clerk had been compromised (likely by guessing an easy password or the clerk responded to a phishing email.) It was by hacking into the law clerk's email account that the fraudsters learned about the transaction and were able to

read and send genuine emails in furtherance of the fraud. The rules of the email account were re-written so that these emails were sent to folders other than the Inbox and Sent folders so the clerk wouldn't catch on.

2. A lawyer acted for the seller on a non-real estate transaction. The purchaser's lawyer attempted to cc them in an email, but sent the correspondence to an address that was one letter off from the real email address. In response, the purchaser's lawyer received instructions from this fraudulent email address with new trust account information and payment instructions.

The purchaser's lawyer thought this was suspicious, and called the seller's lawyer, who was able to confirm that the instructions were fraudulent. Independent verification saved the day.

It is unclear how the email hack occurred in the first place.

Three simple things you can do



1) Call before you click

If you receive instructions from a client, colleague, or other lawyer that involves a change in wire transfer account numbers or relates to a transfer of funds, always pick up the phone and call the individual to verbally confirm those instructions.



2) Train your lawyers and staff

Make sure all the lawyers and support staff in your firm are aware of the likelihood of spear-phishing attacks and the need to verbally confirm any changes to wire-transfer instructions received by email.



3) Warn your clients

Alert your clients of the dangers associated with wire fraud and advise them to verbally confirm with your firm any bank account details received by email.

What should you do if this happens to you?

What to do immediately



Contact the bank

The person who initiated the wiring of funds should immediately report the diversion to the bank from where the wire was initiated, requesting that they stop the wire. This is not always possible as wires are usually instantaneously dispatched and irrevocable, however, they may get caught in the financial institution's suspicious transaction filters and be pending.

Also, request that they contact the bank they sent the wire to and so on until the trail disappears or the money is found and frozen.



Report to LAWPRO

File a claim (lawpro.ca/claim) with LAWPRO as soon as possible. Provide all the relevant documents in your possession.



Alert your client

Notify your client of the diversion fraud immediately and request that they consider whether their systems have been compromised and they should seek the assistance of IT professionals.

The systems of third parties with knowledge of the transaction (e.g., in the email thread) may have also been compromised. Speak with your client about similarly alerting such third parties to the fraud, with your client's permission. If no system was hacked, consider if this was an inside job.

What to do next



Notify the authorities

Report the matter to your local police as a fraud, and the Canadian Anti-Fraud Centre.



Review your other insurance policies

Consider filing a claim under other policies you may have intended to respond to this type of risk, including but not limited to professional liability excess coverage, cyber insurance, commercial general liability, crime, computer fraud, and fidelity insurance. It is important that you obtain complete copies of all your insurance policies, including the declarations, policy wordings, and endorsements, for purposes of analyzing the potential coverages available to you. Your insurance broker may be of great assistance to you in this regard.



Seek IT help

Obtain the assistance of an IT specialist if it appears that your systems were hacked. Even if you received a spoofed email from a fraudster, the fraudster may have hacked into your systems to determine when to make the request for the wire transfer and which client representative to impersonate.

Be prepared to act quickly and work closely with your insurer(s) and other professionals retained. Cooperation between the parties is vitally important in these types of situations. ■



Tips to avoid being a victim:

Review our article [Wire Fraud Scams on the Rise](#): 5 Tips to Reduce Your Risk

Verify instructions independently: Anytime you receive instructions to wire money to a bank account and especially if the instructions are changing previous instructions, contact the payee directly by an independent method (not replying to the email sending the instructions) to verify the instructions received and the accuracy of the bank routing information.

Confirm instructions before a transfer: Advise your clients, or anyone you expect funds from, of the potential for a diversion attempt and to confirm the instructions before initiating the wire transfer.

Double check email addresses to see if they are fake: Fraudsters will spoof an email address by creating a very similar looking address by adding an extra letter/number or changing a character(s). Having hacked into one account, they may spoof other email addresses that were in the email thread to increase your confidence that it is a proper message. It is important to carefully look at all the email addresses in the message. And remember, if the client's email account is compromised, it could be the fraudster sending you emails that look like they are coming from your client.

Regular training: Train staff in what to look out for and have regular discussions and to reinforce the cyber security message. Someone from the office may see information or indications of fraud that others may not.

Stay up to date: For general cyber prevention tips, review our Cybersecurity and Fraud Prevention Tips, and subscribe to AvoidAClaim.com for fraud alerts.

Answering to the inbox:

Tips for improving your email habits

With the shift to remote working, even more of our professional communications now happen through the medium of a blinking cursor. Ensure you're making the most of the inbox, with these tips to better manage your email.



1. DON'T click on suspicious links and DO confirm instructions by phone

Lawyers are often targets of email spoofing and phishing schemes where fraudsters send emails purporting to be from a trusted colleague or third party in an effort to trick a lawyer or staff member into clicking on a dangerous link or downloading a dangerous attachment.

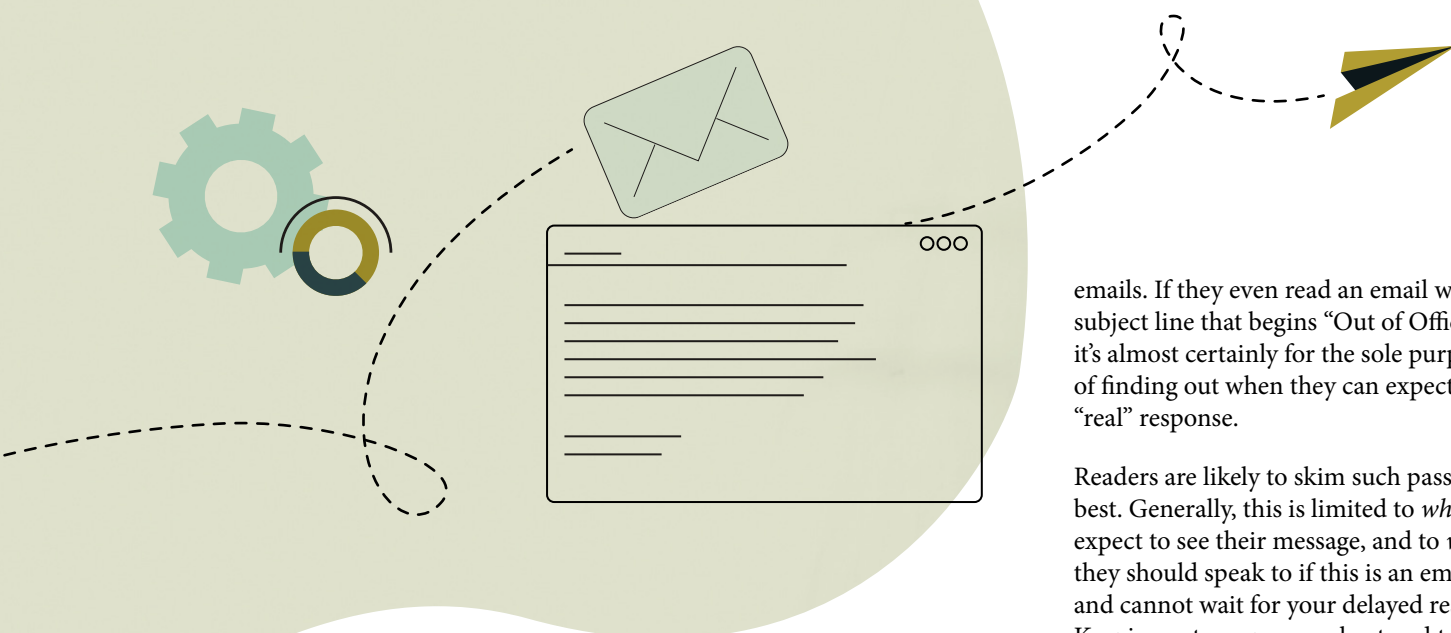
Never click on an attachment or link within an email unless you recognize the sender's email address (their *exact* email address, with no misspellings or changes). Even if you know the sender, it's a good idea to avoid clicking on anything that is out of the ordinary or unexpected.

And if you receive instructions involving the transfer of funds from a client or colleague by email, always confirm those instructions by phone or in-person before taking any action, especially, if it is a change to previous instructions or banking information. **Using a different mode of communication is essential to make sure you are talking to your client, and not the fraudster.**



2. Use "safe senders" lists to avoid missing important emails

Most email applications now use algorithms and artificial intelligence to automatically sort your incoming emails and emphasize what they *think* you want to see. These decisions can evolve over time based on which emails the user has opened or deleted in the past. While these functions are often



helpful, features like Outlook's "focused" inbox or junk folders can sometimes keep you from seeing important information if you're not careful (like LAWPRO's annual insurance renewal reminders sent every October).

Keep your filters up-to-date by adding important contacts, like LAWPRO, to your contacts or safe senders list to ensure you don't miss any communications you're waiting on. Telling your program to never block or filter a particular domain (such as @lawpro.ca) ensures no messages from contact companies will fall through the cracks.



3. Emphasize action items and deadlines

No matter how pithy we try to make our emails, sometimes there is a lot of information to share, issues to cover, or questions to ask. When drafting, always keep the reader in mind, and structure your writing in a way that makes it easiest for them to

absorb what you're saying and respond to *all* requests.

If the email includes an action item or question that requires a response, break that out into its own paragraph at the end of the message. If your email includes *multiple* such requests, it's a good idea to bold each of them as well.

If the email covers multiple topics or issues, use numbered headings to separate each subject and organize your thoughts. And if your message is particularly lengthy and includes multiple questions or requests, enumerate each request a second time at the end with a bullet point summary of exactly what you need the recipient to do in response to the email.



4. Away Messages: Don't bury the lead

Lawyers' tendencies toward prolix prose can easily infect every aspect of their writing. It's especially detrimental in automatic form

emails. If they even read an email with a subject line that begins "Out of Office," it's almost certainly for the sole purpose of finding out when they can expect a "real" response.

Readers are likely to skim such passages, at best. Generally, this is limited to *when* you expect to see their message, and to *whom* they should speak to if this is an emergency and cannot wait for your delayed response. Keeping auto responses short and to the point ensures key information isn't missed.

Also, remember to *update* these messages each time you turn them on. You don't want to gently inform the sender that you will respond to their email on a specific date that is already three months past.



5. Use carbon copy fields and @ functions to specify who needs to take action

If your email is going to multiple recipients, distinguish those that need to take action based on the email by putting their names in the "To" field, while including those that only need be informed of the email's content in the "CC" field.

Email programs like Outlook also allow users to call out specific recipients within the body text email by using the @ symbol before their name (e.g., "@ John Smith please send me your thoughts on this before Friday"). The recipient is then alerted that they are specifically mentioned in the email, and the relevant passage will be highlighted for them in the text.



6. Sort your to-do list and your have-done list with folders

Keep track of your communications (and, let's face it, your files) with a standardized format for subfolders within your email application. Folders can be organized by client, with subfolders for distinct matters and files. These subfolders can be further delineated by action items or steps within a given matter (such as court applications, specific filings, third-party correspondence, etc.)

The format you use for organizing subfolders can then be extended to your email subject lines. A standardized subject format such as “*Client – Matter – Topic*” will allow you to easily locate what you need using the application's search function (e.g. *Parking Co. – Hamilton Lot Purchase – Easement*).

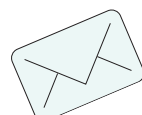
The subject line of received emails can be easily altered to conform to your personal format in Outlook and many other email applications by opening the email, double clicking on the subject line, changing the text, and then saving the email with the new header.



7. Respond quickly, except when you shouldn't

Waiting for a response to an important email can be frustrating. If you know you won't be able to provide a full response to an email that day, alleviate the sender's stress by providing a quick response acknowledging the email and providing an estimated period in which you expect to be able to give a more fulsome reply.

However, quickly and impulsively responding to a rude, frustrating, or confusing email can sometimes make a situation worse or cause you to respond in a way you later regret. In such circumstances, setting the email aside



and responding after a brief walk outside, or even the next morning, can lead to a more constructive communication.

Quick responses are great, except when they're not.



8. Don't force your schedule on others

Working from home means we're always at work. While it's important to separate your work and home life as much as possible, working from a home office or kitchen table means it can be especially convenient to “time shift” and do some work in the evening if other personal responsibilities crop-up during the day.

But remember that receiving a non-emergency work email at 11 o'clock at night can be frustrating for those that didn't time shift

and need personal time away from “work thoughts.” If you are sending an email late at night or early in the morning, and it's not an emergency, it's a good idea to schedule it to be automatically sent first thing during business hours. Alternatively, you can state at the beginning of the email that you are time-shifting and you do not expect a response until the next business day.

Keep learning new tricks

Email programs are always changing, often for the better. Make the most of your time in front of the screen by exploring the application. To learn more, check out our articles on “Paying attention to the fraud behind the curtain: Don't get fooled by spoofed email addresses” and “A place for every email and every email in its place: Improving your inbox organization” at practicepro.ca. And remember to add the domain “lawpro.ca” to your safe senders list to ensure you receive more practice tips as well as insurance renewal information. ■

Shawn Erker is Legal Writer & Content Manager at LAWPRO

Add important contacts, like LAWPRO, to your contacts or safe senders list to ensure you don't miss any communications you're waiting on. Telling your program to never block or filter a particular domain (such as @lawpro.ca) helps avoid missing messages you want.



Hot real estate market?

Excess coverage protects your practice as property values soar

Current market conditions mean business is booming for lawyers, but keep in mind that your risk exposure may be growing in lockstep with property values.

A hot market changes the way real estate deals unfold. Not only do lawyers see a higher transaction volume, but unconditional offers proliferate, and closing intervals may shrink. All these factors place pressure on lawyers and can increase the chance of an error in even the best-run practice. For example, when buyer clients come in with an unconditional deal and a tight timeline only to struggle to secure the insurance needed to satisfy a lender, negotiating a closing extension becomes the lawyer's job. The risks associated with renegotiating closing terms are a substantial deviation from the risk profile of a routine real estate deal.

At the same time, growth in land values can mean that if you do make a mistake, the resulting claim could easily hit the limit of your professional indemnity coverage. Early in 2020, the Canada Mortgage and Housing Corporation (CMHC) predicted that the COVID-19 pandemic would deliver an 18 per cent blow to Ontario house prices; instead, prices increased by 25 per cent from March 2020 to March 2021. This trend was exaggerated in the Greater Toronto Area where, according to the Toronto Regional Real Estate Board (TRREB), the average price in April 2021 was \$1,090,992 — a 33% year-over-year increase. Until interest rates increase and mortgages become more difficult to maintain, Ontario real estate lawyers can

probably expect that values will continue to go up. For real estate lawyers, this means that if something goes wrong on a file, the potential damages are so much worse than if the same error had occurred 20, 10 or even just five years ago.

What's more, the odds of something going wrong increase when the market is hot. Not only can pressure to win bidding wars lead to reckless decision-making by buyers, it can leave a bad taste in the mouths of "winning" and "losing" buyers alike. As the market heated up in 2020, complaints to real estate regulators surged, with reports to RECO, the Ontario regulator, increasing 43 per cent over the previous year alone. A key focus of these complaints has been the blind-bidding system in Ontario which requires buyers to submit bids without knowing what price others have offered. When a buyer "wins" a bidding war with a high bid, they may suffer buyer's remorse. This leaves some lawyers in the dangerous position of trying to protect the interests of reneging buyer clients.

If lawyers micro-managed every file to eliminate all risk, it would be hard to have enough time to keep a practice alive. It's not reasonable to expect lawyers to be perfect or to never make a mistake. Even where lawyers can implement all relevant best practice suggestions into their workplace routines, the unexpected

can still occur – and in a hot market, it will occur more often. So, plan for the unexpected. If you haven't already done so, it may be time to consider whether excess insurance is appropriate for your practice.

When making a disaster plan or reviewing a firm's insurance needs lawyers should take a hard look at what can go wrong in their specific practice in the context of current economic conditions. What may have been enough coverage even two years ago may be completely inadequate in 2021 and beyond. When performing an updated risk calculus, a lawyer should look at the average price of properties they handle and consider how busy their practice is before they plot out how many claims could arise and their potential cost when preparing for a worst-case scenario.

To help with planning, LAWPRO has a "Test Your Exposure" stress test available on its website that can help lawyers determine if their firm would benefit from getting excess insurance. LAWPRO can provide excess limits that go as high as \$9 million per claim/in the aggregate above the \$1 million per claim/\$2 million in the aggregate limits provided under the primary program. For more information on LAWPRO's excess insurance program please visit our website (lawpro.ca/Excess), contact us at service@lawpro.ca or call us at (416) 598-5800 or 1-800-410-1013. ■

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