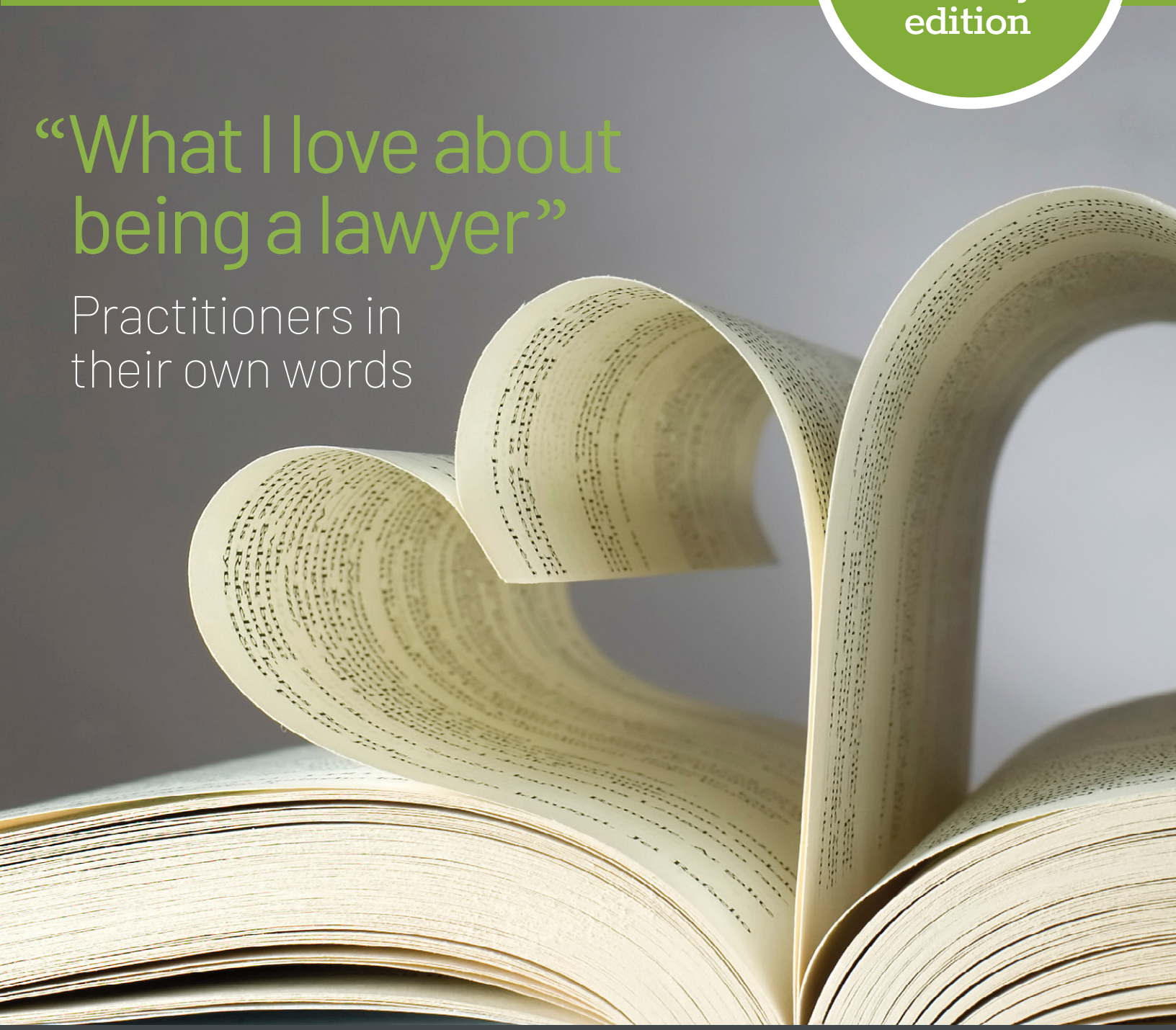
LawPRO magazine

2022 | New Lawyer Issue 10

special
new lawyer edition



"What I love about being a lawyer"

Practitioners in their own words

Common practice pitfalls | Student to lawyer tips | Life after graduation

What is LawPRO®?

And why should I care

LAWPRO provides primary errors and omissions insurance coverage to every Ontario lawyer in private practice, as required by the Law Society of Ontario. This coverage protects lawyers from the potentially catastrophic financial consequences of professional malpractice claims. When a potential claim arises, LAWPRO helps lawyers respond to the claim, defend the claim, and, if appropriate, settle the claim or pay damages. This insurance coverage also supports the interests of those who have a legitimate malpractice claim against a lawyer and are hoping there will be funds available to compensate their losses.

Almost half of Ontario lawyers will experience a malpractice claim in their career. Being a great lawyer isn't always enough. Sometimes there is an honest oversight, or an unfair accusation from a client, but whatever the cause, a malpractice claim should be defended and addressed. That's where LAWPRO comes in.

In this magazine, you will learn about the primary, excess, and title insurance provided by LAWPRO. You'll also learn what LAWPRO does for Ontario lawyers *before* a claim arises through the practicePRO claims prevention program. The practicePRO team creates and maintains a wide range of practice management resources for lawyers at all stages of practice. For details, see *LAWPRO's best claims prevention tools and resources*.

LAWPRO also offers title insurance via its TitlePLUS program, which protects property purchasers, owners, and mortgage lenders against losses associated with title problems.

What can I do to avoid malpractice claims?

Our claims counsel have years of experience defending claims and a detailed understanding of the circumstances that often lead to claims. For example, did you know that problems with lawyer-client communications are the single largest source of claims? Take a look at the rest of the content in this issue and visit practicepro.ca for information on common pitfalls in each practice area and tips on how to avoid claims in your practice.

Is LAWPRO part of the Law Society?

LAWPRO is owned by the Law Society of Ontario, but it is an independently operated company governed by its own board of directors and subject to insurance industry regulations. Every year at fall convocation, Law Society Benchers are given an opportunity to review the program. Of course, we welcome comments, questions, and concerns from members of the Ontario bar at any time.

Does every lawyer need insurance from LAWPRO?

Certain categories of lawyers, such as government lawyers, in-house lawyers, or lawyers that are not currently practising, are exempt from the requirement to carry mandatory insurance coverage. For more information, see *What you need to know about LAWPRO's mandatory professional liability insurance* on page 4

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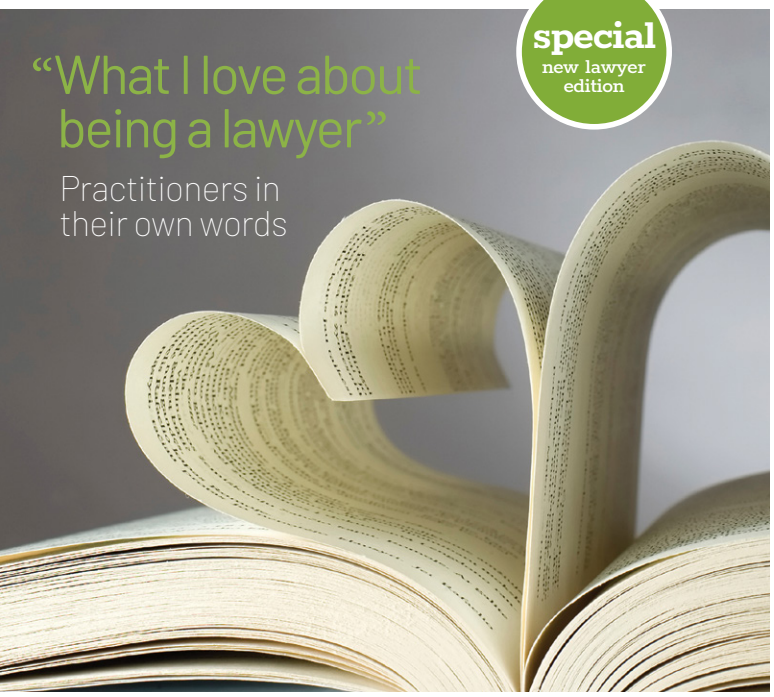

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special new lawyer edition

LAWPRO magazine

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LAWPRO Magazine and *LAWPRO Magazine's New Lawyer Edition* are published by Lawyers' Professional Indemnity Company (LAWPRO) to update practitioners about LAWPRO's activities and insurance programs, and to provide practical advice on ways lawyers can minimize their exposure to malpractice claims. 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.

The comments in this publication are intended as a general description of the insurance and services available to qualified customers through LAWPRO. Your policy is the contract that specifically and fully describes your coverage and nothing stated here revises or amends the policy.

Common practice pitfalls:

How to avoid them

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

Our records suggest that almost half of all lawyers will be the subject of a claim at one point in their career. Malpractice claims can be stressful, can hurt your reputation, and can be costly, even if the only financial consequence to the lawyer is an increase in insurance premiums.

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

What kinds of mistakes lead to claims?

Students in the midst of law school, with its mountain of reading on cases and substantive law, might be surprised to learn that "errors of law" are not the biggest pitfall to watch out for in the world of private practice. In fact, only about 13% of LAWPRO malpractice claims are caused by lawyers getting the law wrong, except in very complex areas like family or tax law.

So, if knowing the law isn't the problem, what *is* the danger that new lawyers should be on the lookout for? In a nutshell, you could call it "human error": breakdowns in communication, poor calendaring and procrastination, and not digging deeply enough into a client's matter. These types of errors make up around 62% of the claims LAWPRO sees.

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

Client communication

In almost every area of practice, the number one cause of claims to LAWPRO is a breakdown in lawyer-client communication. This ought to be the easiest type of error to guard against, but it is also the most common. Often, these claims arise because the lawyer and client disagree on what was said or done – or not said or done – sometimes because communications are rushed. This is partly the result of lawyers being busier than ever, and partly due to clients who expect fast replies and 'round the clock' responses from their lawyer.

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

As the matter progresses, it is important to document conversations with the client, your advice, and the course of action the client wishes to pursue. This documentation can be a lifesaver in the event of a malpractice claim. Clients may later say they asked the lawyer to do X and it wasn't done; or the lawyer may have done Y and the client claims they didn't authorize this course of action. If there is no documentation of lawyer–client conversations, the claim then turns on credibility, and LAWPRO's experience has been that courts are more likely to believe the client's more specific recollections over the lawyer's typically vague or non-existent memory.

It's an unfortunate fact that while email and other electronic media provide more ways than ever for a lawyer to interact with clients, all these lines of communication seem to result in even more misunderstandings. Clients or lawyers read things into emails that aren't there, miss the meaning of what was said, or read between the

lines and make assumptions. Face-to-face communication is the best way to ensure miscommunications don't happen. If meeting in person isn't possible, at least pick up the phone to avoid misunderstandings when important matters need to be discussed.

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

Inadequate investigation

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

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

The best way to avoid these claims is to simply slow down. Take the time to read between the lines so you can identify all appropriate issues and concerns. Ask yourself: What does the client really want? Does everything add up? Are there any issues or concerns that should be highlighted for the client? If something doesn't add up, dig deeper.

One way to ensure that the right questions are asked on a matter is to make use of the practicePRO program's articles and checklists. At practicepro.ca/checklists you'll find checklists for domestic contract matters, commercial transactions, and independent legal advice, as well as claims prevention articles from *LAWPRO Magazine* at practicepro.ca/lawpromag

Time management

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

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

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

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

These are very general descriptions of the common causes of LAWPRO claims. If you want to learn more about malpractice claims in particular areas of law, you'll find a wealth of articles at practicepro.ca. There are detailed examinations of claims causes in several areas of law, as well as articles featuring advice from LAWPRO's claims counsel on the common mistakes they see lawyers making and how to avoid them. ■

Tim Lemieux is Claims Prevention & Stakeholder Relations and Claims Analyst at LAWPRO.

What you need to know about

LAWPRO's mandatory professional liability insurance

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

Visit lawpro.ca/newcalls

for more information about insurance requirements

What is professional liability insurance?

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

What is private practice?

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

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

If you are engaged in private practice in Ontario, you will need to purchase coverage through LAWPRO. See *Going into private practice* on the next page.

If you are not in private practice and meet certain criteria, you are likely exempt from the mandatory insurance requirement. See *Not going into private practice* on the next page.

Going into private practice.

How do I apply?

If you will be working as a sole practitioner, you will need to complete an application online. New lawyers can apply at any time after receiving a Law Society number from the Law Society of Ontario. While it's important to apply promptly for insurance, you do NOT need to delay beginning to practise. You can begin the practice of law immediately while you wait to receive your number, with one exception: if you intend to practise real estate law, you must wait until your compulsory Real Estate Practice Coverage Option (REPCO) coverage is in place to do so. After the first year, you will be asked, each October, to renew your insurance for the following year.

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

How much will it cost?

Not every lawyer in private practice pays the same premium. LAWPRO offers discounts to certain categories of lawyers (including part-time practitioners, and lawyers who practise criminal and/or immigration law exclusively). The base premium for the year 2022 is $3,000 plus PST.

New lawyers receive a discount: Lawyers new to the bar in the current year receive a 50% discount from the standard base rate in their first full year of practice. Additional discounts are available in the second, third, and fourth years (40, 30 and 20%, respectively). New lawyers who practise for less than 200 days in their first year will be eligible for a "first year" discount in both their first and second years of practice. These discounts reflect the risk profile of new lawyers. Because the maximum premium discount for any lawyer is 50%, these discounts cannot be combined with other discounts.

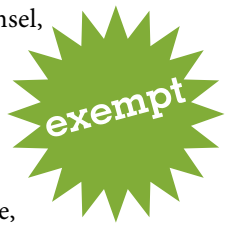
Some lawyers pay more than the base premium. For example, there is additional premium required for the practice of real estate law (a higher-risk practice area, from a claims perspective). Also, lawyers for whom LAWPRO has paid claims within the previous five years may pay more for their insurance because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

HOW DO I FIND OUT MORE?

For more information, **visit lawpro.ca/newcalls**

Not going into private practice.

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



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

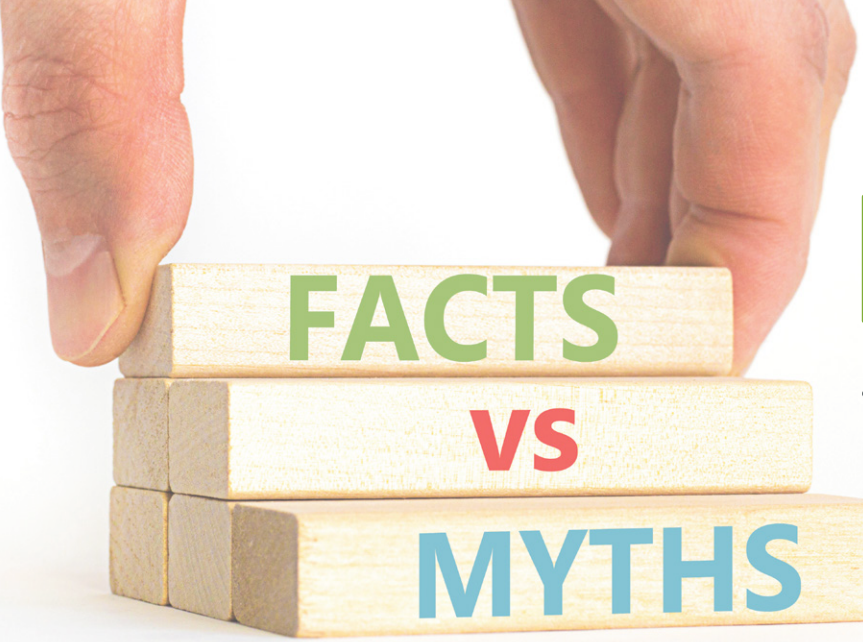
If I'm not going into private practice, can I just forget about insurance?

No. The Law Society of Ontario requires that ALL members of the bar (not just those in private practice) confirm their practice status every year. This means that you must either pay for insurance, or file an application for exemption from the insurance requirement. Go to lawpro.ca to complete these steps online.

What happens if...

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

Anytime you provide professional services, you expose yourself to a potential claim. Even if you are not in full-time private practice, if you contemplate providing even occasional legal advice or services, you will need to purchase insurance coverage (there are a few narrow exceptions, including one for certain kinds of pro bono work). Visit lawpro.ca for details. ■



LAWPRO is not like your auto insurer

A lawyer dispels common myths about your insurance coverage

In my more than 20 years of defending lawyers on malpractice claims, I continue to be amazed at how little some lawyers seem to know about the "LAWPRO policy" and how a claim is handled. I am also frustrated by how often lawyers have not done even the simplest things that could help them avoid or defend a malpractice claim.

Lawyers often assume that LAWPRO operates like an auto insurance company. This impression is just not correct – LAWPRO is very different from your auto insurer because it:

- Actively works to prevent claims;
- Does not look for ways to avoid providing insurance coverage;
- Appoints repair counsel to fix the mistake and reduce damages if there has been an error;
- Does not settle a claim just because the cost of defending the claim may exceed the amount at issue;
- Takes a principled approach and settles claims where there has been negligence and the client suffered damages;
- Appoints counsel to vigorously defend proceedings if there is no negligence or damages; and
- Works collaboratively with defence counsel and the insured to defend the claim.

From my work defending lawyers, I have found over and over again some common myths about the LAWPRO policy and how claims should be handled. All these comments apply to coverage under the mandatory insurance program LAWPRO runs on behalf of the Law Society, and may also apply to excess insurance coverage if it is in place.

MYTH #1: Only bad lawyers have claims against them.

FACT Even the best lawyers make honest mistakes or can face a baseless allegation of negligence from a client that is suddenly unhappy due to unexpected events or changed circumstances. LAWPRO's claims stats indicate that almost half of all lawyers can expect to have at least one malpractice claim in the course of their career. Many of the lawyers reading this will have to contact LAWPRO to report a claim at least once in their career.

MYTH #2: Lawyers only need to report to LAWPRO when they are served with a statement of claim.

FACT Lawyers should report to LAWPRO in a variety of circumstances. These include: when a lawyer discovers or thinks a mistake was made; when a client has asserted that the lawyer made a mistake; when a lawyer is being asked to swear an affidavit or give evidence about their file handling; or, when a request for production or court order has been made for the lawyer's file. When in doubt, report!

MYTH #3: If a lawyer can fix their mistake, they should try to do that before contacting LAWPRO.

FACT A lawyer should never try to fix a mistake or admit to a client a mistake has been made. Instead, LAWPRO should be immediately contacted. Attempting to fix a mistake or admitting an error may jeopardize the lawyer's insurance coverage, especially if it makes the situation worse. LAWPRO claims professionals or defence counsel can coach you on the conversation you should have with a client if there is a potential claim.

MYTH #4: A lawyer working at a firm does not have to worry about their LAWPRO policy. It is a firm concern.

Fact The lawyer is individually named as the insured under the LAWPRO policy, not the firm. This is unlike excess policies where the firm is usually the named insured. Any claims should be reported to LAWPRO by the lawyer who made the purported error or is responsible for the file. LAWPRO will look first to the individual lawyer for payment of any applicable deductibles or claims surcharge levies, even if there is an arrangement that the firm will pay these amounts. As well, LAWPRO can look to the partner(s)/shareholder(s) of the law firm the lawyer was at as of the date of the claim for payment of the deductible.

MYTH #5: It is better not to take notes or keep your file because it makes it harder to prove you made a mistake.

FACT It makes it harder to defend! While clients remember what was said and done on a file, usually in great detail, in my experience lawyers just do not remember the details. Notes or other documentation in a file that can establish what actually happened can be a lifesaver in the event of a claim.

MYTH #6: Reporting a claim will trigger a deductible and claims surcharge levies.

FACT Simply reporting a claim to LAWPRO does not, repeat, does not trigger a deductible. Lawyers have various deductible choices that include a nil deductible option (where you don't pay a deductible at all), a deductible that only applies when there's a payment further to a judgment, settlement and/or repair ("indemnity payment"), and a third deductible option that applies to indemnity payments and claims expenses. If the third type of deductible applies, 50% of the deductible would be payable when a statement of defence or responding materials are filed, and the remainder would be payable on the earliest of the commencement of discoveries, examinations, or a pre-trial conference is held, or when an indemnity payment is made.

The claims history levy surcharge is only applied if a claim has had an indemnity payment or the entire claim limit has been otherwise exhausted. If a claim is closed without any repair being required or payment made to the other side, then your premiums aren't expected to go up just because you've had a claim reported. Most claims are settled without a finding of negligence. In 2021, 35% of LAWPRO claims were closed with no costs whatsoever, defence costs were incurred on only 52% of the files, and an indemnity payment was paid on only 13% of the files.

MYTH #7: Lawyers do not have to worry about obtaining insurance in excess of the amount afforded under the LAWPRO policy.

FACT The LAWPRO policy provides annual errors and omissions coverage of $1 million per claim, or $2 million in the aggregate. Keep in mind that this amount erodes with defence costs and expenses – which can sometimes be significant, even when the allegation of negligence has no merit. Consider the matters you handle and the nature of your practice – get excess coverage if you think you have exposure to a claim that would be worth more than $1 million in terms of indemnity (including pre-judgment interest) and defence costs. Excess coverage is not very expensive and gives you great comfort. Visit lawpro.ca/excess for information on LAWPRO's excess insurance program.

MYTH #8: Lawyers have no insurance coverage after they leave practice.

FACT When lawyers leave private practice (e.g., to retire, go in-house, move to another jurisdiction or take a temporary leave to focus on family) they usually qualify for exemption from payment of the premiums. Whatever the reason, the policy provides for Run-Off coverage that covers the work you did as an Ontario practising lawyer, for free! The standard Run-Off coverage has a sublimit of $250,000 that covers your work as a lawyer when coverage was carried prior to going on exemption. This basic Run-Off coverage remains in place and lasts as long as you are on exemption. Of course, the limits will be depleted by claims that arise after the lawyer goes on exemption and the coverage may change in future. Lawyers can apply to buy up this sublimit to $500,000 or $1 million. It's also worthwhile to check if your current or previous firms have any excess insurance that might also respond to claims made against former members of the firm after they leave and what conditions might apply.

Take the time to learn more about your LAWPRO policy. Visit lawpro.ca for a copy of the policy and coverage. And remember to take steps to reduce your exposure to a claim. practicepro.ca has loads of helpful tools and resources to help you accomplish this. Lastly, please follow the advice I give above to help LAWPRO and your defence counsel defend you in the event you face a malpractice claim. ■

Susan Sack is a partner at Rosen Sack LLP.

What I love about being a lawyer

Practitioners in their own words

Turn on a movie and you may see a legal career portrayed as one of stoic solemnity, like in To Kill a Mockingbird; or perhaps it's one of overwhelmed but passionate idealists, like in A Few Good Men; or maybe it's one of corruption and cynicism, like in The Firm.

Our culture, through movies and journalism and bad jokes, paints different pictures of legal careers—but rarely is it a picture of joy.

But joy is there. In fact, the profession is full of it. Like any job, a legal career has its ups and downs; its thrilling moments and its seemingly dreary tasks.

We asked some Ontario lawyers--from various practice areas and years of call--what they love most about being a lawyer and what part of their day brings them that all-important joy. Here's what they said.

"Every now and then I get a thank you card; or another lawyer sends me a holiday card; or a colleague sends a handwritten note of encouragement. I love these gestures of kindness from clients and colleagues. Being a lawyer can be an isolating experience. We focus on our solicitor-client relationships from a transactional approach, documenting our instructions, committing our legal advice to memos. Our work is surgical and tactical. We are taught to set and maintain professional boundaries, and to be stoic, intelligent, and tough.

But a hand-written card is magical. The whimsical bends and curves of the penmanship, the careful selection of words, the genuine expressions from the writer. Sometimes cards have a picture of a happy client, a sticker, or a small doodle or drawing enclosed. The choice of pen is always special – a sharpie or a fine point pen. The cards are always sent to my office address, which is available on my website and the Law Society of Ontario portal, so they always come as a surprise. The address is handwritten, the sender taking time to fill out the envelope and place a stamp. In today's digital age, this gesture is significant. I save every card that is sent to me, and a shelf in my office is now happily cluttered with them."

Neha Chugh practises criminal law with Chugh Law in Cornwall, Ontario

Oneal Banerjee

Will Horne

Heather Douglas

"I've been practicing law for almost 19 years. Nothing really beats being in court on a complex matter. But on a more regular basis, I love that I still find myself having to wrap my head around new and interesting facts, even in my focus areas, and having to write opinions on the probability of success in these matters. This is basically writing a more complex and much longer law school exam (we also assess damages).

For example, in one week in August 2021, I was assigned three files, each with a fact pattern I hadn't seen in the previous 18 years. The next month, I was asked to assist with handling a matter relating to alleged engineering design errors in the construction of a hydro-electric substation. Since October, I have worked on three class action certification responses relating to three completely different types of losses, in two different provinces.

Of course, I have to deal with more conventional matters, as well. But having to often consider new and complex issues allows me to address the more conventional matters with greater energy and vigor."

Oneal Banerjee practises insurance litigation, focussing on personal injury, property, and class actions defence with Dolden Wallace Folick LLP

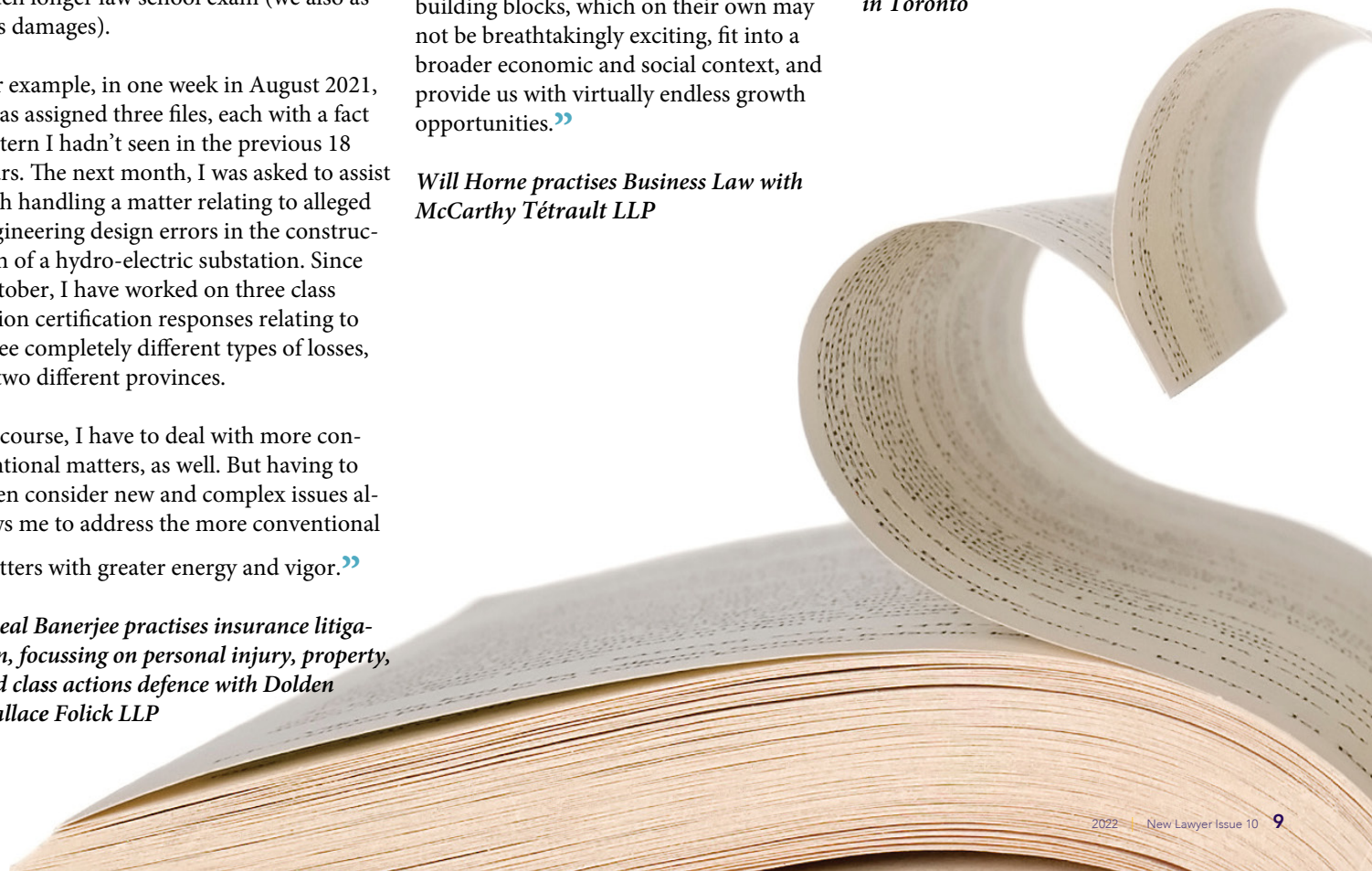
"What brings me satisfaction on a daily basis is the knowledge that my transactional work in the renewable energy sector – from the mundane to the complex – is contributing (at least in a small way) to Canada's energy transition.

This includes everything from contractual drafting to staying on top of the latest regulatory and legislative developments. For me, it's about seeing how the individual building blocks, which on their own may not be breathtakingly exciting, fit into a broader economic and social context, and provide us with virtually endless growth opportunities."

Will Horne practises Business Law with McCarthy Tétrault LLP

"My favourite aspect of my day-to-day work is speaking directly to clients, hearing their stories, and then transforming the information received into a plan of action. By the time people come to lawyers, they often feel discouraged and victimized. So being able to help clients reclaim what they've lost feels rewarding. The best part about being a lawyer is knowing that you've helped achieve justice for the underdog."

Heather Douglas, B.A. J.D. LL.M., is a sole practitioner with a civil litigation practice in Toronto



"One of the best parts of being a lawyer is being part of the legal community. The vast majority of lawyers that I know in Ontario are incredibly brilliant, kind, and generous people, who are always happy to see their colleagues, catch up on what they've been working on, and even lend a hand if you're encountering a particular challenge. Those connections have become far more strained during the pandemic, and I'm looking forward to catching up with many people in the months and years to come.

Having a passion for the law also means that on a monthly or even weekly basis there is always some new development or change in the law, either through a new court decision or statute or regulation that is being introduced or amended. What that means is that the law is an ever-evolving story, and one that we are all part of. There's something special about knowing where our laws come from, why our laws are what they are right now, and imagining what they could be in the future."

Omar Ha-Redeye practises business law, health law, and civil litigation with Fleet Street Law in the Greater Toronto Area

"I started my career as a litigator at a small law firm in Windsor. Back then, even though a divorce was uncontested, you had to attend court, robe, and call evidence to prove the grounds. As the only associate at my firm, it fell upon me to present these divorces. Each of the judges in Windsor had a preference for how they ran their court on uncontested divorce day, and they had no bones about chastising you if you didn't present the divorce exactly to their liking. So, on my own time, I made a point of going to court many times to observe and make notes on each judge's preferences.

One day I was heading to uncontested divorce court when one of the partners told me to bring the articling student along to watch. The articling student was my older brother's best friend. Will had taken a detour before going to law school, which resulted in me beating him to the call to the bar and now, coincidentally, landing us both at the same firm. The tide had turned – I was no longer the pesky little sister who wasn't allowed to tag along, rather the lawyer allowing the student to watch and learn. Karma, baby!

The courtroom was packed that day with lawyers and their clients. The cases were called in order of seniority of counsel. The judge seemed to be in a particularly foul mood, and, when the first case was called, the judge sniped at the senior lawyer and told him to sit down until he could figure out how to properly present a divorce. Next lawyer, same thing. The judge scanned the courtroom and saw me. "Miss Glatter", he said, "you're next." I put my client in the box, followed the script I'd prepared reflecting this judge's preferences, and got my client divorced without a stumble. The judge then turned to the packed courtroom and said, "That gentlemen, is how it's done". (Yes, back in the day they were all men.)

As the articling student and I left the courtroom, I turned to him and said, "That happens to me all the time."

I'm pretty sure I heard his eyes rolling."

Deborah Glatter is a professional legal educator and management consultant. She previously practised as a litigator in Windsor, Ontario

"I have done a lot of different things with my law degrees. I have overseen programs and strategies to improve access to justice, changed laws, and now I run a firm. In every position I have held, I have looked for and found ways to support the people I work with to do their best and to work collaboratively to achieve ambitious goals. Nothing makes me happier than helping a colleague identify a goal – big or small - and brainstorming and working with them to get there."

Kirsti Mathers McHenry is a lawyer and consultant at Mathers McHenry & Co. in Toronto

practice PRO®

LAWPRO's best claims prevention tools and resources

LAWPRO sees the same errors time and time again. Lawyer–client communication problems, inadequate investigation or discovery of fact, missed deadlines and procrastination are the most common causes of claims.

The top 15 things you can do to avoid a malpractice claim

1 Start out on the right foot with a formal file opening procedure and a written retainer: With every new client you should go through a standard file opening procedure that includes client/matter screening and a conflicts check.

If you are going to act, you should prepare a retainer letter or agreement that sets the key terms of engagement for the matter. It should clearly identify who the client is and what you are retained to do and any limitations on the scope of the retainer. Consider including a provision that describes your firm's policy on disbursing money from your trust account. To protect yourself against counterfeit cheque fraud: Put the client on notice that you reserve the right to hold funds for a specific time period or until you are sure they have cleared.

2 Don't dabble or handle a matter you are uncomfortable with: If you are unsure or hesitant about handling the matter for any reason, get appropriate help or refer it to another lawyer.

Send the matter away if you are unfamiliar with the area of law, a real or potential conflict exists, the matter is for a relative or friend and you are not able to be objective, or the client is uncomfortably challenging.

3 Get the money up front at every stage of a matter: At the time you are retained, get a retainer that is sufficient to cover all work that needs to be done on the initial stage of the matter. Replenish retainer funds before they are exhausted and on the start of each stage of a matter or file. Configure your accounting system to remind you when the amount in trust is getting low relative to the WIP on the file or when the accounts have not been paid within 30 days. Stop work if the retainer is not replenished or accounts are not paid on a timely basis.

Working on credit with a growing A/R greatly increases the likelihood you will not get paid and the potential for a malpractice claim (see #13). This is especially important for plaintiff litigation, where you could find yourself in the middle of a malpractice claim due to an administrative dismissal of the action. If the retainer is not replenished, get off the record in a timely fashion.

4 Manage client expectations with good communication: Clearly and accurately communicate to your clients the available courses of action and possible outcomes, all the implications of any decisions or actions, how long things will take, and the expected fees and disbursements. Immediately advise them if changed circumstances affect any aspect of your initial advice to them.

5 Document (almost) everything: It is just not practical to document everything on every matter, but strive to document as much as you can in some contemporaneous manner. Formal letters are fine, but emails, detailed time entries or marginal notes on documents can be equally effective. In particular, record advice or instructions that involve significant issues or outcomes, as well as major client instructions or decisions (especially with respect to settlements).

Documentation takes on a greater importance when dealing with challenging or emotional clients. Memorialized communications are invaluable to confirm what was said to, or done for, the client in the event of a malpractice claim. Refrain from making nasty or embarrassing comments (which may end up in client files or records).

6 Meet or beat deadlines: Set realistic deadlines for completing tasks and/or delivering documents or advice to clients. Under-promising and over-delivering (i.e., earlier than promised) on work for clients will make them very happy. Don't leave work to the last minute as unexpected events may intervene and lead to missed deadlines (e.g., blackouts, snow storms or a sick staff member). Give yourself a margin of safety by setting deadlines a day or two early.

LawPRO®

7 Delegate but supervise: Delegation is an essential part of running a practice, but make sure there is appropriate supervision and review of junior lawyer or staff work. Never allow others to use your Teraview® RSA token and password.

8 Dig deeper to get all required information and ask questions if things don't add up: Lawyers in many areas of practice are not taking the time to get all the information they need to give proper and complete advice to their clients. For example, identifying all assets and liabilities on a will or family law matter or getting details of injuries on a tort claim. You must dig deeper, spot relevant issues and ask all appropriate questions of a client, especially if there is something on a matter that doesn't quite make sense.

9 Do not allow yourself to become a pawn: Do not allow loyalty to a client, pressure by a client, or other motivations get in the way of your professional duties and ethics. Do not cut corners, cover up irregularities, or forgo investigative steps at the urging of a client. Doing any of these things will come back to haunt you.

10 Don't do any of the things that most annoy clients: These are all the things that would equally annoy you. They include not returning phone calls or emails, long periods of inactivity, and surprising a client with bad news or a large account.

Implement standards or practices that govern your client communications, such as phone calls will be returned within 48 hours (not same day) and, describe them in the initial retainer letter (see #1).

11 Don't wait until after the file is closed to ask how you did: Ask clients for feedback as the matter progresses, at milestones, or when interim accounts are rendered. Proactively address any concerns or issues the client raises.

12 Send interim and final reporting letters: At milestones, confirm to the client the work that was done and the results or outcomes, good and bad. Be sure to note any follow-up tasks that are the responsibility of you or the client. In the final reporting letter be clear that your retainer is concluded.

13 Think VERY carefully before suing for fees: Suing for fees almost guarantees a counter-claim alleging negligence, even if there are no grounds for the allegation.

14 What goes around comes around: Your reputation will precede you. Be civil at all times to your client, judges, court staff, and the counsel and client on the other side.

15 Communicate and document (almost) everything: Read #4 and #5 again – managing client expectations with good communication is the best way to avoid a claim, and having some documentation of those communications is one of the best ways to defend a malpractice claim.

Top technology articles and resources

Technology has become an essential part of practising law. These tips, articles and papers, available at practicepro.ca, will help you use technology to become more effective and efficient. They will also help you avoid some of the dangers inherent in the use of technology in a law practice setting.

1 **Perspective on the future of law**
2 **How to safely put your data in the cloud**
3 **Work from home technology tips**
4 **Technology products for lawyers and law firms**
5 **Phishing scams: Be the one that got away**
6 **Danger: When a hacker emails you instructions in the name of your client**
7 **Fifteen tips for preventing identity theft and online fraud**
8 **Does your firm need cybercrime insurance?**
9 **A place for every email and every email in its place**
10 **Docketing dos and don'ts**
11 **Artificial intelligence and the self-driving lawyer**
12 **Backup best practices and strategies**
13 **Outsourcing your law firm's cyber security**
14 **Ten tips for effective video conferencing**
15 **Essential dos and don'ts for LinkedIn users**

All available at praticepro.ca

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15 of our most practical and helpful checklists, precedents and resources available at practicepro.ca

1 Retainer agreement precedents: One of the best ways to reduce the risk of a claim is a retainer agreement that clearly identifies the client and the scope of work to be done. We have a variety of retainer agreement precedents for different types of matters which you can adapt for your practice.

2 Limitations period charts: The *Limitations Act, 2002* represented a huge reform of the existing law of limitations. We continue to see claims related to lawyers' unfamiliarity with the limitations rules or failing to consider a possible action until it's too late. Take the time to review these charts and avoid a claim related to a missed deadline.

3 Annual legal health checkup: This is a list of common legal issues that may arise in a client's personal or business life. By giving it to your clients, you can encourage them to consider their potential legal needs and be aware that you can help them address issues before there is a crisis.

4 Post-matter client service survey: What did your clients think of your service? Use this post-matter client service survey to find out.

5 Generic independent legal advice (ILA) checklist: A hasty $150 ILA consult can easily lead to a claim and a $5,000 deductible. Use the ILA checklist to make sure you cover all the bases when giving independent legal advice.

6 Domestic contract matter toolkit: This toolkit helps lawyers systematically consider and discuss all relevant information at the initial interview and signing of a domestic contract. It includes an intake form, an intake checklist, a post-meeting client assignment form, and a review and signing checklist.

7 Commercial transaction checklist: This checklist contains a series of questions lawyers should ask themselves to help ensure that the commercial documents they are drafting correctly reflect the client's instructions and expected results. It helps ensure that your communication with the client has been thorough, too.

8 Fraud fact sheet: These pamphlets describe cybercrime and bad cheque fraud scams, and frauds targeting real estate lawyers. They list the "red flags" that indicate that an otherwise legitimate looking matter is actually a fraud. Share this with your staff too!

9 Rule 48 transition toolkit: As of January 1, 2017, matters are being automatically dismissed without notice, five years after they were commenced unless there is an order otherwise or the plaintiff is under disability. Move your files along and comply with the requirements of the new Rule 48.14 of the *Rules of Civil Procedure* with help from this toolkit.

10 Client trial preparation checklist: Prepare your client for the ups and downs of trial with this customizable checklist, which covers topics to discuss with your client, including process, timing, outcomes, risks and costs. From managing emotions to the day-to-day workings of a trial, the checklist covers important topics to discuss with your client in preparation for trial.

11 Real estate file management checklist: Even the most routine real estate transaction has many steps and the details may seem obvious but it is easy to let one or two slip through the cracks. This checklist can be a valuable risk management tool.

12 Using title insurance safely checklist: Title insurance plays an important role in real estate transactions. Each transaction presents a different set of circumstances and risks. This checklist keeps you on top of the issues to consider when your are obtaining a title insurance policy for your client.

13 Business plan outline: Looking to grow your practice or to borrow some money from the bank? This business plan outline will help you set some long-term goals for the finances, management and marketing of your practice.

14 Sample budget spreadsheet: This 12 month budget spreadsheet will help give you detailed insights into your practice revenues and expenses.

15 Limited scope representation resources: These resources will help you understand some of the risks inherent in providing limited scope legal services, and how you can reduce your exposure to a claim when working for a client on an unbundled basis.

What are the risks in your area of law?

Our malpractice claims fact sheets include claims statistics, causes of claims against lawyers, and tips for avoiding claims for the following areas of law:

Litigation, Wills & Estates, Criminal, Family, Real Estate, Corporate, Franchise, IP, Employment, Immigration

lawpro.ca **practicepro.ca** **AvoidAClaim.com**

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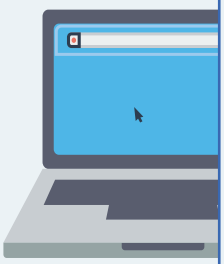

Practice advice for avoiding claims: 15 articles we wish lawyers would read

1 The biggest malpractice claims risks: Lawyers may be surprised to learn that failure to know or apply substantive law accounts for a relatively small portion of LAWPRO claims. Find out the biggest causes of claims in this article.

2 New Year's resolutions for a healthier law practice and a new you: If you are going to read one article this is it – practical tips for reducing risk and avoiding claims and stress.

3 Inadequate investigation/discovery now #1 cause of claims: Lawyers in many areas of law are not taking the time to get all the information they need to give proper and complete advice to their clients. Read this article to learn how to dig deeper, spot relevant issues and ask all appropriate questions of a client.

4 Tips for navigating the new Simplified Procedure: The new Simplified Procedure seeks to provide a more streamlined process to resolve claims up to $200,000. Lawyers need to adapt to the faster environment and manage clients, experts, and costs effectively.

5 Manage malpractice risk by recognizing cultural diversity: In the context of legal services, cross-cultural misunderstandings and other culture-related factors can occasionally lead to malpractice claims against lawyers. Understand more from this article.

6 Litigation claims trends: errors & insights: This fact sheet examines the most common civil litigation-related errors that LAWPRO sees, and the steps you can take to reduce the likelihood of a litigation claim.

7 Self-represented litigants: A survival guide: Having a self-represented litigant on the other side of a matter can be very frustrating for you and your client. This article will help lessen those frustrations.

8 Real estate claims trends: A detailed review of where and why real estate claims happen – and what can be done to avoid them.

9 Cultivate your innovation mindset to build your future practice today: 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.

10 Unbundled legal services: Pitfalls to avoid: "Unbundled" or limited scope legal services are here to stay; but providing these services creates risks that must be managed. Read this article to understand and avoid those risks.

11 Landmines for lawyers when drafting wills: This article outlines some of the areas of greatest malpractice danger for wills practitioners.

12 Diversify without dabbling: Before expanding your practice, expand your competence. Dabblers – lawyers working outside their usual area of practice – cause a significant number of claims. Read this to understand why.

13 Wondering when to report that claim or potential claim? Do it now: Late reporting of a claim can have severe consequences. Read this article so it doesn't happen to you.

14 The morning after mediation: Settling a matter requires lots of give and take and some compromise, with the result that clients may have second thoughts about what they agreed to the day before. Avoid this predicament with the advice in this article.

15 A checklist for avoiding conflicts on lateral transfers: Lateral transfers need to be a good fit and having the right credentials is important, but so is avoiding conflicts of interest. Get the advice to do it right here.

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Year one:

Navigating a new professional landscape

It's sometimes said that law school doesn't fully prepare students for most of their actual work as a lawyer. No class teaches students how to get through a heated phone call with difficult opposing counsel or how to collect outstanding accounts from a tardy client. No class teaches students how to *get* clients, for that matter.

Today, with so much of the legal profession transitioning to virtual work environments, digital workflows, and online filing and communication, it might be said that even 20-years' experience doesn't fully prepare a lawyer for what the profession may look like tomorrow.

Senior and junior lawyers alike are adapting to new tools, new techniques, and new work environments. We sat down with Mithea Murugesu, Simona Ristic, and Susan Wu, who recently joined LAWPRO as articling and LPP students, to ask them about their journey to LAWPRO, their experiences so far, and how they're responding to a changing legal profession.

Mithea Murugesu

After undergrad, Mithea saw two possible career paths: teaching or law. Laughing, she says she chose law because, "I didn't want to be in a classroom for the rest of my life." More seriously, she adds, "with law, I thought I could make an impact and help more people." It was that desire to help people that drew her to her clinic work in law school. "My number one thing was the human element—to be able to hear someone's story, empathize with them, and give them some assurance that help is available."

Although her clinic work gave her a strong interest in social justice, when it came time to apply for articling positions, Mithea conducted a broad search. Although professional insurance wasn't initially on her radar, the more she learned about LAWPRO the more it appealed to her: "I realized that, since all lawyers are insured through LAWPRO, this was an interesting way to learn to be the best lawyer I could be. Or at least learn what not to do."

After securing an interview with LAWPRO, Mithea says she "did a deep dive of the website—every page and detail. I also read some issues of LAWPRO Magazine and found a list of sample interview questions in an older Student Issue. I said to myself 'This is perfect!' so I printed it out and prepared with that as well."

Articling while working remotely can be difficult. But it also has its advantages. Mithea says, "I knew if I didn't make an effort to reach out to my coworkers, I was going to be literally alone. I try to reach out remotely to at least one new person every week, learn about their background and their work at LAWPRO, and really make up for any lost social elements from being away from the office most of the time."

Susan Wu

As a legal graduate from Hong Kong who came to Canada to complete her Masters and practice law, Susan is used to adapting to new challenges. "At this point, I've gotten used to the virtual environment," she says. "I don't even remember what it's like to be in a class or meeting with more than five people at a time."

"You learn to be patient," she says, reflecting on the remote work environment. With such a major and rapid move to new technologies, "tech hiccups will always crop up, and you just need to have confidence it will work out." But with the frustrations come opportunities, and Susan is quick to stress that the environment has pushed her to develop her electronic communication skills. She says, "drafting emails and communicating electronically is such an important skill, and communicating concisely only comes from practice."

Law is a demanding profession, so it's important to find the little things that bring you joy every day. At LAWPRO, Susan says she loves "going through the file and seeing how the events played out. But my favourite part is forming an opinion on the issues. Being able to discuss it with other people and having a conversation about the claim is really exhilarating."

Simona Ristic

After seven months at LAWPRO, Simona has a positive view of the work-from-home and hybrid-work models put in place due to the pandemic. She explains, "some people seem to feel bad for us because we're articling remotely, like we're missing something. But articling depends on your mentors and your colleagues, not whether it's virtual or in-person. I've had a great experience because my mentors and colleagues at LAWPRO have been so helpful and willing to provide feedback."

Going further, Simona stresses that there are benefits to being thrown into a mostly remote and digital world: "There's this transition happening right now—in the courts, in the business registry—where everything is moving to an online and electronic format. I can already tell that articling remotely has better prepared me for the future practice of law."

"For one thing," she adds, "this remote work has definitely improved my tech skills. You don't have any choice, you just have to learn these things. It's made me much more proficient communicating outside of in-person conversations."

Even beyond the remote workplace and the tech-heavy learning curve, the articling experience has been different from Simona's expectations, in a good way. "I wish I knew just how much I would learn in the articling process," she says. "When I graduated, I felt wholly unprepared to go out into the legal world. I didn't know how I was going to learn everything in ten months, and then be fully licensed as a practicing lawyer. But now it's been seven months and when I look back at who I was when I started, I say 'oh my god. I've learned so much!' And I still have over three months to go! So, it's only up from here," she adds with a laugh. ■

Get your law practice off to the best possible start

Professional liability claims can take the wind out of the sails of anyone's legal career, but can be especially demoralizing for a new lawyer. Your best chance at avoiding claims is to develop great working habits right from the start. Here are some practice 'resolutions' that you may want to consider. Want more? Read the whole resolutions feature on the practicePRO website at practicepro.ca/resolutions

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

...to avoid litigation claims

- I will talk to my clients more often and not rely on email so much.
- I will make sure to have written confirmation of instructions and advice.
- I will enter target dates a few days early to avoid last minute complications.
- I will maintain current knowledge of administrative dismissal rules (see the Rule 48 Transition Toolkit at practicepro.ca/rule48).
- I will create more detailed time dockets.
- I will review my file before closing it to make sure every task is accounted for.

...to avoid corporate-commercial claims

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

...to avoid real estate claims

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

...to avoid family law claims

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

...to avoid wills and estates claims

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

...to avoid criminal law claims

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

✓ **I will download the claims fact sheet for my area of practice from practicepro.ca/factsheets**

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

…for better case management

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

…to avoid doing things that annoy clients the most

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

…for stress relief, wellness and balance

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

…to better set and control client expectations

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

…to better document files

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

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

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

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

- I will visit practicepro.ca/newlawyers to access the *LAWPRO Magazine* archives and many other useful practice resources.
- I will regularly use practicePRO checklists and precedents (practicepro.ca/checklists).
- I will check the AvoidAClaim.com blog to keep up-to-date on claims prevention and fraud matters. ■

Dan Pinnington is President & CEO and Tim Lemieux is Claims Prevention & Stakeholder Relations and Claims Analyst at LAWPRO.

Student to lawyer: 20 tips for a successful transition

This is an abridged version of the LAWPRO article: "20 tips for a successful transition" – a guide for law students through the transition from student life to legal practice. See Our 2021 New Lawyer Issue for the full article.

1. Honestly assess your strengths and preferences to identify what makes sense for you in terms of the type of firm and area of law you want to practice.
2. Consider all the options: big firm, small firm, solo practice, government, in-house. Don't just pursue the opportunities everyone else is pursuing – reflect on what is the best fit *for you*.
3. Create and prioritize a list of your options (from your most desired choices to alternatives you'd accept).
4. Identify what makes you unique and use that to sell yourself.
5. Consider if you have what it takes to be a sole practitioner. Take our self-assessment quiz on page 19 to help you decide.
6. Be prepared to work within the realities of articling, the Law Practice Program (LPP) and the job market. Strive to be both positive and realistic.
7. Be prepared to deal with uncertainty. You can't control all the factors that influence your career path; but you can commit to making the best decisions possible under the circumstances.
8. Be ready to adapt to changing circumstances and external factors. Your vision of the kind of practice that's right for you will likely evolve as you gain experience. Be flexible and open to opportunities.
9. Prepare your resume and the supporting information you will use to sell yourself in interviews. Consider including writing samples and references – with appropriate permission.
10. Contact potential employers in the order in which you have prioritized your options. Research employers online – or even better: network with friends and family to learn about opportunities.
11. Don't have an existing network of contacts? Begin building one! A good first step is to polish your social media presence. Visit practicepro.ca for our article "The essential LinkedIn Dos and Don'ts for law students."
12. Make a good impression at a job interview by preparing answers to the probing open-ended questions you're most likely to be asked. (See our list of sample questions at page 20).
13. Once you have a job, get delegated tasks done right by understanding parameters and deadlines and asking for feedback.
14. Good client communication is essential. See our article on the continuing importance of telephone communication skills from the 2019 New Lawyer Edition of our Magazine.
15. Find a mentor who can help you improve your skills. Visit practicepro.ca for our article "It takes a village to build a lawyer", and see our "Find a Mentor" resource on page 22 of this issue to find a mentor that works for you.
16. Make time for ongoing marketing and client development efforts. For marketing tips, see the full article online.
17. Be nice! The legal world is very small – you will meet the same people over and over again – and your reputation will get around.
18. Have a life outside of law to help deal with the stresses of the job. While at school, you can find help for serious stress from on-campus providers; or contact Homewood Health at myassistplan.com to access confidential member assistance services.
19. Take care of yourself physically and mentally to avoid burn-out. See the article about the Member Assistance Program on page 21 and visit practicepro.ca to download our recent issue on lawyer wellness: "Finding your way. Coping with health and wellness issues."
20. Trust your instincts, think long-term and be prepared for unexpected turns in your career. ■

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

One-third of the more than 29,000 lawyers in private practice in Ontario are sole practitioners. As a solo, it's great to have the freedom that comes with being your own boss, but you also have full responsibility for all aspects of the operation of your law practice. Do you have what it takes to be a sole practitioner? See the self-assessment quiz to answer that question.

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

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

Skills		Rating
Getting clients		
• projecting confidence in your skills • networking • client service follow-up	• asking for referrals • identifying client needs • tracking competitors	1 2 3 4 5 LOW HIGH
Marketing • advertising/promotion/public relations • annual marketing plans	• marketing strategies • pricing	1 2 3 4 5 LOW HIGH
Financial planning • cash flow planning • bank relationships	• monthly financial statements • management of credit lines	1 2 3 4 5 LOW HIGH
Accounting • bookkeeping • monthly profit and loss statements/ balance sheets	• quarterly/annual tax preparation • billing, payables, receivables	1 2 3 4 5 LOW HIGH
Administrative • scheduling • payroll handling	• benefits administration	1 2 3 4 5 LOW HIGH
Personnel management • hiring employees • motivating employees	• general management skills • firing employees	1 2 3 4 5 LOW HIGH
Personal business skills • oral presentation skills • computer skills • fax, email experience	• written communication skills • word processing skills • organizational skills	1 2 3 4 5 LOW HIGH
Intangibles • ability to work long and hard • family support • ability to work alone	• ability to manage risk and stress • ability to deal with failure • ability to work with and manage others	1 2 3 4 5 LOW HIGH

How did you do?

TOTAL

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

Sample interview questions

Prepare in advance to increase your chances of a successful interview. How would you answer these questions?

Background questions:

- Tell me a little about yourself. What made you decide on law school?
- What do you hope to get out of a legal career?
- What do you know about [our firm]?
- How do you think [our firm] can help you achieve your career goals?
- If you had to describe yourself in only three words, what would those words be?

Independence/sense of self/judgment:

- Describe what success means to you.
- Do you think of yourself as a risk-taker, or someone who plays it safe?
- How would you describe your standards of performance?
- Describe a (recent) situation in which you had to quickly establish your credibility and gain the confidence of others. What did you do?
- What do you think has contributed most to your success so far?
- What are some of the things (weaknesses) you are still working on in yourself?
- Describe a time when you had to take on something very new or different and you had little or no guidance and support in doing so. How did you handle it?
- A senior partner left an assignment for you before leaving on vacation. Now, you can't reach them and don't understand the assignment. What do you do?

Conscientiousness/work ethic:

- Describe a situation in which you had to work under pressure. How did you handle it?
- Do you anticipate problems effectively or just react to them?
- Tell me about a time when you went beyond the call of duty or delivered results beyond what was expected. Why did you do that?
- How would you clarify an unclear assignment?
- What kind of work environment are you most comfortable in (structured/unstructured)?
- Tell me about a time when you were assigned an unwelcome task. What did you do?
- Have you ever made an error in judgment that you had to address with your employer? How did you handle it?
- What part of your current workload do you find most challenging?
- What distinguishes you as a candidate?

Motivation/initiative:

- Would you describe yourself as a self-starter? If so, why?
- Would people describe you as a competitive person?
- Describe two things that motivate you at work.
- Give me an example of something you've done that demonstrates initiative and willingness to work.
- What kinds of responsibilities are important to you in your work?

Achievement/accomplishments:

- What work or personal accomplishments are you most proud of?
- What accomplishments gave you the most satisfaction?
- Have you ever accomplished something you did not think you could? How did you do it?
- Give me an example of how you have shown initiative.
- What is the most challenging thing you have ever done?
- What would you consider to be a stimulating work environment?
- Describe a significant risk you took to accomplish a task.

Interpersonal skills/communication:

- Describe a (recent) experience when you worked in a team environment. What was your role?
- Describe a situation where you had to give constructive criticism to another person. How did you go about this?
- Can you describe a situation where you worked for a difficult boss? What happened and how did you handle it?
- Have you ever had to resolve a conflict with a co-worker? How did you resolve it?

Organization:

- Describe your study habits.
- How do you manage your time/organize your workload?
- Describe a situation in which you've faced competing priorities. How did you handle it?
- How do you plan to achieve your career goals?
- Tell me about a time when you organized a project/completed a job where the directions were vague.
- When you are under a lot of stress, what is your typical reaction?

Many students and lawyers find themselves confronting mental health and wellness issues during their career. If you find yourself dealing with depression, anxiety, addiction, or other mental health or wellness concerns, know that you're not alone. The Ontario Member Assistance Program ("MAP") is a confidential, independent program operated by Homewood Health that provides resources and counselling at no cost to Ontario lawyers and students.

Increasing awareness and new resources available to legal professionals in Ontario are building a healthier, more resilient, and stronger profession.

The MAP offers a wide variety of online resources available through the online portal of homeweb.ca, 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.

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.

Online lifestyle and learning resources

Historically, despite the MAP's commitment to privacy and confidentiality, many lawyers have remained reluctant to reach out for necessary assistance due to concerns that their health issues may become known to colleagues or the Law Society. For that reason, the MAP provides self-directed online resources.

Member Assistance Program

Myassistplan.com

A curated collection of Homewood's resources are available to Ontario lawyers through the myassistplan.com online portal, which provides 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. Resources can be accessed on any desktop or through Homewood's 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. ■

FIND A
MENTOR

Ontario programs

Association of French Speaking Jurists of Ontario (AJEFO)

Mandate: The Association of French Speaking Jurists of Ontario facilitates equal access to justice in French for everyone everywhere in Ontario.
Mentorship Program Details: Mentor relationships are facilitated by the organization and have a 5-month duration, from February-June. One-on-one meetings occur every 1-2 months, at a minimum.
Eligibility: Membership cost: $110-$185 ($55 for retired or unemployed lawyers).
Availability: Applications open from August – September.

Canadian Association of Black Lawyers (CABL)

Mandate: To bring together law professionals and other interested members of the community from across Canada.
Mentorship Program Details: One-year mentoring relationship with one-on-one meetings at least once every quarter.
Eligibility: Open to CABL members in good standing. Membership costs $75 - $150 per year.

Canadian Defense Lawyers

Mandate: A national organization representing the interests of civil defence lawyers.
Mentorship Program Details: CDL encourages informal mentoring relationships where senior members develop new lawyers through education and collegiality.
Eligibility: Membership cost is $60 to $170 annually.

Durham Regional Law Association (DRLA)

Mandate: To support, in both a print and digital capacity, the citation research, reference and educational needs of our member lawyers and visiting counsel throughout Durham Region and beyond.
Mentorship Program Details: DRLA's Mentorship Committee matches interested mentors with mentees.
Eligibility: Membership requires an annual fee of $50 – $125. Mentors must have at least 10 years of practice.

Federation of Asian Canadian Lawyers (FACL)

Mandate: FACL is a diverse coalition of Asian Canadian legal professionals who promote equity, justice, and opportunity for Asian Canadian legal professionals and the broader community.
Mentorship Program Details: FACL organizes a variety of networking and social events, including an annual "Speed Mentoring" a-thon.
Eligibility: Membership requires $50 annual fee.

Global Lawyers Canada

Mandate: Global Lawyers of Canada exists to provide Internationally Trained Lawyers (ITLs) with a voice and a community, and to celebrate the strengths that ITLs bring to Canada's legal community.
Mentorship Program Details: In lieu of a one-on-one mentorship program, GLC Ontario has launched a Small Group Program that places licensing candidates and practicing lawyers into groups of 4 to 5 individuals.
Eligibility: GLC's mentorship program supports NCA students or ITLs who are looking to secure and/or complete articles.

Medico-Legal Society of Toronto

Mandate: To promote medical, legal, and scientific knowledge, cooperation, and understanding between the legal and medical professions.
Mentorship Program Details: Matches senior lawyers and physicians with those in their first 10 years of practice. Mentees do not need to be members of the Society in order to participate. Mentees can be paired with either a lawyer or medical professional.
Eligibility: Mentees do not need to be members of the Society to participate. Mentors must pay a $260 annual membership fee (or $130 for 6 months).

National Committee on Accreditation Network (NCA Network)

Mandate: Promotes professional connections with NCA alumni who now have successful legal practices and foster meaningful mentor relationships for NCA students.
Mentorship Program Details: The NCA Mentor program aims to connect Mentees, who are usually law students or NCA Students with Mentors, who have completed the NCA process. Due to the volume of Mentee applications the NCA Network has shifted towards monthly Coffee Chats via Zoom with Mentors.
Eligibility: NCA Network is open to all students and lawyers living in Canada pursuing or who have an international degree and will be based in Toronto, Ontario.

Ontario Bar Association (OBA)

Mandate: Provides professional development, networking, and information to members of the legal profession.
Mentorship Program Details: Mentorship administered through self-serve "Mentor-loop" software. Mentors and mentees upload personal information to an online profile. Users can then request a connection with other OBA members present within the mentoring program.
Eligibility: OBA membership requires annual fee of $345.38 – $714.16 for practising lawyers

Ontario Trial Lawyers Association (OTLA)

Mandate: Professional association for plaintiff lawyers and staff.
Mentorship Program Details: The Ontario Trial Lawyers Association has established a mentorship program that offers guidance and assistance on various issues, including those that relate to their practice, general advice on handling their matters, and work / life balance. OTLA's mentoring program will allow mentees to choose from a list of OTLA members offering mentorship on different topics. The intent is an informal matching of mentors and mentees on a one-time basis, although more long-term mentoring relationships may naturally develop.
Eligibility: Membership requires annual fee of $275 – $695 for lawyers, and $215 for law clerks and paralegals.

South Bar Association of Toronto (SABA)

Mandate: The South Asian Bar Association of Toronto is the GTA's is dedicated to promoting the objectives of South Asian members of the legal profession. Members of SABA include lawyers that self-identify as South Asian or are of South Asian origin, and lawyers that advocate on issues of relevance to the South Asian community.
Mentorship Program Details: The SABA Toronto Mentor Match Program for Lawyers is a mentorship program that aims to pair new lawyers with senior lawyers who can help provide guidance and support to lawyers entering the profession or a new area of practice.
Eligibility: All mentors and mentees must be SABA Toronto members and lawyers of good standing in Ontario. Mentees can be any year of call. Mentors must be at least 5th year calls. Interested members can learn more about the mentorship program by emailing *sabatoronto@gmail.com*

South Asian Women in the Law

Mandate: To provide targeted and concrete mentorship opportunities for self-identifying South Asian women.
Mentoring Program Details: The program pairs racialized licensees with Mentors in the legal profession who share similar identity factors to afford them access to a richer mentorship relationship. This mentoring relationship provides for a safe space for Mentees to discuss potential barriers they may face in their career development, and acquire advice on how to overcome them, and essentially step into their power.
Eligibility: There is no membership fee. This is a free, volunteer based program for self-identifying South Asian women.

The Advocates Society (TAS)

Mandate: To help advocates become leaders inside and outside the courtroom.
Mentoring Program Details: One-on-one and group mentoring is available to members who "opt-in" through their TAS profile and matches are made through the online Mentoring Portal.
Eligibility: Membership requires annual fee of $160 – $490.

Waterloo Region Law Association

Mandate: Law association serving the Waterloo region.
Mentoring Program Details: Formal mentoring program available through the female lawyers practice group: "Female Engagement and Mentorship for Practitioners of Waterloo Region" (FEMPOWR). The program matches young female practitioners with senior female practitioners for mentorship.
Eligibility: Lawyers and paralegal in good standing of any Law Society. Membership requires an annual fee of $180.80.

Welland County Law Association

Mandate: Law association serving Welland County.
Mentoring Program Details: Multiple wine and cheese and mentoring "speed dating" events hosted each year to facilitate mentoring relationships between members. Since COVID, virtual "reverse mentoring" relationships have been facilitated where younger members assist senior members in setting up virtual practises and remote workplaces.
Eligibility: The association serves lawyers from Welland, Fonthill, Fort Erie, Niagara Falls, Port Colborne, Thorold and Ridgeway.

Women in Canadian Criminal Defence (WiCCD)

Mandate: WiCCD is Canada's first national advocacy organization solely for women—those who identify as female or as gender non-conforming—working in criminal defence.
Mentoring Program Details: WiCCD pairs senior lawyers with junior lawyers and articling or law student members for 4-month terms (Jan–Apr, May–Aug, or Sept–Dec). WiCCD aims to pair mentors with three or fewer mentees in geographical proximity and with shared practice-related interests.
Eligibility: WiCCD membership is free but limited to those identifying as female or gender non-conforming. Mentors must be 7+ years at the bar and mentees must be 6 or fewer years from call.

Women's Law Association of Ontario (WLAO)

Mandate: The Women's Law Association of Ontario is dedicated to empowering women in the legal profession by providing a collective voice and advocating for equality, diversity and change.
Mentoring Program Details: WLAO facilitates mentoring relationships between interested mentors and protégées who are members.
Eligibility: Membership requires annual fee of $50 - $150.

Women's Legal Mentorship Program (WLMP)

Mandate: To dismantle the systemic barriers facing all self-identified women (which includes LGBTQI2S+, non-binary, gender diverse and BIPOC self-identified womxn) within the Canadian legal profession through integrative intersectional feminist mentorship, equity and leadership.
Mentoring Program Details: The mentorship program allows members to create their own customized professional mentorship experience using a private virtual mentoring community, smaller mentoring circles for formal and informal mentoring experiences, and access to professional development virtual events.
Eligibility: There is no membership fee.

Working Group on Lawyers and Real Estate

Mandate: To enhance the role of the lawyer in real estate transactions in order to promote the public's protection.
Mentoring Program Details: The initiative uses a survey "question/answer" format where real-estate practice-management questions are put to members of the bar who provide comments in response using SimpleSurvey software.
Eligibility: Participation and use of the resource is free and available to all lawyers.

York Region Law Association

Mandate: A community focused professional organization of lawyers serving the York Region of Ontario.
Mentoring Program Details: Association matches interested junior members looking for legal mentors with senior members.
Eligibility: Membership requires annual fee of $96.05 – $127.13.

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*But were afraid to ask

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Wire fraud scams on the rise:

5 tips to reduce your risk

LAWPRO is seeing an increase in phishing attacks against lawyers trying to trick them into wiring funds out of their trust accounts to the fraudster.

There are different ways that fraudsters are trying to direct lawyers and law firms to wire money to them. Fraudsters have pretended to be:

- A lawyer in the firm, to direct staff to wire funds to a client or to complete a transaction
- A lawyer or staff at a firm acting for a seller in a transaction, to direct the other side to wire funds
- A financial institution, to direct wire payment to it
- A client, to seek payment of funds by wire

It starts with a hacked email system or impersonation using lookalike fake email address. We have seen cases where the fraudster has hacked into a lawyer or law firm email system, the client's email, or the email system of others related to the transaction. In these situations, fraudsters monitor the emails and send wire transfer instructions from legitimate email addresses to send out wire payment instructions.

Follow the tips below to reduce your risk of falling victim to these increasingly sophisticated fraud scams.

Tip 1: Don't be spoofed: check the email address

Lawyers should use spam filters and check email addresses to reduce the risks posed by fraudsters impersonating lawyers, law firm staff, clients, financial institutions and others. For more tips to avoid spoof email addresses, see our article "Paying attention to the fraud behind the curtain."

Tip 2: Check documents to make sure they haven't been manipulated

When sending documents electronically, on receipt back, double check to make sure that key information, such as wire direction instructions, have not been manipulated. If you send out a document with wire instructions or other key financial information, you can check the document on receipt back that this information has not been changed.

Tip 3: Implement independent verification on all wire payments

Verify all directions to wire funds out of trust by confirming the instructions using a different medium than they were first received. This step can help reduce the risks posed by email hacks and cases where documents have been intercepted and manipulated.

Here are a few examples of independent verification in action:

- **Internal verification**: The law firm partner purportedly emails from the firm address or a personal email address instructing you to wire money out of trust. Walk down the hall to the partner's office to ask if the partner sent the instructions. If the partner is out of the office, rather than replying to the email to confirm the direction (which will not help if the lawyer's email account has been compromised), call or text the lawyer.

- **Before wiring funds to another firm:** If a lawyer at Firm A emails wire instructions to a lawyer at Firm B, the lawyer or staff from Firm B can call Firm A to confirm the wire instructions. The same process can apply on receiving wire instructions from a financial institution or any other request for payment by wire transfer.
- **Before wiring funds to a client:** As another example, a client may email you to instruct you to wire payments to an account. You can consider calling the client to verify that the client's instructions are valid, and that the client's account has not been hacked.

Firms that have implemented independent verification protocols have successfully foiled fraud attempts. A quick call to verify written wire payments might save you from being a victim of fraud.

Tip 4: Make fighting fraud part of your firm culture

Continue to train yourself and train your staff about fraud risk.

- For related CPD programming on fraud prevention, see our watch-anytime CPD programs on real estate fraud, bad cheque and cyber fraud. These programs are free for you, your colleagues and staff to view, and are eligible for LAWPRO's Risk Management Credit.
- Subscribe to avoidaclaim.com for fraud warning updates.

Try incorporating these tips into your practice to help reduce the risk of fraud.

Tip 5: Stay on constant alert

Fraud prevention is not a one and done task. You and your staff need to be constantly vigilant. A few of the fraud scenarios we have recently seen include:

The fake instruction to wire funds

The fraudster sends instructions directing the wiring of funds to a particular account that the fraudster has set up or can access. In recent cases reported to LAWPRO, a fraudster infiltrated a law firm email system, intercepted correspondence regarding a transaction, and then sent wiring instructions from a law clerk's email address. Since they were being sent from legitimate law firm email addresses, there was nothing to suggest anything fraudulent from the email itself. Since the fraudster could see incoming emails, as described further below, only a separate means of verifying the instructions could stop the fraud.

Fake documents may strengthen the credibility of the direction to wire funds

We have seen instances where fraudsters have manipulated documents to alter wire payment instructions. We have even seen "secure" electronic documents prepared by a law firm intercepted, manipulated to provide new account information for wiring funds, and then sent back to the firm.

Last minute changes are a red flag, but aren't the only flag

Often, the fraud may include a last-minute direction to wire funds to a new account. Any late change in payment instructions should be treated with caution, as this is a red flag of fraud. However, we have also seen cases where the fraudster has sent out the wire fund instructions early in the transaction.

Bottom line – there are all sorts of ways that fraudsters try to trick lawyers and their staff to wire funds to them. Lawyers and their staff should be on constant alert for these frauds and can adopt proactive measures to reduce the risk of these attacks. ■

Juda Strawczynski is Director of practicePRO

Three simple things you can do

Call before you click

Always independently verify wire instructions.

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.

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.

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How could fraud affect clients?

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Legal podcasts:

Because you can't review a brief while commuting

It can be difficult to stay up-to-date on new developments and ideas in the practice of law when there is already so much to do in the day. Subscribing to interesting and educational legal podcasts can keep you informed as well as entertained (especially during a long commute).

Here are four current podcasts that can help you improve your legal practice.

1) The Every Lawyer

Produced by the Canadian Bar Association, The Every Lawyer releases 20-30 minute episodes every two weeks that touch on legal practice tips, lawyer wellness, and Canadian legal trends. It's hosted by Julia Tétrault-Provencher and covers topics such as an exploration of the CBA's Asylum seekers Toolkit, issues that arise when lawyers sit on boards of directors while managing a full-time legal practice, a look at practising law with a hearing disability, working with clients who are survivors, and discovering atypical careers within the legal profession.

theeverylawyer.simplecast.com/

2) Smashing Security

Hosted by computer security industry veterans Graham Cluley and Carole Theriault, *Smashing Security* is a weekly podcast that covers recent cybersecurity breaches from around the world. The hosts explain how cybersecurity, hacking, and online privacy are changing and how recent online security failures occur and can be avoided. Recent topics include facial recognition apps, online data privacy, and prosecuting good faith security researchers. Episodes are generally 45 minutes to one hour in length.

smashingsecurity.com/episodes

3) Law Bytes

Hosted by Michael Geist, law professor at the University of Ottawa and holder of the Research Chair in Internet and E-Commerce Law, *Law Bytes* is a recent addition to the catalogue of Canadian legal podcasts, launched in March of 2019. Every week, Michael Geist explores global digital policy from a Canadian perspective, with recent topics including discussions of federal privacy reform bills, the *Online News Act*, and the *Online Streaming Act*. Episodes are approximately 30 minutes in length.

michaelgeist.ca/category/podcasts-2/

4) The Lawyerist

A weekly podcast highlighting small firm lawyers and business leaders speaking on issues relevant to firm management, *The Lawyerist* is part of the Legal Talk Network, an American network of legal-related podcasts produced in association with organizations such as the American Bar Association and Thomson Reuters. Recent topics include dealing with grief in the workplace, starting your firm with succession planning in mind, and hiring for law firms. ■

lawyerist.com/podcast/

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LAWPRO and the TitlePLUS program share educational videos to encourage the public to access professional legal services when buying a home, planning an estate, or managing other life transitions.

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