Client Management and Effective Client Relationships

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Program materials

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Building a better clientele:

How to improve your client base in tough times

The impact of poor client selection and sloppy client service will be magnified in trying economic times. In response, you want to proactively take steps to build and retain a better clientele. Here are some pointers to help you meet that goal.

1. Get a retainer up front: The best way to ensure that you get paid in full at the end of a matter is to obtain a retainer at the matter's start. After you and your client reach a consensus on what work you need to do, how long it will take and how much it will cost, collect a retainer that's sufficient to cover the contemplated initial work. And don't neglect to confirm in a written retainer agreement or engagement letter what work you are to do, the initial retainer, and your expectations for payment of accounts and retainer replenishment.

Tip:

Getting a retainer is also an excellent way to scare off fraudsters as they rarely wish to provide retainers, in LawPRO's experience.

2. Replenish your retainers: Many lawyers who do an adequate job on collecting initial retainers fall down here. Before (emphasis on *before*) you completely exhaust the initial retainer, send an account to the client and request a further retainer. Don't do more work until you have sufficient funds to carry out that work. Use your accounting software's reporting features to actively monitor the sufficiency of retainers on a matter-by-matter basis.

3. Say good-bye to your most demanding client: In some lawyer-client relationships, there comes a time when the client no longer has confidence in the lawyer's advice or strategy. Or perhaps the client is taking up too much lawyer and staff time (most of which is not billable) and thereby taking too big a bite out of profitability. That's the time to suggest that the client find another lawyer. If you are transferring an active file, take care: You must comply with the ethics rules, ensure that the client is not disadvantaged, and make certain that all material needed to allow the client to move forward with the matter is released (even if the client owes you money).

4. Don't take any client that walks through the door: Especially when you're not busy and have extra capacity to do work, it is so tempting to accept every client who wants to retain you. But beware: Don't take on clients who can't pay retainers, will be difficult (see number 9), or will require you to work outside your usual practice area. As a "dabbler" you will be less efficient and effective in your services – and more prone to a malpractice claim or Law Society complaint.

5. Remember to keep developing business: When money gets tight, marketing expenses are often one of the first to be cut. This is short-term gain for long-term pain. You should spend some time each week developing potential sources of business, even if you don't have a lot of money to spend. And you should also have a written plan that includes specific goals for developing new business. Don't be scared off – your plan doesn't need to be lengthy or complex or involve expensive initiatives. There are many inexpensive or free activities you can undertake, such as the following:

- Each week take at least one referral source or one potential client to lunch (or even just for coffee).
- Send a handwritten thank-you note to anyone who refers a client to you and to anyone who does something beyond the call of duty for you.

- Attend a civic, spiritual, community or industry group meeting.
- When people you know receive some good press, send a copy of the newspaper article along with a congratulatory note to them (doing this by e-mail is fast and free).
- Schedule a public speaking engagement, and let your clients and prospects know about it in advance.
- Attend a CLE program and sit with some lawyers who you don't know that well, or do some volunteer work for the CBA, OBA or your local bar association.

Tip:

A simple and low cost marketing plan for an individual lawyer can be found at page 21 in the Managing a better professional services firm *booklet (www.practicepro.ca/servicebooklet).*

6. Strengthen connections with existing clients: It is well-known that most new business comes from existing clients, so building stronger connections with them is clearly worth the effort. As with new prospects, there are many inexpensive or free things you can do to grow the relationship.

For example, call clients just to say hello and check how things are going – and don't bill them for the call. Send your clients copies of newspaper or magazine articles that they might find interesting. How about sending a handwritten note of appreciation to every client whose file you close, including an outline of your other practice areas and a client satisfaction survey?

7. Work harder to keep your best clients happy: Who are your major clients? Who are your most profitable clients? Do some research to get to know more about them and their industry or business area. Ask to take a tour of their facilities. Then schedule a meeting with them – off the clock – and use you this knowledge to talk about longer-term strategy and goals and how you might help this client reach its particular goals. At a minimum, do this once per year on an ongoing basis. These meetings should also help you connect with other employees of a client company and build a stronger and longer-term strategic relationship with the client as a result. Don't be afraid to cross-sell other services you can provide.

8. Choose new clients for the longer term: In good times and bad, as your practice grows and evolves you will want to be more selective with respect to the clients you take on, as well as the ones you want to keep. Demanding clients are a fact of life for most lawyers. Some will be unhappy with the progress of the case, no matter how hard you have worked or how good the results are. Some may ignore your advice. Others will treat you and your staff badly. Difficult clients are also a concern because they are more likely to do the three things that distress lawyers most: (1) not pay the bill, (2) complain to the bar or law society about the lawyer, or (3) bring a malpractice claim against the lawyer. Do you need any of those things in your law practice?

There is no time like the present to start focusing on building the kind of clientele that will bring you satisfaction in your legal career. How do you cull the bad from the good? Read on …

9. Know how to recognize the difficult client: It doesn't take long for most lawyers to learn to recognize the difficult client. Often it's obvious in the first interview—and sometimes even in the phone call setting up that interview. Asking the following questions will help raise your awareness of the danger points:

- "Am I the first lawyer dealing with this particular problem for you?"
- "How many lawyers have you consulted or retained about this problem?"
- "Why did you leave your previous lawyer(s)?"
- "Who were your previous lawyers?"
- "Can I talk to your previous lawyers?"
- "What stage is this problem at?"

Throughout the interview, keep your ears attuned to signs that the client has unreasonable or unrealistic expectations about the time, results or costs involved in resolving a matter. Learn to listen to and trust your instincts. If the warning bells go off and you sense a problem client, think very hard about accepting a retainer from him or her.

Tip:

For more help on recognizing and dealing with difficult clients, go to www.practicepro.ca/difficultclients to see an article and retainer precedents Justice Carole Curtis wrote when she was in private practice.

10. Read numbers 1 and 2 again – and remember there are no exceptions to them: In trying economic times, getting and replenishing a retainer is critical to making sure you are paid at the end of the day. Don't forget that your pocketbook will ultimately be hit by any financial pressures that your clients' pocketbooks feel, so do what you can to protect yourself up front.

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COMMUNICATING LIKE IT'S 1876:

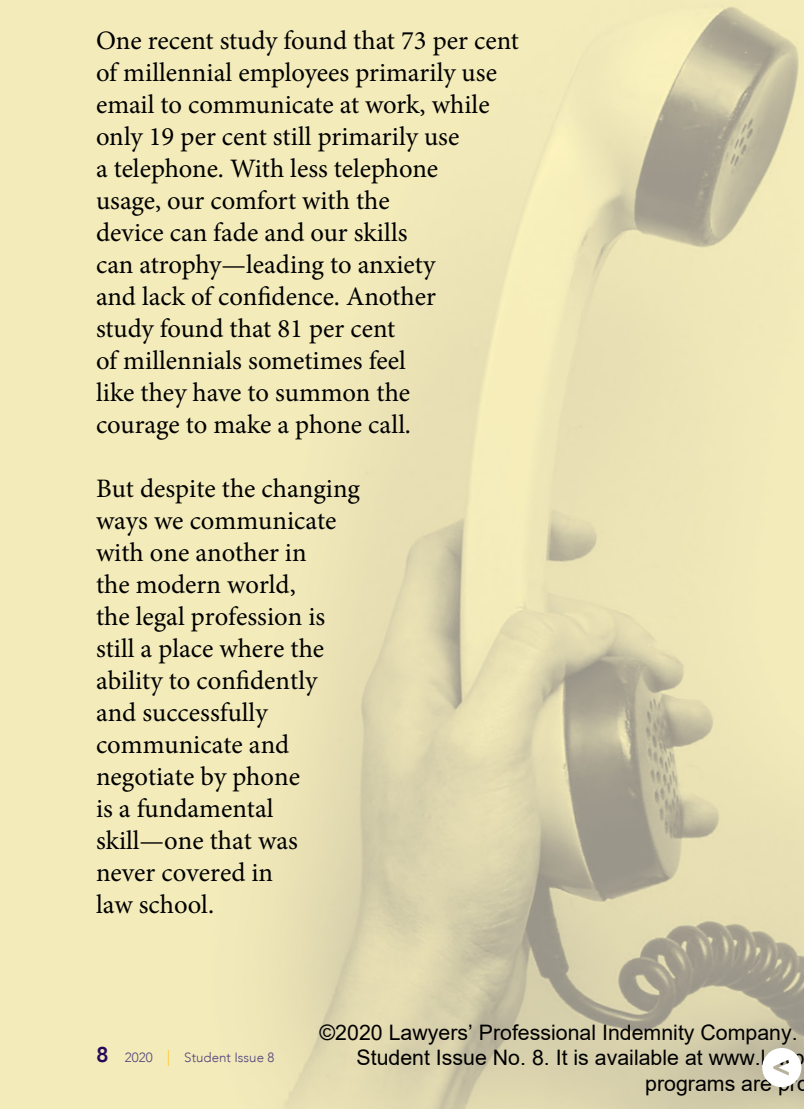
THE CONTINUING IMPORTANCE OF TELEPHONE SKILLS FOR LAWYERS

When the Western Union Telegraph Co. famously declined to purchase the telephone patent from Alexander Graham Bell, it was allegedly because they wondered why anyone would want to use such a frivolous and impractical device when a clear and concise written message could just as easily be sent by telegraph.

This assessment seems less absurd today than it once did. For younger generations, communicating by telephone is quickly becoming an anachronism—the "phone" component of smartphones a vestigial relic.

One recent study found that 73 per cent of millennial employees primarily use email to communicate at work, while only 19 per cent still primarily use a telephone. With less telephone usage, our comfort with the device can fade and our skills can atrophy—leading to anxiety and lack of confidence. Another study found that 81 per cent of millennials sometimes feel like they have to summon the courage to make a phone call.

But despite the changing ways we communicate with one another in the modern world, the legal profession is still a place where the ability to confidently and successfully communicate and negotiate by phone is a fundamental skill—one that was never covered in law school.



Communication breakdowns and misunderstandings cause close to 47 per cent of malpractice claims.

We spoke with Deborah Glatter, a management consultant for various Bay Street firms who previously led Cassels Brock's professional development department and worked with the Law Society of Ontario designing and teaching the bar admission course for new lawyers, and Sandra Forbes, a partner at Davies Ward Phillips & Vineberg LLP with 27 years of experience as a commercial and civil litigator. They provided us with their thoughts on when phone calls should be preferred and the bad telephone habits they often see in the legal profession, including the advice they have for lawyers looking to improve their ability to advance their clients' interests over the phone.

Five times it's best to pick up the phone

1) When the client prefers phone calls

If a client or third-party usually reaches you by phone, you can assume it's their preferred method of communication. Deborah says, "you should determine the form of communication in some part by virtue of how people are communicating with you. If I have a client who only communicates by email, I might not pick up the phone, and vice-versa."

2) Delivering bad news

Bad news shouldn't be delivered in an email. It's difficult to convey empathy without a true conversation, and

it's important to communicate to the client that you care about their interests and share their disappointment, lest they question how hard you worked to avoid such a turn of events.

3) Scheduling and other non-substantive matters

Written communications can be easily misunderstood. A quickly dashed-off email can leave the recipient confused or with the wrong impression. Any time more than one email is needed to confirm a non-substantive issue, such as scheduling a meeting or court date, or if there is any concern that the other person has misunderstood what was intended, it's best to pick up the phone.

Sandra advises that a phone call will often expedite scheduling issues: "I get lawyers who are frustrated because they sent an email asking for dates and they can't get a response. So I'll just say 'get on the phone and call them.' There comes a point where you find you're not getting anywhere with written communications and getting someone on the phone can be very effective."

Of course, if you come to an agreement, you should follow up with an email to confirm it in writing.

4) Asking for favours and addressing outstanding accounts

It's harder to ignore someone when they have you on the phone. Sandra suggests if you need a favour from opposing counsel, such as adjourning a court date, it's easier to get what you need if they put a voice to the request.

Similarly, Sandra says lawyers should follow-up with clients regarding unpaid fees by phone: "It's more effective to call the client and say 'the account that we sent three months ago remains unpaid, do you have any questions about it? We would really appreciate it if you would bring these accounts up to date.' This has more impact than writing another 'Further to my letter of such and such' message, which looks like a form letter and won't have much effect."

5) Putting the brakes on an escalating conflict

Sometimes you may want to have a discussion before putting anything in writing. Sandra suggests there are "circumstances where someone may write you an email or letter and it's clear that your only possible response to them would take everyone down an unhelpful path. It's a good idea to call the other person and say 'Is this really what you want to do? Maybe we should think about another option.'"

Similarly, a phone call can help unwind an escalating dispute. In Sandra's experience, "if somebody is being difficult or rude by email, I usually try to call them, because that will often deflate the situation. You humanize yourself that way and can often avoid the animosity and dispute that might otherwise arise."

Six bad telephone habits (and how to fix them)

1) Not listening

For Sandra, the biggest problem she sees is lawyers doing a lot of talking, but not a lot of listening: "People have a natural inclination when they get on the phone to feel like they have to make their point and convince the other side. Unfortunately, that means they're often not listening. They try to talk over others and act like the last word is going to win the day. That's really not the case though."

As Deborah explains, "in terms of your tone, you want to provide active listening cues. Silence may not be reassuring to the speaker, so things like a simple 'uh-huh' can be beneficial because you don't want to interrupt. Small vocal acknowledgments from time to time let the other person know that you're listening. If there's a pause, it's helpful to repeat a word or phrase back to the other person and acknowledge what was just said. Things like 'I realize how important this is to you' in a tense conversation can go a long way. When you're wrapping up, it's good to ask 'Is there anything else you would like to add?'"

2) Lack of preparation

Sandra says, "it's important to set the stage at the beginning of the call for what you want to accomplish. Not doing that can lead to a wide-ranging discussion that becomes very inefficient. Before an important call, I'm going to think about what I want to say, what I want to accomplish, and what I'm going to say in response to what the

other person will likely say. That may mean thinking about the call for 15 seconds, it may mean writing an outline for five minutes, or it might mean sleeping on a strategy for the conversation overnight. Everything is a form of advocacy and if you're calling somebody to achieve something, you need to put your best foot forward to be successful."

Deborah suggests that an outline can help keep a conversation on track: "While you don't need to write out the narrative in advance, it's important to write down a few key points before the call. That will give you some assurance that you will accomplish everything you need without having to call back later."

3) Yelling

Unfortunately, one downside to using the phone to discuss a contentious matter is the possibility that someone will let their passions inform their volume. This undermines the productivity of the conversation. "It's hard to manage your own emotional state when somebody is yelling at you," Deborah says, "but if you respond in the same way, it escalates the situation. It's okay to say 'do you realize you're yelling at me? I'd like you to stop.' If you're speaking with someone other than a client, and you're unable to bring the tension down, you just have to say 'the tone of the conversation isn't productive. I think we need to speak again when we can control the emotions here.'"

Some aggressive phone conversations can be avoided by establishing a positive tone at the start of the call. Sandra says, "you'll have the most success if you make the other side feel like things are their idea. So it's good to start with a positive comment on their interests in the matter at hand, such as saying 'I've been thinking about your suggestions from our last conversation.' You should try to make your points in a context where the other side's defences aren't immediately raised."

4) Leaving muddled voicemail messages

"One thing that maddens me," says Deborah, "is when I pick up a voicemail and it sounds like the speaker is in a race against time. I can't tell where the first name ends and the last name begins and I waste an inordinate amount of time replaying the message to just get the information down."

Sandra agrees that long and confusing voicemails are a widespread and frustrating problem. She says "if I call someone and they're not there, but I'm not ready to leave a voicemail message, I won't leave it. I'll hang up and compose what I want to say and phone them back so they have a crisp, clear voicemail that will facilitate a response. When people are not prepared, they tend to repeat themselves, go on forever, and end up contradicting themselves."

The voicemail should briefly state the purpose of your call and whether or when you intend to call back. You should end the message by slowly stating your own phone number—preferably twice to ensure the listener has time to write it down—and repeat your name at the end if the other person doesn't already know you.

5) Indiscrete cell phone calls

Some lawyers are rarely in the office and practice from their cell phones. But lawyers should take care when taking or making a call outside the office. "Aside from the fact that it's annoying to hear someone speaking loudly on their cell phone in public," Sandra says, "there are confidentiality concerns. If you're in a public area, you really can't have a conversation that mentions names, and it may not even be safe to speak in generalities."

Sandra suggests taking the time to find some privacy before talking about a legal matter by cell phone: "If someone calls me on my cell phone and it's urgent, I'll say, 'I'm on my cell right now, so how urgent is this? Can I call you back later when I'm in my office?' If not, I'll try to find a place close by where there is as much privacy as possible."

6) Not memorializing the phone call

Always make a written record of a phone conversation with a client or opposing counsel, including any substantive issues discussed, instructions received, or agreements reached. Habitually doing so can prevent serious headaches and malpractice claims down the road.

The generational telephone gap

While strong telephone skills are important for every practice, cultural and technological changes will likely continue to minimize the volume of calls most lawyers make. Even so, both senior and junior lawyers should keep in mind the communication preferences of their clients and colleagues and adapt accordingly.

Deborah points out that senior lawyers can sometimes take offence if a junior associate often uses email to communicate, rather than a phone call or in-person conversation: "I think some younger associates don't understand that when they're dealing with older lawyers, they often didn't grow up with keyboarding skills and it's sometimes very time consuming and cumbersome to communicate by email."

At the same time, Deborah says senior lawyers need to understand that younger associates will sometimes consider it rude to use the phone: "It means the caller is prioritizing their schedule over the schedule of the person they're calling. It's assuming that they have time to set everything else aside and talk right now."

Of course, telephone communications being one-sided impositions on another person's time was a feature from the technology's inception. After all, the first spoken words transmitted by wire were Alexander Graham Bell summoning his assistant with the utterance, "Mr. Watson—come here—I want to see you." ■

It's easy to prevent communications breakdowns: So why is this consistently the #1 source of claims for LawPRO?

No matter what the area of practice, the number one source of claims at LawPRO is a breakdown in communication between the lawyer and client. And those numbers are increasing.

Between 2005 and 2010, more than 4,200 communications claims – an average of 711 a year – have been reported to LawPRO. The total cost of these claims to date is about $150 million – and likely to rise as more recent years' claims are resolved.

During that same period, the percentage of claims resulting from communication issues has also increased – to 35 per cent in 2010 from 32 per cent in 2005. More concerning is the increase in costs – to 45 per cent of all claims costs in 2010 from 32 per cent in 2005.

What's ironic about this discussion is that communications claims are potentially easy to prevent. This is a risk management message that we have consistently sent to lawyers through past issues of *LawPRO Magazine*, our *Managing* booklets and at every presentation on claims prevention.

And still the numbers creep up.

So rather than simply repeat the message that "lawyers need to communicate better," we thought we'd take a different approach and look at how communications claims can arise in particular areas of law.

We asked LawPRO claims counsel with expertise in the various areas of law to provide insights into the communications mistakes they see in their daily handling of claims files. We hope this approach makes it easier for you to implement risk management steps in your own practice.

Real estate

Real estate claims make up the largest share of communications claims. Busy, high-volume practices often lead to situations where the lawyer is not taking the time to communicate with the clients properly. Mitchell Goldberg, unit director and counsel and Nadia Dalimonte, claims counsel, both in our Specialty Claims Department, provide some examples of the kinds of claims they see in this area of practice.

Meet the client – yourself – and ask questions

The common thread running through the examples that follow is that many real estate lawyers say they are too busy to communicate directly with clients. They rely on clerks, so the lawyers themselves become removed from the process. "It is always preferable for the lawyer to meet with the clients and review the important documentation in the file with the clients at that time. In the event of a claim, it's not usually a strong defence for the lawyer to say to us 'well, the clerk met with the client,'" says Dalimonte.

Some lawyers, she adds, take the position that their job is to carry out only the title conveyancing, when what they should have done is take the time to speak to the client to ensure they've gathered all the relevant information.

For example, although only one person may be registered on title, there could be a spousal interest in a matrimonial home. LawPRO has seen a number of claims where the lawyer did not get the consent of the spouse to change the ownership status or encumber the property with a mortgage. Take the time to discuss important information such as the client's marital status to determine whether the consent of a spouse – or any other person with an unregistered interest in the property – needs to be obtained, or whether the spouse needs to be sent for independent legal advice (depending on the nature of the transaction).

Another source of claims involves situations in which parents get involved in their children's real estate dealings – such as the transfer of a parental property to a son or daughter, or the purchase of a home by the child with the parents guaranteeing the mortgage or taking title with the child and actually becoming mortgagors. The parents often later claim the lawyer did not properly communicate the potential consequences to them (e.g. if the children did not keep up the mortgage payments, the lender could come after them) or failed to send them for ILA.

There may be issues of capacity or language barriers preventing the clients from fully understanding the proceedings. Until you sit down and talk to the clients, these kinds of complicating factors might not be apparent.

Use title insurance wisely

Lawyers using title insurance also need to take the time to communicate directly with clients. Often the lawyer fails to ask clients about possible future uses of the property that the client might have in mind, and as a result fails to get a title insurance endorsement that would protect the clients (e.g., they planned to build a pool, but later discovered a subdivision agreement prevents it). Similarly, lawyers sometimes fail to discuss whether a client wants a survey or a particular search done.

"They just assume title insurance takes care of issues that could arise, so that the lawyer has no documentation in the file to demonstrate that the lawyer discussed what the client did or didn't want," says Goldberg. Failure to have that conversation may constitute negligence, and also may violate the commentary to the *Rules of Professional Conduct* that addresses informing clients about options to assure title.

Remember the lender client

Lawyers also need to remember that lending institutions are also their clients. We've seen claims in which lawyers have failed to communicate material information to the lender client so the lender can make an informed decision on whether to advance mortgage funds. Such details could include the correct purchase price, current ownership, or whether the purchaser is going to reside on the property.

Litigation

Jennifer Ip, unit director and counsel (Primary Professional Liability Claims Department) and Yvonne Diedrick, claims counsel (PPL) provide some insights into how breakdowns in communication with the client can derail litigation or leave the client dissatisfied with the outcome.

Put it in writing

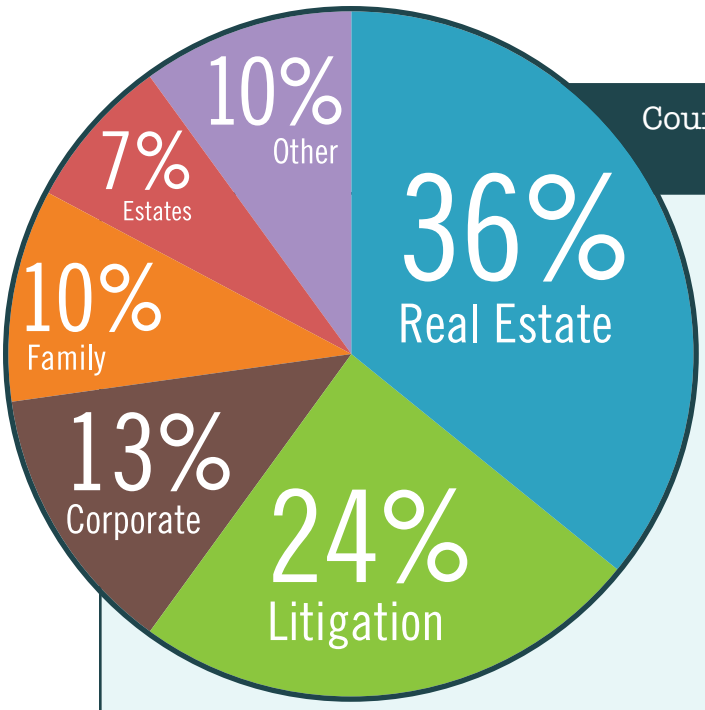
One of the biggest issues in the litigation claims LawPRO sees is a failure on the part of the lawyer to properly document instructions. Clients may later say they asked the lawyer to do X and it wasn't done; or the lawyer may have done Y and the client claims he didn't authorize this course of action. If there is no documentation of the lawyer client/conversations, the claim then turns on credibility, and the experience has been that courts are more likely to believe the client's recollections (the case is top of mind for the client, but only one of several for the lawyer).

The same failure to document discussions can be seen when advising clients on the terms of settlements and what the client can expect. Clients can be left thinking they will receive more money out of the

settlement than they in fact get. "They may try to claim they were not aware that a portion of the award would flow back to the lawyer in fees," says Ip.

When it comes to motor vehicle cases, some lawyers will handle only the tort action or only the accident benefits claim, not both, but they fail to put this limited retainer into writing. The client then comes back and says the lawyer failed to follow instructions – but by then the limitation period has expired – and now the lawyer faces the prospect of a claim. Even if you have put the limited retainer into writing, make sure the client understands what this means.

Many communication errors result in accusations of an improvident settlement. For instance, the defendant in an action may offer to



Count of Communication claims (2005-2010)

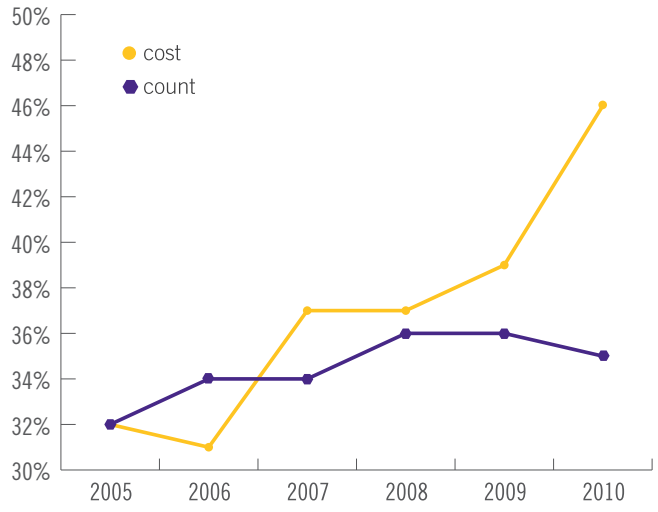
Communication breakdowns – broken down

Failure to obtain client's consent: 41 per cent of communication claims by count (36 per cent by cost) involve the lawyer doing work or taking steps without informing the client or getting the client's consent, or else not making sure the client was fully informed about what he or she was consenting to.

Failure to follow client's instructions: 39 per cent of communications claims (45 per cent by cost) are essentially a disagreement over what instructions the client did or didn't give and what the lawyer did or didn't do. These claims often come down to credibility, and without proper documentation by the lawyer they are difficult to defend.

Poor communication with client: The remaining 20 per cent of communication errors (18 per cent by cost) result from a failure by the lawyer to properly explain various aspects of the case (e.g., timing, fees, outcome) or confusion over whether the lawyer or client was responsible for doing something during or after the matter.

Communications claims as a % of all LawPRO claims



settle for a lower amount than is really justified by the facts of the case and the lawyer is obliged to present this offer to the client. The client may want to settle, but if the lawyer doesn't recommend the settlement, this advice should be clearly documented and communicated. Otherwise the client may come back later, perhaps when the money runs out, and accuse the lawyer of not properly explaining the situation or not making clear that the settlement might have been greater had the matter been pursued further.

Take the time to explain – and document

During a trial, things can happen quickly. LawPRO has seen claims in which an offer was communicated verbally mid-trial. The lawyer then quickly explains (or says she explained) the offer to the client. The client rejects the offer and the lawyer's recommendation to accept it, and goes on to lose the case. The client then sues the lawyer saying, "had I properly understood the offer, I would have accepted it."

On the flip side, it may be the client who chooses to accept an offer to settle for a lower amount – despite the lawyer's advice to the contrary. No matter how rushed you are or how convincing (and happy) your client appears, take the time to make notes of your conversations with the client and make sure your client fully understands the implications of the decision he or she is making.

Similarly, lawyers should communicate (and document that they have done so) the prospects of winning or losing a case. This is especially so in cases where the client insists on pursuing the case "on principle." When the client loses, it's suddenly no longer about the principle. "If the lawyer is of the opinion that the client has a weak case, the client needs to be told so and instructions to proceed to trial, despite the lawyer's recommendation not to proceed, should be written down," says Ip.

Communicate clearly – face-to-face if possible

As in all areas of law, lawyers are using email to communicate – resulting in increased 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, says Diedrick. "You can't replace face-to-face communication. If geographic distance makes that difficult, pick up the telephone and later document the call in a follow-up letter or email."

This is particularly important in litigation matters, which can go on for long periods of time and involve strong emotions. There isn't necessarily the same tradition of a pivotal lawyer-client meeting as often occurs before the closing of a transaction in other areas of the law. Consider at what point in a long piece of litigation you should meet with the client, and be sure to document your discussions.

Corporate law

Anna Reggio, claims counsel (PPL), says corporate communication claims often arise from confusion over the breadth of the insured's retainer and who is representing the interest of whom in an environment of fast-paced, and sometimes large-dollar, transactions where the niceties of communicating may get overlooked.

Know who your client is – and communicate this clearly

A question which frequently arises is the question of who the lawyer is acting for and whether it is the corporation or one or more of the shareholders. The interest of the corporate entity may be different from that of one or more of the shareholders and therefore, the corporate entity should be separately represented.

Certainly, in any given proposed transaction or agreement, each shareholder's interest may vary from that of one or more of the other shareholders. Therefore, in fact, the corporate entity and each of the shareholders should really be represented by a separate lawyer.

Often, in closely held corporations, the lawyer will meet with all of the directors, officers and shareholders to discuss the terms of a transaction to be entered into by the corporation or the terms of a transaction or agreement amongst the shareholders. A shareholders' agreement, for example, is one of the more common agreements under discussion.

In many cases, the parties are of the view that it is not financially expedient for the corporate entity and each of the shareholders to be separately represented. In other cases, the transaction may be clipping along and the parties are too focused on their negotiations to care about the lawyer's oral caution that they should obtain independent legal advice or independent representation.

Later, a disgruntled party may allege that he or she relied on the lawyer and may accuse the lawyer of having been in a conflict of interest, preferring the interest of one party over another (particularly where the lawyer has represented the other party or parties in the past) or failing to consider and advise that party of the implications arising from the particular transaction or agreement. The lawyer may well respond by saying that he or she was not acting for the complaining party, but rather acting for the corporate entity or, possibly, for another shareholder. But if this was never clearly communicated, in writing, the lawyer is faced with a credibility dispute.

The lawyer should write to all principals to clarify and confirm whom he or she is acting for. The lawyer should confirm that the

other parties will not be provided with any advice and that they should not be relying on the lawyer for that purpose.

Further, the lawyer should tell the other parties or entities to retain independent counsel or obtain independent legal advice, preferably as evidenced by way of a Certificate of ILA, depending upon the circumstances. Otherwise, the lawyer must obtain a signed, written acknowledgement of this advice together with a waiver of independent counsel or ILA.

"There is no shortcut for this," says Reggio. "The lawyer needs to get written, signed acknowledgements to protect him or herself." If the lawyer chooses to proceed to act for more than one party, the lawyer faces the inherent risks of failing to meet the onerous burden of providing the best possible advice to all of the clients in the circumstances. Also, depending on the deductible chosen, the lawyer may also face the obligation of a double deductible under the LawPRO policy if he or she is subsequently sued, even if a written acknowledgement and waiver was obtained.

Be clear about the services you are providing

Lawyers should also communicate clearly and in writing to confirm that they are not providing business advice and they are not reviewing financial statements or providing any tax advice, where applicable. Lawyers should specifically advise the client in writing to get advice from tax specialists, accountants or other experts where necessary and applicable.

Family law

Yvonne Bernstein, litigation director and counsel (PPL) with extensive experience in family law claims, talks about the potential for misunderstandings and communication breakdowns in family law.

Email communication must be very clear

The increased use of emails to replace face-to-face meetings has significant implications in family law where emotions (and tensions) often are high; clients can be difficult, emotional and prone to misunderstanding (and for these reasons some lawyers find the lack of face-to-face contact a good thing).

While email is a faster form of communication, the in-person conversation provides visual cues and the discussion is more interactive. The lawyer can judge reactions, and make sure everyone understands. Email promotes a more stilted, incomplete communication, says Bernstein.

In a recent claim a client was informed by email about what was being negotiated, and agreed to the settlement; but the client had not been given enough information on a certain part of the settlement. He later sued the lawyer on the grounds that if he'd known how valuable this concession was, he never would have agreed. "The client could have asked," says Bernstein, "but the on the other hand the lawyer should have been clearer."

Take the time to explain implications of legal processes

Often, clients don't understand that a settlement is a final settlement. They may have thought maybe they could settle today and re-open the agreement later.

Misunderstandings such as this can stem from the fact that lawyers operate within a framework where certain concepts or rules are understood: "We all know that when you sign a release, that's it," says Bernstein. "Lawyers don't always appreciate that clients don't have that same frame of reference." When a claim arises, it is then found that there is no letter from the lawyer to the client confirming the things they discussed, such as the fact that the settlement was final.

Limited retainers and possible unbundling of legal services will bring more challenges for lawyers to communicate as clearly as possible about what they are retained to do and not retained to do, as well as the potential consequences of what they're not being retained to do.

"There will be more of a burden on lawyers to hone their communication skills if they want to accept limited scope retainers and hope to get out of that process unscathed," says Bernstein. "This risk is not confined to family law, but family law has a high proportion of litigants who are self-represented and only want to retain a lawyer to do X, but not Y and Z."

Another way in which clients feel they can save money is by negotiating with the other side themselves. At the same time, the lawyers for each side are in communication as well. In these situations, things can get overlooked, or a lawyer can be left out of the loop.

Wills and estates

Cynthia Martin, unit director and counsel (PPL), Deborah Petch, claims counsel (PPL), and Pauline Sheps, claims counsel specialist (PPL) review the kinds of communication errors we see in wills, estates and trusts practice.

Ask questions – many questions

The biggest communication issues take place at the time the will is being drafted. The claim may result from drafting errors, but often it was poor communication that led to the drafting error.

Too many lawyers, says Martin, are not truly listening to the client's instructions and not probing and questioning the client to uncover facts that may cause problems later.

"It's not so much the client not providing the information as the lawyer failing to communicate what the lawyer needs to know," says Martin. "For instance, the client says: 'I want to leave everything to my son.' Fine, but does she have any other children? What did the prior will say?"

Are the beneficiaries identified correctly? (e.g., there is more than one St. John's Church in the city.) Did the lawyer ask about gift-overs in the event that a beneficiary is not alive at the time the testator dies? When the will drafting is complete, lawyers should do a reporting letter to the client so that there will not be confusion in the future about why changes were made, which beneficiaries added or removed, and so forth.

LawPRO has seen in an increase in claims resulting from lawyers failing to ask about client assets when drafting wills. Too many lawyers don't ask the simple question: "What assets to do you have?" (Given how many people in Ontario now come from other jurisdictions, lawyers should be asking about assets on a worldwide basis.)

It's equally important to discuss how these assets will be distributed. This issue often arises in the case of second marriages. The clients want to leave everything to their respective children, but often what happens goes something like this: after the husband dies, the wife says that she didn't understand that the assets would go to his children and not her; or conversely, all the assets are in joint names and – despite the will – at the end nothing is left to go to the children.

"Ask what the assets are, and ask how they are registered," says Sheps. "Some lawyers tell us they don't ask 'because the client will have different assets when they die.' That's not a good enough reason not to ask."

Get clarification given complexity of family structures and dynamics

Lawyers are increasingly likely to be dealing with a variety of family structures other than the traditional nuclear family. When the client uses words such as "married" or "my daughter," those words may not necessarily mean what the lawyer thinks. The marriage could be common-law, and the daughter could be a step-daughter.

To be absolutely sure of the nature of the relationships, ask questions and get clarification.

Talk to your client to understand family dynamics. You may discover information that could improve the advice you provide the client. If you know, for example, that two siblings don't get along, it may not be wise to appoint them as joint powers of attorney or estate trustees.

"A dysfunctional family can lead to a dysfunctional estate," says Sheps, who also recommends not agreeing to be an attorney or trustee if you know the family is fighting. "If they are not satisfied with the management of the estate, they will all blame you."

State who is doing what

Miscommunication regarding pensions often results in claims. The client may have made designations for inheritance purposes on a pension, life insurance, RRSP, etc., but a will can revoke those designations. There is often not enough discussion with clients about these designations, and what effect a will can have on them. The clients themselves may not be certain how the designations are arranged, and it may not be clear who was supposed to find out (client or lawyer) and what the consequences are for not making certain.

When dealing with powers of attorney, it is important to communicate to the attorney the roles and obligations involved. Template letters and a checklist are very good tools for this. They protect the lawyer from future accusations that "the lawyer didn't tell me I couldn't spend the money this way."

The administration of an estate also requires clear communication. Keep records of who is responsible for what, in terms of what the lawyer is doing and what trustee is doing. If roles are divided, the work and responsibilities should be spelled out.

"If the lawyer is taking on work normally done by the estate trustee, there has to be a letter setting out clearly who is doing what," says Petch, who recommends communicating to your trustee client what you'll charge in legal fees for this work.

"We get a lot of complaints about the mishmash of the lawyer's fees and executor's fees. This is particularly true where the lawyer is a co-trustee." ■

Tim Lemieux is practicePRO coordinator at LawPRO.

CONFLICT OF INTEREST TIPS

A conflict of interest happens when there is a substantial risk that a lawyer's duties to a client will be compromised by the lawyer's own interest or the lawyer's duties to another client, former client, or another third person.

1. DEVELOP AND FOLLOW A CONFLICT CHECKING SYSTEM

- Every new client means new potential conflicts. Implement and follow a rigorous conflicts-checking system that applies to every new client and new file. Also, make sure there are not conflicts with other lawyers at the firm, or with your own business interests. You can't always objectively judge your own conflicts, so it may be a good idea to get the opinion of someone outside the matter.

2. KNOW WHO YOUR CLIENT IS

- Ask yourself "who is my client"? Some family or business disputes find lawyers taking instructions from multiple individuals. Ensure you know which natural or corporate persons you represent in all circumstances. Send clients for ILA when appropriate Remember that conflicts can unexpectedly arise in the middle of a matter.

3. DON'T ACT FOR FAMILY MEMBERS OR FRIENDS

- It's best not to act for family or friends. They are too close to you. It increases the risk that you may have an interest in the matter, be unable to remain objective or manage your client's expectations. We see claims where lawyers don't make proper enquiries or proper documentation because they assumed they knew their family or friends' personal circumstances or didn't treat their friend or family member's matter as they would normally. It's best not to act for them, but if you must, treat them as if they were strangers.

4. DON'T BE AFRAID TO WALK AWAY

- When a real or potential conflict of interest situation arises, it is critical that a lawyer immediately informs the client, and either withdraws, or proceeds with the client's consent where this is permitted.

5. SEEK FURTHER GUIDANCE WHERE NECESSARY

- For further guidance, consult the Law Society of Ontario's Steps for Dealing with Conflicts of Interest Rules resource, the Canadian Bar Association Conflicts of Interest toolkit and our Managing Conflict of Interest Situations booklet.

LEARN MORE ABOUT AVOIDING CONFLICTS AND MANAGING YOUR RISKS:
See the "**Malpractice Claims Fact Sheets**" and the praticePRO **conflicts of interest webpage.**

10 TIPS to Adapt to the New Contingency Fee Regime

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

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

1 Get familiar with the new requirements now

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

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

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

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

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

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

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

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

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

3 Bring in your team to get the changes right

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

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

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

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

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

4 Market to get the clients you want

a) Have answers for prospective client's questions

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

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

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

b) Marketing your maximum rates, and beyond

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

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

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

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

5 Use the consumer guide as part of your onboarding

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

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

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

6 Tailor your retainer letters to clarify the scope of services

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

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

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

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

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

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

8 Settlement Discussions – Put it in writing

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

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

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

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

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

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

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

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

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

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

10 If things don't go as planned, contact LAWPRO

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

Juda Strawczynski is Director, practicePRO at LAWPRO

Alternative fee arrangements in litigation

In recent years more focus has turned to alternative fee arrangements as a way to offer clients more predictable costs and affordable legal services. Hughes Amys LLP, based out of Hamilton and Toronto, offers alternative fee arrangements which have proven successful for them. Here is a look at how they've done it.

"We've been doing alternative fee arrangements for over 20 years," says managing partner William (Bill) S. Chalmers. "In the early days it was a blended rate, where the client would pay one hourly rate regardless of who worked on the file. Then clients wanted to pay a fixed rate until a certain stage of litigation." The problem was there was little information as to whether the rate made sense on either side. A complex file requiring work from the senior partners could mean the firm was less adequately compensated, and conversely a simpler file would potentially be overcompensated.

There had to be a "better way. One which provided both cost certainty and a price at a reasonable level," says Bill. "We started to dig down into our statistics using practice management software. We gathered data reports including the average shelf life of a certain kind of file from opening to closing. Take a lower level personal injury file – we could look at hundreds of files and tell you, on average, the defence costs, the time it took to resolve, and how much was paid out. And we can do this down to the last dollar."

With the data in tow, the firm was able to calculate the average fee that was charged per month per file based on a number of categories such as reserve limits. "We show the client the data. They know exactly how much a certain file cost over the span of hundreds of files and decades of experience. We then charge them a flat fee per month for a file of a certain type that is in line with the average data."

Clients appreciate the open approach. "We can generate these reports based on virtually any set of criteria, and clients are confident the number is accurate. And potential clients love that we can quote them a fee based on hard data. Our fee isn't just an approximation or a guess about how much a file is worth. It's based on precisely what files have cost in the past and what they're costing now."

The firm also solved a problem inherent with fixed fee per month per file. This approach incentivizes law firms to keep a file open longer to make it more profitable. "Average shelf life can creep upward. We prevent this by updating the stats on every file every quarter. We keep track of lawyers and see how they are performing. Is one lawyer keeping files for longer than expected? Are certain files more likely to stay open longer? We can take action where necessary."

The fee arrangement requires trust on both sides. "It only works if the client does not change the way it typically provides instructions. If the client says 'it's a fixed fee, so now we want the law firm to do extra motions,' then the law firm is undercompensated. At the same time the law firm cannot say 'it's a fixed fee, so now we're going to do less'. It's a reciprocal relationship. This only works when you trust each other and have an ongoing relationship. We also build loyalty by being open with our data. No one can take advantage of the other when the numbers are shared."

In recent years, some clients have hired third party billing administrators to review a lawyer's account. "So much time is spent figuring out how a lawyer dockets, reducing the account, and going through appeal processes. The whole process takes a lot of time and energy from all parties and is inefficient. It's based on a system of distrust, where nobody trusts the other is doing their job right. Everybody's unhappy. Flat fee billing arrangements like ours present a huge opportunity for both law firms and clients to move completely away from the hourly rate system and its associated problems. Flat fee billing is just a happier and more efficient way to practise."

Sharing the data and providing alternative fee arrangements have given the firm an edge, says Bill. "We now have a much better handle on what we can do to lower shelf life or be more efficient. We can learn where we can cut and where we can't. We've learned that if you don't measure it, it doesn't exist. We've become a more agile law firm." ■

Ian Hu is Counsel, Claims Prevention and practicePRO.

Limited scope representation

With the right safeguards, possibilities abound

A self-represented family law litigant anxiously prepares for a hearing, which can resolve months, if not years, of anxiety, and determine the litigant's financial and family affairs in the near future. Retaining a lawyer from cradle to grave is out of budget for this litigant. What to do? Relief is around the corner – a lawyer steps in to help solely with the hearing, the result is fair, and the cost is affordable.

Success stories like this are playing out across the profession. The unbundling of legal services, also commonly called limited scope representation or a limited scope retainer, is expanding the legal market and at the same time one of the cornerstones of access to justice. Lawyers "unbundle" the full service package to provide a particular legal service, be it consultation, ghostwriting, or appearing in court, and leave the rest to the client. Clients that may otherwise be unable to afford a lawyer for full representation can now meet the legal system halfway with the assistance of a lawyer.

"In the last several years limited scope retainers and single consultations have increased dramatically. A lot of people come to me for a consultation and simply seek information and directions about what the legal procedures are, and also about alternative dispute resolution," says Sonya Jain, a lawyer and mediator at HGR Graham Partners LLP in Simcoe County and Family Law Committee Chair of the Federation of Ontario Law Associations (FOLA). Family law is ripe for exploration consultations. "We (family lawyers) are able to offer many solutions to our client's issues. As a family lawyer, I see myself as a problem solver and a peacemaker because I want to lower conflict for families and children, and this includes providing more options and pointing clients to community resources."

Benjamin Arkin, an estates litigator at Arkin Estate Law, also finds clients may approach him for just one service, "a beneficiary or a potential beneficiary may need to know what all the options are. What are the risks and possible outcomes? With a consultation, I can help my client answer the biggest questions – including whether going to court is the best route. We can agree about the scope of the work I will do for them from there."

While perhaps most popular among family law practitioners, limited scope retainers are making headway in many areas of law, including administrative law, corporate law, and civil litigation. An entrepreneur buying a small business may approach a lawyer to scrutinize an already-negotiated contract. A recently fired employee can consult a

lawyer to get information on what constitutes an acceptable range for a severance package, then work out the details with the employer alone. A "small" transactional dispute over the quality and quantity of widgets can be canvassed with a lawyer before digging in. The list of possibilities is long, and much of the market may yet be untapped.

Justin Jakubiak, a partner at Fogler Rubinoff LLP specializing in litigation and dealership law, says that large companies are also looking at retaining lawyers on a limited scope. "In-house counsel can look to a Bay Street lawyer to write a demand letter to demonstrate a higher level engagement. A limited scope retainer gives the corporate client more control and understanding of the process. While the corporation typically has the skills, abilities, and resources to take on a legal project, it may want to get someone else to do the heavy lifting. Satisfaction rate is high – the client has what it went to the lawyer for – and it's clear what the client is paying for."

Clients, opposing counsel, judges and adjudicators report that, for the most part, they are happy with limited scope retainers. The clients are satisfied because they get help; judges and adjudicators deal with better-informed self-represented parties; and opposing counsel is happier dealing with a self-represented person who has had the benefit of a lawyer's input.

Draw the lines clearly and follow them

While there are clearly benefits to limited scope representation, what about the risks for lawyers? There are two major risks.

First, communication-related claims, which are the highest source of claims in virtually all areas of law, are equally if not more likely to occur under limited scope representation. This typically happens when there is a disagreement between what the lawyer and client have agreed to do. Was work promised but not done? Did the lawyer take steps to which the client never consented? A limited scope retainer that fails to draw the lines clearly – or fails to follow the lines drawn – can lead to a malpractice claim.

Second, limited scope representation presents a risk that lawyers may not dig deep enough and ask appropriate questions on a matter. The failure to undertake adequate investigation is another leading cause of claims. In the context where only some legal work is provided, it may be tempting to cut short a client interview once the paid-for time has run out. If the lawyer discovers any impending deadlines or limitation periods, they should be disclosed and, preferably, confirmed in writing. The interview with the client must be done as carefully as it would be for a client with full representation. If not, remember that lawyers who fail to warn their clients of material legal issues or claims, even where they were not part of the limited scope retainer, have been held liable for malpractice.

Discuss the risks and disadvantages of limited scope representation

Rule 3.2-1A of the *Rules of Professional Conduct* "Legal Services Under a Limited Scope Retainer" imposes new obligations for lawyers acting under a limited scope representation. The lawyer must advise the client about the extent and scope of the proposed services, and whether they can be provided within the financial means of the client. The client must be fully informed of the risks and disadvantages of limiting the scope of the representation. If the client is unfamiliar with the legal system, extra care should be taken to ensure the client truly understands the limits and the risks.

The claims experience in the U.S., where limited scope representation has been more common, indicates that dissatisfied clients will allege negligence. Examples include alleging the lawyer was authorized to undertake certain steps but failed to do so, the fees were unreasonable given the limited scope, the litigation result should have been better, or that one or other aspect of the matter was not handled properly. The bottom line: A higher likelihood for malpractice claims and ethics complaints when the risks and disadvantages are not discussed.

Limited scope representation does not mean less adequate representation

Taken in conjunction with "Competence" commentary [7A] to Rule 3.1-2, the lawyer must carefully assess whether it is possible to render legal services in a competent manner. Simply providing a limited legal service on the basis that the client can only pay a certain amount poses a risk if it means the lawyer is unable to provide competent services. Is it competent service to shrink a consultation requiring three hours into only one hour because that is all the client can afford? Is it competent service to attend a court hearing without the benefit of a factum because the client cannot afford to pay for a factum? The risk of a malpractice claim increases when the lawyer is unable to spend the time necessary to provide adequate service.

Dealing with opposing counsel and the courts

Be careful with communications when opposing counsel is acting on a limited scope representation. Is opposing counsel on the record? If so, you must communicate through counsel. Otherwise, clarify whether you are to deal with the client or the lawyer, depending on the issue. Consider the circumstances in which you should deal with opposing counsel. It can help opposing counsel if you provide written notice clarifying the extent to which you are acting and what aspects of the matter opposing counsel should communicate with you on, versus those aspects being handled by the client.

Similarly, if you are acting on a limited scope retainer and a tribunal is confused about your role, do not mislead the tribunal, and consider whether the circumstances and rules of practice require you to disclose the scope of your retainer.

When limited scope representation is not appropriate

Commentary [5.2] to Rule 3.2-1A.1 states that a lawyer must carefully consider and assess whether it is possible to provide competent services to a client with diminished capacity. A client who is a minor, mentally disabled, or otherwise impaired, may not be capable of understanding the risks and disadvantages of a limited scope retainer. Take care when considering a limited scope representation with such clients.

"Another red flag is when a potential client comes in on an emergency basis with a big retainer," says Justin Jakubiak, "The client can pay, but is there enough time to digest the case and put together a theory? I have to ensure I can get adequate information to proceed, and that's hard to do on a tight timeline. The client may say 'these are the facts you need to know' – but chances are there's more to it. If I can't give adequate representation, I decline."

Steps to take to minimize risk

If you choose to offer limited scope representation, there are steps you can take to minimize risk. Work out the discrete legal steps the client needs to achieve. Confirm the steps that are within your wheelhouse. Advise the client about the risks and disadvantages of the limited scope. And control the client's expectations from the start of the matter.

Next, it's time to put it all in writing. Rule 3.2-1A.1 requires the lawyer to confirm the services in writing and to provide a copy to the client when practicable. LawPRO has a limited scope representation resources page at practicepro.ca/limitedscope on the practicePRO website. The resources include tips and checklists to help you, handouts for your client, and sample limited scope retainers and clauses. At practicepro.ca/retainers, you will find updated precedent retainers. The retainer should identify the discrete collection of tasks to be undertaken, and who is responsible for which tasks.

Once you've begun work on a limited scope representation file, document every step of the matter. Keep a record of all communications, especially information and instructions provided by the client, and advice you have given. When a step has been completed, confirm that the work was done at each step.

When you have completed work on a limited scope representation, there is a chance the client will return to you with more questions or steps that need to be done. If this occurs, make sure you have a new retainer in place. This may be hard to do as the inclination is to want to step in and help. However, should you skip obtaining a new retainer, you may have difficulty collecting payment for the extra work, and you will lose the protection that comes with documenting the steps.

Conclusion

Limited scope representation is part of a solution to the complex issue of access to justice. Grace Vaccarelli, counsel at Human Rights Legal Support Centre says, "We get 25,000 inquiries every year. Limited scope retainers allow us to provide effective and focused representation at each stage of the process – whether assessing merit, reviewing pleadings, engaging in party-to-party settlement negotiations or, most commonly, attending a mediation or a hearing. Self-represented claimants can often very effectively articulate the impact of the discrimination – we're here to help them with the specifics of the legal process."

Be aware of the risks of limited scope representation. Protect yourself by only providing limited scope representation in circumstances where you can do so competently. Clearly set client expectations from the beginning on what you will do. Use a written retainer. Document the file. And don't do work after the retainer is terminated, unless you create a new retainer agreement. These basic steps can help reduce your exposure to a malpractice claim, and help you defend a claim if an allegation of negligence is made. ■

Ian Hu is Counsel, Claims Prevention and practicePRO.

LAWPRO®

Best Practices for Limited Scope Services:
Looking at issues of liability and good practice

Limited Scope or discrete legal services (sometimes called "unbundling") refers to matters in which a client hires a lawyer to assist with specific elements of a matter such as legal advice, document preparation or document review, and/or limited appearances. The client and lawyer agree on the specific discrete tasks to be performed by the client and the lawyer. Depending on the nature of the lawyer's involvement, the lawyer may or may not enter an appearance with the court. The client represents him/herself in all other aspects of the case.

The special issues governing limited scope fall into three general categories:

1. **The limitations on scope must be informed and in writing;**
2. **Changes in scope must be documented;**
3. **A lawyer has an affirmative duty to advise the client on related matters, even if not asked.**

The following guidelines are designed to assist lawyers in addressing and avoiding malpractice liability in a limited scope/discrete task representation. Limited scope representation does not differ substantially from the rest of your practice, and most of the suggestions which follow are equally applicable to full scope service. However, there are some specialized issues which require consideration.

It is important to note that limiting the scope of your representation does not limit your ethical obligations to the client, including the duty to maintain confidentiality, the duty to act competently, the duty not to communicate with another person known by you to be represented by legal counsel in the matter (absent written permission from counsel to do so), and the duty to avoid conflicts of interest. It is also important to note that limiting the scope of your representation does not limit your exposure to liability for work you have agreed to perform, nor is such a limitation permissible under the *Solicitors Act*, R.S.O 1990, c S.15.

Deciding whether to take the case

1. **Work within your expertise.** As with full scope service, strongly consider rejecting a limited scope matter in areas of law in which you or your firm have little or no experience. Taking a case for the "learning experience" is unwise in limited representation, or any representation. It takes significant expertise in family law to be able to anticipate what issues will arise in a matter, and it is necessary to give good counsel and avoid liability. **Even where your representation is limited to particular tasks, you may still owe a duty to alert the client to legal problems outside the scope of your representation that are reasonably apparent and that may require legal assistance.**

This document can be found on LAWPRO's Limited Scope Representation Resources page at practicepro.ca/LimitedScope. It was adapted out of the Limited Representation Committee Risk Management Materials at the California Commission on Access to Justice, as created and updated by M. Sue Talia.

Therefore, you should inform the client not only of the limitation of your representation, but also of the possible need for other counsel regarding issues you have not agreed to handle.

2. **Don't be pressured by emergencies.** Pay particular attention to prospective clients who have last-minute emergencies and seek limited scope representation. Limited scope representation does not mean that you do not have to provide competent assistance or zealous advocacy. Being pressured to conduct a "quick document review" because of an upcoming deadline is much riskier if you will only be involved in that brief transaction. Consider giving advice on ways to move the deadline, if possible, to allow adequate time for review or representation.

3. **Be wary of clients who take a "musical chairs" approach to finding legal help.** Consider carefully the requests from prospective limited scope clients who have involved multiple lawyers in the same case. Bouncing around may be an indicator that the client is searching for the "right" answer after being given what they believe are unsatisfactory responses to previous analyses of their situation. You should avoid helping to facilitate situations in which a client may blame you for his/her discontent with the outcome. *On the other hand*, you may find that previous lawyers were uncomfortable with taking a "piece" of the case and that your prospective client simply had trouble finding a lawyer like yourself who was willing to work effectively with them on a limited scope basis. The client may have been viewed as "difficult" because s/he was seeking more of a partnership relationship than the traditional full scope representation envisions.

4. **Be careful of clients who have unrealistic expectations.** A prospective client may be unrealistic about what s/he can achieve alone or about the nature of your limited scope representation. Part of your obligation in offering limited scope services is to teach the client about the legal system and the available remedies. Few non-lawyers will arrive on your doorstep with totally realistic expectations. Their beliefs are likely to have been shaped by what they have seen on TV, what they believe is fair, or what they have been told by neighbors or friends. You bring your knowledge and experience with the legal system to the relationship. If you believe that you will not be successful at reining in a client's unrealistic expectations, you should decline the representation. It is important that the self-represented litigants "hear" your advice in order to partner successfully with you in the representation and carry out a plan with your guidance. Not every client is temperamentally suited to representing him/herself.

5. **Explain the "why."** Limited scope matters are pursued in partnership with the client. A client who understands the "big picture" and the tradeoffs will not only be more successful in self-representation but also less likely to blame you for unwanted outcomes.

6. **Clients with limited capacity or language barriers may not be good candidates.** Since limitations on scope by definition must be informed and in writing. Further to Commentary [7A], Rule 3.1-2 of the Rules of Professional Conduct, limited scope representation will generally not be appropriate if a client's ability to make adequately considered decisions in connection with the matter or representation is impaired due to minority, mental disability, or other reasons. That commentary states that a lawyer who is asked to provide legal services "must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner." If the limitation is one of language (and many potential limited scope clients have limited English

skills) special issues are presented. If you are not bilingual yourself, you should insist on a translator. It is your responsibility to ensure that the client understands the limitations on scope and has the capacity to assist in their representation. This is an individualized assessment. Be creative in your fees or look for sources of *pro bono* or low cost assistance for these clients.

7. **Identify those with hidden motives.** Be wary if the prospective client has trouble focussing on the legal outcome even after you have carefully explained the possible remedies available to them. Emotional needs may be driving the request for assistance. While many cases involve an emotional component, self-represented litigants who seek revenge are likely to be unhappy with the limited results that the legal system provides and even unhappier with limited scope services. Clients who require a lot of hand holding are also unsuited to limited scope representation.

8. **Make sure the limited scope of your services is reasonable.** Although you and your client have substantial latitude in limiting the scope of your representation, the limitation must be reasonable under the circumstances and the client must give you informed consent. If you conclude that a short-term limited representation would not be reasonable under the circumstances, you may offer advice to the client but must also advise the client of the need for further assistance of legal counsel.

9. **[Family Lawyers:] Identify those with a history of domestic violence seeking limited scope legal assistance in cases involving the batterer.** Survivors of domestic violence face special issues when considering self-representation. The power inequities and intimidation present in an abusive situation must be considered. They may raise serious questions about her/his ability to maintain the balance necessary to pursue an action against the batterer. On the other hand, coaching the domestic violence survivor to successfully confront the batterer for the first time may be the best service you can render. The client may not be seeking limited scope services solely for financial reasons; they may be looking specifically for someone who can give them the tools to successfully enforce their own rights. Discuss these issues openly with the client.

10. **Clearly address the fee structure and its relation to services.** If during your initial interview you find that the prospective client is reluctant to discuss or agree on fees, be cautious. It is critical that the client understands that limited scope services not only limit your fees but *also* limit the services that you will perform for them. If anything, your fee arrangement must be clearer in limited scope representation than in full service. You must ensure that there is no misunderstanding about what limited services you have agreed to perform. In limited scope representation, it is crucial to be on a “pay as you go” basis, as you may never see the client again.

11. **A good diagnostic interview is critical.** It is critical to perform a good diagnostic interview to pick up all the critical issues in the case. Both experienced and inexperienced lawyers will find a checklist of issues in the relevant practice area to be extremely helpful in conducting a good diagnostic interview.

12. **Develop and use an intake form.** A good form should list the key issues and allow room to insert unusual ones. Give a completed copy to the client. It is a contemporaneous record which documents your file, reminds you to ask about related issues, memorializes the limitations on scope, and educates the client. Use and tailor

the forms which appear in these materials to make them work for you. Precedent intake forms are available at practicepro.ca/LimitedScope.

13. **Advise clients of their right to seek advice on issues outside the scope of the limited assignment.** It is probably a good idea to include in your intake sheet or handouts a statement that the client has been advised of the right to seek counsel on other issues.

14. **Use a clear fee agreement detailing the scope of representation.** A good limited services fee agreement will spell out exactly what you are doing for the client, and even more importantly, what you are *not* doing, and will detail what responsibilities the client will assume. There should be no confusion about the scope of the representation. Look at the included fee agreements here and on practicepro.ca/LimitedScope for sample agreements. Tailor them to each case and to your individual practice. A fee agreement which puts the limitations and checklist in an attachment is probably better suited to a case where you anticipate a change in scope.

After you take the case

15. **Use checklists.** This documents who is going to do what before the next meeting. Give a copy to the client. Tailor checklists to your specific practice, fill them out while the client is present, and make sure that you and your client each have an initialed copy. Precedent checklists are available at practicepro.ca/LimitedScope.

16. **Create a support group of experienced colleagues.** Limited experience with handling limited scope representation poses special challenges for newer lawyers or those new to a particular practice area. An experienced practitioner can confirm your analysis, suggest additional issues to explore or divert you from a particular proposed course of action. You might want to locate colleagues who are experienced with offering limited scope representation, and consider creating a study group, referral sources, or general references for each other. Meet with them periodically to discuss common problems and solutions. Most of the issues which will come up in a limited scope practice are practical rather than ethical, and it can be immensely helpful to talk to other practitioners who have faced the issues and developed solutions. See LAWPRO's *Managing a Mentoring Relationship* booklet at practicepro.ca/mentoring for helpful tips on working with a mentor.

17. **Practice defensively and document all decisions.** This is good advice in any type of legal work. It is particularly essential to document instances in which you offer advice on a particular path for the self-represented litigant to take.

18. **Memorialize any changes in the scope of your limited representation as they occur**. ***Never*** do work outside the scope of the original retention without a new retainer signed by the client. Checklists that attach to the fee agreement are a simple and reliable way to do this. A confirming letter that the client doesn't sign will probably be insufficient to effectively document the new limit in scope. Be sure that you and the client both sign off on any changes in scope.

19. **Use prepared handouts.** Many of you will already have prepared handouts on common questions which arise in your practice. It is helpful to have one which describes limited scope representation and details the specific options available. Note on your intake sheet which handouts you gave to the client and on what date. A sample client handout on limited scope representation is included in the materials at practicepro.ca/LimitedScope.

20. **Making non-client laypersons part of your team is hazardous.** Limited scope representation may create an informal feeling to the lawyer-client relationship. Remember that, despite the apparent informality, this is a lawyer-client relationship. It is between you and your client, not you, your client, Aunt Mary, and others the client may want to have involved. Allowing third parties to participate may destroy the lawyer-client privilege. If the client insists on utilizing non-clients, clearly advise them, in writing, in advance, of the risks involved.

21. **Refrain from providing forms with no assistance or review.** Some of the forms which will be required are simply too complicated for a self-represented litigant to complete without assistance. Your expert assistance in the completion of these forms is not only a best practice but will also reduce any potential liability.

22. **Do not encourage a self-represented litigant to handle a matter that is too technical or difficult.** A prime example of this problem is preparation of a factum. Part of your responsibility as a lawyer is to counsel a person *against* handling such a matter and to help them understand the cost/benefit analysis of using their litigation budget wisely to acquire the expert assistance in the areas where they most need it. This is an individualized assessment.

Ending the relationship

23. **Let the client know when your involvement has ended.** There should be no surprises either to you or the client about when your involvement in the matter has ended, and no unstated expectations of continued participation on your part. Send out a notice at the end of your involvement in a matter that involves a series of steps. Notify the client that you believe you have completed your part and advise him/her to get in touch with you immediately if s/he disagrees.

24. **If you have appeared at a hearing**, **let the court know about ending the relationship as well.** Use a Notice of Change in Representation or bring a motion to be removed as lawyer of record. Note that if an order arises from a hearing you appeared at, Rule 59.08(1) of the Rules of Civil Procedure requires you to act in the place of the party. If you do not wish to do so, your retainer must state that you will not act in the place of the party, and you must provide written notice of the fact to the parties and to the registrar. Don't attach your limited scope representation agreement to your motion materials, since that is a confidential communication.

Use good judgment. Many of these suggestions apply equally to full service representation. Your limited scope clients are likely to be more satisfied than your full service clients if you follow these simple practices. They don't take much effort and will document your file and educate your clients in ways which substantially increase the likelihood of a satisfactory relationship for each of you.

This document can be found on LAWPRO's Limited Scope Representation Resources page at practicepro.ca/LimitedScope. It was adapted out of the Limited Representation Committee Risk Management Materials at the California Commission on Access to Justice, as created and updated by M. Sue Talia.

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Social Engineering Fraud
Policy Requirements Chart

Your 2024 professional liability policy covers you to a sublimit of $250,000 in the event you are a victim of social engineering fraud. By ensuring you have a written agreement with your client and the following steps are taken, your "social engineering coverage" is extended to the standard $1 million limit per claim.

The following chart states the requirements and provides corresponding example language. *LAWPRO does not require you to use this language or any specific language to satisfy the requirements. The example wording is provided by LAWPRO for your consideration and use when you draft your own documents, to be adapted to suit your practice and matter for which it is being used.*

Requirement	**Example wording for written/retainer agreement**
Include written Instructions in a retainer (or other agreement) for the receipt, release, and transfer of any funds or assets.	To prevent fraud and ensure the safe and accurate receipt, release, and transfer of any funds or assets, the following steps will always be taken to safeguard such assets: 1. We will only accept funds [or assets] from you [or additional party] by way of: ☐ Electronic funds transfer to our trust account numbered _____ ☐ Wire transfer to our trust account numbered _____ ☐ Certified cheque delivered to us at _____ ☐ Additional method of funds or asset transfer _____ 2. We will only transfer funds [or assets] to you [or additional party] by way of: ☐ Electronic funds transfer to your account numbered _____ ☐ Wire transfer to your account numbered _____ ☐ Certified cheque delivered to you at _____ ☐ Additional method of funds or asset transfer _____
Advise in the written retainer (or other agreement) that the client or another party to which you owe a duty of care should not ordinarily expect to receive any revised instructions from you or your firm for the transfer of funds or assets.	You [or another party] should not expect to receive any revised instructions for the transfer of funds or assets from us.

Advise in the written retainer or agreement that, should the client or another party to which you owe a duty of care receive revised instructions for the transfer of funds or assets, they should immediately contact you by way of a telephone number specified in the written retainer or other agreement.	If you [or another party] receive any written communication advising of such a change that appears to come from us, immediately contact us at [insert telephone number] to verbally confirm these changes.
If you or your staff: a) receive any changes to the contact information of a client or other party to which you owe a duty of care, or *b)* any changes to established instructions for the transfer of funds or assets you confirm those changes by: a) either calling the client or other party to which you owe a duty of care using contact information previously confirmed to be that of the client or other party, or *b)* by meeting with the client or other party.	If we receive any changes to your [or another party's] contact information, or any changes to the instructions for the transfer of funds or assets as set out above, we will not act on these changes until we have verbally confirmed the new instructions in-person or by calling you [or another party] at the following phone number: [insert phone number]
Maintain in writing any updated contact information for a client or other party to which you owe a duty of care, and any updated instructions for the transfer of funds or assets.	

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Social Engineering Fraud
EXAMPLE RETAINER LANGUAGE

LAWPRO does not require you to use the following language or any specific language to satisfy the requirements. The example wording below is provided by LAWPRO for your consideration and use when you draft your own documents, to be adapted to suit your practice and matter for which it is being used.

Fraud Prevention

To prevent fraud and ensure the safe and accurate receipt, release, and transfer of any funds or assets, the following steps will always be taken to safeguard such assets:

1. We will only accept funds [or assets] from you [or additional party] by way of:
   - ☐ Electronic funds transfer to our trust account numbered _____
   - ☐ Wire transfer to our trust account numbered _____
   - ☐ Certified cheque delivered to us at _____
   - ☐ Additional method of funds or asset transfer_____

2. We will only transfer funds [or assets] to you [or additional party] by way of:
   - ☐ Electronic funds transfer to your account numbered _____
   - ☐ Wire transfer to your account numbered _____
   - ☐ Certified cheque delivered to you at _____
   - ☐ Additional method of funds or asset transfer_____

3. We will only release funds or assets to a third party upon receiving verbal confirmation of the transfer from you and any other party necessary to confirm the veracity of the transfer details.

4. You [or another party] should not expect to receive any revised instructions for the transfer of funds or assets from us. If you [or another party] receive any written communication advising of such a change that appears to come from us, immediately contact us at [insert telephone number] to verbally confirm these changes.

5. If we receive any changes to your [or another party's] contact information, or any changes to the instructions for the transfer of funds or assets as set out above, we will not act on these changes until we have verbally confirmed the new instructions in-person or by calling you [or another party] at the following phone number: [insert phone number]

Ending well means starting right:

The family law intake process

The most critical step in any family law case is when clients meet with prospective counsel. That meeting establishes the nature of the relationship, a preliminary game-plan, and each party's expectations of the other.

Most clients approach that inaugural meeting with considerable anxiety. Most have never dealt with a lawyer, and certainly not with respect to a family law case. Most are apprehensive about sharing their story and anxious to hear the lawyer's assessment of the case. Depending upon the client's knowledge, sophistication and expectations, he or she may be looking to the lawyer as a potential saviour, gladiator, therapist, best friend, or adversary. At the same time, the lawyer is assessing the client for appropriateness of the case, potential conflicts of interest, financial resources and ability to develop an effective working relationship.

The lawyer's objectives for the initial meeting should include:

- Determining the names of all parties and related or interested third parties that will be required for a conflict search;
- Determining how the client was referred to you and whether the client is prepared to retain counsel or is "just shopping";
- If the client is changing counsel, assessing the reasons for the change;
- Understanding the circumstances of the separation, including whether the client was the "leavor" or the "leavee";
- Understanding what formal and informal procedures (negotiations, litigation, interim agreement, etc.) have taken place to date, with what success, and why;
- Obtaining a preliminary history that allows you to identify in a general sense what the factual and legal issues are likely to be;
- Determining what the issues or problems are that require immediate attention;
- Determining if the client's level of understanding, emotionality, expectations and financial resources make the client suitable for representation;
- Asking about the client's objectives and motivations and how they might compare to those of the spouse;
- Determining who is opposing counsel and what, if any, communications with counsel have taken place; and
- Developing a rapport that allows the client to feel understood, confident, and in good hands.

Wise counsel will exercise caution in promising a favourable result in the case. While it is tempting to tell the client what the client wants to hear, the initial meeting usually does not provide the lawyer with enough information to allow a useful assessment. It may be appropriate to explain general legal principles and how they may apply in this case, depending on what facts are ultimately determined. Sometimes the most that can be done is to identify factual or legal issues that will require further investigation. The lawyer should assure the client that a thorough analysis and recommendation will be provided once the initial investigation stage is completed.

The initial meeting is an appropriate time to discuss the methods of dispute resolution that may be appropriate for this case. The lawyer should explain the steps in a typical family law case and when and how such cases are usually resolved. Clients should understand that there is a range of options (negotiation, mediation, litigation, and so on) that can be utilized, depending on the requirements of the case, and be given a summary of the advantages and disadvantages of each.

Clients need to understand that there are at least four key players in a family law case (the two parties and their counsel) and that no one player controls the pace and direction in which that particular case moves.

The two questions that are on the mind of any client are: "How long will it take?" and "What will it cost?" If the client doesn't raise these issues, the lawyer should. The answer, of course, is that no one knows, although the lawyer can often identify certain factors or developments that may add to or reduce the time and cost it will take to get a resolution. The lawyer should explain how legal fees are determined, hourly rates for the lawyer and the members of his staff, and the lawyer's retainer requirements. A written retainer agreement should be reviewed and either signed at the meeting or sent home with the client for review, execution, and return.

The lawyer should identify and explain the role of each member of staff and who the client will deal with for different aspects of the case.

The client should be given a blank financial statement to complete and return, together with a list of the documentation that will be required. Where appropriate, the client should be directed to prepare a history of the marriage as well as a written response to the opposing party's financial statement, pleadings, or other documentation. A preliminary discussion may take place regarding expert reports (valuations, income analyses, medical reports, etc.) that will likely be required. By the end of the initial meeting (which typically will last 60 to 90 minutes), both the lawyer and the client should be in a position to indicate to the other whether or not he or she is comfortable formalizing their relationship and planning for the important next steps. ■

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practicePRO Resources for Family Practitioners

Visit practicepro.ca for these helpful resources

- The **Domestic Contract Matter Toolkit** includes an intake form, matter intake checklist, post-meeting client assignment sheet and Children of the Marriage form.
- The **Limited Scope Retainer Resources page** includes sample retainers, checklists and client information brochure.
- A **Family law matter retainer precedent** includes all the terms a retainer should have.
- The **Client Billing and Administrative Information letter precedents** advise clients on communication protocols, retainer and billing expectations and how they should conduct themselves.

Manage malpractice risk

by recognizing cultural diversity

Lorne Shelson

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Scenario 3: Failure to be on guard

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

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

lawyer unquestioningly trusted the paralegal and began working for her.

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

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

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

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

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

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

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

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

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

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

Risk management lessons

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

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

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

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

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

Cultural competence:

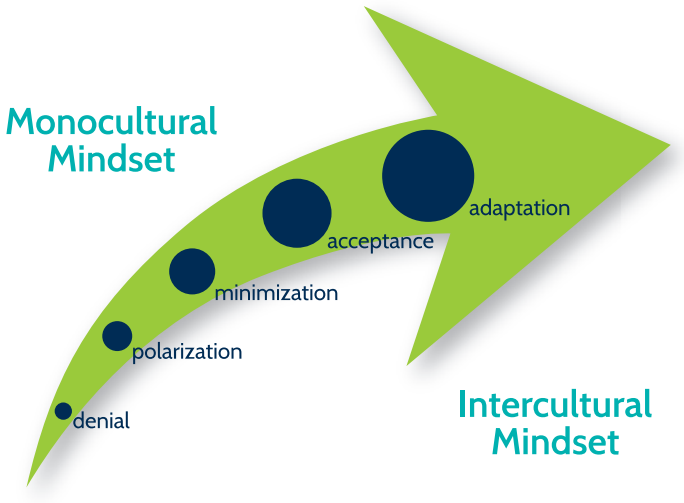
an essential skill for success in an increasingly diverse world


Ritu Bhasin

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

What is cultural competence?

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



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

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

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

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

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

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

Don't ignore differences

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

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

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

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

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

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

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

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

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

"Layers" of difference

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

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

Common cultural differences at law firms

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

High vs. low hierarchy cultures

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

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

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

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

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

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

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

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

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

Group vs. individual focus

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

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

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

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

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

Where do law firms fall on the culture spectrum?

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

Likeness bias and "blind spots"

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

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

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

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

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

How low cultural competence impacts recruiting and retention

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

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

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

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

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

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

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

Identifying your biases and blind spots

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

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

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

Embracing cultural diversity is a service quality and business development imperative

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

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

Assess your social attitudes with an online test

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

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

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

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

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

Date

SENT BY EMAIL

Client Name
Address

Dear Client,

RE: *Name of File*
Court file No. XX
Our File No. XX

Further to our discussion, the following is a final reporting letter to advise that our retainer agreement, dated *XX,* is terminated effective *XX*. We are happy to assist you with the transition to new counsel and have prepared your file for transfer. Please confirm your new lawyer's name and address and we will send it over to them immediately. Although you have copies of all substantive material as it is our policy to send the complete file regardless. We are happy to speak to your new lawyer if there are any questions on the file to ensure a smooth transition. Alternatively, you may pick up the file yourself during normal office hours.

During our retainer, we completed *XX. (details of work completed)*. Please note that your next court date is *XX* and you will need to hire a new lawyer or represent yourself at that hearing. Please also be aware of *(limitation periods, filing deadlines)*. It's important to ensure you complete *XX (any items outstanding as per court order or consent of the parties)*.

Please find enclosed a copy of your final bill. The remainder of your retainer funds will need to be picked up at our office at your earliest convenience. As *lawyer* is on the record for you, we will have to file the appropriate form with the court to notify them that she is no longer acting for you. We have attached the form to this email. **Kindly return an original signed copy to our office.** Of course, if you have already retained a new lawyer, you can execute the Form 4 naming them as your solicitor of record. If you are looking for a new lawyer, we would recommend *XXX or XXX* in the area as these firms have extensive experience in family

law.

We confirm that we have previously returned all your original documents, if any. Upon completion of the above items, we will close your file in accordance with our normal policy. Please be advised that we will keep a copy of your file for the following seven years as per the Law Society of Ontario's guidelines.

We wish you the best with your file in the future.

Warm regards,

Name

FIRM NAME
Encl.

Resources and CPD for Lawyers

LAWPRO's Practice Management Resources	
Retainers and non-engagement letters	Model retainers and agreements provided for your consideration and use when you draft your own documents.
Drafting a non-engagement letter	Checklist when drafting your non-engagement letter.
Limited scope representation resources	Resources to help you understand the risks in providing limited scope legal services and how to reduce such risks.
The importance of reporting letters	Reasons why having interim and/or final reporting letters in the file can be very helpful to the lawyer's defence.
Managing conflict of interest situations	This booklet will show how to better manage this risk by identifying, checking for and managing conflict of interest situations.
Additional Resources	
LSO: Retainer and Non-Engagement	Law Society of Ontario's resources include checklists for retainers and non-engagement letters and sample non-engagement letters.
LSO: Client Service and Communication	Law Society of Ontario's Client Service and Communication Guideline provides a practical tool for lawyers to manage their client service and communications with success including withdrawal of services or otherwise ending the engagement.
Additional CPDs for Lawyers	
Diversity, Inclusion and Cultural Competence to Reduce Risk	This pre-recorded program from December 2020 focuses on include the importance of diversity, inclusion and cultural competence for the legal profession, malpractice claims where an issue related to a lack of cultural competency contributed to a claim and understanding key EDI concepts for your practice and tips on developing cultural competence.

Building Resilience and Maintaining Mental Health in the Legal Profession	This CPD provides practical advice from those on the frontlines of improving mental health for lawyers. You will hear directly from a clinician at the Member Assistance Program, a Peer-Support Ambassador that works with lawyers experiencing mental health concerns, a LAWPRO Unit Director on managing when things go wrong, and an expert in mindfulness within the legal profession.

SPEAKER BIOS

Amer Mushtaq

Amer Mushtaq is an employment lawyer based in Toronto. His current practice is focused exclusively on conducting workplace investigations for various private and public sector entities. Amer advocates for the public's direct participation in the justice system. To that end, Amer operates a YouTube Channel, YouCounsel, where he posts educational videos on various legal topics and issues. Amer also assists self-represented litigants with their legal proceedings. Amer can be reached at amer@formativelaw.ca.

Stephanie Ostrom

Stephanie has exclusively practised in the area of Family Law since her call to the bar in 2012.

There's no denying that many families face stressful situations that require outside expertise. As a family lawyer, Stephanie understands how highly sensitive and personal these matters are, and is very knowledgeable in advocating for your best interests. She tries to ensure that the legal process a family faces is as thoughtful and caring as possible.

Stephanie assists clients with all issues arising from separation and divorce, ranging from the amicable negotiation of separation agreements to litigation through the family court system.

"The best thing about being a family lawyer is helping people through a traumatic experience and ensuring that they receive everything that they are entitled to through the Family Law Act," she shares.

As an energetic, compassionate person, Stephanie likes to take on the challenge of defending someone who is without a voice, and helping that individual to be heard. “I feel like I’m able to empower people simply by giving them some knowledge and steering them through the separation process.”

Stephanie completed her undergraduate degree in specialized history at York University, graduating with honours. She attended law school at Queen’s University and graduated with a Juris Doctor (J.D).

Stephanie volunteers her time offering legal assistance to Luke’s Place, an award winning non-profit organization that helps women who have left abusive relationships. She is also a member of the Legal Advisory Board for Luke’s Place.

Rachel Sachs

Rachel Sachs (she, her) is a Filipino-German Canadian lawyer striving to improve accessibility to the law for her clients. Rachel runs her own practice, serving seniors, their families and individuals. Rachel specifically designed her practice for older adults in memory of her much loved grandparents and for the many, wonderful older adults who have impacted Rachel’s life.

In her teenage and young adult years, Rachel volunteered in the Veteran’s Wing of Sunnybrook & Women’s College Health Sciences Centre. When home from university, Rachel would regularly join her father and grandmother for morning coffees with other local seniors, listening to their stories and arguing politics. Later, Rachel experienced firsthand life and all that comes with caring for and living with an older adult with dementia.

Rachel loves her young family, pets included, and enjoys advocating for better services, resources and policies for seniors, women, as well as improved inclusion and diversity initiatives within the legal profession and beyond in her limited spare time.

Rachel studied post-secondary education in Canada and abroad. She holds an Executive MBA from Quantic School of Technology, which she hopes to use to improve legal services for older adults, as well as a Masters degree from the University of Edinburgh School of Business, in addition to her law and undergraduate degrees.

Rachel is President and a founding board member of the Filipino Canadian Lawyers Network, a board member of the ITLNCA Networks and a not-for-profit daycare centre,

a Past Chair of the Ontario Bar Association's Women Lawyers Forum and a mentor with various legal organizations. Rachel is a contract lawyer with Pro Bono Ontario, a volunteer in the Free Wills Network, and a former volunteer with organizations such as the Barbra Schlifer Commemorative Clinic and the Refugee Sponsorship Support Program.

Shawn Erker

Shawn is the Legal Writer and Content Manager in the Claims Prevention & Stakeholder Relations department at LAWPRO. Prior to joining LAWPRO, Shawn practised as a civil litigator in British Columbia in a full-service national firm after clerking at the British Columbia Court of Appeal.

He graduated from UBC Law where he served as Editor-in-Chief of the UBC Law Review.

Safiyya Vankalwala

Safiyya is Communications Counsel at LAWPRO, focusing on risk management, including monitoring changes in the law and claim trends as well as developing and delivering practical resources to lawyers across Ontario.

Prior to joining LAWPRO, Safiyya worked at a fintech company in strategic planning and legal technology development. She spent 15 years practicing law, has an undergraduate degree in Political Science and Law & Society from York University and her LL.B. is from the University of Ottawa. Safiyya was called to the Ontario Bar in 2007.

Named one of Toronto's top lawyers by her peers (Post City Magazine) and co-author of a book focusing on legal considerations for entrepreneurs, Safiyya enjoys playing an active role in her local community.