

LAWPRO®

Toronto Lawyers ASSOCIATION 

Corporate Practice: Navigating Incorporations to Dissolutions and Stages in Between

March 12, 2026

Table of Contents

| | |
|---|----|
| Corporate/Commercial Claims Fact Sheet | 3 |
| Hidden Risks in Legal Representation, Incorporations, and Reorganizations – by Anurag Gupta | 5 |
| Amalgamations & Dissolutions – <i>Business Corporations Act</i> (Ontario) | 15 |
| Investigation Tips | 16 |
| Corporate ID Fraud | 17 |
| Conflict of Interest Tips | 19 |
| Resources and CPD for Lawyers | 20 |
| Speaker Bios | 21 |

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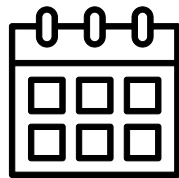


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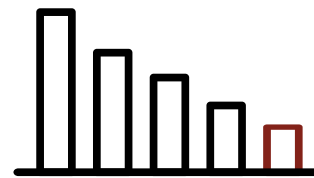


4 claims area by cost

- average total cost \$8.9 million per year



Average 153 claims per year



5 claims area by count

RISK MANAGEMENT TIPS



Carefully document instructions, advice and steps taken

Taking detailed notes and documenting client conversations can minimize misunderstandings. Claims often involve a dispute over what was said and done, or not said and done, or confusion over who was to look after which tasks. LAWPRO's [Checklist for Commercial Transactions](#) has a detailed list of matters to consider when communicating with clients.



Follow the firm's conflict checking system and take action on conflicts

Most law firms have rigorous conflicts checking systems that do a good job of catching potential conflicts. The problem is that these warnings are often ignored. Listen to your instincts and ask yourself "who is my client"? You can't always objectively judge your own conflicts, so get the opinion of someone outside the matter. Send clients for ILA when appropriate. Keep in mind that conflicts can unexpectedly arise in the middle of a matter. If there's a real or potential conflict, decline or terminate the retainer, even if it means turning down work for a good client or turning down substantial fees.



Take time to catch and consider all the details

Whether it is misreading (or not reading) information on a corporate document, not doing a title search on a corporate lease matter, or failing to ensure that two merged corporations don't lose a 'grandfathered' exemption, rushing or taking shortcuts can come back to haunt you. Take the time to do the job right, even if it takes a bit longer or involves coming back on another day. Make sure clients understand the risks if they instruct you to take shortcuts (usually to reduce fees), and that those discussions are documented. Do not be pushed into taking shortcuts that make you uncomfortable.



Do not dabble in areas outside your expertise

Corporate/commercial law is complex and diverse, so don't stray outside your area of expertise. If necessary, recommend your client retain the services of an expert in specialized areas like tax, IP or franchise law if you don't have a thorough knowledge of those fields.

COMMON MALPRACTICE ERRORS

Communication - 39%

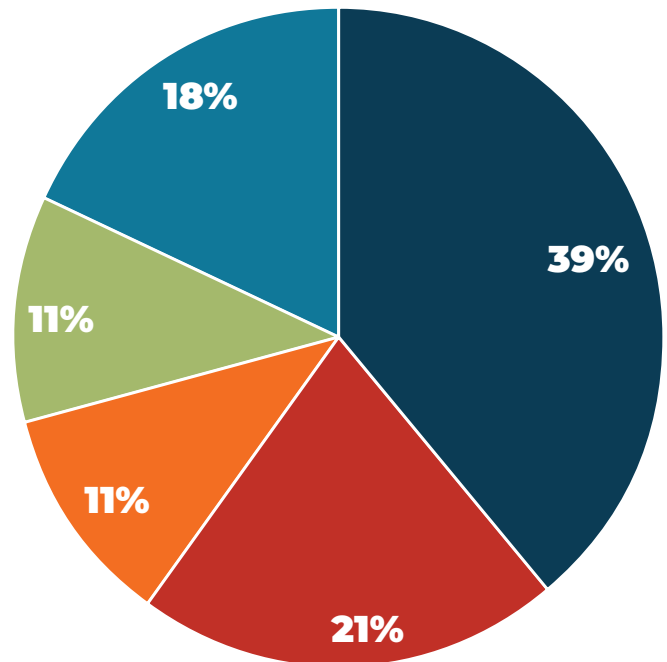
- Failing to follow client's instructions to file articles of amendment or articles of amalgamation.
- Failing to specify the limits of the retainer in writing, including which services the lawyer will perform and which actions the client or third-party (e.g., an accountant) will take.
- Contents of document (e.g., a lease or shareholder agreement) do not reflect the client's instructions (or those of outside expert, e.g., an accountant).
- Failing to document in writing that a client instructed you to take a course of action on a transaction that was different from the one you recommended.
- Retainer did not clearly specify work that was to be done by the lawyer and/or outside expert (e.g., accountant or tax expert).
- Minute book not kept up-to-date.
- Failing to inform a franchisor client about the disclosure requirements under the Arthur Wishart Act.
- Failing to explain to a client the consequences of a personal guarantee in a commercial lease, mortgage or other transaction involving security.

Inadequate investigation - 21%

- Provisions in lease and sublease(s) are not coordinated.
- Not doing a title search on a commercial lease matter.
- Misreading (or not reading) information on a corporate document or search result.

Errors of law - 11%

- Taking on a complex corporate transaction that the lawyer is not capable of handling, or failing to obtain specialist advice for specialized issues (e.g., tax or IP issues).
- Failing to properly protect a security interest or priority status under the Personal Property Security Act.



Conflict of interest - 11%

- Acting simultaneously for members of the same family and their business or corporate entities.
- Not sending client for ILA when appropriate.
- Acting for a corporate client and providing legal services on the side to an employee of the client.

Other - 18%

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We can provide knowledgeable speakers who can address claims prevention topics.

Email practicepro@lawpro.ca

*All claim figures from 2013-2023. All cost figures are incurred costs as of June 2024

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Hidden Risks in Legal Representation, Incorporations and Reorganizations

1. Who is the Client?

A. Core Risk:

Confusion about who the lawyer represents can not only pose a source of professional risk in corporate matters but can also create other headaches and the lawyer may need to withdraw from the file. Before engaging on a potential multi-party engagement, consider the lawyer-client relationship.

At incorporation, everyone is aligned. The risk feels theoretical. The problem surfaces later, during disputes, litigation or transactions, when someone alleges you owed duties to them personally.

Clarity at the onset prevents conflict at the end.

B. Identify the Client

When an agent of the Corporation approaches you, you must determine:

- i. Are you acting for the corporation?
- ii. The individual?
- iii. An individual and the Corporation?

If acting for the corporation, remember: the corporation is a separate legal person. The fact that you communicate primarily with one founder or shareholder does not convert that person into your client. Provide disclaimers.

If acting for multiple parties, joint retainer rules, as discussed below, apply.

Never assume it is obvious, put it in writing. It may seem clear that the lawyer is acting for the corporation, however, individuals may later allege that they believed personal advice was being provided, particularly where informal discussions between the lawyer and the individual are taking place. Always make it clear, if you are acting for the corporation only, any advice given is for the advancement of the corporation. When the lines are especially blurry, it may be helpful to explicitly state who the client is not.

C. Who Can Instruct You?

You must determine who has legitimate authority to instruct you.

If there is doubt:

- Request a board resolution confirming; or
- Confirm authority in writing of who is directing you and in what capacity.

This becomes critical when internal relationships deteriorate.

D. Joint Retainers (if Applicable)

If you determine that you are acting for two or more parties, whether that is multiple founders, or the corporation and one or more individuals, the matter becomes a joint retainer. You may only proceed with a joint retainer when you receive written informed consent from all parties.

You must advise each client:

- You act for all;
- No relevant information provided by one can be kept from the others; and
- If an unresolvable conflict arises, lawyer may need to withdraw.

If you have a continuing relationship with one client, you should:

- Disclose it (required);
- Recommend the other seek independent legal advice prior to signing the joint retainer; and
- Clarify who you will continue to act for if conflict arises (and if permitted).

Even with informed consent, if you foresee that interests will likely diverge, you should not act jointly.

E. Engagement Letter as Risk Control Tool

The engagement letter is your best risk management tool. It allows you to clarify in writing the parties you are acting for and in what capacity. It should clearly:

- Identify the client;
- Address joint retainer terms if applicable;
- If a joint retainer, confirm procedures in case of conflict between parties;
- Document informed consent where required;
- Define scope of advice;
- Exclude personal, tax, employment or family advice, unless specifically retained and qualified to provide such; and
- Clarify reliance on all other advisors (accountants, tax professionals, etc.).

Equally important is ensuring that professional conduct aligns with the engagement letter. Even a well-drafted engagement letter will not protect a lawyer whose actions blur the distinction between corporate and personal representation. Clarity in writing must be matched by clarity in practice.

F. Risk Checklist

- Have I clearly identified the client in writing?
- If acting jointly, have I obtained informed written consent?
- Have I addressed confidentiality between joint clients?
- Have I assessed likelihood of future conflict?
- Have I confirmed who has authority to instruct?
- Have I defined the scope of advice?
- Have I avoided personal advice?

2. Incorporations

Schedule “A” is a non-exhaustive list of preliminary questions to ask your client prior to incorporation.

A. Selecting the Type of Entity

Incorporation is often treated as a default, but entity choice is strategic. The optimal form of entity depends on structure, liability, tax and management considerations.

Ensure your client understands their options before proceeding with incorporation. Would a sole proprietorship or partnership be better suited to their current needs?

Key Considerations at this stage:

- Are outside investors expected?
- Will this business be sold?
- Is tax deferral a priority?
- Is liability insulation critical?

Incorporation will introduce formal governance obligations and statutory compliance requirements that do not arise in partnerships. They also have the highest start up costs of all business structures.

B. Jurisdiction

In Canada, you can either incorporate federally (pursuant to the *Canada Business Corporations Act*) or incorporate in any one of the ten provinces or three territories of Canada in accordance with the corporate legislature in that particular province or territory.

A federal incorporation provides the corporation with the right to carry on business throughout Canada and broader national name protection. While a provincial incorporation provides the corporation authority to carry on business in the specific province.

The following matters are some important considerations when helping a client decide whether to incorporate federally or provincially:

- A federal corporation has the capacity to carry out its purpose throughout Canada as of right. However, provincial law may require the federal corporation to register as an extra-provincial corporation prior to or concurrent with the federal corporation attempting to carry on business in that province.
- A provincial corporation can carry on business within its own province as of right, but to carry on business in another province, must registered as an extra-provincial corporation in that jurisdiction. Such registration can be refused by the other jurisdiction if the corporation’s name conflicts with the name of an existing corporation in that province.
- Consider the local, national or international nature of the business. Jurisdiction selection should align with anticipated geographic expansion.

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- The *Canada Business Corporations Act*, requires at least 25% of the directors be resident Canadians. As of 2021, Ontario no longer has this requirement for provincial corporations.

While corporate jurisdiction can change (through a continuation or restructuring), the process has additional costs associated with it. The proper jurisdiction should be given appropriate attention and consideration at incorporation.

C. Corporate Name Compliance

Both the OBCA and CBCA require that a business corporation's name include one of the following legal elements: Limited, Limitée, Incorporated, Incorporée, Corporation, Société par actions de régime fédéral, Ltd., Ltée, Inc., Corp. or S.A.R.F.

The key to naming a corporation is that the name must be distinctive enough to distinguish the corporation from any other business. The proposed name must not:

- Be identical or deceptively similar to an existing entity;
- Cause confusion with any existing corporate names, business names or trademarks;
- Contain prohibited terms (obscene or contrary to public policy);
- Suggest governmental or institutional sponsorship or control;
- Be misdescriptive of the business of the corporation;
- Solely describe the activities, goods or services of the corporation (e.g., Transport Ltd., Painting Corp., Ice Cream Incorporated);
- Include the name of someone else without their consent;
- Include only the name or family name of an individual (e.g., Smith Corp., Jane Ltd.);
- Include only a geographic location (e.g., Ontario Inc., Toronto Ltd.);
- Omit any mandatory terms.

Lawyer's should obtain written confirmation of the client's preferred name and alternatives. For corporations who will not be public facing, consider proceeding with a number name. Once the client confirms their instructions, perform a NUANs search to confirm the availability of the proposed name with Corporations Canada.

D. Capitalization and Share Structure

The most significant incorporation risks arise from improperly designed or inadequately documented share structure.

Corporations may issue shares in one or more classes, each with distinct rights, privileges, restrictions and conditions. These distinctions are central to how control and financial participation are allocated among shareholders. If there is only one class of shares, those shares must, at a minimum, have the right to vote, the right to receive dividends and the right to receive the remaining property of the corporation after it is dissolved. If there are more than one class of shares, each of the three rights must be assigned to at least one class of shares, but one class does not need to have all three.

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Typically, common shares are granted one vote per share. However, corporations may also issue non-voting or restricted voting shares, which confer economic interest without control, and are thus often referred to as “growth shares”.

Some corporations implement “super-voting” shares, which carry multiple votes per share. This is often done to preserve founder or management control while allowing external investment through lower-voting or non-voting shares.

Preferred shares may carry a fixed dividend rate or priority entitlement. Importantly, no junior class may receive dividends unless the preferred class has received its full entitlement, whether cumulative or non-cumulative. In many structures, dividends are tiered, with subsequent classes entitled only after satisfaction of superior dividend claims. Dividend flexibility enables closely held corporations to tailor income distribution among shareholders (e.g., spouses, family trusts), aligning with tax planning and cash flow strategies.

The distribution of a corporation’s assets upon dissolution is similarly shaped by the rights attached to different share classes. Common shareholders are generally last in priority and receive residual assets only after creditors and senior classes have been satisfied.

Some corporations issue “special shares” that guarantee a return of capital or a fixed value before any distribution is made to other shareholders. These shares are often used in the context of property transfers to a corporation, where the contributing party receives a class of shares that protects their investment or capital contribution. Such structuring ensures that certain shareholders are “made whole” before any division of surplus value among the broader shareholder base.

E. Professional Corporations

In Ontario, professional corporations are corporations formed to provide professional services that are regulated by the province of Ontario and that require a license or other legal authorization. Professional corporations are subject to both corporate statute and profession-specific regulatory requirements.

Below is a list of professions who can incorporate professional corporations and their governing bodies (Ontario):

| | |
|------------------------------|---|
| Lawyers and Paralegals | The Law Society of Ontario |
| Physicians | College of Physicians and Surgeons of Ontario |
| Dentistry | Royal College of Dental Surgeons of Ontario |
| Accountants | Chartered Professional Accountants of Ontario |
| Veterinarians | College of Veterinarians of Ontario |
| Chiropractors | College of Chiropractors of Ontario |
| Physiotherapy | College of Physiotherapists of Ontario |
| Optometry | College of Optometrists Ontario |
| Pharmacy | College of Pharmacists of Ontario |
| Traditional Chinese Medicine | College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario |

Common additional obligations include:

- Share ownership restricted to licensed members;
- Director and officer eligibility restrictions;
- Certificate of Authorization from governing body;
- Mandatory naming conventions; and
- Annual regulatory filings.

In Ontario, for example, the OBCA requires a professional corporation's name end with "Professional Corporation" or "Société professionnelle" and cannot have a number name.

Always check the appropriate governing body to ensure you are in compliance with regulatory requirements.

3. Reorganizations

A. Why Reorganizations Happen

- Clients reorganize for tax planning purposes, including in anticipation of or response to tax audits
- Reorganizations are also common when preparing a business for sale, as the structure of the corporation can significantly affect the tax treatment of the transaction

B. Tax Memo Review

- A reorganization should not proceed without a tax memo prepared by the client's accountant; this is the foundational document for the transaction
- Accountants can make mistakes: do not take their instructions at face value and do not simply implement whatever the memo says without review
- Read the memo carefully and apply your own professional judgment; flag any inconsistencies between the memo and what you know about the client or the corporation
- Map out instructions, use diagrams to confirm corporate structure
- If you are unfamiliar with this type of file or are uncertain about the memo's contents:
 - Communicate your concerns to your client in writing
 - Advise them that a second opinion from a tax lawyer may be required before you can proceed
- If you are familiar with these types of files and identify inconsistencies:
 - Raise the issue directly with the accountant and their team in a collaborative way
 - Always document these discussions in writing so you can demonstrate you performed due diligence if a dispute arises later
 - Tread carefully

C. Know Your Client

- Before reviewing the memo, confirm who the client is and what their profession or practice area is
- This matters because the rules governing who can hold shares of a professional corporation vary significantly, both by province and by profession

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- Different professions have different regulatory frameworks, and you cannot assume the rules are uniform:
 - **BC (dentistry example):** Under the *Health Professions and Occupations Act*, SBC 2022, c 43, s 59(2)(b), a trust can hold shares of a dentistry professional corporation in British Columbia; note that the HPOA has not yet come into force (in force April 1, 2026) and the current governing legislation remains the *Health Professions Act*, RSBC 1996, c 183; this trust holding arrangement is not permitted in Ontario
 - **Ontario (lawyers):** All issued and outstanding shares of a lawyer's professional corporation must be legally and beneficially owned, directly or indirectly, by one or more members of the same profession; holding companies may be used to own shares: *Business Corporations Act* (Ontario), s 3.2(2)(1)
 - **Ontario (physicians and dentists):** Voting shares must be personally owned, directly or indirectly, by a member of the relevant College; non-voting shares may be held by another member of the College (physician or dentist), a family member of the voting shareholder, or in trust for a minor child of the voting shareholder: O Reg 39/02 (Certificates of Authorization), ss 2.1 and 2.2 under the *Regulated Health Professions Act*, 1991, SO 1991, c 18

The takeaway: always confirm the applicable regulatory regime for your client's profession before advising on any share restructuring in a reorg

D. Minute Books

- Minute books must be up to date before you proceed with a reorganization
- If you are working with a new client who has retained you for a reorg, request the minute books early and review them for completeness before doing anything else
- Check for the following:
 - Articles of incorporation and any articles of amendment
 - Organizational resolutions and initial documents
 - Annual resolutions for each year since incorporation
 - Registers (directors, officers, shareholders, transfers)
 - Any existing shareholder agreements
 - Voting trust agreements
- If articles of incorporation are missing, you can obtain a copy from the Ontario Business Registry or equivalent provincial registry
- If articles of amendment have been filed, review them carefully; they may contain changes to share characteristics (e.g., authorized share classes, special rights or restrictions) that are directly relevant to the reorg
- Look for gaps in documents that fall outside of regular annual filings; these are particularly relevant to reorganizations because they may indicate prior transactions that were not properly documented
- All reorganizations should be accompanied by a Schedule 50 from the client's tax filings; this form provides shareholder information for any person or entity owning 10% or more of the common and/or preferred shares and is a useful cross-reference tool

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- Where possible, obtain the physical minute book; not every document ends up in the electronic copy provided by the client or their previous lawyer
- If any shareholder is a trust or another corporation:
 - Request the trust agreement from the client; the terms of the trust may affect who qualifies as a beneficiary and whether the proposed share structure is permissible
 - Request the other corporation's articles so you can confirm its share structure and any applicable restrictions

E. Corporate Profile Report

- Pull a corporate profile report at the outset; it is a quick and inexpensive way to verify key information before the transaction proceeds
- The profile report will confirm:
 - Whether all annual filings since the date of incorporation have been filed and are up to date
 - Whether the directors and officers listed on the profile match the minute book; if there are discrepancies, the online filing system will need to be updated
 - Whether any articles of amendment have been filed; if so, review them to confirm what changes were made, particularly any changes to share characteristics

The takeaway: keep the client informed and updated throughout the process; they should understand what you are reviewing, why it matters, and what issues (if any) you have identified

Schedule “A”
Pre-Incorporation Client Questionnaire

A. Business Overview and Entity Selection

- I. What is the nature of the proposed business?
- II. Why is incorporation being pursued at this time?
- III. Have alternatives (partnership, limited partnership, sole proprietorship, co-operatives) been considered?
- IV. Is liability insulation a primary objective?
- V. Is tax deferral or income splitting a primary objective?
- VI. Is long term succession planning a primary objective?
- VII. Is there an anticipated sale of the business?
- VIII. Is external financing expected?
- IX. Will this corporation function as an operating company, holding company, professional corporation, management corporation or investment corporation?
- X. Will there be any related corporations?
- XI. Have you consulted other professionals in making your decision?
- XII. What is the preferred timeline of incorporation?

B. Jurisdiction of Incorporation

- I. Where will the corporation carry on business?
- II. Is expansion outside of Ontario anticipated?
- III. Is national name protection important?
- IV. What jurisdiction have related corporations been incorporated in?
- V. Are there any foreign directors?

C. Corporate Name

- I. What is the desired corporate name?
- II. Where is the distinctive term in the name derived from?
- III. Are there alternative corporate names available?
- IV. Will the corporation operate publicly under the legal name or a business name?
- V. Is a numbered corporate name acceptable?
- VI. Will the name serve as domain name, trademark or certification mark?

D. Shareholders and Ownership Structure

- I. Who will be the initial shareholders?
- II. Will any shareholders be a trust, holding company, minor or non-resident?
- III. What percentage of ownership is intended?
- IV. Is control intended to differ from economic participation?

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- V.
- VI. Should all shareholders have voting rights? Dividend rights? Rights to property on dissolution?
- VII. Will any shareholders be silent investors?
- VIII. Are there unequal capital contributions?
- IX. Are there spousal considerations?
- X. Are there any existing shareholder relationships or prior disputes?

E. Governance and Management

- I. Who will be the initial directors?
- II. Who will be the officers? President? Secretary? Treasurer?
- III. Who will be the corporation's accountants?
- IV. What will the company year-end be?
- V. Will there be a unanimous shareholders agreement?
- VI. Who will make day-to-day operational decisions?
- VII. Who will make more substantial decisions?
- VIII. Who will be the signing authority on the corporation's bank account?
- IX. Will any shareholders have veto rights?
- X. Will decisions be made by majority, super majority, unanimous, or some other percentage?
- XI. How will you handle disagreements? Is there a deadlock resolution method?
- XII. Will there be any restrictions on share transfers?
- XIII. How does a partner get out of the business if they wish?
- XIV. Can partners get rid of a partner they no longer want?
- XV. Can some partners force a sale of the whole business?
- XVI. Are buy-sell provisions anticipated?
- XVII. How will you manage a partner who is in default of their obligations?
- XVIII. Will any shareholders be employees?

F. Professional Corporations

- I. Is the corporation regulated by a professional body?
- II. Are all shareholder's licensed members?
- III. Are there restrictions on directors and officers?
- IV. Has regulatory pre-approval been obtained?
- V. Is a Certificate of Authorization required?
- VI. Are you aware of the naming requirements imposed by the regulating body?

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Amalgamations & Dissolutions -*Business Corporations Act* (Ontario)
Principles, Pitfalls & Practicalities

A. Amalgamations (s. 174)

1. Searching for a shareholder ...
2. Corporations v. bodies corporate
3. Long - form (s. 175)
4. Short-form (s. 177)
5. Solvency certificates (s. 178)
6. The unwanted creditor, merger & partner
7. Number names

B. Dissolutions - voluntary (ss. 237, 238, 243)

1. Core requirements
2. Hidden assets and forfeiture
3. Liability limitation

C. Cancellation of Certificates

1. Section 240 applications
2. Ministry of Public and Business Service Delivery and Procurement - Policy on corrected certificates

We often see claims related to lawyers who have not uncovered all the facts or developed a sufficient understanding of a client's matter. Here are tips to ensure a thorough understanding of the file.



1. MAKE INQUIRIES TO KNOW YOUR CLIENT

- Ask about clients' circumstances to ensure your advice takes everything into account. For example, a client's immigration status can be a key consideration when representing a person in criminal law; learning a client's family tree, including previous marriages, is vital to preparing a will.
- Consider whether any title, corporate, or litigation searches may be necessary to develop a complete understanding of the file.



2. ASK FOR DOCUMENTATION AND USE PROBING QUESTIONS

- Some lawyers do not request client documents or ask the questions that could uncover material facts. Not knowing key information can cause significant problems in how you serve your client.
- To reduce this risk, ask open-ended questions during client intake and throughout the retainer.
- Inform your client what documents you will need from them. Follow-up with them with further questions. Ask, ask, ask. And then do a reporting letter to confirm your understanding of the facts and to confirm your instructions for next steps.



3. TAKE TIME TO CATCH AND CONSIDER ALL THE DETAILS

- Whether it is misreading (or not reading) information on a document, not conducting a search or not researching thoroughly, rushing or taking shortcuts can come back to haunt you. Make sure clients understand the risks if they instruct you to take shortcuts (usually to reduce fees), and that those discussions are documented. Do not be pushed into taking shortcuts that make you uncomfortable.



4. IF YOU ARE GOING TO OFFER LIMITED SCOPE RETAINER SERVICES, DO IT RIGHT

- Learn about unbundled legal services best practices, sample retainers and other resources on the practicePRO [Limited Scope Representation Resources page](#).
- Recognize that unbundled legal services are not always appropriate.
- A limited scope retainer does not mean less competent or lower quality legal services.
- Identify the discrete tasks that can be undertaken competently, confirm the scope of the retainer in writing and stick to it.



5. MAKE USE OF CHECKLISTS AND REPORTING LETTERS

- A final reporting letter detailing what you did and the advice you gave can be a great help if a claim occurs, which may arise long after you've forgotten the details of a particular file.

LEARN MORE INVESTIGATION TIPS AND MANAGING YOUR RISKS:

See the "[Malpractice Claims Fact Sheets](#)" and the [practicePRO inadequate investigation webpage](#).

CORPORATE ID FRAUD

Changing or stealing the identity of corporate property owners is commonly accomplished by filing a notice naming imposter directors and officers, using fake ID for the real directors and officers or changing the address of the registered office. The fraudsters then retain a lawyer to help sell or mortgage the corporation's property.



FRAUD WATCH



- ! If you aren't completely sure a matter is legitimate, terminate the retainer.
- ! If you've been asked to do something that seems irregular, ask questions.
- ! If it looks too easy or sounds too good to be true, it probably is.

SIGNS

- Notice of Change is filed after a long period without a change in control of the corporation – even where real owners or their agents regularly make corporate filings
 - Corporation has owned vacant land, disused or run-down property for a long time, without activity on title or visible use of land
 - Property may be in highly marketable or developing areas but subject to restrictive zoning, is environmentally sensitive, or lacking road access
 - Real directors/officers/shareholders are elderly, remote or otherwise vulnerable
 - Current officers and directors were appointed very recently (see “Date Began” in Corporate Profile Report). This may not be a concern by itself, but merits a query about the circumstances of the recent changes and any notes taken (especially if there are other red flags)
 - Corporation’s head office changed to non-existent or problematic address (such as a hotel – Street View on Google Maps may help determine this)
 - Corporate resolutions or minute book with obvious errors or typos, or simply not available
 - One lawyer retained to discharge an existing mortgage or file a Change Notice, but a different lawyer retained for borrower in the new mortgage transaction, or for corporation as vendor in a sale
 - Mortgage statement for discharge purposes shows much less than registered amount of mortgage
- Small encumbrance, such as a construction lien, recently registered and discharged from title (to give credibility to the fraudster’s claim to be legitimate owner of the corporation)
 - Client is new to you and documents show a different lawyer has acted for a corporation for years
 - Clients say that title insurance for new mortgage is not required
 - Client pushes for fast closing

TIPS

Check the Document Last Filed in the Corporate Profile Report. It will likely be an Annual Return, but could be a Form 1 – a possible red flag. A Corporate Document List search will disclose a history of the documents filed for the corporation. Ask for details of the change in control of the corporation, or permission to contact the corporation’s previous lawyer, agent, directors or officers.

Share this information with clerks and other law firm staff as they may be involved in parts of the transaction that you may not see.



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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 practicePRO [conflicts of interest webpage](#).

Resources and CPD for Lawyers

| LAWPRO's Practice Management Resources | |
|---|--|
| Retainer and non-engagement letters | Template retainer and non-engagement letters. |
| Responsible delegation: Annual corporate filings and updates | This article highlights rules pertaining to delegation. Also see Delegation checklist . |
| CPD: Conflicts, Undertakings, and File Management: What You Need to Know (2025) | This CPD was on common claims and consequences from conflicts of interest and solicitor's undertakings, including what happens when promises go unfulfilled. |
| Is it safe to serve on a client's board of directors | This article explores the problems that can arise when a lawyer sits on a corporate client's board. |

SPEAKER BIOS

Anurag Gupta



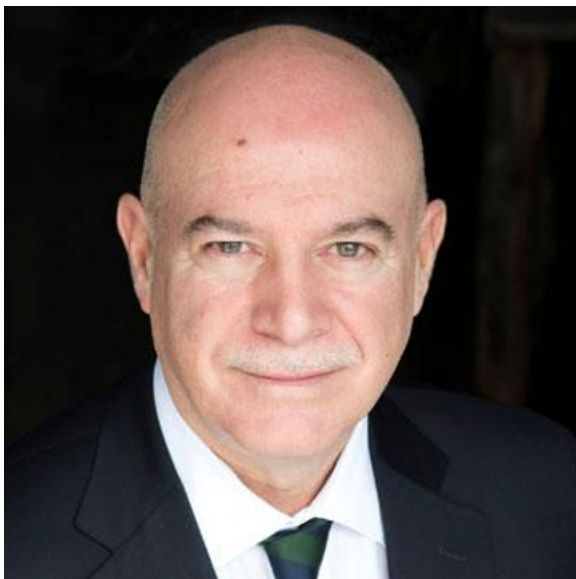
Anurag focuses on business law transactions in the Greater Toronto Area. Anurag Gupta's experience includes advising health professionals, business owners, technology, manufacturing for small to medium sized businesses on business, tax and commercial real estate matters. His focus is on goal orientation and long-term planning for clients.

He holds a law degree from the University of Ottawa and an Honors Bachelors of Science degree in Microbiology and Immunology from the University of Miami.

He is a member of the Law Society of Ontario.

Anurag was raised in Suriname and Miami before moving to Toronto.

Henry Bertossi



Henry has over 30 years of experience and expertise which encompass mergers & acquisitions, reorganizations and the structuring of diverse business and contractual arrangements including strategic alliances, domestic and international joint ventures and related licensing, distribution and support arrangements.

Henry provides discreet counsel that enables our clients to achieve their objectives. His expertise informs the judgment required to effectively navigate sensitive stakeholder relationships and complete complex matters.

Henry has assisted a broad range of clients, including private and family owned businesses, entrepreneurs, public institutions, regulated entities as well as multi-

national corporations, with business critical transactions and agreements as well as governance and regulatory compliance. His practice also includes advising foreign enterprises with respect to establishing business operations in Canada and related structuring and financing alternatives. Henry regularly advises on director and officer liability matters and risk mitigation.

Safiyya Vankalwala



Safiyya is PracticePRO Manager & Counsel at LAWPRO, overseeing the creation and delivery of practical risk-management resources and educational initiatives for Ontario lawyers. She monitors legal developments and claims trends, and collaborates with partners across the profession to promote best practices and reduce risk and claims. Her background includes 15 years in private practice, followed by work at a fintech company focused on strategic planning and legal technology development.

When not working, Safiyya can be found soccer mom-ing around the city, deep in a debate with family or friends, or unraveling a mystery -- sometimes in books, sometimes on TV, and occasionally in real life.