

LAWPRO

magazine

2024 | New Lawyer Issue 11

special
new lawyer
edition

MAKING
TECHNOLOGY
WORK FOR
YOU

and not
the other
way around.

Common
practice pitfalls

Student to
lawyer tips

Life after
graduation

What is LAWPRO®

And why should I care

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

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

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

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

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 LAWPRO insurance
TitlePLUS Home Buying Guide – Canada

 LAWPRO
TitlePLUS

What can I do to avoid malpractice claims?

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

Is LAWPRO part of the Law Society?

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

Does every lawyer need insurance from LAWPRO?

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

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//contents

LAWPRO Magazine
New Lawyer Edition

2024 | New Lawyer Issue 11



- 11** LAWPRO's best claim prevention tools and resources
- 16** Life after graduation
An article about articles
- 18** Resolve to get your law practice off to the best possible start
- 20** Student to lawyer: 20 tips for a smooth transition
- 22** Do you have what it takes to be a sole practitioner?
- 25** Sample interview questions

features

- 2** Common practice pitfalls: How to avoid them
- 6** LAWPRO is not like your auto insurer: Dispelling common myths about your insurance coverage
- 8** Making technology work for you and not the other way around
From new developments in online client intake, remote team management, and AI deep-learning models (like the program that created the image on the cover of this magazine), we look at the kinds of software you may use in your practice

in practice

- 4** Your insurance
What new lawyers need to know about LAWPRO's mandatory professional liability insurance
- 15** Tech tip
Wiring funds checklist



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magazine

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LAWPRO Magazine and LAWPRO Magazine's New Lawyer Edition are published by Lawyers' Professional Indemnity Company (LAWPRO) to update practitioners about LAWPRO's activities and insurance programs, and to provide practical advice on ways lawyers can minimize their exposure to malpractice claims. The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.

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

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Common practice pitfalls:

How to avoid them

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

Our records suggest that almost half of all lawyers will be the subject of a claim at one point in their career. Malpractice claims can be stressful, can hurt your reputation, and can be costly.

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

What kinds of mistakes lead to claims?

Students in the midst of law school, with its mountain of reading on cases and substantive law, might be surprised to learn that “errors of law” are not the biggest pitfall to watch out for in the world of private practice. In fact, only about 12% of LAWPRO malpractice claims are caused by lawyers getting the law wrong, except in very complex areas like family or tax law.

So, if knowing the law isn't the problem, what *is* the danger that new lawyers should be on the lookout for? You could call it “human error”: breakdowns in communication, poor calendaring and procrastination, and not digging deeply enough into a client's matter. These types of errors make up around 68% of the claims LAWPRO sees.

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

Client communication

In almost every area of practice, the number one cause of claims to LAWPRO is a breakdown in lawyer-client communication. This ought to be the easiest type of error to guard against, but it is also the most common. Often, these claims arise because the lawyer

and client disagree on what was said or done – or not said or done – sometimes because communications are rushed. This is partly the result of lawyers being busier than ever, and partly due to clients who expect fast replies and ‘round the clock’ responses from their lawyer.

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

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

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



communication breakdown



not digging deeply enough



poor calendaring



procrastination

68%

12%
errors of law

20%
other

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

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

Inadequate investigation

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

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

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

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

as well as claims prevention articles from *LAWPRO Magazine* at practicepro.ca/lawpromag

Time management

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

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

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

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

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

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



What you need to know about

LAWPRO's mandatory professional liability insurance

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



Visit lawpro.ca/newcalls

for more information about insurance requirements

What is professional liability insurance?

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

What is private practice?

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

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

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

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



Going into private practice.

How do I apply?



If you will be working as a sole practitioner, you will need to complete an application online. New lawyers can apply at any time after receiving a Law Society number from the Law Society of Ontario. While it's important to apply promptly for insurance, you do NOT need to delay beginning to practise.

You can begin the practice of law immediately while you wait to receive your number, with one exception: if you intend to practise real estate law, you must wait until your compulsory Real Estate Practice Coverage Option (REPCO) coverage is in place to do so. After the first year, you will be asked, each fall, to renew your insurance for the following year.

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

How much will it cost?

Not every lawyer in private practice pays the same premium. LAWPRO offers discounts to certain categories of lawyers (including part-time practitioners, and lawyers who practise criminal and/or immigration law exclusively). The base premium for the year 2024 is \$3,250 plus PST.



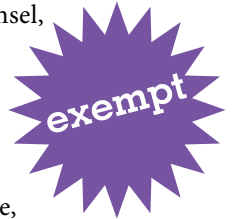
New lawyers receive a discount: Lawyers new to the bar in the current year receive a 50% discount from the standard base rate in their first full year of practice. Additional discounts are available in the second, third, and fourth years (40, 30 and 20%, respectively). New lawyers who practise for less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

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

Not going into private practice.

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

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



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



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

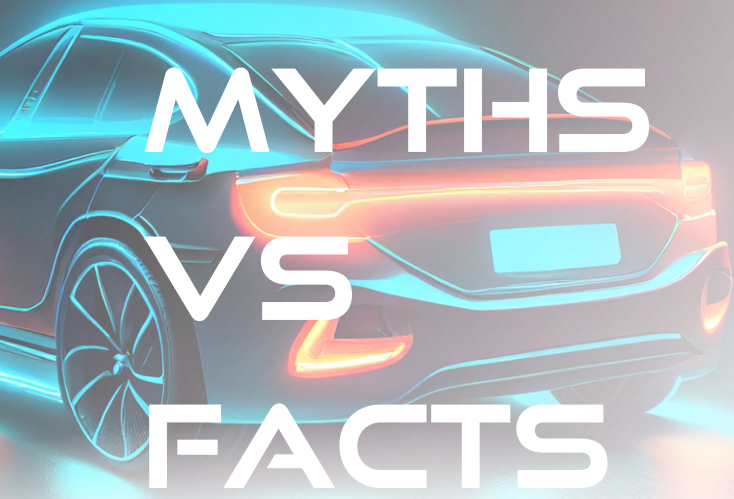
What happens if...

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

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

i HOW DO I FIND OUT MORE?

For more information, visit lawpro.ca/newcalls



LAWPRO

is not like your
auto insurer

A lawyer dispels common myths about your insurance coverage

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

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

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

From my work defending lawyers, I have found over and over again some common myths about the LAWPRO policy and how claims should be handled. All these comments apply to coverage under the mandatory

insurance program LAWPRO runs on behalf of the Law Society, and may also apply to excess insurance coverage if it is in place.

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

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

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


FACT Lawyers should report to LAWPRO in a variety of circumstances. These include: when a lawyer discovers or thinks a mistake was made; when

a client has asserted that the lawyer made a mistake; when a lawyer is being asked to swear an affidavit or give evidence about their file handling; or, when a request for production or court order has been made for the lawyer’s file. When in doubt, report!


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

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


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

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

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

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


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

 **FACT** Simply reporting a claim to LAWPRO does not, repeat, does not trigger a deductible. Lawyers have various deductible choices that include a nil deductible option (where you don't pay a deductible at all), a deductible that only applies when there's a

payment further to a judgment, settlement and/or repair (“indemnity payment”), and a third deductible option that applies to indemnity payments and claims expenses. If the third type of deductible applies, 50% of the deductible would be payable when a statement of defence or responding materials are filed, and the remainder would be payable on the earliest of the commencement of discoveries, examinations, or a pre-trial conference is held, or when an indemnity payment is made.


The claims history levy surcharge is only applied if a claim has had an indemnity payment or the entire claim limit has been otherwise exhausted. If a claim is closed without any repair being required or payment made to the other side, then your premiums aren't expected to go up just because you've had a claim reported. Most claims are settled without a finding of negligence. In 2023, 34% of LAWPRO claims were closed with no costs whatsoever, defence costs (without indemnity payments) were incurred on only 55% of the files, and an indemnity payment was paid on only 11% of the files.

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

 **FACT** The LAWPRO policy provides annual errors and omissions coverage of \$1 million per claim, or \$2 million in the aggregate. Keep in mind that this amount erodes with defence costs and expenses – which can sometimes be significant, even when the allegation of negligence has no merit. Consider the matters you handle and the nature of your practice – get excess coverage if you think you have exposure to a claim that would be worth more than \$1 million in terms of indemnity


(including pre-judgment interest) and defence costs. Excess coverage is not very expensive and gives you great comfort. Visit lawpro.ca/excess for information on LAWPRO's excess insurance program.

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

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

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

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MAKING TECHNOLOGY WORK FOR YOU

and not the
other way
around

Our watch can track our heartbeat when we exercise; our fridge can order a dozen eggs when we're running low; our cars can drive for us (or at least tell us when we drift out of our lanes); and our phone can recognize our face when we look at it. Every facet of our lives is affected by rapidly evolving technology. The legal profession is no exception.

For new lawyers, and even seasoned associates, the sheer volume of software solutions, subscription services, or server security systems that a sole practitioner or law firm must familiarize themselves with can be daunting. While LAWPRO doesn't endorse or recommend any particular software products, we've provided some examples below to help get you started on determining just what you may need to build your practice.

For more examples and tutorials of the various programs described below, see our table of *Technology Products for Lawyers and Law Firms*, available on practicepro.ca

Practice management software and "all-in-one" solutions

The easiest way to cut through the volume of software and tech solutions available to lawyers is to consider investing in an "all-in-one" solution. While no program will cover everything a lawyer does in a day, many subscription services provide user-friendly software packages designed specifically for lawyers to manage the bulk of the firm's administration needs. These platforms will organize your digital files by matter and client, track deadlines and provide reminders, bill clients, accept payments, coordinate trust accounting needs, and various other sundries. Examples include *Clio's Practice Management Platform*, *Cosmolex*, *PC Law* and *Time Matters*, *Matter365*, or *Filevine*.

Billing and payment products

While the tools for billing clients and collecting payments are often built into the all-in-one packages discussed above, some lawyers may opt for a more bespoke approach. Services like *Stripe Payments* allow lawyers to accept funds by credit card, debit card, and other means. Keep in mind that some billing software not designed for lawyers specifically may not allow users to intuitively distinguish between trust and administrative accounts, or properly abide by Law Society rules when it comes to unearned retainer funds. Services such as *LawPay*, which not only organizes payments but also facilitates the receipt of funds by credit card and other means, may be necessary to provide simple billing and payment options to your client while maintaining compliance with trust accounting rules.

For lawyers operating a brick-and-mortar office or meeting with clients in person, consider investing in POS (Point-of-Sale) equipment such as a *Square Terminal* or *Square Reader*, which can connect to a smartphone to accept credit card payments by chip or tap.

Client ID and verification

Verifying that the client is who they claim to be is a key part of opening any file. Law Society rules generally require such verification for anti-money laundering purposes (with some exceptions). Equally important, however, is how proper verification can prevent the lawyer themselves from being targeted for fraud. Various tools

are now available to assist with confirming the authenticity of a client's government-issued ID for verification purposes. Applications such as *Treefort*, *LexisNexis TrueID*, and other similar programs use the client's smartphone camera to scan identification documents, authenticate the document, and compare any photo-ID with a selfie contemporaneously taken by the client.

Time tracking tools

Lawyers billing by the hour need a simple way of tracking those hours. While many lawyers still track their time manually, time-keeping software can be integrated into a lawyer's computer and virtual telephone system to automatically keep track of every second spent on a file.

Like billing and payment tools, time-tracking is often built into the practice management packages discussed above, but à la carte options like *WiseTime* are also available.

Team management and collaboration tools

Working with colleagues, whether it's a fellow lawyer, a paralegal, or a legal assistant, can be much more complicated in a virtual environment. With more lawyers working primarily from home, online collaboration tools may be a necessary addition to any law firm's workflow.

Communication hubs such as *Microsoft Teams* and *Slack* allow colleagues to instantly communicate, coordinate, and share documents remotely. While project management software such as *Trello*, *Confluence*, and *Monday.com* are designed to help managers assign work to team members and monitor the progress of various projects. Other examples, such as *Legalboards*, are designed with the specific needs of law firms in mind.

Cybersecurity

All lawyers should be careful to maintain proper cybersecurity in their practice. While it's, quite frankly, impossible to remember multiple complex alphanumeric passwords (and then annually update them), proper password hygiene can be maintained by utilizing tools such as *1password* or *Lastpass*, which store passwords and other sensitive information in a "virtual vault" (with data maintained on Canadian servers), usually protected by a Two-Factor Authorization (2FA) system.

Speaking of 2FA, applications such as *Authy* and *Microsoft Authenticator* can be easily downloaded onto a smartphone and connected to the lawyer's computer or database, requiring all users to have both a valid password as well as a validated smartphone in order to access confidential information.

Social media and marketing

Alas, like any business, law firms need to spend time thinking about their marketing needs. Programs such as *Canva* provide simple tools for creating graphics and advertisements that can be used to promote a law firm on social media or elsewhere. While *Loomly*, *Hootsuite* and other similar software can help collate and organize your social media posts and marketing strategy into a single, easily digestible format.

For online marketing and ad spends, tools such as *Google Search Console* and *Google Analytics* can help a law firm optimize their website so it is more likely to appear in web searches and track the efficacy of online advertising. Third party alternatives to these Google tools are also available.

Transcription software

Virtual dictation assistants have become extremely effective and accurate in transforming recorded audio into text. Programs such as *Dragon Speech Recognition* or *SpeechExec* can be used to draft memos or notes to file by way of dictating directly to the software, while even the ubiquitous Microsoft Word allows for speech-to-text dictation options.

As well, certain programs like *Otter.ai* facilitate the transcription of recorded meetings or interviews, usually with the convenience of automatically distinguishing between different speakers. Keep in mind that using cloud-based services means that the content of the conversation will be shared and possibly stored with a third party (perhaps outside of Canada). Be careful to ensure that the encryption and confidentiality policies of any cloud-based service you use satisfies your ethical obligations to protect potentially privileged information.

AI: Machine Learning and Large Language Models

Recently we've seen the public release of software that can read, write, paint, and dream (or at least hallucinate). In fact, for this very issue of LAWPRO Magazine, we used AI to design the cover image (specifically, DALL-E by OpenAI). To create that artificial black and white "photograph," we provided DALL-E with the following prompt: "A black and white photo of a female lawyer, holding a briefcase, wearing a darkened space helmet that obscures her face, standing at counsel's table." In response, DALL-E compared millions of images in its database, along with the corresponding descriptions of those images, and "painted" a fake "black and white photograph" that it believed best represented the description provided in the prompt.

While the technology is impressive, we can already see certain dangers lurking behind this simple example. For starters, biases in the inputs can create bias in the output. Why did our prompt

have to specify that we wanted an image of a “female lawyer”? Because any prompt that simply requested a “lawyer” automatically produced a *male* lawyer. Presumably, in most of the images that the program analyzed to “learn” about what a lawyer looks like, the lawyer in question was male (a historical artifact that is less-true today). Since the program presumably “learned” that most lawyers were male, the program assumed that we wanted an image of a male lawyer.

There are many unwanted discriminatory biases implicitly or explicitly contained within historical documents, images, and data. By training the AI on this data, the AI inherits those biases and will often produce similarly biased answers, prose, or images, unless the user is careful to prevent such outcomes.

The use of AI-based tools are such a complicated and emerging part of a lawyer’s practice that LAWPRO invited Edward Marrocco, Partner with Stockwoods LLP Barristers, to speak with us about using new AI tools in a law practice. Here’s some of what he said:

“In the context of E-discovery, or TAR (Technology Assisted Review), artificial intelligence is being used to conduct doc reviews. Instead of just searching for keywords, you have a machine that can be trained to look for “concepts.” The machine reads all the words in your database, with the ability to understand sentences, and then it tries to identify relevant documents by connecting them to the concepts you’re interested in. The machine may be able to find documents relevant to your case that don’t use any of the keywords you thought were material. Some software on the market has been pre-trained to look for things like indicia of a toxic work environment, or evidence of deception or fraud. The idea is, if the model is trained correctly, you can grind through a huge collection of data very quickly and have relative confidence that you are locating all the documents relevant to your matter.

The other big thing right now is Large Language Models. This was heavily fueled by a platform called ChatGPT launched by a company called OpenAI. GPT stands for “Generative Pre-trained Transformer.” It’s a type of model that uses machine learning to generate human-like text. Quite simply, you can have a conversation with a machine, and it feels like you’re just talking to a person. You can ask a question in sentence-form, and it will give you an answer in sentence-form. Its answers are based on a huge amount of past data that were ingested into it, so it doesn’t know anything that occurred after that ingestion date. We know that ChatGPT was trained on “a diverse range of internet text.” And if you want to know how I learned that: I asked ChatGPT and it told me.

For lawyers, this kind of technology is very attractive, because you can quickly obtain information in a conversational format. You can ask it to write an essay, a summary of a book, a policy for your office, or a factum. But I wouldn’t recommend you go to a service like ChatGPT and ask it to write you a factum. For one thing, the platform doesn’t have a real ability to signal to you that it may have misunderstood your prompt. It can give you an answer, but it may not be accurate even though the platform is quite confident when it tells you that it has the answer right. This is where we get the concept of so-called “chat hallucinations.” Lawyers have run into trouble by filing briefs with courts about cases that don’t exist. This can happen for different reasons, such as the model misinterpreting the question, being trained on imperfect data, or trying to complete sentences in a coherent manner but missing the mark.

In addition to the false information it can provide, there are also privacy risks associated with the technology. Don’t share any confidential or privileged information with an AI program, because we don’t know what the program will do with that information.

So here are some warnings about AI: It’s undoubtedly going to revolutionize the way we do business. But if I can just be the killjoy here, I think that, at this point, it’s something you should familiarize yourself with so that you understand it and how to work with it, but don’t rely on it. The day will come when it will replace traditional legal research, but we’re not there yet.”



LAWPRO's best claims prevention tools and resources

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



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

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

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

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

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

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

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

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

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

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

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

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

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

9 Do not allow yourself to become a pawn: Do not allow loyalty to a client, pressure by a client, or other motivations get in the way of your professional duties and ethics. Do not cut corners, cover up irregularities,

or forgo investigative steps at the urging of a client. Doing any of these things will come back to haunt you.

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

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

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

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

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

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

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

Top technology articles and resources

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

- 1 Perspectives on the future of law
- 2 How to safely put your data in the cloud
- 3 Work from home technology tips
- 4 Getting started on investing in tech
- 5 Phishing scams: Be the one that got away
- 6 What to do if money is diverted to a fraudsters account
- 7 Survival tips to prevent fraud
- 8 Does your firm need cybercrime insurance?
- 9 A place for every email and every email in its place
- 10 Docketing do's and don'ts
- 11 Artificial intelligence and the self-driving lawyer
- 12 Backup best practices and strategies
- 13 Outsourcing your law firm's cyber security
- 14 Ten tips for effective video conferencing
- 15 Essential do's and don'ts for LinkedIn users

All available at practicepro.ca



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

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

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

3 Social Engineering Toolkit: Lawyers and law firms are frequent targets of Social Engineering schemes. To better protect our insureds from these schemes, LAWPRO has put together a Toolkit of simple steps you and your staff can take to prevent becoming the victim of fraud.

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

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

6 Domestic contract matter toolkit: This toolkit helps lawyers systematically

consider and discuss all relevant information at the initial interview and signing of a domestic contract. It includes an intake form, an intake checklist, a post-meeting client assignment form, and a review and signing checklist.

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

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

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

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

important topics to discuss with your client in preparation for trial.

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

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

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

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

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



What are the risks in your area of law?

Our malpractice claims fact sheets include claims statistics, causes of claims against lawyers, and tips for avoiding claims for the following areas of law: Litigation, Wills & Estates, Criminal, Family, Real Estate, Corporate, Franchise, IP, Employment, Immigration



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

- 1 The biggest malpractice claims risks:** Lawyers may be surprised to learn that failure to know or apply substantive law accounts for a relatively small portion of LAWPRO claims. Find out the biggest causes of claims in this article.
- 2 New Year's resolutions for a healthier law practice and a new you:** If you are going to read one article this is it – practical tips for reducing risk and avoiding claims and stress.
- 3 Check your cheques: Five ways to spot fraudulent cheques:** The use of counterfeit cheques or similar instruments is still a common form of fraud against lawyers. Learn about how to protect yourself from common scams.
- 4 Tips for navigating the new Simplified Procedure:** The new Simplified Procedure seeks to provide a more streamlined process to resolve claims up to \$200,000. Lawyers need to adapt to the faster environment and manage clients, experts, and costs effectively.
- 5 Manage malpractice risk by recognizing cultural diversity:** In the context of legal services, cross-cultural misunderstandings and other culture-related factors can occasionally lead to malpractice claims against lawyers. Understand more from this article.
- 6 Litigation claims trends: errors & insights:** This fact sheet examines the most common civil litigation-related errors that LAWPRO sees, and the steps you can take to reduce the likelihood of a litigation claim.
- 7 Self-represented litigants: A survival guide:** Having a self-represented litigant on the other side of a matter can be very frustrating for you and your client. This article will help lessen those frustrations.
- 8 Real estate claims trends:** A detailed review of where and why real estate claims happen – and what can be done to avoid them.
- 9 Cultivate your innovation mindset to build your future practice today:** Here are 20 innovation tips to get you in an innovation frame of mind; help you find your innovation inspiration; give you practical tips to succeed in any innovation project; and equip you for long term success.
- 10 Unbundled legal services: Pitfalls to avoid:** “Unbundled” or limited scope legal services are here to stay; but providing these services creates risks that must be managed. Read this article to understand and avoid those risks.
- 11 Landmines for lawyers when drafting wills:** This article outlines some of the areas of greatest malpractice danger for wills practitioners.
- 12 Diversify without dabbling:** Before expanding your practice, expand your competence. Dabblers – lawyers working outside their usual area of practice – cause a significant number of claims. Read this to understand why.
- 13 Wondering when to report that claim or potential claim? Do it now:** Late reporting of a claim can have severe consequences. Read this article so it doesn't happen to you.
- 14 The morning after mediation:** Settling a matter requires lots of give and take and some compromise, with the result that clients may have second thoughts about what they agreed to the day before. Avoid this predicament with the advice in this article.
- 15 A checklist for avoiding conflicts on lateral transfers:** Lateral transfers need to be a good fit and having the right credentials is important, but so is avoiding conflicts of interest. Get the advice to do it right here.

AN ARTICLE ABOUT ARTICLES:

Recent law school graduates in their own words

To be a lawyer is to be accustomed to words. Files, contracts, factums, letters, memos, dictation, transcripts, docket, emails, pleadings. Words. Some words seldom seen or used outside the parlance of the profession.

A new lawyer isn't simply *licensed*, they're *called*. At which point they will hopefully not be *hired* by a client, but *retained*. And, perhaps, bring that client's matter before a judge where they won't *argue*, but make *submissions*. Until they not simply *ask for a remedy*, but make a *prayer for relief*.

Before all of that though, they don't just *train*, or *intern*, or *apprentice*—but *article*.

In a profession suffused with ancient and awkward terms of art, *to article* is a particularly opaque piece of jargon. Etymologically, it comes from the Articles of Clerkship, meaning the literal terms (i.e., *articles*) of the contract between an apprentice lawyer and their principal. To be working under such a contract came to be known as completing one's *articles*. In much of Canada, those training to be lawyers were therefore known as *articled students*—evoking the notion that the difficult licensing process is, perhaps, not something these students are doing but is instead something being done *to them* (one can be *articled* like one can be *tackled*, *trampled*, or *conussed*). In Ontario it's now commonly used as a present-tense adjective—*articling student*.

Those entering their first years as a lawyer, from the forests of textbooks, essays, footnotes, fact patterns, and three-part tests festooned upon blackboards, may understandably find this profession to already be a surfeit of words. But even so, we asked them to add a few more of their own.

We sat down with three articling and LPP students starting their careers with LAWPRO—**Alexandra Alayche**, **Bianca Zuzu**, and **Elliot Wilson**—to speak, in their own words, about transitioning from student to lawyer.

On working remotely

Alexandra's final year at law school was done entirely by remote learning. She says, "I was a bit worried when starting the articling process that the whole journey might be online. I couldn't even fathom doing it that way because articling is a steep learning curve. You want to be able to have social interactions with the people you're working with."

"Thankfully," she continues, "I feel like a hybrid environment is a great balance. There are a lot of opportunities that arose while articling that I was only able to attend because they were done remotely. Things like examinations for discovery or court appearances that are happening in different cities. When they're on Zoom, an articling student can still be there and just observe."

Elliot agrees. For him, "working directly with different people and understanding their personalities, what they're looking for, and how to communicate with them" is a major benefit to working in a hybrid environment.

On the job search and coming to LAWPRO

Thinking back to the job search in law school, **Bianca** laughs and says, "I didn't even know what the OCI process was until I started law school." She explains, "I always had a passion for real estate, but I didn't want to pigeonhole myself by starting at a boutique real estate firm. Thankfully, at LAWPRO, there's just so much real estate work to do."

For **Alexandra**, the process was an evolution. She says, "I used to volunteer at a hospital all throughout high school. If I didn't pursue political science and law, I would have gone down the biomedical route."

She continues, "I ended up doing an internship with Sport Resolutions in the UK, which is an alternative dispute resolution tribunal. I love sports, and it was a great opportunity to gain legal knowledge in a field that connected to my biomedical experience. From there, I started volunteering with a Health Professional Review Board. That led me to an interest in professional liability and LAWPRO."

On building new skills

Elliot has fond memories of law school, particularly classes like Negotiation, where mock deal-making provided real experience with the legal profession. But he stresses that the LPP program has been much more valuable than law school. "When you're assigned a memo at the beginning of the day and told you have to finish it by 6pm," he recounts, "it forces you to pump through it and figure out what it is they want. Exposure to all parts of the law is what you're doing on a day-to-day basis as an LPP student."

Alexandra explains how her writing has changed since leaving law school. "One thing that stuck with me so far," she says, "is the importance of concise writing. Prior to joining LAWPRO, I think

I wrote maybe five memos through law school. I've since written over 30. There can be volumes and volumes of material to condense, which can be overwhelming at first, so you need to think about who your target audience is, who you're writing for, and summarize only what is important. That's a skill that will help in the future."

On time management

Bianca describes herself as "the kind of person that always needs an answer." She says, "I always need to get to the bottom of everything. And in law school, there usually is an answer. But in practice, you need to know when there isn't an answer. It's not a failure to discover there's nothing to be found on a particular question. When you have multiple files or assignments, you can't afford to go down a rabbit hole sometimes. Articling has taught me to accept the limits of our knowledge, and to know when I'm reaching a dead end."

After her undergrad, Bianca had to quickly develop time-management skills to balance her studies with a strong commitment to athletics. "Throughout law school," she explains, "I was coaching tennis every day. The most important thing I learned was how to organize my time—you need to just write out your entire schedule because it's impossible to memorize it all."

In building that schedule, Bianca stresses the importance of avoiding burnout, saying "I also made sure I was taking care of my mental health. In law school, it's easy to not see your friends for three or four months, if you're not careful. Finding a balance kept me sane and allowed me to perform better."

For **Alexandra's** part, she says, "I was very young starting my first year of law school, with only two years of university experience. I remember saying I was going to give myself one semester to just focus on my studies. But then you always want to get involved with volunteer activities and *pro bono* work. During exam season I would have this calendar full of sticky notes with due dates, assignments, grocery shopping lists, and I would always fall behind. When you put too many things in a day, you can't seem to catch up. I would eventually just tear it up and start a new calendar."

"It became very important to balance my extracurricular activities, commitments, and academic success at the same time. Time management is a transferable skill applicable to not only articling, but anything that you undertake."

Now that she's at LAWPRO, Alexandra has become proficient with organizing her time through online calendars and time-management tools, but looks back fondly on physical calendars. "There's something about the feeling of crossing something off your list that that is just so..." Alexandra trails off. Ironically, she is unable to find the right word. ■

Get your law practice off to the best possible start

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

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

...to avoid litigation claims

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

...to avoid corporate-commercial claims

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

...to avoid real estate claims

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

...to avoid family law claims

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

...to avoid wills and estates claims

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

...to avoid criminal law claims

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



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



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

...for better case management

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

...to avoid doing things that annoy clients the most

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

...for stress relief, wellness and balance

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

...to better set and control client expectations

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

...to better document files

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

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

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

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

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

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

STUDENT TO LAWYER

20 TIPS

FOR A SUCCESSFUL TRANSITION

There isn't a magic formula for mapping out a career in law. You will make some decisions on where you would like to go, but there are many things outside your control which will impact where you end up. Factors such as economic conditions, personal circumstances, and even a bit of luck will affect the career path you will follow.

Some law students have a very strong idea about the area of law they ultimately see themselves practising in. Others have no idea. Your thoughts may change as you go through law school. Whether you already have an articling position, an LPP placement, or are still searching, it is worthwhile to spend time organizing your thoughts about the direction you would like your professional life to take. This can help you make better choices. This article outlines some tips and self-assessment questions that will help you find your way to a satisfying and successful legal career.



1

HONESTLY ASSESS WHAT MAKES SENSE FOR YOU

Regardless of what stage you are at in law school, you may have an idea of where it is you would like to end up. That could be in Toronto at a large Bay Street firm, a sole practitioner in a small community, or somewhere in between. When it comes to areas of law, work hours, working environments, types of work, remuneration, and many other factors, Bay Street lawyers, smaller firm, and solo practitioners live in very different worlds.

Ask yourself what makes sense for you. This is a very personal question. Be honest – very honest. You will be happier and more successful if you can find the place where you best fit in. Do your best to figure out where that is.

2

A QUICK REVIEW OF THE OPTIONS

In Ontario there are around 31,000 lawyers in private practice (i.e. lawyers who work at a firm serving clients). The largest firms have several hundred lawyers. The smallest have a single lawyer. A job at a large firm may mean a bigger salary, and in some cases, a bigger time commitment. Some lawyers enjoy and thrive in the big firm environment, others do not. One-third of the lawyers in private practice work in sole practices and one-third work in firms with just 2-10 lawyers. There are a few thousand Ontario lawyers that have a corporate or “in-house” position. And while it is probably not something that many students contemplate as they are in the midst of working hard to get through law school, ultimately the realities of practice or other personal circumstances cause some to leave private practice and even the legal profession.

3

CREATE A LIST OF OPTIONS

Where do you want to go? Consider your preferences and what you think makes sense for you. Write out a list of your options. Your list should include the most desirable options as well as others you might consider if your preferred choices do not work out. Think broadly and keep alternatives open. You may have specific firms in mind, but you should keep an open mind and include groups or categories of firms that would be of interest.

4

WHAT MAKES YOU UNIQUE?

Every law student is unique, and the key to selling yourself is to tap into your own uniqueness. To do this, consider the work and personal experiences you have had, the education and training you have completed, and any other skills that you have learned before entering law school. Identify what makes you stand out from the crowd. This will let you sell yourself with more confidence and will also help you make choices about job opportunities that are the best suited to your abilities and preferences.

5

DO YOU HAVE WHAT IT TAKES TO BE A SOLE PRACTITIONER?

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

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

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

Skills	Rating
<p>Getting clients</p> <ul style="list-style-type: none"> projecting confidence in your skills networking client service follow-up asking for referrals identifying client needs tracking competitors 	<p>1 2 3 4 5</p> <p>LOW HIGH</p>
<p>Marketing</p> <ul style="list-style-type: none"> advertising/promotion/public relations annual marketing plans marketing strategies pricing 	<p>1 2 3 4 5</p> <p>LOW HIGH</p>
<p>Financial planning</p> <ul style="list-style-type: none"> cash flow planning bank relationships monthly financial statements management of credit lines 	<p>1 2 3 4 5</p> <p>LOW HIGH</p>
<p>Accounting</p> <ul style="list-style-type: none"> bookkeeping monthly profit and loss statements/balance sheets quarterly/annual tax preparation billing, payables, receivables 	<p>1 2 3 4 5</p> <p>LOW HIGH</p>
<p>Administrative</p> <ul style="list-style-type: none"> scheduling payroll handling benefits administration 	<p>1 2 3 4 5</p> <p>LOW HIGH</p>
<p>Personnel management</p> <ul style="list-style-type: none"> hiring employees motivating employees general management skills firing employees 	<p>1 2 3 4 5</p> <p>LOW HIGH</p>
<p>Personal business skills</p> <ul style="list-style-type: none"> oral presentation skills computer skills fax, email experience written communication skills word processing skills organizational skills 	<p>1 2 3 4 5</p> <p>LOW HIGH</p>
<p>Intangibles</p> <ul style="list-style-type: none"> ability to work long and hard family support ability to work alone ability to manage risk and stress ability to deal with failure ability to work with and manage others 	<p>1 2 3 4 5</p> <p>LOW HIGH</p>

How did you do?

TOTAL

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



A DOSE OF REALITY – THE JOB MARKET

After you have determined what you think your preferred career path will be, you need to consider the job market. Finding an articling position or post-articling job may be difficult right now, although the introduction of the Law Practice Program in 2014 expanded the options for students. Unfortunately, you may end up taking a position that will not be your ideal in terms of size of firm, area of law or geographic location. These factors are beyond your control. You will need to work with them and make the best choices you can in the circumstances in which you find yourself.



BE PREPARED TO DEAL WITH UNCERTAINTY

Making decisions about your career path when you are a student is not easy. There is a great deal of uncertainty as there are many choices and limited information on which to base decisions. This uncertainty is compounded by many factors and unknowns beyond your control. You will not be able to eliminate uncertainty. Accept that there is an element of risk and chance. Work to gather all available information and make the best decision you can in the circumstances.



BE READY TO ADAPT

After you have assessed your preferences and mapped out your options, you should have an idea of where you want to go and what you need to do to get there. However, your personal circumstances and external factors can change. Make sure you consider new or changing circumstances and be alert for new opportunities. Your preferred path may change based on your articling or LPP placement experience or the work you end up doing in the early years of practice.



PREPARE YOUR RESUME AND SUPPORTING INFORMATION

Prepare the bundle of information you will use to sell yourself in interviews. This includes a resume that highlights your background and why you are unique – remember, you want to stand out from the crowd. If you have them, collect writing samples to show your work. Identify your references and contact them for permission.



10

CONTACTING POTENTIAL EMPLOYERS

Contacting potential employers takes some legwork. Start with your most preferred options and work down your list. Go online and review firm websites; talk to friends and colleagues to get information about the firms you are considering. An inside introduction can help, so look to see if someone you know knows someone at any of the firms that interest you.

11

GET NETWORKING

For lawyers and students the process of networking is aimed at increasing your contact with individuals who may be clients, know about career opportunities, help open doors, or provide support. Networking involves developing new contacts, as well as tapping old ones. Informal channels can also help with networking, and even with finding a job. Many law students initially think they do not have “contacts” in the legal profession. Don’t sell yourself short. If you are active on social media you already have a network that probably includes people from the legal world or people that are connected to people in the legal world. If you aren’t on social media, you can create a network with minimal effort.

12

MAKING A GOOD IMPRESSION AT A JOB INTERVIEW

When it comes to getting a position, making a good impression is critical, both in your articling and LPP interviews and in any future interviews you might do. You can make a positive impression with good answers to the many difficult and awkward questions that will be asked of you. These questions are often fairly standard and you can and should prepare answers for them. See page 25 for a list of some of the questions you can expect in an interview for a position at a law firm.

How would you answer these job interview questions?

Job interviews can be very stressful. It’s not easy to answer questions about yourself, especially when they are open-ended questions that address your personality, work habits, ability to do teamwork and so on. Good answers are the key to a successful interview, and hopefully a job offer. The questions asked at job interviews are fairly standard. You greatly increase the chance you will give a good interview by preparing answers ahead of time. See the facing page for the questions you can expect in an interview for a position at a law firm.

SAMPLE INTERVIEW QUESTIONS

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

Background questions:

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

Independence/sense of self/judgment:

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

Conscientiousness/work ethic:

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

Motivation/initiative:

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

Achievement/accomplishments:

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

Interpersonal skills/communication:

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

Organization:

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

13

DELEGATED TASKS DONE RIGHT

Delegation involves getting the job done through others. As an articling/LPP student and new lawyer you can count on having many tasks delegated to you. Here are some tips to help you maximize the learning opportunities that delegated tasks present and to make sure the tasks delegated to you are successfully completed:

- Get clear instructions and all required information: Make sure you understand the specific issues of concern, but also look to appreciate the bigger picture so that you understand the reasons behind the work that you are doing.
- Get direction on any special parameters: Ask the person giving you the task if there are any parameters that will limit or direct what you are to do to complete the task. Are there resources to use or to avoid? How much time is to be spent on the task? Are there any cost sensitivities on the part of the client with respect to the amount that will be billed for the work?
- Get a realistic deadline: Most tasks will come with a deadline attached to them. Make sure you are aware of the deadline and that you can realistically meet it given the other tasks for which you are responsible. Talk about alternatives if the deadline is unrealistic given other deadlines you are facing.
- Understand the reporting mechanism: Are you expected to simply return the completed work, or are you to check in with updates as the work progresses?
- Confirm the instructions given to you: At the end of your discussion, reiterate the instructions given to you to make sure you properly understood them. Ask about anything you don't understand or are confused about.
- Ask for feedback when the work is done: Getting feedback is key to learning, especially if there were mistakes or complaints about the work. Hopefully any criticism given to you will be constructive criticism.



14

GOOD CLIENT COMMUNICATION IS ESSENTIAL

Start off on the right foot in your dealings with clients. LAWPRO statistics indicate that nearly half of all lawyers will have at least one malpractice claim during the course of their career. The most common malpractice claims don't involve a failure to know or apply the law – errors of law lead to only about 12 per cent of the claims

LAWPRO sees. Lawyer/client communication issues are the most common cause of claims, accounting for more than one-third of the claims LAWPRO handles. These errors arise due to poor communication, miscommunication, or no communication whatsoever. Take the time to develop good interpersonal skills and to implement sound client communication practices. You can find more resources on client communication practices on practicepro.ca

15

GET A MENTOR TO IMPROVE YOUR SKILLS

Mentoring is one of the most effective ways to gain skills, knowledge, and wisdom about many topics that are not taught in law school. See LAWPRO's table of Ontario Mentoring Programs at practicepro.ca to find a mentor that's right for you.

16

MAKE TIME FOR MARKETING

Some lawyers find rainmaking natural and easy, others struggle with it, and some are oblivious to the need to market their services. In today's competitive environment, marketing and client development are essential. Marketing legal services does not lead to instant results. Not everyone needs legal services at the moment. Good marketing does pay off, but generally only slowly and with a steady effort over the long haul. Therefore it is critical that you market yourself on an ongoing basis, even when business is good. Most law firms of any size will have some kind of formal marketing and business development plan. As an articling student there are some marketing-type activities that you can undertake to foster positive relationships with the clients you are dealing with. You will have to work within the parameters of any existing plan.

Marketing basics

It's never too early to begin marketing services to existing and potential clients. As you work on a basic marketing plan, consider including the following activities and implementation schedule:

Each week:

- Take at least one current client, potential client, or potential source of referrals out to lunch (or just for a coffee).
- Send a handwritten thank-you note any time you; close a client file; receive an introduction or a referral; or receive any kind of advice, assistance, or support that goes beyond the call of duty.
- Post articles on interesting legal topics to social media along with comments explaining their importance (see *Essential LinkedIn dos and don'ts for law student* on practicepro.ca).

Each month:

- Attend at least one civic, service, or community meeting.
- Try to add at least five new people to your professional contacts list.
- Make a telephone call to an old friend you haven't talked to in a while and just chat.
- Spend some time touring a client's place of business at no charge to the client.

- Send someone you know who received some good press a copy of the article and a congratulatory note.
- Attend an education program and sit with lawyers you don't already know.

During the next four months:

- Set up a public speaking engagement, or volunteer to help with one on behalf of your firm. Tell your clients about it.
- Read a book about marketing or law practice management.
- Host a social event or arrange a get-together.
- Do some volunteer work for the Law Society, the Canadian Bar Association, the Ontario Bar Association, or another law association.
- Schedule a time to review the last four months of your marketing efforts.
- Send cards to clients and other contacts on their birthdays and during the holiday season.

When choosing marketing activities, play to your strengths. If you're very social, find opportunities for face-to-face meetings. If you're a written communicator, keep those thank-you notes flowing. Remember that a diverse approach will often yield the best results. Make an effort to try some of those marketing activities that lie outside your comfort zone. With practice, you'll find that your efforts come more naturally. You'll also begin to see results.



BE NICE!

You will find that the legal world is a very small one. You will meet hundreds of people through the course of your articling year or LPP placement. This will include lawyers and staff at your firm and at other firms, clients, court office staff and others. You can count on meeting many of these people again through the course of your career, so be professional and courteous with everyone you deal with each and every day. Word gets around, and you never know how the people you interact with today will be in a position to help or harm you in the future. Always remember, what goes around, comes around. Be nice!



HAVE A LIFE

Many legal positions will put great demands on your time, sometimes far beyond the regular 9 to 5 workday. There is nothing wrong with working hard and being proud of the work you do as a lawyer. But don't neglect the people in your life, and make sure you spend time outside the law office setting! Your partner, kids, extended family, friends, and community are important. Make time for them. A strong social network outside the office will make it easier to deal with the stress at the office and can help keep your job in perspective. Sports or other hobbies will let you blow off steam, keep in shape, or be engaged with non-legal tasks and people.



TAKE CARE OF YOURSELF

At times you will find the demands of working stressful, as well as physically and emotionally exhausting. You can count on being exposed to high levels of stress on a daily basis. Unfortunately, lawyers exposed to high levels of stress over the long term may misuse or become addicted to drugs or alcohol, and can have challenges to physical or mental wellness. These problems can be contributing factors for LAWPRO claims and Law Society complaints. So try to eat right, and get exercise. And if you feel stressed and burnt out, remember there are resources to help you. See the self-assessment tools and resources on the practicePRO wellness page and page 29 for more information.



TRUST YOUR INSTINCTS

Throughout your career as a lawyer, there will be highs and lows, good times and bad. Follow your heart and your instincts. Be ready for the unexpected. Many of you will end up in a career that is very different from anything you are expecting or planning for today. It may even be outside the law. Good luck on your articling or LPP experience and with the other decisions you face over the coming months. ■

What new real estate lawyers need to know



What is title insurance?

Title insurance protects property owners and lenders from certain losses and risks to their property title. It's purchased for the owner only once and is valid for the entire time the purchaser or their heirs own the home. A lender policy will usually need to be purchased each time the homeowner changes or refinances their mortgage to a new lending institution. Title insurance is offered on almost all purchase and refinance transactions in Ontario.

What kinds of risks does it cover for my client?

TitlePLUS title insurance, backed by LAWPRO offers:

- ✓ Title fraud protection: coverage for title fraud that may have occurred before or after the purchase
- ✓ Unpaid utility bills and or appliances: coverage for utility bills or appliances which the seller should have paid for – but didn't
- ✓ Building permits: coverage where the buyer may be required to make repairs to items that were built by the seller without prior permits or inspections
- ✓ Cottage/recreational properties: coverage for access and road allowance issues
- ✓ Legal Services: coverage for errors and omissions made by the lawyer in the transaction

What is the lawyer's part in helping clients get title insurance?

Real estate lawyers can purchase title insurance on behalf of their clients purchase or refinance transactions. Contact TitlePLUS at titleplus@lawpro.ca or 1800-410-1013 to find out more.

TitlePLUS is committed to the legal profession

Developed in 1997 by Lawyers' Professional Indemnity Company (LAWPRO), TitlePLUS is the only 100% Canadian owned and bar related title insurance provider in the market. We believe that lawyers are a critical part of real estate transactions and are committed to offering services that values lawyers' expertise.

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