Quick stats

Average 202 claims per year
Average cost: $6.8 million per year
Average cost per claim: $33,400
#4 claims area by count
#4 claims area by cost
Average of 4 years before claim reported

Common errors

The number of claims per year in this area has doubled over the last decade, with inadequate investigation claims surpassing communications issues as the biggest source of these claims.

These errors typically occur at the client intake. Too many lawyers are not truly listening to the client’s instructions and not probing and questioning the client to uncover facts that may cause problems later. It’s important to read between the lines instead of simply filling in the elements of a will template or precedent.

Wills and estates is an extraordinarily complex area. Lawyers who practice in this area must maintain a working familiarity with a wide range of statutes and must apply complex provisions of the Income Tax Act. Law-related errors are more than twice as likely to occur in the wills and estates area as compared to other areas of practice.

Ensuring you understand the client’s needs, knowing the relevant law and avoiding shortcuts can help prevent claims. Detailed documentation of your conversations with, and instructions from, the client can support a lawyer’s defence should a claim be made.

See the reverse page for the most common wills and estates errors and more steps that can be taken to reduce exposure to a malpractice claim.

Speakers and resource materials

We can provide knowledgeable speakers who can address claims prevention topics. Email practicePRO@lawpro.ca

Visit practicePRO.ca for resources including LawPRO Magazine articles, checklists, precedents, practice aids and more.

Hot topics in wills and estates law claims

- Proper investigation requires that you ask yourself the question: “what does my client really want?”
- Ask your client what their assets are (and insist on an answer).
- Law-related errors are twice as likely to occur in this area of practice than in others. Make sure you know statute and case law.

Resolution of claims

Count of wills and estates claims

All claim figures from 2007-2017. All cost figures are incurred costs (March 2018)

- Indemnity Paid 11%
- No Cost 39%
- Defence Only 50%
- All other 1%
Risk management tips
Ask more probing questions when meeting with a client to prepare a will
Too many lawyers are not asking the questions that could uncover facts that could cause problems later, or making clear to the client what information they need to provide. Was there a prior will? Are all the beneficiaries identified correctly? What about giftovers? Were all assets identified and how are they registered? Was there a previous marriage? Ask, ask, ask. And then do a reporting letter to confirm everything that was discussed.

Take time to compare the drafted will with your notes
It sounds like obvious advice, but we see claims where the will did not adequately reflect the client’s instructions, or overlooked some important contingencies. Many of these errors could have been spotted by simply reviewing the notes from the meeting with the client. It can help to have another lawyer proofread the will, or set it aside for a few days and re-read it with fresh eyes. When you review it, consider the will from the position of the beneficiaries or disappointed would-be beneficiaries. Ask yourself if you were going to challenge this will, on what basis would you do so?

Confirm as best you can the capacity of the testator and watch for undue influence
With greater numbers of elderly clients, lawyers need to be vigilant about these issues. Meet with the client separately from those benefitting from a will change, and have written proof that the client understands what they are asking and the advice you’ve given. And while it is difficult to be completely certain of capacity, be sure to document the steps you’ve taken to satisfy yourself that the client’s capacity has been verified.

Don’t act for family members or friends
We see claims where lawyers didn’t make proper enquiries or take proper documentation because they assumed they had good knowledge of their family or friends’ personal circumstances. It’s best not to act for them, but if you must, treat them as if they were strangers. And remember if a claim arises it will likely not be from the friend or family member, but from a disappointed beneficiary with no personal relationship with you.

Most common malpractice errors

Inadequate investigation of fact or inadequate discovery (32%)
- Failure to ask the testator what their assets are
- Failure to ask about the existence of a prior will
- Not digging into more detail about the status of past marital relationships, other children or stepchildren, or whether a spouse is a married spouse or common law spouse

Lawyer/client communication errors (29%)
- Failure to compare the draft will with the instructions notes to ensure consistency
- Failing to ensure that the client understands what you are telling him and that you understand what he is telling you, particularly if there is a language barrier
- In estate litigation: failing to communicate and document settlement options

Failure to know or properly apply the law (14%)
- Not being aware of key provisions of the Income Tax Act (and not obtaining the appropriate tax advice)
- Drafting a complex will involving sophisticated estate planning when you do not have the necessary expertise
- Failing to properly execute documents

Time management and procrastination (8%)
- Missing the six-month deadline for making an election and issuing the necessary application under Section 6 of the Family Law Act
- Delay in preparing a will
- Delay in converting assets into cash in an estate administration

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While the number of LawPRO claims involving corporate and commercial law has declined in recent years, the average cost for this type of claim remains the highest of all areas of law.

The most common source of corporate/commercial claims are lawyer/client communication issues. Claims occur because there are misunderstandings or when the client’s instructions are not followed. Complex law and complicated transactions seem to drive communication-related errors in this area of practice. See the reverse page for common communication-related claims scenarios.

Also, lawyers practising in this area need to be especially vigilant of conflicts of interest. As compared to most areas of practice, conflicts of interest-related claims are four times more frequent in the corporate/commercial area. Conflicts claims frequently arise when work is done for closely held corporations and it becomes unclear who the lawyer’s client is (e.g. the corporation or the individual shareholders or officers.)

Costly claims also arise when tax issues are not recognized or when a lawyer undertakes tax work with insufficient expertise and/or advice from a tax expert.

See the reverse page for more steps that can be taken to reduce your exposure to a corporate/commercial-related claim.
Corporate/Commercial Claims Fact Sheet

Risk management tips

Carefully document instructions, advice and steps taken.
Taking detailed notes and documenting client conversations can minimize misunderstandings. Claims often involve a dispute between the lawyer and client over what was said and done, or not said and done, or confusion over who was to look after which tasks. LAWPRO’s “Checklist for Commercial Transactions” has a detailed list of matters to consider when communicating with clients.

Follow the firm’s conflict checking system and take action on conflicts.
Most law firms now have rigorous conflicts checking systems that do a good job of catching potential conflicts. The problem is that these warnings are often ignored. Listen to your instincts, and ask yourself “who is my client”? You can’t always objectively judge your own conflicts, so get the opinion of someone outside the matter. Send clients for ILA when appropriate. Keep in mind that conflicts can unexpectedly arise in the middle of a matter. If there’s a real or potential conflict, decline or terminate the retainer, even if it means turning down work for a good client or turning down substantial fees. Taking steps to avoid the possibility of an expensive claim is the preferred course of action.

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

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

Most common malpractice errors

Communication-related errors (41%)
• Failing to follow client’s instructions to file articles of amendment or articles of amalgamation.
• Failing to specify the limits of the retainer in writing, including which services the lawyer will perform and which actions the client or third-party (e.g., an accountant) will take.
• Contents of document (e.g., a lease or shareholder agreement) do not reflect the client’s instructions (or those of outside expert, e.g., an accountant).
• Failing to document in writing that a client instructed you to take a course of action on a transaction that was different from the one you recommended.
• Retainer did not clearly specify work that was to be done by the lawyer and/or outside expert (e.g., accountant or tax expert).
• Minute book not kept up-to-date.
• Failing to inform a franchisor client about the disclosure requirements under the Arthur Wishart Act.
• Failing to explain to a client the consequences of a personal guarantee in a commercial lease, mortgage or other transaction involving security.

Inadequate investigation (16%)
• Provisions in lease and sublease(s) are not coordinated.
• Not doing a title search on a commercial lease matter.
• Misreading (or not reading) information on a corporate document or search result.

Conflict of interest (16%)
• Acting simultaneously for members of the same family and their business or corporate entities.
• Not sending client for ILA when appropriate.
• Acting for a corporate client and providing legal services on the side to an employee of the client.

Error of law (14%)
• Taking on a complex corporate transaction that the lawyer is not capable of handling, or failing to obtain specialist advice for specialized issues (e.g., tax or IP issues).
• Failing to properly protect a security interest or priority status under the Personal Property Security Act.

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Quick stats*

Average 43 claims per year
Average cost $924,590 per year
Average cost per claim: $21,114
Average 2 years before claim reported
Longest claim reporting time: 21 years

Common errors

Communications 43%
Error of Law 28%
Conflict of Interest 11%
Clerical 4%
Time Management 5%
Inadequate Investigation 6%
Other 13%

The number of malpractice claims flowing from criminal matters has been trending up in recent years. Lawyer/client miscommunications cause 43% of these claims.

The resolution of a criminal matter can have a significant impact on a client. Common claim allegations include that the client was not informed of the implications of entering a guilty plea, of a particular sentence, or of procedural choices made. Criminal convictions are often appealed on the basis of “ineffective assistance of counsel” - whether the allegation has any merit or not. The allegations made on appeal may include failing to properly review Crown disclosure, failing to mount the defence requested by the client, not calling a particular witness, etc. See the reverse page for more examples of the most common criminal claims.

Many types of criminal claims are preventable. Lawyers should take steps to ensure the client understands the strengths and weaknesses of his case and the implications of entering a plea. Because they will need to be referenced in the event of a claim, document these conversations and the instructions that were received. See the reverse page for more steps you can take to reduce your exposure to a malpractice claim.

Speakers and resource materials

We can provide knowledgeable speakers who can address claims prevention topics. Email practicepro@lawpro.ca

Visit practicepro.ca for resources including LawPRO Magazine articles, checklists, precedents, practice aids and more.

Hot topics in criminal law claims

It is critical that clients are clearly informed of the implications of pleas and final outcomes of their matter, and that those communications are documented.

Lawyers failing to understand the consequences of advising a guilty plea in light of the Immigration and Refugee Protection Act (i.e., a sentence of 6 months or more may cause loss of right to apply for permanent residency).

Resolution of claims

- Indemnity Paid: 4%
- Defence Only: 48%
- No Cost: 48%

*All claim figures from 2006-2016. All costs figures are incurred costs (November 2017).
Risk management tips

Ensure the client understands your recommendations
Failing to effectively communicate with the client is the biggest claims pitfall in the criminal law area. A lawyer may not realize that the client doesn’t understand all the implications of choices proposed. A lawyer should provide detailed recommendations based on a full analysis of the case, including a reminder that the plea decision is the client’s alone. Documenting these communications (using a checklist, taking notes provides a valuable record of your efforts in the event you are faced with a claim).

Ensure you have all the facts
Lawyers should enquire about clients’ circumstances – for instance, immigration status or Indigenous identity-to ensure that advice takes these details into account. Clients whose immigration status may be at risk should be advised to consult an immigration lawyer, and that advice should be documented.

Discuss potential consequences of pleas, sentences, and procedural choices (and document it)
We frequently see claims involving a failure by the lawyer to communicate the potential ramifications of guilty pleas and custodial sentences on employment or immigration status. For instance, a truck driver convicted of a DWI may become unemployed as a result. A non-Canadian sentenced to six months or more may lose the right to apply for permanent residency. We have also seen claims alleging lack of communication about defence choices, such as a decision not to call the accused as a witness, or failure to apply for participation in an ignition interlock program.

Promptly notify LAWPRO of potential claims
Early reporting of client complaints offers the best opportunity for claims repair. Lawyers are encouraged to report allegations immediately, even where they arise during trial, so that LAWPRO counsel can provide risk management advice. In an appeal alleging ineffective assistance of counsel, the Crown may ask the trial lawyer to sign an affidavit supporting this ground of appeal. If asked to do so, you should call LAWPRO right away so that we can advise whether preparing an affidavit is necessary, and if so, how it can be done so that privilege is maintained and there is no admission of negligence.

Most common malpractice errors

Lawyer/client communication errors (43%)
• Failing to ensure the client understands or agrees with the strategy to be taken in court, or the of potential consequences of pleading guilty often resulting in claims of “ineffective assistance of counsel”
• Dispute over whether client’s instructions were followed regarding a plea to a charge or reduced charge
• Failing to clarify court dates, with consequences for client if lawyer or client doesn’t show up

Errors of law (28%)
• Overlooking viable defences when advising a client to plead guilty
• Overlooking sentence consequences (for example, license suspension)
• Failing to understand consequences of advising a guilty plea in light of Immigration and Refugee Protection Act

Inadequate investigation of fact or inadequate discovery (6%)
• Failing to obtain evidence or information that could assist the client at trial
• Failing to properly determine whether the client is required to attend at court
• Failing to consider whether client is fit to stand trial

Time Management (5%)
• Failing to properly calendar a court date
• Failing to proceed with an appeal in the allowed time
• Missed limitations for civil actions relating to the criminal matter, such as suing for malicious prosecution or appealing forfeiture of property
Labour and employment law claims have remained steady in count and cost over the past decade, consistently costing LawPRO about $1 million dollars each year. These claims are notable for having errors of law claims that are costly in relation to their numbers. The ‘civil rights violation’ and ‘malicious prosecution’ claims reflect heightened personal and emotional stakes for claimants.

Speakers and resource materials

- We can provide knowledgeable speakers who can address claims prevention topics. Email practicepro@lawpro.ca
- Visit practicepro.ca for resources including LawPRO Magazine articles, checklists, precedents and practice aids.

Most common employment law errors

- Failing to provide adequate settlement advice
- Missed limitations period
- Incorrect procedural forum

Resolution of employment law claims

- Indemnity paid 10%
- Defence costs only 32%
- No Cost 58%
Risk management tips

Have written confirmation of instructions and advice.
As in all areas of law, this is crucial to helping LAWPRO defend you in the event of a claim where you may have no recollection of the details years later. Take notes on your conversations with the client, and document the details of settlement offers, the scope of your retainer (especially in limited retainer cases), your advice on accepting offers, the likelihood of winning or losing a case and the costs involved.

Create detailed docket notes.
Like the tip above, this has the benefit of helping protect you in the event of a claim. “Conference with client re risks and costs of litigation” is much better than just “conference with client re lawsuit.”

Do not dabble in employment law.
A lawyer should either be an expert in employment law or refer his or her client to an employment law specialist. We see a number of claims in this area resulting from a lawyer not being aware of the correct forum to bring a client’s matter (Superior Court, Federal Court, Ontario Labour Relations Board, etc.) or not being aware of the related deadlines and limitations periods.

Be prepared for nuisance claims
The emotional toll of a job loss and resulting legal fight can leave lawyers in this area more likely to have claims made against them for ‘civil rights violations’ or ‘malicious prosecution’, alleging wrongdoing, bias or colluding against the client. These often coincide with Law Society complaints or Human Rights Tribunal claims against a former employer (and the insured who represented them), and in several cases are brought by self-represented or vexatious litigants. LAWPRO has yet to pay an indemnity on this type of claim, but they cost on average $20,000 to resolve. While they may be difficult to guard against, taking the above advice to take detailed notes documenting instructions will help, as well as maintaining high standards of professionalism in heated disputes can help ward off these accusations.

Most common malpractice errors

Lawyer/client communication errors (31%)
- Failing to adequately explain or advise clients on settlement offers
- Accepting or failing to accept settlement offers against the instructions of a client
- Unclear retainer agreements resulting in claims that lawyer failed to perform certain services

Time management and procrastination (21%)
- Missing the limitations period to file a wrongful dismissal suit
- Failing to be aware of deadlines for WSIB appeals, arbitration under collective agreements, judicial reviews, and other time sensitive actions
- Administrative dismissal of client’s actions

Errors of law (20%, though 31% by cost)
- Not being aware of the correct procedural forum in which to pursue the client’s case
- Drafting an employment contract that does not comply with the Employment Standards Act

Inadequate investigation of fact (7%)
- Failing to consider pension loss, long term disability benefits, vacation pay or other financial issues when advising on a settlement offer
- Misidentifying the end date of employment, leading to missed limitations period

Clerical errors (5%)
- Typos in settlement agreement (e.g. incorrect termination pay amount), that prove detrimental to employee or employer
- Emails or faxes containing privileged information accidently sent to opposing side

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Emotions can run high in family law disputes. Lawyers must support family clients in forming realistic expectations. You can significantly reduce your claims exposure by confirming in writing the information your client provides to you, your advice to the client, the client’s instructions to you, and what steps were taken on those instructions.

Failure to know or apply the law is twice as likely to occur in family law than in other areas of practice. It is one of the most complex practice areas involving dozens of federal and provincial statutes and voluminous case law. You should be aware of the limitations in your legal knowledge and expertise. You may want to engage another lawyer who has expertise in estate planning or tax issues; an accountant or actuary may be needed to help with a pension or business valuations, stocks or stock options, bonds; or an appraiser to deal with assets such as antiques.

You can substantially reduce your risk with clear lawyer/client communications and ensuring you know the relevant law. See the reverse for more steps that can be taken to reduce exposure to a family law claim.

Visit practicepro.ca for resources including the Domestic Contracts Toolkit, the Limited Scope Retainers Resources page, LAWPRO Magazine articles and other checklists, precedents, practice aids.

LawPRO can provide knowledgeable speakers who can address claims prevention topics. Email practicepro@lawpro.ca
Risk management tips

Proactively direct and control client expectations
Family law clients can be emotional and difficult to manage. They may also have changing and unrealistic expectations. This makes it especially important that you manage their expectations from the very start of the retainer. Helping clients avoid disappointment and surprises will significantly lower your claims exposure.

Carefully explain agreement terms to clients
Carefully explain domestic contracts or settlement agreements so that clients cannot later allege that they did not understand the contents of these agreements.

Be aware of the limitations of your legal knowledge
Family law is one of the most complex practice areas, with federal and provincial statutes and voluminous cases. No lawyer can hope to be an expert in all aspects of this field, so it’s important to know when to seek advice from more specialized counsel (e.g. for estate planning) or third party experts (e.g. tax advisors, accountants, appraisers or actuaries).

Consider not taking on a potentially difficult client
There may be cases where the client will never be satisfied. Lawyers involved in claims often tell LawPRO that their instincts told them a client was going to be difficult. Have they changed lawyers several times? Do their demands seem unreasonable? Ask yourself if it’s worth accepting the retainer.

Make better use of checklists and reporting letters
LawPRO’s Domestic Contract Matter Toolkit (practicePRO.ca/domestic toolkit) has checklists and forms that contain issues lawyers should consider as they conduct the interview on a domestic contract matter and when they meet with the client to review and sign the document. A final reporting letter detailing what you did and what advice you gave can be a great help in the event of a claim, which may arise long after you’ve forgotten the details of a particular file.

Don’t lower your standards for limited scope matters
A limited scope retainer does not mean less competent or lower quality legal services. Identify the discrete collection of tasks that can be undertaken on a competent basis and confirm the scope of the retainer in writing. Clearly document all work and communications. Recognize that unbundled legal services are not appropriate for all lawyers, all clients, or all legal problems. Sample retainers and checklists can be found on the Limited Scope Representation Resources page at practicepro.ca/limitedscope.

Most common malpractice errors

Lawyer/client communication errors (41%)
- Failing to ensure the client understands the potential consequences of excluding certain property from an equalization calculation in a marriage contract
- Failing to adequately explain the terms of a separation agreement, minutes of settlement, or that a settlement is final before the client is asked to sign
- In a limited-scope retainer, not communicating clearly what you are retained to do and what you are not going to do

Errors of law (22%)
- Errors as to entitlement, amount or duration of spousal support
- Not complying with Federal Child Support Guidelines when arrangements are made for child support
- Unanticipated and unintended tax obligations

Time Management (10%)
- Claim for spousal support is not made for a lengthy period of time, and ultimately an amount of support is lost because the court will not make a retroactive order
- Missed deadline for an equalization claim

Inadequate discovery of facts or inadequate investigation (9%)
- Failing to properly identify all assets and liabilities for the purposes of preparing financial statements and making net family property calculations
- Failing to explore full facts and circumstances of a client’s marriage so as to appreciate issues that need to be dealt with in a separation agreement or litigation

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Quick stats*

Average 11 claims per year  
Average cost: $1.3 million per year  
Average cost per claim: $113,000

Common errors

Acting on franchise matters can be particularly risky for lawyers. While some franchisors are large multinationals, many are small, relatively unsophisticated businesses. They are running a “mom-and-pop-style” family business; they are usually financially (and more importantly, emotionally) invested in the business, and they have scraped together their life savings to open the franchise. These characteristics frequently result in “sympathetic” claimants.

The greatest area of risk involves the onerous disclosure requirements imposed upon a franchisor by the governing statute, the Arthur Wishart Act. Inadequate disclosure entitles a franchisee to rescind the franchise agreement within two years and to extensive damages, including the return of its investment in franchise fees, inventory and equipment costs, as well as compensation for any losses incurred by it in acquiring, setting up and operating the franchise business.

Faced with such a heavy damages claim, a franchisor will often claim against the lawyer, alleging that the lawyer either drafted an inadequate disclosure statement or failed to warn the franchisor of the consequences of inadequate disclosure.

See the reverse page for more steps that can be taken to reduce your exposure to a franchise-related claim.

Speakers and resource materials

- We can provide knowledgeable speakers who can address claims prevention topics. Email practicepro@lawpro.ca
- Visit practicepro.ca for resources including LawPRO Magazine articles, checklists, precedents and practice aids.

Additional reading at AvoidaClaim.com

- Franchise law tenet - Disclosure! Disclosure! Disclosure!
- Practice Pitfalls – Franchise law
- Surprise! You have a franchise

Resolution of franchise claims

Average indemnity payment on a franchise claim is $227,000 compared to $94,000 on all other LawPRO claims

Average defence cost on a franchise claim is $36,000, compared to $19,000 on all other LawPRO claims

All figures from 2005-2015. All cost figures are incurred costs (Dec 2016)
### Risk management tips

**Familiarize yourself with the disclosure requirements of the Arthur Wishart Act**

Lawyers acting for franchisors or franchisees should ensure that their clients are aware of the disclosure obligations which the Act (and the courts) place on franchisors. Inadequate disclosure entitles a franchisee to rescind the franchise agreement within two years and to receive extensive damages.

**Do not dabble in franchise law**

Franchise law is a very complex area of law. Lawyer’s doing work in this area should have sufficient expertise to handle that work, and if not, they should refer the matter to someone that has franchise law expertise. The client should also retain a chartered accountant familiar with franchises. The detailed financial disclosure requirements can be beyond the scope of a lawyer’s expertise.

**Beware of ‘franchises in disguise’**

A lawyer might fail to identify a commercial transaction as a franchise arrangement when dealing with a new franchise – when the party behaving as a franchisor is not yet fully aware that they are creating a franchise. This goes back to the point about not dabbling – as anyone knowledgeable in the area would immediately recognize a franchise agreement, regardless of what it’s called.

**Avoid limited retainers**

Limited retainers, even if they are reduced to writing, tend to be ineffective in franchise cases. In the context of a franchisee to franchisee purchase in particular, lawyers who think they are just acting on the “closing” may not deal with the franchise aspects of the case, which can lead to disaster. You can’t treat a franchise like a typical asset purchase.

**Carefully document instructions and advice**

Many of the LawPRO’s larger franchise claims have involved allegations that a lawyer failed to advise the franchisor or franchisee regarding proper disclosure. Regrettably, lawyers’ files often have little or no documentation that the statutory provisions of the Act and the consequences of non-compliance were explained to the client. As a result, liability is often a foregone conclusion or turns on a credibility contest, which commonly favours the client.

### Most common malpractice errors

#### Communication-related errors (47%)

- Failing to inform a franchisor client about the disclosure requirements under the Arthur Wishart Act, and the severe consequences of inadequate disclosure.
- Failing to document in writing that a client instructed the lawyer to take a course of action that was different from the one the lawyer recommended.
- Retainer did not clearly specify work that was to be done by the lawyer and/or outside expert (e.g., accountant or tax expert).

#### Error of law (21%)

- Failing to provide proper advice to the franchisee with regards to the information disclosed by the franchisor pursuant to the requirements under the Arthur Wishart Act.
- Failing to be sufficiently aware of the disclosure requirements under the Arthur Wishart Act.

#### Inadequate investigation (18%)

- Failing to adequately review a disclosure document.
- Failing to do due diligence that might discover encumbrances, liens or outstanding debts.
- Overlooking or failing to advise clients properly as to their rights of rescission.

### Consider Excess insurance

Given the potentially significant damages involved in a franchise claim, lawyers who practise in this area should seriously consider carrying excess insurance. Find out more at lawpro.ca/excess.

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The number of malpractice claims flowing from immigration matters, while not many, has been trending up in recent years. Lawyer/client miscommunications cause 42% of these claims.

Immigration clients have a great deal at stake, and many pin their hopes on the efforts of lawyers who often have little control over the results of administrative decisions. In these circumstances, careful management of client expectations and regular communication about the status of a client’s matter are essential to prevent misunderstandings that can bloom into claims. Take care to provide good client services that are within your control, such as competent, complete, and accurate client documentation, and meeting deadlines.

LawPRO has recently seen an increase in claims related to the potential for deportment of individuals under the “serious criminality” rule (s. 36(1)(a) of the Immigration and Refugee Protection Act). It’s the responsibility of immigration lawyers to consider the impact of criminal pleas and convictions on immigration status, and to encourage clients to retain the services of knowledgeable criminal lawyers where appropriate.

See the reverse page for more steps you can take to reduce your exposure to a malpractice claim.
Risk management tips

Don’t overpromise, and keep your client informed
Claims against immigration lawyers are often prompted by a client’s disappointment about the outcome of a residency application or refugee claim. Manage client expectations by fully explaining admissibility criteria, requirements and the need to have documents provided in a timely manner to comply with deadlines. Don’t promise a result that is outside your control. Keep clients up-to-date on the status of their applications. Document these communications by sending letters to your client explaining the process, what they need to do and outcomes. Also consider making memos to file and take notes of client meetings.

Be prompt and thorough when submitting applications
Citizenship, refugee and residency criteria and programs change frequently. Once retained by a client, it is important to be prompt in pursuing available opportunities and to include all necessary supporting documentation when submitting applications since incomplete submissions may be ignored until deadlines are past.

Discuss potential consequences of procedural choices (and document it)
We frequently see claims involving a failure by the lawyer to communicate the potential ramifications of missed deadlines or guilty pleas and custodial sentences on immigration status. Under the Immigration and Refugee Protection Act, a non-Canadian sentenced to six months or more may lose the right to apply for permanent residency. When meeting with a new immigration client, be sure to ask about criminal convictions and charges. If a client is facing a criminal charge, advise him or her to retain competent criminal counsel.

Promptly notify LAWPRO of potential claims
Early reporting of client complaints, missed deadlines etc. offers the best opportunity for claims repair. Lawyers are encouraged to report allegations or omissions as soon as they arise, so that LAWPRO counsel can provide risk management advice. On appeal or reconsideration, allegations of ineffective assistance of counsel are raised. This should be reported immediately even if it’s only being considered or investigated by appeal counsel. Early reporting allows LAWPRO counsel to investigate, ensure the protocol is met and that there is no admission of negligence.

Most common malpractice errors

Lawyer/client communication errors (43%)
• Making promises to a client (for example, about likelihood of being granted residency under a particular program) that the lawyer cannot fulfill
• Failing to explain which tasks are the lawyer’s responsibility and which are the client’s, such that tasks are not completed and opportunities are lost
• Not keeping clients informed about the status of their matters/applications, which can lead them to make poor decisions in reliance on particular expectations

Errors of law (28%)
• Not understanding the consequences of guilty pleas and convictions for clients, or giving inaccurate advice with respect to criminal matters
• Failing to fully research and understand the range of options, programs and administrative procedures available to a client, or the deadlines for taking important steps
• Having an inaccurate or out-of-date understanding of the criteria associated with programs or rules

Time management (5%)
• Delays in completing applications such that intervening criteria changes lead to lost opportunities
• Failure to update client details (for example, employment or marital status) promptly on active applications

Clerical errors (4%)
• Submission of forms or applications that are incomplete, such that they are not considered
• Inaccuracies in documentation due to errors or confusion related to translation of information
• Failure to have clients review documents for submission

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Clerical errors are the most common cause of IP claims, representing 1/3 of the claims in this area of law. Missed deadlines are also a very common cause of claims. However, the actual costs of these errors is relatively low as they can sometimes be repaired or there are no damages. The more costly IP-related claims involve communication issues, errors of law and conflicts of interest. See the next page for examples of these claims and how to avoid them.

**Quick stats***

Average 46 claims per year  
Average cost: $529,000 per year  
Average cost per claim: $88,000  
Longest time from error to claim: 17 years

**Common errors by count**

Clerical: 32%  
Error of Law: 9%  
Time Management: 21%  
Communication: 27%  
Conflict of Interest: 5%  
Inadequate Investigation: 7%

**Common errors by cost**

Error of Law: 35%  
Communication: 36%  
Clerical: 7%  
Conflict of Interest: 14%  
Inadequate Investigation: 3%  
Time Management: 4%

**Speakers and resource materials**

- We can provide knowledgeable speakers who can address claims prevention topics. Email practicepro@lawpro.ca  
- Visit practicepro.ca for resources including LawPRO Magazine articles, checklists, precedents and practice aids.

**Most common IP malpractice errors**

- Missing deadlines  
- Drafting errors  
- Miscommunications

**Resolution of IP law claims**

The average indemnity payment on an IP claim is $167,000 compared to $94,000 on all other LAWPRO claims.

Average defence costs on IP claims where an indemnity is paid is $67,000, double that of non-IP claims.

Average defence cost on an IP claim where no indemnity is paid is $19,000, in line with other LAWPRO claims.

*All claim figures from 2006-2016. All cost figures are incurred costs (Jan 2017)*
Risk management tips

Ask for, and make sure you receive, acknowledgement of receipt on important correspondence. When sending correspondence to others, especially foreign agents, ask them to confirm receipt of that correspondence. If you don’t receive confirmation within a reasonable time, follow up to ensure the correspondence was received.

Review delegated work. To run an efficient and profitable IP practice you must delegate appropriate work to a clerk. However, remember that as the lawyer you are ultimately responsible for the work of a clerk, so take care to review delegated work, especially if there is something unusual involved with the matter.

Check and double-check dates. Date related errors are one of the most common causes of claims in IP law. Encourage lawyers and staff to double-check that correct dates are entered on all documents and diary systems.

Proofread documents! Careful proofreading of documents will help insure client instructions are followed and catch drafting errors.

Document instructions, advice and steps taken. Taking detailed notes and documenting client conversations can minimize misunderstandings and help give clients reasonable expectations, which in turn can help avoid fee disputes.

Don’t leave things to the last minute. Get in the habit of making payments and completing filings well before actual deadlines. In the event there is an unexpected problem the extra time will allow you to find out about it and take corrective action before the deadline has passed. Document your advice to clients about the need for timely instructions.

Don’t give advice on foreign law. Remember that the LawPRO policy provides protection for claims that are the result of your “professional services” for others involving the practice of the law of Canada, its provinces and territories. What will or will not be covered can be very fact-specific, but you should expect you are not covered for work involving non-Canadian law.

Consider having your clients retain foreign agents directly. Being the conduit for communications with foreign agents increases your exposure to a claim. Consider having your clients retain foreign agents directly.

Most common malpractice errors

Clerical error (32% by count, 7% by cost)
- Errors involving dates (see Time Management below).
- Fees not paid (e.g. missing specific fee, payment not included, or wrong amount paid).
- Mistakes made when completing application or other document (e.g. wrong/missing dates, incorrect/missing information, pages missing or wrong pages included).

Communications (27% by count, 36% by cost)
- Not responding to incoming communication (e.g. notices from CIPO, letters or emails from foreign agents).
- Miscommunications or misunderstandings with foreign agents (e.g. filing deadlines, insufficient information).
- Lost or undelivered communications (e.g. faxes, emails, courier packages or electronic filings).
- Confusion as to when retainer terminated and who is responsible for payment of maintenance fee.
- Action not taken when document sent without covering letter (e.g. filing of documents, cheque sent for payment).

Time Management (21% by count, 4% by cost)
- Wrong date entered in tickler system.
- Deadline not entered in tickler system.
- Failure to respond to tickled date.
- Not knowing a deadline.

Error of Law (9% by count, 35% by cost)
- Failure to appreciate when actions taken in one country impact on rights in another country (e.g. filings elsewhere impact on priorities) or when law in another jurisdiction changes.
- Alleged error or insufficiency in drafting application.
- Improper advice on infringement.

Inadequate Investigation (7% by count, 3% by cost)
- Error in or insufficient search.
- Not getting enough information to recognize if large or small entity.

Conflict of Interest (3% by count, 14% by cost)
- Acting on a patent application for same or similar products for different clients.
- Using confidential information for benefit or another client.
- Taking opposite position in subsequent matter for a different client.
Litigation claims, always near the top of the LawPRO claims count (alternating some years with real estate), saw an increase after 2009 due to Rule 48 administrative dismissals. Amendments to Rule 48.14 as of January 2015 have reduced these claims, but there are still risks for lawyers who don’t move their files along.

Lawyer/client communication is also a significant source of claims in this area. Misunderstandings around actions the client expected the lawyer to take, or the expected outcome/cost of a case, often result in claims. Proper documentation of instructions, detailed notes of client conversations and reporting letters can help LawPRO defend these claims should they arise.

Claims involving inadequate discovery of fact or inadequate investigation are the third most common source of plaintiff litigation claims. These involve the lawyer not taking time or thought to dig deeper and ask appropriate questions on the matter.

See reverse page for the most common plaintiff litigation errors and more steps that can be taken to reduce exposure to a malpractice claim.
Risk management tips

Avoid administrative dismissals. Under the new Rule 48.14 of the Rules of Civil Procedure, matters commenced after January 1, 2012 will be dismissed on a rolling basis five years after commencement. These dismissals will happen without notice to the parties. Use the Rule 48 Transition Toolkit (practicepro.ca/rule48) to help you avoid administrative dismissal claims.

Familiarize yourself with the Limitations Act, 2002. We continue to see claims related to lawyers’ unfamiliarity with the limitations rules. Take the time to review the rules and the related jurisprudence: See practicePRO’s limitations resources at practicepro.ca/limitations.

Have written confirmation of instructions and advice. As in all areas of law, this is crucial to helping LAWPRO defend you in the event of a claim as you may have no recollection of the details years later. Take notes on your conversations with the client, and document in writing things like the details of settlement offers, the scope of your retainer (especially in limited retainer cases), your advice on accepting offers, and the likelihood of winning or losing a case and the costs involved.

Create more detailed docket notes. Like the resolution above, this has the benefit of helping protect you in the event of a claim (e.g. “Conference with client re risks and costs of litigation” is much better than just “Conference with client re lawsuit.”) It will also help you determine if you are making money on a particular case by giving you a better understanding of the amount of time you and your staff are spending on it.

Talk to clients more often. Don’t rely solely on email. Lawyers are increasingly using emails to communicate with clients, and this is resulting in misunderstandings. Clients and lawyers read things into emails that aren’t there, miss the meaning of what is said, or read between the lines and make assumptions. During a long litigation matter, arrange some face-to-face meetings, or at least a phone call if distance is an issue.

Most common malpractice errors

<table>
<thead>
<tr>
<th>Time management and procrastination (42%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Failing to issue a claim within two years of the date when a claimant knew or ought to have known that he/she had a cause of action/claim</td>
</tr>
<tr>
<td>• Failing to commence an action for injuries sustained in a motor vehicle accident before the expiry of the two-year (from date of discovery) limitation period</td>
</tr>
<tr>
<td>• Failing to prosecute an action in a timely fashion, leading to an admin dismissal of the action for delay</td>
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<table>
<thead>
<tr>
<th>Lawyer/client communication errors (20%)</th>
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<tbody>
<tr>
<td>• Failing to manage client expectations, specifically: failing to clearly explain the risks and cost implications of litigation; failing to realistically explain the chances of success in proposed litigation; encouraging false hopes and unrealistically high expectations</td>
</tr>
<tr>
<td>• Failing to ensure that the client understands your advice and recommendations, and you understand your client’s instructions</td>
</tr>
<tr>
<td>• Failing to provide client with a breakdown of settlement monies when obtaining instructions to settle, including &quot;take home&quot; amount for how much the client will receive, and how much will be paid to lawyer as costs, disbursements, &amp; HST</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Inadequate investigation of fact or inadequate discovery (14%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Failing to name proper defendants due to improper review or lack of corporate searches, property searches, motor vehicle accident reports, and police investigation files</td>
</tr>
<tr>
<td>• Failing to name proper insurer as defendant due to an unidentified, uninsured or underinsured claim</td>
</tr>
<tr>
<td>• Failing to name all proper plaintiffs such as corporate entities and Family Law Act claimants</td>
</tr>
<tr>
<td>• Failing to assess the file properly due to lack of expert reports, medical reports, and investigation reports</td>
</tr>
</tbody>
</table>

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As the price of real estate in Ontario has steadily risen, so has the dollar value of real estate claims, making it the second most costly area of law for LawPRO.

Breakdown in lawyer/client communication is the most common cause of real estate claims. Busy, high-volume practices often lead to situations where the lawyer does not take the time to communicate with clients properly. Lawyers often rely on clerks, so the lawyer becomes removed from the process. If a claim arises, there is frequently inadequate documentation in the lawyer’s file to back up the lawyer’s version of what occurred. Spending more time meeting with clients and documenting discussions can be of great help in both preventing and defending a claim.

There has been a sharp increase in ‘inadequate investigation’ claims in recent years. As with communication claims, these result from busy lawyers not spending enough time on a file. Important information from the client is overlooked, or crucial details missed on surveys, condo status certificates or the agreement of purchase and sale. Despite the time pressures of a real estate practice, take the time to do it right and avoid short-cuts.

See reverse page for examples of real estate errors and steps to reduce exposure to a malpractice claim.
Risk management tips

Meet clients in person at least once
Meet with the client in person to review the transaction and understand client instructions, particularly with respect to the client’s intended uses of the property. Not every matter is straightforward, and you don’t want to have to address a problem that was only noticed the day of closing, or never noticed at all.

Remember, the lender is also your client in most residential transactions
The lender is also your client and is owed a duty of care. Provide any information to the lender that is material to the lender’s decision to advance funds under the mortgage. Lending clients can sue lawyers for failing to disclose all relevant information they knew or ought to have known.

Document your conversations with and instructions from the client
This is the best defence against a malpractice claim. Clients may only be involved in one or two real estate transactions in their lifetime and will remember the details, while the lawyer who sees countless transactions will likely have little specific recollection of one matter. Keep notes of your conversations with the client and document discussions and your actions in a detailed reporting letter to the client.

Do not give your electronic registration password to your clerks or anyone else
Only the lawyer who received the electronic registration credentials provided by the Ministry of Government Services is entitled to use the Teraview® key and password to register an instrument. As tempting as it may be in a busy real estate practice to let the clerk register instruments requiring a lawyer’s electronic signature...just don’t.

Review the title insurance policy with your client
You should have a solid understanding of the title insurance policy and be able to explain standard coverages, exclusions and property-specific exceptions. It is also important to have a detailed understanding of the client’s planned use of the property to ensure the coverage obtained applies to those uses.

Most common malpractice errors

Lawyer/client communication errors (41%)
- Failing to inform a client about restrictions on land use contained in a subdivision agreement
- Failing to review the survey and to discuss the risks or problems it reveals with the client
- Not inquiring about or following through on the client’s intentions for future use of the property. For example, not doing the necessary zoning searches or getting title insurance with a future use endorsement. The client may intend to build a swimming pool, but sewers or utility easements may make this impossible. Zoning may not permit a home-based business or multiple dwelling units
- Failing to ensure that the condominium unit shown on the plan meets the client’s expectations (e.g., whether it overlooks a lake or a parking lot)

Inadequate investigation of fact or inadequate discovery (29%)
- Misreading (or not reading) a survey, search, or reference plan
- Failing to review a condo status certificate and bring deficiencies to the client’s attention
- On a condominium purchase, failing to ensure that the parking space and locker specified in the agreement of purchase and sale are actually for sale and that the legal description of both units is correct

Clerical and delegation (8%)
- Not meeting with the client. Delegating the entire file/transaction to a law clerk
- Failing to review the statement of adjustments for clerical errors

Errors of law (6%)
- Failing to fully understand or properly apply the part-lot control provisions of the Planning Act
- Not being sufficiently aware that different types of searches are required depending on the type of property being purchased (e.g., single unit vs. multi-unit, commercial vs. residential)
Artificial intelligence: What is AI and will it really replace lawyers?
If you scanned social media or the headlines in many online or print-based newspapers or magazines published in 2017, you were pretty much guaranteed to see posts and articles on artificial intelligence (AI).

Most of these articles suggest that AI is in the process of fundamentally changing our lives at work, home and play. And if you believe the comments in these articles, the good news is that we will have more free time to enjoy virtual-reality worlds and have our self-driving cars take us around the countryside. The bad news is that many people, including lawyers, will supposedly lose our jobs to AI technology and robots. There is no doubt, along with other major disruptions (See “Perspectives on the future of law: How the profession should respond to major disruptions” at page 5), AI technologies have and will bring changes to the legal services arena. This article attempts to sort out the hype and reality of how AI will impact the legal profession.

What is AI?

To really understand the impact AI will have on the legal profession, we should start with a clear understanding of what AI really is. This is difficult as even AI experts can't seem to agree on a definition for AI. To further complicate things, the definition of AI has changed over time as computers have become increasingly capable. For example, while some considered it AI when it was newly available, optical character recognition (the ability of a computer to recognize letters in a scanned image of a document) is now considered a routine technology by most people.

At the simplest level, you can say AI is the capability of a computer or machine to imitate intelligent human behavior. To add some details, it means a machine that can learn and think. A machine that is “smart” enough to know or recognize things and mimic human cognition for problem solving. As you will see, there are many different AI technologies involved in mimicking human senses and thinking. Let’s look at them individually, and then discuss how they can work together. As you will also see, higher levels of human functionality only become possible when different types of AI work together.

Text/speech manipulation

Using skills that were learned at an early age, with little thought or effort, most people engage in many oral conversations and countless instances of reading text on a daily basis. Text and speech manipulation seems very easy to most of us. But when you break it down, there’s a lot happening here. It’s much harder than it looks.

The first version of DragonDictate® software was released in 1982. Each word had to be enunciated individually with a slight pause between them so it could recognize the intended word by analyzing the sound pattern it heard. It had no understanding of the words it was translating and it easily confused words like to, two and too or there, their and they’re. The widely used current version of this software, Dragon Naturally Speaking®, is far more capable. It does an excellent job of recognizing words in a continuous stream of speech and will improve its accuracy by learning the nuances in a particular person’s voice. As it converts spoken words to text on a screen it can simultaneously correct grammar and pick the correct homonym by looking at the other words in the sentence. However, it still doesn’t really understand the words it is transcribing.

Text readers can convert text into words spoken by a very human sounding voice. While early text readers sounded robotic and were hard to understand, Google’s DeepMind® AI allows computers to mimic the human voice in a manner that is virtually indistinguishable from a real human voice.1

While it takes some effort to learn how to use Dragon Naturally Speaking (you need to learn 20 or so voice commands to use it effectively), it is a tool that can make most lawyers more efficient as it lets them put words on a screen faster than they can type. It is very helpful for answering emails or drafting documents. It is less helpful for drafting long documents with complex formatting. Voice-recognition software is being used in other situations. The basic features on most smart phones can now be operated with spoken commands, as well as hands-free smart speakers like the Amazon Echo and Google Home. In the not too distant future you will be talking and listening to your car and most of the devices and appliances in your house.

While text readers are currently used primarily by lawyers with visual impairments, they can be useful for any lawyer looking to have a document read to them for proofing or review purposes, or while they are commuting.

1 Listen to some sample audio files and read more about how they are created here: deepmind.com/blog/wavenet-generative-model-raw-audio/
Vision

The human eye is truly amazing. It can see in light and dark and change its focus from near to far and back again in an instant. With the assistance of powerful software, computers are learning to see too, and they are also gaining some of the visual processing capabilities that humans have.

Machine vision couples a visual input with analysis and some kind of mechanical device. An example would be a device that sorts fruit by ripeness as it passes by on a conveyor belt. But it has moved far beyond recognizing when a green tomato goes by – more advanced AI technologies are allowing computers to be smart enough to recognize people and objects in a picture. The tagging feature in Facebook has the ability to recognize you or one of your friends in a picture you just uploaded. Google's image search has the ability to identify what a picture contains (e.g., a dog, a forest, mountains or a sunset). These technologies are not perfect as they don't accurately identify the contents or faces in a picture 100 per cent of the time, but they are getting very impressive.

Decision trees

Moving up a level we have decision trees. While vision and text manipulation may seem a bit abstract when it comes to the work that needs to get done on a daily basis in a law office, decision trees will seem more relevant as they can directly mimic the very specialized work that lawyers do.

A decision tree is a logical structure that contains every question a lawyer would normally ask when handling typical factual scenarios and legal issues for a certain type of legal matter. For example, consider building a decision tree that would do the intake on a will matter. You would first assemble the questions to gather the basic identity and background information of the client and beneficiaries. Further questions would draw out the client’s instructions on the basic provisions that go in every will (e.g., executor(s) and alternate executor(s), specific bequests and gifts, gift overs, etc.). A will matter intake decision tree would consist of a few hundred or more questions in many branches. The answers to certain questions would trigger the decision to answer or skip further questions in other branches (e.g., the question asking if any beneficiaries were minors would trigger the need to ask or skip the questions on setting up trust provisions). Once all the relevant questions are asked, the answers could be dumped into a document assembly engine which could create a will that has all the relevant clauses based on the client’s information and instructions in a matter of seconds.

A decision tree “thinks” in much the same way that a lawyer would, albeit in a much more organized fashion. A decision tree system would ask the questions in the same order every time whereas an experienced wills and estates lawyer would ask all the same questions, but the order might change (unless she was using a checklist).

If you had enough time and money, you could build a decision tree that would handle every possible scenario that might be encountered on a will intake. This decision tree would likely have thousands of questions but it would be impractical as most of the questions would not be relevant to most clients. Some lawyers will argue that every matter they handle is unique and requires a custom solution which only a lawyer can provide after having done a thorough analysis. While there are extremely complex matters that are unique if you analyzed them down to very detailed factual level, in most areas of the law there are one or more common factual scenarios and legal issues that repeat themselves over and over in the majority of matters. The trick is building a decision tree that will ask all necessary questions to draft a will in the majority of situations, while at the same time flagging when manual intervention is needed because the facts or legal issues are not properly addressed in the questions within the decision tree. Typically a lawyer would still meet with the client to review the will and make sure it was correctly drafted and that the client understands the provisions in it.

Decision trees can be built into website or smart phone apps and could be helpful to automate the intake process on a wide variety of legal matters or for some stages of some types of matters (e.g., gathering the information for a financial statement on a family law matter). Spending 30 minutes with the client to review information provided from an automated intake is more efficient than spending two hours with the client transcribing all the background details of the matter. Some online forms sites are using decision tree and document assembly technology to automate the creation of forms that are provided directly to clients.

Natural language processing

Natural language processing (NLP) takes things to the next level and involves creating AI that can understand how humans understand language. There are two approaches to NLP: rules-based NLP and statistical NLP.

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2 Watch this video of a machine that sorts red and green tomatoes: youtube.com/watch?v=6ur5g2rvXog
3 Paraphrased from What is Natural Language Processing (NLP) by Dr. Rutu Mulkar-Mehta (ticary.com/2017/12/12/what-is-nlp.html).
Rules-based NLP involves common sense knowledge which is all the inherent background knowledge human beings take for granted in our daily lives (e.g., freezing temperatures cause hypothermia or hot coffee will burn skin). Encoding common sense knowledge is a very manual and time-consuming process because it isn’t written down clearly anywhere and it is difficult to identify all the rules required to understand something. Further, some common sense knowledge which humans inherently and easily understand can’t be explained to a computer with a simple rule (e.g., what is death or what is dancing).

Statistical NLP takes a different approach. It uses statistics to review large amounts of already existing data for NLP tasks. It involves using statistics to find patterns in a large data set and then uses those patterns to induce a solution to the problem it is trying to solve. In many NLP applications better results are obtained by using both rules- and statistical-based NLP.

Relative to the previous types of AI, NLP appears to have an even greater understanding of the words and information it is processing. Siri®, Google Translate and other similar online translation tools use NLP. NLP is now at the point where translation tools can do real-time translation from one language to another.

Machine learning

Machine learning is another type of advanced AI that is widely used for legal applications. Machine learning occurs when computers learn something without explicitly being programmed to do so. Machine learning is used for image recognition (e.g., tagging in Facebook), speech recognition and NLP.

Deep learning is a type of machine learning that uses neural networks. A neural network is a computer program that can figure things out on its own by thinking like a human, as opposed to a program – that is, to figure things out with a collection of explicit rules.

The process is simple; the results are amazing. You first take a large number of training examples, such as pictures of apples. The neural network program uses these examples to automatically infer rules for recognizing apples in pictures. A larger number of training examples improves the accuracy of these rules. You then give it a large collection of pictures and ask it to look for apples. Supervised learning occurs when a human verifies which pictures in the search results are apples and the program takes these confirmations and improves its rules for recognizing apples. Unsupervised learning can occur when the program uses other information to verify what is in the picture (e.g., how the picture is described or tagged). Every time you tag a friend in Facebook the rules for recognizing that friend are improved. When deep learning is used on very large data sets the neural networks become very smart and results are very accurate. Google Translate taught itself how to do better translations using deep learning and the Google engineers don’t know or understand the thought process it used.

And it goes far beyond recognizing pictures of apples. Litigation strategy tools like Lex Machina® can analyze a set of facts against a collection of past decisions and give a prediction of the likely timing and outcome that is more accurate than an experienced counsel can give.

Expert systems

The AI technologies reviewed above are already doing some of the types of work traditionally done by lawyers, and will undoubtedly be doing more of it in the future. By mimicking human intelligence, these AI technologies can be used to create expert systems – systems that have some level of human expertise that can be harnessed to complete a task normally done by lawyers. Here are some examples.

In the not too distant past, document discovery for litigation was done by manual review. The ability to do keyword searches of scanned collections of documents was considered a quantum leap forward. That advance pales in comparison to the abilities of AI-enabled eDiscovery tools. By using deep learning, these tools can use the words and word patterns in a small collection of documents identified as relevant or privileged to search across a large database for other relevant or privileged documents. They can then use the contents of the newly identified relevant or privileged documents to refine the search parameters to find further potential relevant or privileged documents. This is called predictive coding or technology aid review (TAR). Studies have shown that TAR enables you to search large collections of documents far more quickly and accurately than humans can, and at a fraction of the cost of a manual search.

Tools that have NLP abilities can be used in a wide variety of other legal applications. Contract review tools like Kira® and Diligen® have the ability to read through a contract and identify types of clauses and prepare a summary of key contract terms.
Can robots lie?

While AI has the potential to do a lot of good, there are some who suggest there is also the potential for AI to do negative things. Here’s an example of how one AI system told a harmless lie.

At the College of Law Practice Management’s 2017 Futures Conference I saw a fascinating presentation by Professor Ashok Goel. His program at the Georgia Institute of Technology has 6,000 students each year. The students have multiple coding assignments that they complete with the direction and assistance of teaching assistants (TAs).

There is an email system which allows the students to communicate with each other as well as Professor Goel and the TAs. The students send thousands of emails asking questions about their assignments. To help reduce the workload of the teaching assistants, Professor Goel created Jill Watson, a virtual TA.

Professor Goel analyzed thousands of previously answered questions and their respective answers. He categorized the questions to identify the questions that were asked over and over again which, in turn, helped him create answers that Jill Watson could provide to specific questions. Jill was programmed to answer questions only when she was sure the answer was 97 per cent or more likely correct. The students were not told that Jill Watson was a virtual TA, and aside from one direct question, it appears the students didn’t figure this out. As real TAs rarely answers questions instantly, at the start Jill was programmed to delay giving answers so as not to blow her cover. Subsequently, Jill was programmed to give answers immediately as it is much more helpful for students to get immediate answers to their questions.

The vast majority of Jill’s answers addressed questions about lab assignments. However, on one occasion, Jill told a lie. In the first week the students sent messages introducing themselves to each other. One student stated she was from London, England. In response, Jill Watson replied that she was also from London and had recently seen and enjoyed a particular show there.

Now of course, Jill hadn’t been to London and certainly hadn’t seen this particular show. However, when Jill looked at the collection of the prior questions, she noticed that a virtually identical introduction had been given previously. Jill’s programming also told her the answer given previously (by a real TA) was 97 per cent or more likely correct, so she sent an answer to the student.

So there you have it, Jill told a lie. A fairly harmless lie, and certainly not one made with any malice by Jill. But a lie nonetheless. This serves to highlight how complicated the ethics of AI will become. Teaching computers to think like humans is one thing, teaching them human ethics and emotions is something else again.
ComplianceHR® offers HR departments a suite of intelligent, web-based compliance tools that allow them to quickly and efficiently handle routine and repetitive employment compliance obligations without the need to contact a lawyer. This tool helps with:

- assessing whether someone is an independent contractor or employee;
- assessing whether someone is exempt from the requirement to pay overtime;
- assisting with the creation of customized employment documents such as offer letters, non-disclosure agreements for any jurisdiction, or non-compete agreements; and
- assisting with various other compliance issues.

It is interesting to note that ComplianceHR is a joint-venture between AI software provider, Neota Logic, and employment law firm, Littler Mendelson P.C. Littler originally hired Neota Logic to create a tool that would allow the firm to provide these services to its clients. Recognizing the need, Neota Logic and Littler entered the joint-venture to sell this product to others. Blue J Legal™ is a Canadian product that performs similar services.

**Robotics**

Ultimately we can expect that AI will be built into anthropomorphic logical robots that will do our every bidding. Perhaps the pinnacle in legal AI will be the Robot Associate. This associate will work an unlimited number of billable hours without taking a break or making a complaint.

While computers are ever more powerful and AI is becoming ever more capable, the Robot Associate is likely a long way off. AI technologies that can recognize emotions or whether someone is lying are being developed, but we are a long way from robots that can understand and express emotions in the same manner that a human can. We also need to develop AI that can understand the very complicated world of human ethics. See the sidebar, “Can a robot lie?”

Young and old lawyers alike will find some comfort in the prediction that “The Singularity,” a term that refers to the point when AI will be indistinguishable from human intelligence, is currently estimated to occur around 2040.

**AI and access to justice**

In 2012, a website (which is no longer active) was launched to help immigrants brought to the U.S. as children understand the Deferred Action for Childhood Arrivals (DACA) initiative. DACA granted reprieve from deportation to eligible young immigrants. The site had English and Spanish versions and offered an online self-screening tool to help DACA applicants review their eligibility, educational videos, FAQs and a directory of free or low-cost nonprofit immigration legal services providers in all 50 states. Recognizing that many DACA candidates would not have access to a computer, but would likely have a smartphone, a free app for iPhone and Android that included all the same functionality as the website was created. This app provides a great example of how a particular technology channel – an app on a smart phone – was used to provide access to justice to a group of people who likely would not have been able to obtain help in any other manner. It is easy to see how this could be done for other areas of the law with similar issues (e.g., family law information and forms).

A2J Author® is a software tool developed in the U.S. that delivers greater access to justice for self-represented litigants by enabling non-technical authors from the courts, clerk’s offices, legal services programs, and website editors to rapidly build and implement customer friendly web-based interfaces for document assembly. A2J Guided Interviews® created with A2J Author removes many of the barriers faced by self-represented litigants, allowing them to easily complete forms through a step-by-step interface and then print court documents that are ready to be filed with the court system. Recognizing that a page full of questions can be daunting, A2J Guided Interviews presents one question at a time on the screen.

Visit Travel Ban Navigator® to see a nice example of a simple web-based interface. It is a complimentary tool from ComplianceHR that provides U.S. employers and current and/or prospective employees with preliminary information to help determine whether they are affected by President Trump’s revised “travel ban,” issued in September, 2017.

While AI-based technologies can be used to offer legal information and services in new and cost effective ways on websites or smartphone apps, it must be recognized that some people may not be able to access web-based services due to cultural, language, disability barriers, or the simple fact that they don’t have access to a computer or smartphone.

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6 bluejlegal.com
7 a2jauthor.org
8 clientapps.compliancehr.com/a/travelbannavigator
When doing work for clients, lawyers typically work very hard to avoid making errors. This is certainly appropriate where the matter involves significant costs or consequences. But what about the opposite extreme: Does a parking ticket warrant the same standard of care that a murder charge does? It is fairly obvious that a murder charge warrants a high standard of care and that the time and expense of retaining an experienced criminal counsel is justifiable. On the other hand, the financial and other consequences of a parking ticket are fairly minor and it just doesn’t make financial or practical sense to hire an expensive lawyer to defend a parking ticket. A technology-based solution that could provide assistance to someone with a parking ticket is a more cost-effective solution. The DoNotPay chatbot is a perfect example of this type of solution. It helped overturn 160,000 London and New York parking tickets involving over $5 million in parking fines in just 21 months. In the interest of greater access to justice, offering new types of services with a lower standard of care probably makes sense for minor legal issues.

Who owns the law?

AI systems raise another interesting issue that deserves some thought: Who owns the law? Open and public access to court and tribunal decisions facilitates stare decisis, one of the foundational principles of our common law legal system. But what happens when disputes are resolved outside the court process?

Most of the people or companies that create AI systems will expect to be compensated for their work by lawyers or others that are using their products. At the same time, some of these tools have significant potential benefits for litigants. A litigation strategy tool that predicts the outcome of litigation can help a party assess whether the time and expense of litigation is justified. These tools can now predict outcomes more accurately than experienced lawyers can. A prediction that a lawsuit would likely be unsuccessful could help them quickly and privately settle a dispute thereby avoiding an expensive and public courtroom battle.

These tools potentially make courts less relevant. And what about those that can’t or don’t pay for access to these types of systems? They lose the benefit of accessing precedent decisions and the opinions and reasons behind them. These issues may warrant some discussion.

Will lawyers be replaced by computers?

Now that you have a better understanding of AI, let’s try to answer the question as to whether lawyers will be replaced by computers. From the comments above you can appreciate that AI can already do a lot of amazing things, including many things that mimic some of the work that lawyers do. You will also appreciate that AI will give machines significantly more capabilities in the not too distant future.

It should also be clear that humans are better at some tasks than computers, and that computers are better at some tasks than humans (and will get better at even more tasks in the future). So yes, some of the tasks that some of us do have already or will likely be taken over by machines at some point in the future. This makes sense for a whole bunch of reasons. The work that AI is good at tends to be the dull, boring and repetitive work that most of us don’t like (e.g., eDiscovery or due diligence document review). Having a computer do this work makes sense as a computer can do it more accurately, quickly and inexpensively. Better, faster and cheaper is better for the client and improves access to justice.

We also need to learn where humans and technology can work better together. There are studies that show that humans aided by computers do a better and faster job than either humans or computers working alone.

The software to create AI systems was originally very expensive and it required coding or other special skills. This is changing as there are more vendors offering AI-based tools and services across many areas of practice and, thanks to competition and better technology, the prices for these tools and services are coming down. Document assembly tools have also come down in price and some allow you to build expert systems without the need to learn programming or other special skills. Surprisingly few law firms are using document assembly tools despite the fact they can reduce document creation time from days or hours to minutes or seconds.

But there are loads of tasks that lawyers do that AI and machines can’t, at least for the foreseeable future. Robots won’t be making submissions in courts for many years. And while small matters like parking tickets will probably be handled by chatbots or apps on a smartphone, lawyers will still be required do some types of work on larger matters. In the traditional services model, lawyers will still need to meet with clients and show empathy and understanding while counseling a client through the matter at hand.

And in their Future of the Professions book, Richard and Daniel Susskind highlight a number of new roles that must be filled to support the various new models they propose will come to be for legal services in the coming years (see the list of these new models in the “7 Models for legal services” sidebar at page 11).

So no, you won’t be replaced by a robot, at least not yet. But AI will play a big part in changing how legal services are done and provided to clients in the coming years. Your challenge is to learn how to make greater use of these technologies so you can adapt to the changing times.

Dan Pinnington is Vice-President, Claims Prevention and Stakeholder Relations at LawPRO.

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9 AJJ Author is available free to interested courts, legal services organizations, and other non-profits for non-commercial use.

10 The Future of the Professions: How technology will transform the work of human experts, by Richard and Daniel Susskind, 2015 Oxford University Press.
Most lawyers are surprised to learn that failures to know or apply substantive law account for a relatively small portion of LawPRO claims. Over the last eleven years, by both count and cost, law-related errors were only the fourth most common cause of claims.

In most areas of the law, lawyer/client communication problems are the number one cause of claims, followed by basic deadline and time management issues. The pie chart on the next page illustrates the relative proportion of claims by area of law for 1997-2007.

**Communications-related errors #1 claims concern**

Lawyer/client communication-related errors are the biggest cause of malpractice claims. Over the last eleven years, by cost and count, more than one-third of LawPRO claims involved this type of error – almost $22 million or close to 7,200 claims.

It is interesting to note that for sole, small, medium and large firms alike, one-third of claims were communications-related. This is a profession-wide issue.

There are three types of communication-related errors. The most common is a failure to follow the client’s instructions. Often these claims arise because the lawyer and client disagree on what was said or done – or not said or done. These claims tend to come down to credibility, and in handling claims LawPRO finds these matters are difficult to successfully defend if the lawyer has not documented the instructions with sufficient notes or other documentation in the file.
The second most common communications error is a failure to obtain the client’s consent or to inform the client. These claims involve the lawyer doing work or taking steps on a matter without client consent (e.g., seeking or agreeing to adjournment; making or accepting a settlement offer); or failing to advise the client of all implications or possible outcomes when decisions are made to follow a certain course of action (e.g., pleading guilty on DWI; exercising a shotgun clause).

Poor communications with a client is the third most common communications error. These claims often involve a failure to explain to the client information about administrative things such as the timing of steps on the matter, or fees and disbursements. This type of error also arises when there is confusion over whether the lawyer or client is responsible for doing something during or after the matter (e.g., sending lease renewal notice to landlord, renewal of a registration or filing).

On top of being the most common malpractice errors, communications-related claims are also among the easiest to prevent. You can significantly reduce your exposure to this type of claim by controlling client expectations from the very start of the matter, actively communicating with the client at all stages of the matter, creating a paper trail by carefully documenting instructions and advice, and confirming what work was done on a matter at each step along the way.

### Deadline and time management

Missed deadlines and time management-related errors are the second biggest cause of LawPRO claims at all sizes of firms. Over the last eleven years they represented 17.3 per cent of claims by count (3,566 claims) and 14.2 per cent of claims costs ($8.8 million).

The most common time-related error is a failure to know or ascertain a deadline — missing a limitation period because you didn’t know it. The good news is that this specific error has declined by almost 50 per cent over the last ten years. The bad news is that the other time and deadline-related errors are holding stable or increasing slightly.

While in the longer term we expect that the new Limitations Act will result in fewer limitations period claims, at this stage it does not appear to have had any impact. Indeed, over the last year it may have resulted in more claims due to confusion over transition provisions. (For more see the Practice Tips article, Limitation update on page 41.)

A failure to calendar is the second most common time-related error (a limitation period was known, but it was not properly entered in a calendar or tickler system). The fourth most common time-related error is the failure to react to calendar error. In this case the limitation period was known and entered into a tickler system, but was missed due to a failure to use or respond to the tickler reminder.
Lawyers at firms of all sizes seem to have a dusty file or two that sits on the corner of their desks for far too long, and this makes procrastination-related errors the third most common time-related error. By count and costs, procrastination-related errors are on an upwards trend.

These deadline and time management errors are easily preventable with better time management skills and the proper use of tickler systems. Practice management software programs such as Amicus Attorney and Time Matters are excellent tools for helping lawyers manage deadlines and tasks, and for helping them better manage client communications and relationships. Not waiting to the last minute by building in a one-day or two-day cushion can also help prevent this type of error when there are unexpected problems that prevent you from meeting a deadline for a filing (e.g., ice storm or taxi in accident on the way to court house on last day to file).

**Digging a bit deeper**

Inadequate investigation or discovery of facts is the third most common error at firms of all sizes (except firms of more than 75 lawyers, where it was the fourth most common error) and over the last eleven years accounted for 3,202 claims (15.6 per cent) and $9.8 million (15.9 per cent) of LawPRO’s claims costs.

This error has been on the rise for the last several years in many areas of law. Perhaps it is a symptom of “BlackBerry legal advice”: quick questions and answers without context exchanged between people in a rush. It goes to the very core of what lawyers are supposed to do for their clients – give legal advice – and basically involves the lawyer not taking extra time or thought to dig deeper and ask appropriate questions on the matter.

On a real estate deal this type of claim might involve not delving into the client’s long-term plans for the property, and then failing to follow up on appropriate zoning or bylaw searches to ensure the client can use the property as intended. On a family law or will or estates planning matter it might involve not digging into more detail about the status of past marital relationships, other children or step-children, or the amounts of assets or liabilities. On a merger and acquisition matter this error would arise where shortcuts are taken in due diligence work.

To avoid these claims, 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.

**Law**

Over the last eleven years failures to know or apply the law accounted for approximately 2,703 claims (13.1 per cent) and $9.1 million in costs (14.8 per cent).

A failure to know or apply the law arises when a lawyer does not have sufficient or current knowledge of the relevant law on the matter on which he or she is working. Over the past few decades, the law has become far more complicated. There are fewer general practitioners as more lawyers tend to specialize in a given area of law. Legislation has become more complex, there are increasingly more regulations, and new case law is coming out of the courts at an increasingly rapid rate. For these reasons it is important that lawyers participate in CLE programs to maintain a current knowledge of the law.

Extensive federal and provincial legislation, as well as voluminous case law, help make failure to know or apply law the most common error for family law lawyers, representing more that 21 per cent of family law claims in the last eleven years.

“Dabblers,” or lawyers acting outside of their usual practice area, are far more likely to commit this error. Lawyers who are asked to handle a legal matter for a family member seem to feel obliged to help and often find themselves dabbling in an area of law they don’t know. Dabbling is dangerous – don’t do it.

Remember that family and friends can be the most demanding of clients because they can, and will, call at all hours of the day or night. They also tend to not pay their fees on time, if at all. Given the relationship, it can also be difficult or awkward for the lawyer to give a family member or friend independent legal advice. Lawyers should steer clear of representing family members. The best solution is to refer them to someone else in the firm, or, ideally, to send them to another firm with expertise in the area of law.

Lawyers should also tread carefully when giving advice or working on matters relating to U.S. or other foreign law. The LawPRO policy does not cover lawyers for advice involving U.S. or other foreign law.

**Conflicts of interest**

Over the last eleven years, conflicts of interest claims ranked fifth by count (1,322 claims) and cost ($6.0 million), accounting for 6.4 per cent of claims reported and 9.7 per cent of costs, respectively. Conflicts claims are proportionally more costly to defend and indemnify as they tend to be complex and involve multiple parties.

There are two types of conflicts claims: The first arises when conflicts occur between multiple current or past clients represented by the same lawyer or firm. The second is a conflict that arises when a lawyer has a personal interest in the matter.

Multi-client conflicts claims have been on a general downwards trend for most of the last 10 years. During the same period, lawyer self-interest conflicts claims have occurred at the same rate. However, since the Supreme Court of Canada’s decisions in R. v. Neil and Strother v. 3464920 Canada Inc., there is clearly
increased sensitivity to the duties of loyalty and confidentiality that lawyers owe their clients.

As they regularly act for multiple clients and/or entities, real estate and corporate commercial lawyers experience more conflicts claims than other areas of law, while litigators have a relatively low rate of conflicts claims.

To avoid conflicts of interest, make sure your firm has a procedure and system in place for checking conflicts at the earliest possible point in time. Ideally it should be an electronic system and include more than just client names. A system that includes individuals and entities related to the client, including corporations and affiliates, officers and directors, partners, and trade names etc. will flag more real and potential conflicts.

Often, firm conflicts-checking systems do catch real or potential conflicts. Unfortunately, decisions are made to overlook these conflicts, either to please the client (often to keep fees down) and/or keep the matter at the firm for the fees it will generate. In the end these decisions come back to haunt firms.

LawPRO is also seeing more conflicts arise with the lateral hiring of partners and associates. In a desire to bring on the new person, real or potential conflicts are also ignored or overlooked.

Clerical and delegation errors

Clerical and delegation-related errors are the sixth most common type of error by count and cost (1,093 claims and $1.6 million in costs, 5.3 per cent and 2.7 per cent, respectively).

Delegation errors include things such as simple clerical errors, errors in mathematical calculations, work delegated to an employee or outsider that is not checked, and failures to file document where no deadline is involved.

Delegation of tasks to knowledgeable support staff is an essential part of the operation of every practice as it makes lawyers more efficient and effective. However, ultimately the lawyer is responsible for delegated work, and steps should be taken to review delegated work where appropriate. Extra care is especially warranted if there is something different or unusual on the matter.

Fraud claims

As is detailed in the articles on pages two to eight, fraud-related claims are on the rise and of significant concern to LawPRO. Although real estate fraud has been a concern for several years, counterfeit cheques now are being used to target litigators (on collection matters) and commercial lawyers (on financing deals), as we are seeing more frauds by firm lawyers and staff.

Regardless of firm size, it is important that every firm implement appropriate internal controls to ensure that funds in trust accounts are handled properly and that all transactions involving client monies are properly documented.

Firms have different claims “personalities”

It is interesting to note that, on an aggregate basis, the malpractice error types and proportions can vary significantly from firm to firm. Sometimes this is a reflection of practising in a different area of law, but it can also very much reflect an individual firm’s culture, calendaring procedures and time management practices.

For example, firms that do a poor job of managing tasks and deadlines have more time management and missed deadline-related claims. To reduce claims risks, firms should proactively identify and address shortcomings in their operations practices and procedures. One large Toronto firm seems to have kept conflicts claims very low by having excellent conflicts checking procedures and an increased sensitivity to conflicts claims through an annual conflicts education program that is mandatory for all lawyers and staff.

Avoiding a claim: your marching orders

Over the last eleven years LawPRO has averaged 1,846 new claims each year. Over this time period LawPRO successfully defended 86 per cent of these claims (of all claims closed during this 11-year period, 39 per cent were closed with only defence costs incurred, and 47 per cent with neither defence costs nor indemnity payments). But, while only 14 per cent of these claims ultimately involved an indemnity payment, it still makes sense to do everything you can to avoid the stress, time and cost of dealing with a malpractice claim.

The six most common malpractice errors detailed in this article represent more than 92 per cent of the malpractice claims handled by LawPRO in the last eleven years. The biggest claims risks, and the biggest opportunity to reduce claims exposure, lie in basic lawyer/client communications, and in time and deadline management – accounting for more than 50 per cent of the claims. Taking some proactive steps to address these types of claims is your best opportunity to reduce your claims exposure. See the practicePRO resources centerfold for tools and resources that you can use to reduce your claims exposure.

Dan Pinnington is director of practicePRO, LawPRO’s risk and practice management program. He can be reached at dan.pinnington@lawpro.ca.
The legal profession is in the midst of significant change, and is headed into a period where there will be even greater change. These changes are driven by disruptions that alter the very nature of how traditional legal services have been performed and provided to clients for decades. These disruptions include:

- access to justice
- client empowerment
- technology
- alternative legal service providers
This article will give some insights into these disruptors and suggest how members of the legal profession can respond to them.

What is a non-lawyer?

To start, a brief discussion about the term “non-lawyer” is helpful. Lawyers seem to like this word and we readily use it, in particular, in any instance when we are talking about someone who is not a lawyer (including paralegals, who are also licensee of the Law Society in Ontario). The members of other professions don’t seem to have the same hang-up. Do you ever recall hearing a dentist refer to non-dentists, or a doctor referring to non-doctors? Most people, including lawyers, are familiar with and regularly use terms such as dental hygienist, nurse practitioner, chiropractor, physiotherapist, etc.

When lawyers use non-lawyer there can be a subtle suggestion that we have special status or are in some way superior to non-lawyers. This is more likely to be perceived negatively when lawyers put forth the proposition that the monopoly we have on legal services is special and should be protected.

In recognition of the negative context the term non-lawyer can sometimes create, at a conference I recently attended we all agreed that we would refer to individuals that were not called to the bar as “human beings.” Now to be sure, lawyers have a good life relative to many human beings. And while many of us don’t quite earn what the human beings think we do, most of us have a fairly decent income and enjoy the work we do on a day-to-day basis. We should not take this for granted, and we should avoid giving human beings the impression we are somehow better than they are. Referring to non-lawyers as human beings worked nicely at the conference, and I will do the same in this article. Unfortunately human beings is not practical as a substitution for non-lawyer in everyday conversation.

Access to justice

In recent years, access to justice (A2J) issues have been getting increasingly more attention. The most obvious A2J issue is a court system that is bogged down with large numbers of self-represented human beings, in particular in the family law area. Human beings with poverty law issues often can’t find or afford help and most would acknowledge that it is financially challenging for middle class human beings to hire a lawyer.

So clearly, there are lots of human beings not getting the legal help they need. In contrast, there is lots of work being done by lawyers.

By one estimate, Canadian law firms will earn $25 billion in revenue in 2017. This stark contrast is explained in a survey that concluded that Canadians get help from lawyers on only 11.7 per cent of their justiciable events. To be fair, some of these human beings may not want help with their issue. Others could be dealing with a small or insignificant issue for which they don’t need formal legal help or can solve themselves with a DIY solution. Still others may not recognize they have a legal issue or have access to a resource that could help them identify and find help for it. However, there remains a significant number of human beings who need and want help, but can’t get it for a variety of reasons, including not being able to afford it or being unable to find someone to help them. And U.S. Census Bureau statistics seem to indicate the problem is getting worse: while total law firm receipts increased from $225 billion in 2007 to $246 billion in 2012, receipts for work done for individuals declined 10.2 per cent over the same time period, a staggering sum of $7 billion dollars.

Lawyers tend to focus on preserving and protecting the small 11.7 per cent portion of the legal services pie we are already serving. It is incumbent on lawyers to pay more attention to the unserved 88.3 per cent as others are stepping up to the plate to provide services to this group. Recognizing the dire need in the courts, the Ministry of the Attorney General and the Law Society of Ontario are exploring whether paralegals or special limited licence providers can give some forms of assistance to human beings with family law issues. Various alternative legal service providers are also looking for ways to meet the legal needs of this group of unserved clients.

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Client empowerment

In various subtle and not so subtle ways, clients are driving change as well. Clients in most areas of practice are asking their lawyers to provide more for less. They want more and better service, and at the same time, lower fees. Some clients will call around asking for quotes in an effort to find the lowest price. This is putting significant pressure on lawyers to lower their fees. While quoting the lowest fee may make sense to get a client in the short term, it may not bode well for running a profitable practice in the long term, unless steps are taken to do it more effectively and efficiently.

Millennials come to the table with a set of expectations that are very different from most traditional law firm clients. They are tech savvy and very comfortable buying things online. They like using the internet to find information and solutions to their problems quickly and expect to be able to do so 24 hours a day. I recently spoke to a millennial, a lawyer herself, who was very frustrated because two lawyers she had approached to do a will were unwilling to meet her and her husband outside of office hours.

As compared to the individual clients of solo and small firms, corporate clients are often more sophisticated and have larger budgets to pay for help on a wide variety of matter types. Still, they too, are putting pressure on law firms for lower fees and many are pushing law firms to consider flat fees and other alternative fee arrangements. As evidenced by increasing numbers, corporate counsel are doing more work in-house. U.S. Bureau of Labor statistics show that the number of in-house lawyers tripled between 1997 and 2016, as compared to just 46 per cent more government lawyers and only 27 per cent more lawyers at private law firms over the same time period.4

But an individual client can only do so much. When clients band together they can demand and drive significant change. A striking example of this is the Corporate Legal Operations Consortium (cloc.org). The members of this fast-growing organization are the legal operations employees of Fortune 500, medium and small companies, government entities and educational institutions. Legal ops usually have a financial background and look for ways to lower costs and optimize the delivery of legal services to a business. Through conferences and networking, the members of CLOC share resources and teach each other how to get the legal help they need more effectively, efficiently and at a lower cost. CLOC is driving significant and rapid change in how legal services are consumed by corporate clients. In-house counsel are also making far greater use of legal process outsourcing.

Technology

Technology is another major disruptor that is driving huge change in the legal services arena. Changes brought about by the fax machine and email – which were seen by many as earth-shattering when they occurred – seem small and insignificant relative to emerging technologies on the horizon.

Technology has significantly changed the manner in which work is done in a law office, as well as the manner in which lawyers communicate with and serve their clients. With the advent of networked computers and email, many law offices are operating in a much more digital fashion with far less paper. Email has become the de facto mode of communication between lawyers and clients. Smart phones allow clients to access their lawyers around the clock. And while it was unthinkable just five years ago, many law firms are using cloud-based services and storing sensitive client and firm data in the cloud.

By some accounts, increasingly smart computers will replace lawyers. But how much of this is hype and how much is reality? This is discussed in more detail in the “Artificial intelligence: What is AI and will it really replace lawyers?” article at page 15.

4 “How Much Are Corporations In-Sourcing Legal Services?”, Prof. Bill Henderson on Legal Evolution blog (May, 2017) (legalevolution.org/2017/05/003-inhouse-lawyers/)
Various internet-based technologies have opened the door for individuals and entities, many of whom are not lawyers or law firms, to offer online legal services or help with selected tasks that are a constituent part of handling a matter. These “alternative legal services providers” are discussed in the next section.

Blockchain will also bring significant change. It is the technology behind bitcoin and other cryptocurrencies. See the “What is blockchain?” sidebar on page 9.

The blockchain in the sidebar handled simple financial transactions. Blockchain systems can be built to handle more complex transactions. Sweden is building a blockchain-based land registry system. Blockchains can include smart contract functionality and can be used for complex commercial transactions involving multiple parties. For example, the seller, buyer, lender, and shipper of goods could complete a commercial transaction entirely on a digital basis within a blockchain system, including verifying the identity of the parties, preparing and signing a bill of sale, applying for and advancing the loan, making and verifying payments, and instructing, tracking, and paying for shipping. The appeal of blockchain is its ability to irrevocably verify and record every step in a transaction in a secure environment that is global and platform independent (it won’t matter what technology systems or software you use in your office). Lawyers can expect to see blockchain systems become part of some of the transactions they handle today, and in some instances, lawyers may find themselves replaced as transactions will be completed entirely within a blockchain system. There are Canadian law firms currently building blockchain systems to better serve their clients.

**Alternative legal services providers**

Lawyers should wake up to the fact that various alternative legal service providers are actively looking to address the legal needs of the clients their firms are currently serving as well as the human beings they aren’t currently serving. These alternative legal service providers come in many forms. They include websites that sell legal forms, legal process outsourcers, and apps or websites that dispense legal information or advice.

Many lawyers were quite upset when DIY forms books appeared on the shelves of bookstores 25 years ago. Most of these books had simple “fill-in-the-blank” forms in them. The forms that first appeared online were also simple fill in the blank forms. As compared to the advanced forms found online today, these old fill in the blank forms were prehistoric stone tablets.

A consumer or business client can find just about any form they would ever need or want online. With a quick Google search you can find sites that offer wills, leases, articles of incorporation and other corporate documents, pleadings, criminal pardons, and trademark registrations, just to name a few. While some of these sites have an indication that they are affiliated with a law firm, most have no obvious or stated connection to a law firm. The documents prepared on these sites will have specific customizations based on detailed questions the client answers and they can be as lengthy and complicated as any document prepared by a lawyer. (See the discussion of expert systems in the “Artificial intelligence: What is AI and will it really replace lawyers?” article at page 15)

Legal process outsourcing (LPO) refers to the practice of obtaining support services from an outside law firm or legal support services company (LPO provider). When the LPO provider is based in the same country, the practice is called onshoring. When the LPO provider is based in another country, the practice is called offshoring. In the early days of LPOs, law firms tended to outsource back-office functions like bookkeeping, accounts receivable collections, etc. Globally LPO has become a multi-billion dollar industry. Major LPO providers like Axiom, Integreon Managed Solutions, Inc., and Pangea3 (owned by Thomson Reuters) are global companies that have operations in multiple countries. In Europe and the United States it has become very common for corporate entities and, more recently, law firms to outsource legal work, including agency work, document review, due diligence, legal research and writing, drafting of pleadings and other litigation support, contract management, and patent and other IP services. Major accounting firms are also doing LPO work (e.g., document review). A 2016 survey of almost 250 lawyers across Canada, including those who worked in firms, corporations and the government, found that 40 per cent were using legal process outsourcing.5

It is virtually impossible to know how many forms sites, LPO providers and other alternative legal service providers there actually are. But a good starting point is the Legal Tech Startups list on LawSitesBlog.com. It is the most complete and up-to-date list I have come across. As I write this article there are 691 startups listed. While some of the companies listed are arguably not startups anymore as they have a large base of existing customers, the majority of companies on the list are in the early stages of creating or testing a new product or service aimed at the legal services arena.

Some of the startups on this list have received large investments from leading venture capital firms and technology companies (e.g., Google has invested in LegalZoom and Rocket Lawyer). Established legal industry vendors and LPOs are also investing in these startups (e.g., Lexis-Nexis acquired Lex Machina) to offer new services and products and to obtain technology to improve their existing products (e.g., Integreon acquired Allegory).

While some of these startups are clearly aimed at helping lawyers work better, faster, or cheaper many offer various types of legal assistance directly to consumer or business clients. In some cases those clients are currently being served by lawyers; in other cases those clients are getting little or no help from lawyers. The sheer number of startups on the LawSitesBlog list is striking, not to mention the fact that the venture capital firms investing in them must see significant potential revenues here. These startups will bring meaningful change.

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What is blockchain?

While the technology behind blockchain is very complex, the functionality at its core is quite simple. This infographic explains how blockchain works.

1. The basics...
   - Need at least three people, but more is better
   - All mutually agree to be in a group for some common purpose
   - Group members are anonymous to each other
   - All group members see every transaction

2. A sample transaction – the transfer of funds between two people in the group...
   - Lender announces a $500 transfer and it’s seen by all
   - Every group member has a full copy of the account of every other group member, a distributed ledger
   - Each checks lender’s balance, and if enough, each enters a transfer in their ledger
   - The transaction is then considered complete
   - This continues for further transactions

3. Locking a ledger page
   - When a ledger page is full, its contents are run through a cryptographic calculation that generates unique code which is a “hash”
   - You always get same hash for a given input
   - Changing just one character on the page will result in different hash
   - Hashing the ledger page “locks” it, making it verifiable

4. Mining
   - The first to calculate hash announces it to the group
   - Others check hash
   - If it is verified by the majority in the group, first person gets paid nominal amount of new money
   - This is called mining

The secret sauce in blockchain...
   - The hash of the prior page is calculated into the hash of the current page
   - Each ledger page is a block
   - The linked blocks are a blockchain
   - This gives you a locked and verifiable chain of transactions

The blockchain in this infographic handled simple financial transactions. Blockchain systems can include smart contract functionality and could be used for complex commercial transactions involving multiple parties. The appeal of blockchain is its ability to irrevocably verify and record every step in a transaction in a secure environment that is global and platform independent.

For a video explanation visit the LawPRO YouTube page.
to the legal services business. Take a look through LawSitesBlog to gain an appreciation of the types and variety of legal services that these entrepreneurial and innovative startups are providing to human beings and entities that are looking for help with legal issues.

How does the legal profession respond to alternative legal services providers?

At the most basic level, there are just three options for dealing with alternative legal service providers. They are:

1. prosecute them for the unauthorized practice of law;
2. ignore them; or
3. bring them into the legal services tent.

When it comes to dealing with a human being providing legal services, the first inclination of most lawyers is that the human being being prosecuted for the unauthorized practice of law (UPL). This is not necessarily a practical option for several reasons. First, there is the challenge of determining whether the startup is engaged in the practice of law. Is a company that owns a website that generates a will engaged in the practice of law? Does the answer change depending on whether it is a simple will with very basic clauses for an individual or a very complicated will that includes family trust provisions? Is a company that owns a web-based service that predicts litigation outcomes or gives strategy advice engaged in the practice of law? What about a company that solely does document review for eDiscovery or due diligence purposes?

UPL prosecutions tend to be very time-consuming and expensive. Most legal regulators do not likely have the resources at present to launch large numbers of UPL prosecutions, and it’s probably safe to assume members of the profession are unwilling to pay significantly higher annual dues to give their regulators the resources to do so. It’s also important to keep in mind that UPL prosecutions are not intended to protect lawyers’ turf; rather they are intended to protect the public from suffering damages due to incompetent legal services. Last but not least, human beings see UPL prosecutions as self-serving and protectionist, and alternative legal services providers helping individuals that were otherwise not getting help from lawyers and paralegals would likely argue that access to justice is being thwarted.

In some ways the second option is the status quo. As a profession we are mostly ignoring alternative legal services providers. This option is easier and far less expensive than the UPL prosecution option, but it isn’t in the best interest of the legal consumer. Almost universally, the terms of service on alternative legal services provider websites state that the forms or services offered are not legal advice and are offered without warranty on an “as is” basis. The terms of service also specify that there are limitations to the liability of the provider, at best, a limitation to the cost of the service, and more typically, there is a provision that says there will be no liability whatsoever. Lawyers and paralegals may not like this option as it leaves the door open for the alternative legal services providers to encroach on the work that is currently done by lawyers and paralegals.

To address the public protection shortcomings of the previous option we could consider bringing the alternative legal services providers into the regulatory tent. As the current regulatory regime operates by licensing individuals, this option might involve exploring some form of entity regulation. Another option would be to bring in selected types of services based on an assessment of where client protection or other regulatory needs are important or necessary. Client protection would likely be less of a concern when dealing with a parking ticket but a greater concern where a will was being drafted. Some providers may like pursuing this option as they will feel falling under the regulatory umbrella will give them more credibility with consumers. Others, likely in larger numbers, perceive this will increase their costs and decrease their ability to provide access to justice. So there are various options for less regulation to consider and evaluate.

How should lawyers respond to the changing practice climate?

The disruptors reviewed in this article will bring significant change to the legal profession. Lawyers need to recognize that these disruptions are occurring and respond to the changes they will bring. Areas of practice will come and go, as they always have. Cannabis law has burst on the scene in just the past year or so. An aging population will likely mean more work in coming years in the wills, estates and elder law areas of practice. Clients are going to need help dealing with blockchain and other emerging technologies. But lawyers need to think beyond traditional areas and manners of practice.

The access to justice problem is an issue members of the profession should actively work to address on our own and with the input and assistance of other stakeholders. It is unlikely there will be an increase in legal aid funding that would be sufficient to help a significant portion of the human beings with unmet legal needs. Offering pro bono services is a great way to give back or support a personal cause, and while it will help many, it’s also not a solution to the unmet legal needs problem. Lawyers should consider unbundling or limited scope retainers as there are opportunities to help large numbers of clients who can pay for help on a part of their matter (visit practicepro.ca/limitedscope for tools and resources to help you provide limited scope services), but unbundled services can only chip away at part of the unmet legal needs problem.

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6 A post on the Law2050 blog titled When Is Legal Industry Innovation a Policy Disruption? suggests there are four choices: (1) Block – prohibit the innovator model altogether; (2) OldReg – apply the incumbent regulatory regime as is and see how it fares; (3) NewReg – invent new regulations for the innovator model (and possibly the incumbents); and, (4) Free Pass – leave the innovator alone and let the market chips fall where they may (law2050.com/2017/12/22/when-is-legal-industry-innovation-a-policy-disruption/amp/).
In their recent book *The Future of the Professions: How technology will transform the work of human experts,* legal futurists Richard and Daniel Susskind see two distinct futures for most professions, including the legal profession. One future will see some continue to work in traditional ways. The other future – the one that will bring fundamental change – will see increasingly capable machines and alternative service providers aided by technology transform the way practical expertise is shared amongst members of society. “The 7 models for legal services” sidebar lists the various models the Susskinds predict for the future of legal and other professional services. Some of these models have already started to displace the work that is currently done in traditional ways by many professions. For now, these two futures will operate in parallel, but in the longer run – perhaps in two to three decades – the Susskinds see the second future as dominating and leading to a gradual dismantling of the legal and other professions as we know them today. The legal services monopoly is coming to an end.

There will still be a market for Cadillac legal services at Cadillac prices. Lawyers that are seen as the top experts in a particular area will be sought after. Clients with “bet the farm” issues will also be willing to pay for help with little or no consideration of cost. Traditional practice will continue for this group of lawyers, but this segment of the market is very small, and will likely shrink. As time goes on, lawyers serving the...
rest of the legal market are more likely to find themselves competing with each other and alternative legal services providers, especially on lower value commodity-type services. They will have two choices – competing on service or competing on price.

To compete on service, lawyers will have to provide superior service and also educate clients on the benefits of that superior service. A client that understands the benefits will likely be willing to pay more for those services. In the shorter term, this can be done one matter at a time. For years a real estate lawyer I knew refused to lower his fees when potential clients called him for a fee quote. He quoted fees that were typically $150-$250 more than what other lawyers had quoted them. He said to clients “I’m sorry, I can’t do the work I need to do properly to complete your deal for a fee that is that low.” By his estimate, clients stayed with him about two-thirds of the time. He also felt the clients he was getting were more appreciative of the work he was doing and less likely to be unhappy later on, even if minor issues came up.

But the bigger pay-off is in the longer term where competing on service means building an ongoing relationship with the client. This involves thinking beyond quickly preparing articles of incorporation for a minimal fee. Spend time with the client to learn more about the client’s future plans. Highlight information and issues that the client should consider, and in particular, any steps the client could proactively take to be in a better position or avoid problems. For the incorporation example just mentioned, this means setting a goal of becoming the lawyer for a growing and prosperous business that will need help with other legal issues in coming years. This applies to a one-on-one lawyer-client relationship and at the firm level for a larger client.

Competing on price means going toe-to-toe with law firms and alternative legal service providers that are offering services at cut-rate fees. There will be little to differentiate the service offerings here. This will be low-margin commodity work, most likely produced with the assistance of technology. To compete on price you will need to look at implementing process improvements so you are as efficient as possible. This will mean delegating or outsourcing work to get it done at a lower cost and using technology to automate parts of the process (e.g., web-based client intake, document automation to create documents or offering online services). Lawyers and law firms have traditionally been slow to adopt new technologies. A general technology competence requirement appears in the ethics rules of only 26 U.S. states. Many alternative legal services providers have embraced technology and lawyers and law firms will need to do the same if they hope to compete. You don’t need to learn to code, but you do need to understand how technology can be used to work more efficiently and effectively.

Last, but not least, lawyers should not forget the potential clients that we are not currently serving. Many of the alternative legal services providers are looking for ways to help these unserved clients and lawyers need to do the same. It goes without saying that the traditional model of practice doesn’t work for this group, mainly due to affordability. While unbundling opens the door to some of the unserved group to get help on parts of their matters, new practice models using technology have greater potential to help this group.

Future of law news and developments:

To help you keep up on news and developments on the future of law, these people and organizations publish regular updates on Twitter and their blogs:

@CFCJ_FCJC: News on A2J issues from The Canadian Forum on Civil Justice, a national nonprofit dedicated to access to justice research and advocacy.

@cloc_org: News and information from the Corporate Legal Operations Consortium.

@Jordan_law21: Legal futurist Jordan Furlong provides commentary on a changing profession.

@legalfutures: News and information on what’s happening in the U.K.

@LeanLawStrategy: Current news and thought provoking comments and insights from legal strategist and innovator Kenneth A. Grady.

@legalMosaic: Thought provoking articles from legal industry strategy consultant Mark A. Cohen.

@RyersonLIZ: The Legal Innovation Zone is a legal tech incubator run out of Ryerson University.

@ronfreidman: Consultant Ron Friedman comments on the future of law, knowledge management, legal technology, better process and firm business models.

@tagactiongroup: News on A2J in Ontario from TAG—The Action Group on Access to Justice, a working group of justice system stakeholders.

@wihender: Prof. Bill Henderson from Indiana University Maurer School of Law provides insightful comments on the future of law and legal education.
Your next steps

If you want a clear picture of where we are going, read The Future of the Professions: How technology will transform the work of human experts by Richard Susskind and Daniel Susskind. Nothing else I have read more clearly and convincingly elucidates the future of legal services and how technology will transform the traditional practice of law.

The Canadian economy, and the law firms within it, were isolated from the fallout of the 2008 financial crisis. Law firms of all sizes in the U.S. and U.K. saw a significant drop in the demand for their services and the start of a transition to a world where clients started demanding lower fees. The Canadian ecosystem has been fairly isolated from changes elsewhere in the world, but these changes are starting to happen here. Legal forms are available online. In-house counsel are learning from foreign colleagues and participating in organizations like CLOC. As these changes have picked up momentum elsewhere, they may well happen more rapidly in Canada.

The biggest challenge most law firms face is a business model that doesn’t fit the changing manner in which legal services are being provided today. Virtually every recent innovation in the legal services market – automation, process improvement, multi sourcing and web-based services – has operated to reduce the amount of time and effort required to produce and deliver legal services. In contrast, most law firms price work, bill clients, compensate lawyers and reward partners based on the amount of time and effort required to produce and deliver legal services. At many firms the barriers to change are significant when the personal experience and comfort zones of most lawyers are coupled with firm culture and incentives.

To help bring meaningful change to your firm you should develop a strategy. Richard Susskind’s Guide to Strategy for Lawyers, published by the CBA Legal Futures Initiative, provides a general step-by-step guide that lawyers and law firms in all practice settings can use to start to create a strategic plan that will help them implement changes to successfully adapt to the changes that will occur in coming years. The “Further reading” sidebar contains other books that you may find helpful. The “Future of law news and developments” sidebar lists people and organizations who publish regular updates on Twitter and their blogs. The sidebar on page 14 gives practical examples of what you can do.

Bill Gates once said that we always overestimate the change that will happen in two years, and underestimate the change that will happen in 10 years. While the legal profession probably won’t look that different two years out, in all likelihood it will be radically different in 10 years, in ways most of us can’t see or imagine. The profession needs to rise to the challenge and find the opportunities these changes will bring.

Dan Pinnington is Vice-President, Claims Prevention and Stakeholder Relations at LawPRO.

Further reading:

Futures: Transforming the Delivery of Legal Services in Canada. Canadian Bar Association Futures Task Force, 2014. This report offers insights on the changing legal marketplace and the opportunities that can arise from lawyers choosing to adapt to change.


Legal Evolution blog by Prof. Bill Henderson. Thought provoking articles on the future of law and legal education.


The American Bar Association’s Law Practice Division has dozens of excellent books on legal technology generally as well as books on specific products. They have published many other books on other law practice management topics (finances, marketing and management). Many of these books are available for loan to Ontario lawyers from the practicePRO Lending Library (practicepro.ca/library).

Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy by Gillian Hadfield. Oxford University Press, 2016. Perspectives on why our legal institutions are out of step in a digital world and what we should do about it.

On the 15th anniversary of the practicePRO® program, LawPRO® asked Dan Pinnington, vice president, claims prevention and stakeholder relations, to give us his personal views on the future of legal practice. This is a topic Dan monitors constantly: One of his main tasks for many years has been to predict where the Ontario bar is headed and what minefields may be encountered on that journey. Dan’s views will be exciting for many readers, although some may be daunted by the challenges ahead, including for the regulators of lawyers.

Currently there is a lot of discussion about changes in the practice of law and the future of the legal profession. When you are in the midst of changing times, it can sometimes be hard to see the changes that are occurring, much less understand where things are going. For some perspective, it can help to look at the before and after.

For the before, consider your parents’ lawyer. He (and that lawyer was most likely a “he”) lived in the same community and had an office around the corner from where your parents lived. He was educated in Canada and admitted to practice in the province where your parents resided. He was likely a general practitioner and all his work was done in person or on paper. He was also probably a member of the local men’s service and golf clubs (as was your father). And last, but not least, he was subject to regulation and ethics rules and had malpractice insurance (at least in recent decades).

For the after, consider your child’s “lawyer.” He or she will live somewhere in the global village that our world has become. He or she was educated and could be located anywhere on the planet. No paper here – electronic documents and virtual communications...
will be the norm. In fact, this person could be a non-lawyer, and might not even be a person: The advice could be coming from a website or computer program. It is unlikely that this person, website or program will be admitted to a bar, subject to regulation or ethics rules, or have malpractice or similar insurance in the same way as your parents’ lawyer.

There are some fairly obvious differences in these two scenarios, and when you consider them more deeply, they raise some interesting and profound questions about what legal services are, who delivers them, and how they will be delivered and regulated. But before we talk about the future, we should start with some reflection on where we came from – the time when your parents’ lawyer was in his prime.

Looking back
Looking back, it would appear that the latter part of the 20th century was the golden era of the traditional law firm. Aside from a few big but temporary bumps, the economy grew steadily for several decades. Lawyers were the only game in town for legal advice and services as they were the only ones with access to the required knowledge and tools. In almost all areas of law and for firms of every size and type, from the biggest firms on Bay Street to the smaller firms and sole practitioners in smaller and rural communities, this created a steady supply of new clients and a growing demand for the services which only lawyers could provide.

Leveraging the billable hour (which increased year after year with few, if any, complaints from clients) and large numbers of hard-working articling students and associates, most firms were profitable and being a lawyer meant you were reasonably or very well off financially. In general, life was very good for lawyers and law firms.

The present
But as we start the second decade of the 21st century, this idyllic existence seems to be coming to an abrupt end. By many measures, the legal system is not functioning as it should. It has become very complex. Going to court is incredibly time consuming and expensive. Self-represented parties are struggling to handle their own matters and are described as bogging down the court system. There is a large legal services gap, even for the middle class. Many people are unable to afford or access the legal services they need. Some are going outside the judicial system for dispute resolution.

There is also a shrinking demand for traditional legal services. Clients (and in particular, corporate clients) are paying a lot closer attention to their legal costs. They have come to recognize that the billable hour rewards the wrong behaviour and does nothing to encourage greater efficiency. Clients want greater predictability and value for their legal costs. Including outsourcing legal work (e.g., research, document resources that only lawyers could access just a few decades ago.

For a variety of reasons there is also a breakdown in traditional law firm structures. With fewer articling students and associates, firms are becoming top-heavy and the pyramid model is no longer working financially or for work-flow structures as demanded by corporate clients, who often do not want to pay for multiple lawyers on a file and certainly do not want to pay to train associates. When you consider outsourcing, some are suggesting firms will move to the “starfish” model, with few permanent lawyers and staff, but a range of outsourced suppliers, independent contractors and temporary employees who come and go as the work demands2. Some firms are experiencing succession planning issues as fewer lawyers are moving up the ranks and willing to take on equity partner and leadership roles.

Changes on the horizon
The picture looking forward from the present doesn’t look much better – we certainly aren’t going to go back to the idyllic era of your parents’ lawyer. Needless to say, many of the issues and changes mentioned in the previous section will drive change. But there are other major drivers of change that are starting to have some impact now and will become more significant in coming years. They include:

- **Globalization:** Both corporate and individual clients (who might themselves be from outside Ontario) are more likely to have matters involving non-Ontario law and parties.
- **Demographics:** The profession is aging and there are large numbers of lawyers approaching retirement age. This is a significant issue in many smaller and rural communities because younger lawyers are not starting up new practices in these communities.
- **Technology:** The internet and other technologies are having a disruptive impact, allowing many new ways for lawyers and clients to communicate and collaborate and opening the door for new types of legal service offerings.
- **Self-help and DIY tools:** The internet has given individual or consumer clients access to virtually all the legal information and resources that only lawyers could access just a few decades ago.
- **Legal process outsourcing:** Firms are exploring new ways to cut costs, including outsourcing legal work (e.g., research, document drafting and review, e-discovery, etc.) and non-legal work.

1 An agreed-upon fee is established with a collar, typically 10 per cent. Should the value of fees be above or below the collar, the law firm and client agree on a percentage of the overage/undergage to be credited or paid. The percentage is normally 50 per cent. This type of fee arrangement allows the firm and client to share fee upsides or downsides with each other.

(back-office support and services) to entities that are both onshore and offshore. There can be significant savings here. For example, hourly rates for legal work in India are typically 25 per cent or less than the rates for comparable work here.

- **New entrants**: There are various types of alternative non-traditional “legal service” providers, almost all of which offer services at lower costs than traditional law firms.

These pressures and changes will shape the legal system your child’s lawyer will live and work in. With these changes will come some interesting questions and challenges regarding who should offer legal services and how they should be regulated. Let’s look at these pressures, questions and challenges in more detail.

**Who will provide legal services?**

Our current legal system is predicated on lawyers – and more recently paralegals – delivering “legal services” (the definition of this term is discussed in the next section). Can Ontario lawyers maintain a monopoly on professional legal services? The answer is probably not. In fact, some would argue the monopoly ended when paralegals were given regulated status to provide legal services.

As mentioned above, access to justice is a problem for many members of the public and there is a massive and growing legal services gap. Lawyers and the legal system do not seem to be changing or evolving to address this gap adequately. This effectively opens the door for non-lawyers to fill this unmet need for legal services. Ontario was very progressive in regulating and licencing paralegals. British Columbia is considering the same issue and notaries already do much of the residential real estate conveyancing work in B.C.

Non-lawyers are stepping up to provide legal services in other jurisdictions, too. Washington State has created an education and professional framework for Limited Licence Legal Technicians (“LLLTs”). LLLTs will have more training and responsibility than the paralegals in that state, but will not appear in court or negotiate on behalf of clients. California and several other U.S. states are looking into doing something similar for immigration consultants.

Computer programs and websites are already providing various types of legal services and it appears they will become a much larger part of the legal services market in coming years. In both paper and electronic form, “DIY” will kits are widely available. The online segment seems poised for very significant growth as there are many start-ups targeting the legal services market, some with capital backing from venture capitalists and major corporations like Google™.

Sites like LegalZoom™ and RocketLawyer™ have become major legal services players, selling standard forms and documents that are customized for a client. Some sites offer pre-fab work product that is ready for client use “as is.” There are many sites with self-help information and many Q&A sites (e.g., Quora®) where you can directly ask a lawyer questions. You can talk to a lawyer in real time and be billed by the minute on your credit card on Ingenio™. Other sites offer lawyers the opportunity to bid on matters or work that potential clients have posted. Cybersettle® is a consumer settlement and payment site that has, without lawyer involvement, facilitated the settlement of almost $2 billion in claim-based transactions for insurance companies, Fortune 500 corporations, and municipalities.

The services offered by these types of sites are usually significantly cheaper than comparable services offered by lawyers, and in some cases are free. They have transformed many common types of personal or consumer legal work into low price, low margin and high volume commodity legal services. Many of these sites are monetized, at least in part, by being a source of referrals for lawyers (this raises ethics issues in many jurisdictions), and in some cases non-lawyers, that own or participate on them.

Most of the websites offering legal forms at the present time are doing basic document automation on common documents like wills, incorporation forms and basic court pleadings. However, work is being done to build intelligent document and advice generation systems that will have artificial intelligence. These systems will be able to handle very complex matters. But, can computers give competent legal advice? See the sidebar, above, for the answer to this question.
So it looks like we will have non-lawyers and computers becoming a much larger part of the legal services market. Will lawyers still provide legal services? Yes, they will still have a part, albeit probably a shrinking part. This is discussed in more detail in the last section of this article.

For the rest of the article, we will call anyone or anything that provides legal services a “legal service provider.” What do legal services providers do? They provide legal services.

**What are “legal services”?**

Perhaps the more relevant question here is “What is the practice of law?” Coming up with a definition of the practice of law has proven to be very difficult. Many have tried, and many have failed, including an American Bar Association Commission. For the purposes of this article, we won’t attempt to come up with the definitive definition of the practice of law. Let’s just say that the practice of law includes giving legal advice. We also won’t attempt to define what “the giving of legal advice” is other than to say it is what lawyers have traditionally done. The key point to note is that the practice of law or the giving of legal advice is important as either triggers inclusion in the legal services regulatory regime.

But, what about the services offered by some of the newer forms of legal service providers? Is a legal forms site that helps you complete a document giving you legal advice? How about an answer to a query you posted on a legal Q&A site? Or when a problem with your online tools is doing work that is the same or similar to what lawyers do. However, if you take a look at the terms of service on online legal services sites, you will find they all explicitly say they are not practising law or providing legal advice. It almost seems as if incremental unauthorized practice of law (known as UPL) is chipping away at the foundations of the legal profession. This leads to the next question we will consider.

**Future “law firm” models**

So what will the law firm of the future look like? There are a number of possibilities, some that will be similar to or evolve from existing types of firms, others that will be entirely new. These are the types of firms we will probably see 10 to 15 years from now.

1. **Global full service**: Following a consolidation of some of the major national firms, there will be a few international mega-firms in this group. This is what has happened in the accounting profession. These firms will be multi-national and have tens of thousands of lawyers. They will handle very complex matters and will provide legal and other professional services (such as accounting) that have not been viewed in the past as legal services.

2. **Global niche**: This is a new category of firm that will focus on niche areas but be able to deal with niche issues on a global and international basis. They will also be multi-national, but they will be small in size.

3. **Local/national full service**: The existing regional and national firms that embrace change and adapt to the changes that the profession is seeing will count themselves in this group. They will have moved away from the billable hour, will be doing more commodity work, and will be doing everything they can to be working better, cheaper and faster for their clients.

4. **Local niche or boutique**: Some of these firms already exist, but there will be more of them. In many cases, they will be breakaways from current larger firms and they will be fairly small in size. Clients will seek them out and pay a premium because they are the best at what they do.

5. **Solo and small general practice firms**: These firms will still be around, but given the demographics of the bar, they will be fewer in number, especially in smaller communities and rural areas.

6. **Legal process outsourcers (LPOs)**: Law firms and corporate legal departments are sending more and more work outside to companies that specialize in particular tasks (e.g., legal research and analysis, document drafting and review for due diligence and litigation, e-discovery, patent and IP work, contracts) and non-legal work (clerical work, back-office support and services). Much of this work was traditionally done by teams of lawyers at the larger firms. This is one of the fastest-growing segments of the legal services market.

7. **Virtual firms**: This is a new category. We are at the start of a huge expansion in lawyers providing legal services without founding their practice in one or more specific bricks and mortar locations. The firm may have multiple lawyers, all working together and/or with clients via shared technology. When meetings are needed they will use technology like Skype, visit the client’s premises or meet in a facility rented for this specific meeting. In a variation of this arrangement, in some cases lawyers from different firms will come together and use “virtual deal rooms” to work on a single matter.

8. **Alternative business structures or ABS**: This is another new category. Lawyers and/or non-lawyers will own and operate these firms. They will initially focus on low-price/high-volume commodity work, but they will start work on higher value matters. The advent of Ontario paralegals as independent business owners providing legal services related to traffic tickets, landlord and tenant hearings and small claims court cases (to name just a few areas) presages the likely tsunami of services to come from the expansion of this model.
**Should legal service providers be regulated?**

By stating that they are not practising law or providing legal advice, these legal service providers shrewdly aim to take themselves out of the current legal services regulatory scheme and nicely avoid all the education, admission, ethics and insurance obligations that lawyers must fulfill.

You can better understand the impact of this if you go back to the “before” and “after” scenarios outlined at the start of this article. Your parents had some guarantee as to the quality of the legal services they got, and some recourse if there was a problem. If the legal services your child gets come from a legal service provider that is outside the regulatory framework, it is quite possible they will have no guarantees as to the quality of the legal services they will get and little or no recourse if there is a problem. For the sake of consumer protection, this suggests that all legal service providers should be regulated.

For this reason, ultimately regulators may look to regulate all legal services providers – not just lawyers. This “entity regulation” has started to happen in some jurisdictions. The alternative business structures (“ABS”) approach in the United Kingdom is one example of this. See the adjacent ABS sidebar for more details on what ABSs are.

When considering the regulation of legal service providers, two other related questions come up. First, should legal service providers be on the hook if they make a mistake? As a matter of consumer protection, the obvious answer to this question is “yes.” There can be very significant legal, financial and/or personal consequences if there is a problem with the legal services provided to a client. Buying legal services is different from buying running shoes on Amazon® or trinkets on eBay®. The terms of service on almost all online legal service provider sites have very broad waivers of liability. At best there is a money-back guarantee. This would not properly compensate a client that has been seriously harmed by erroneous legal services (e.g., a will purchased for $30).

**Alternative business structures (“ABS”)**

The current regulatory approach to permitted business structures and financing rules for law firms or other entities delivering legal services varies greatly by jurisdiction. The continuum ranges from jurisdictions restricting the delivery of legal services to traditional practice structures, where external ownership of law firms and external capital are prohibited, to jurisdictions that have expanded the range of structures through which legal services may be delivered by permitting new forms of law firm ownership and financing.

Alternative business structures or “ABS” is a term that can apply to any form of non-traditional law firm business structure as well as alternative means to deliver services. It may include, for example:

a. Alternative ownership structures, such as non-lawyer investment in or ownership of law firms, including equity financing;

b. Firms offering legal services together with other professionals or non-professionals; and

c. Firms offering an expanded range of products and services, such as do-it-yourself legal forms.

Australia was an early adopter of ABS regulation. Since 2000, legal practices in New South Wales have been permitted to incorporate under ordinary company law without any restrictions on who may own shares or what type of business may be conducted. In 2007, Australia was the first jurisdiction in the world to permit the public listing of a law firm.

England and Wales are experiencing rapid change in how legal services are regulated and provided to the public. Following the Clementi Report, which recommended major reforms to the regulation of legal services in England and Wales, the Legal Services Act 2007 (“LSA”) was enacted. Under the LSA, the objectives of the regulation of legal services have been broadened. In addition to improving access to justice, the regulation of legal services is also founded on objectives such as protecting and promoting consumer interests and competition. The LSA expressly permits the provision of legal services through ABSs in furtherance of these objectives. More than 230 ABSs have successfully become licenced to provide legal services in England and Wales under the LSA, and a further 250 applications are in the pipeline.

The majority of ABSs look a lot like ordinary law firms. Firms of various sizes, including sole practitioners and smaller firms, are themselves or own ABSs in which non-lawyer staff have become equity partners and in which family members, including spouses, have become part owners. It would appear the motives here are profit sharing and/or income splitting. One very large firm was granted five separate ABS licences. Australian mega firm Slater and Gordon purchased a large firm and converted it into an ABS. Some ABS firms offer legal services together with related professional services (e.g., architecture) or expert consulting services (e.g., human resource management).

“Grocery store law” has arrived thanks to Co-operative Legal Services (“CLS”), part of the Co-Op Group, the UK’s largest mutual business. Its businesses include, among others, a national chain of food stores, banking, insurance, pharmacy, and funeral services. The Co-Op Group operates over 5,000 retail outlets, and employs over 106,000 people. As an ABS, CLS currently provides fixed fee legal services in conveyancing, family, wills and probate, personal injury, and employment law by phone, online and in-person at many of its stores.

While it is too early to see if the LSAs objectives are being met, none of the dire predictions of ABSs made have come to pass. Some say that ABSs under the LSA have opened the door to innovation, but others say they are still too restrictive. The Law Society of Upper Canada has a working group of Benchers studying the ABS phenomenon.
The second question is whether legal service providers should have “malpractice” or similar insurance. As insurance is mandatory in every province and territory in Canada, we probably take it for granted. In the United States only one state (Oregon) has mandatory malpractice insurance. There is a wide variation in other countries around the world (see this LawPRO Magazine article: “Errors & Omissions: Mandatory professional liability insurance and a mandatory provider: A global perspective”). This is also a matter of consumer protection. If there is a problem – it means the client is assured some financial recourse. It can also help lawyers avoid dire personal financial circumstances in the event they make an error.

Jurisdiction matters

In most every jurisdiction, including Canada, legal services regulation is very much based on jurisdiction – you must comply with the regulatory regime in the jurisdiction where you are providing legal services. In Canada we have mobility rules which allow lawyers to practice across the country. A similar regime is in place in Europe, but this is not typical of most jurisdictions in the rest of the world. Mobility is difficult if not impossible in most other jurisdictions, including the United States, although there are signs that this is starting to change in some places. For example, discussions are ongoing about legal services falling under GATT, the General Agreement on Trade and Tariffs.

However, the current regulatory model doesn’t work well in the world of your child’s lawyer. This is because your child’s lawyer could easily be a non-lawyer or computer, and may be outside of Ontario. Practically speaking, this puts such legal service providers beyond the reach of any Ontario regulation, education, ethics rules and insurance requirements.

And it gets even more complicated when you deal with matters involving multiple jurisdictions. Which jurisdiction is relevant if an Ontario resident purchases a lease document for a Florida condo from an online forms site owned by an Irish company (not a law firm) with servers in Germany?

Dealing with the complications that the “different jurisdictions” issue raises will have to be sorted out by legal service regulators. Presumably they will look to a jurisdiction where the matter has some physical or virtual nexus. And we may ultimately need some kind of international regulator or enforcer – like an Interpol for legal services providers.

Facing the challenges and opportunities

Big changes – positive and negative – have happened to the profession in the past. We have gone through economic cycles and seen both emerging and disappearing areas of law. Court rules and procedures have changed. There was the consolidation and growth of big firms and the general movement from general practitioners to specialists. Technology has – and will continue to – change the profession and the delivery of legal services in many, and sometimes very disruptive, ways.

No one can really predict for sure how fast change will come to the legal profession, nor with any certainty, the exact changes that will occur. There are many uncertainties. What will the global economy look like? Which purchase and delivery models will develop for legal services? What type of regulatory and compliance environment will exist? To what extent will non-lawyer legal service competition move upstream into areas traditionally served by lawyers? Will the legal profession face deregulation?

The one thing that is certain is that significant changes are coming to the profession in future years and decades. They will occur at different times and in different ways in different jurisdictions. While we are very progressive in Ontario in some ways (e.g., mobility and the regulation of paralegals), we have seen relatively
It will not be easy for many to face these changes. The status quo is coming unstuck. Based on a review of what has happened elsewhere, some lawyers will lose their jobs. Entire practice groups will become unprofitable and will have to be abandoned, and some law firms will fail. Not all law school graduates will be able to get jobs. Institutions and businesses associated with the legal industry that fail to evolve will also face hard times. For lawyer associations, CPD providers and publishers that may mean offering memberships or services to non-lawyers. Our systems of adjudication (whether courts or administrative tribunals) need to adapt and change as well. They need to be simpler, more accessible, easier to navigate and faster. Adding more self-help options could help those without lawyers.

Lawyers tend to be slow to change and it seems many lawyers don’t see or won’t acknowledge the changes that are coming. Some think they are different or they say that their matters are “unique” and require the services of a lawyer. Lawyers should not fool themselves: The basic market forces of supply, demand and pricing apply to them. There is an oversupply of traditional and high (some say over) priced legal services. The client demand for lower-priced legal services is being filled by the new types of non-lawyer legal services providers.

Lawyers and law firms need to recognize that changes to the legal services market are occurring and embrace them. People will always need lawyers, or something like them, for some types of matters. For “bet the company” work there will always be a solid and lucrative demand for services, but it is a very small part of the legal services market. In the middle comes relatively sophisticated or higher value work that is not rocket science but needs a firm that has specialized and competent people. This too is a market that won’t disappear, but it is not a huge one. At the bottom is the largest part of the market – the commodity work we have discussed above: people buying houses, preparing wills, settling estates, resisting eviction or prosecution, and so on.

Many people can’t afford the legal services or get the help they need in our current system. These unmet legal needs are an opportunity that lawyers and law firms must recognize. Lawyers need to innovate and think like business people and entrepreneurs – this is what their non-lawyer competitors are doing. That will mean looking at offering new services. It almost certainly means using technology to work better, faster, cheaper, and in new ways. To compete with legal service providers who are offering commodity services, lawyers must offer more affordable services. Options include going head-to-head by retrenching to offer commodity services to clients as well or by exploring alternative fee arrangements to make existing services more affordable.

Another option is to put more effort into showing clients the value-add that having a lawyer brings to legal services. This involves thinking beyond just doing one matter for a client and thinking about what the client’s longer term needs are. In other words, when a new client walks in, don’t think of just doing an incorporation that will pay a few hundred dollars in fees. This is commodity work. Think about what a new business person will need for the short- and long-term growth and success of his or her business. What information could be provided to the client to help them deal with issues they may come across? What related work can be recommended to them? Think beyond one matter – aim to become the business lawyer for the client’s new company. This is where the longer term and more lucrative fees are. A client won’t get service like this from a $50 incorporation done on a forms site.

As a closing thought, we turn to a comment Richard Susskind made in his book, The Future of Lawyers? He suggests lawyers need to move from being reactive legal problem solvers (the ambulance at the bottom of the cliff) to proactive legal risk management advisors (the fence at the top of the cliff).

Consider how prepared you and your firm are to face the changes that are coming to the legal profession. No doubt you have some work to do. Take proactive steps to face these challenges and the opportunities they present.

Dan Pinnington is vice president, claims prevention and stakeholder relations at LawPRO.

Resources

- Law21 blog by Jordan Furlong (law21.ca)
- Legal Futures blog | legalfutures.co.uk/blog |
- Reinvent Law Laboratory (reinventlaw.com)
- Rethinking Regulation and Innovation in the U.S. Legal Services Market, by Ray Worthy Campbell in New York Journal of Business and Law, Fall 2012, Vol. 9 No. 1
- Sea Change: Inside the Changing Legal Marketplace, a video of a presentation to the Colorado Bar Association by Mark E. Lassiter [vimeo.com/74653671]
LawPRO’s best claims prevention tools and resources

Nobody wants to deal with a malpractice claim – but 4 out of 5 Ontario lawyers will have at least one claim made against them in their careers. When a claim occurs, it is nice for the lawyer and client to have the LAW PRO insurance program in place, especially when claims arise out of honest mistakes or for reasons beyond the lawyer’s control. However, the majority of claims are preventable.

LAW PRO sees the same errors time and time again. Lawyer/client communications problems are the most common cause of claims for law firms of every size and in almost every area of practice. Missed deadlines and procrastination are the second largest cause of claims. Inadequate investigation or discovery of fact is the third largest cause of claims.

Over the last 17 years, the practicePRO program has produced a large collection of tools and resources aimed at helping lawyers avoid claims. This brochure has LAW PRO’s best claims prevention content. We strongly encourage all Ontario lawyers to review and use these tools and resources in their practices.

For an electronic version of this brochure with links to these resources, visit practicepro.ca/topresources

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

Many claims are preventable, often with very little effort. The following is a list of the top 15 proactive steps you can take 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 in particular, 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, in order 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 very demanding and difficult.

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 at the initial stage of the matter. Replenish retainer funds before they are exhausted and at 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. Control client expectations with good communications at all times: 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 difficult or emotional clients. Memorized communications are invaluable to confirm what was said to, or done for, the client in the event of a malpractice claim. Make sure nasty or embarrassing comments never appear in your 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 very last minute as unexpected events beyond your control 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® key 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; getting details of injuries on a tort claim, etc.) 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, greed, or other motivations to 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. If you have certain standards or practices that govern your client communications, such as phone calls will be returned within 48 hours (not same day), 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 – controlling client expectations with good communications 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.

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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. **LawPRO Magazine – December 2013: Cybercrime and law firms**
2. **Keeping your passwords strong and secure**
3. **Don’t take the bait on a spear phishing attack**
4. **10 Tips to managing your inbox**
5. **Danger: When a hacker emails you instructions in the name of your client**
6. **Fifteen tips for preventing identity theft and online fraud**
7. **Technology and stress: Good tool, bad tool**
8. **Docketing dos and don’ts**
9. **Technology in trying times: How and why you should use technology in your practice**
10. **Is Facebook secretly sharing what you’re reading and watching?**
11. **Be smart about spam: Use white listing so you don’t miss key messages**
12. **Danger signs: Five activities not covered by your LawPRO policy**
13. **Social media pitfalls to avoid**
14. **Essential dos and don’ts for LinkedIn users**
15. **Employee departure checklist**
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 Client administrative information and billing information letter precedents: These helpful letters tell a client everything they need to know about dealing with you and your staff and how legal fees will be dealt with.

3 The Canadian Bar Association’s Conflicts of Interest Toolkit: A great collection of practical checklists and precedents that will help you recognize and avoid conflict of interest claims.

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 Independent legal advice (ILA) checklist: A hasty $150 ILA consult can easily lead to a claim and a $5,000 deductible. Use this 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: This pamphlet describes the bad cheque and real estate frauds that most commonly target lawyers and lists the “red flags” that can indicate that an otherwise legitimate looking matter is actually a fraud. Share this with your staff too!

9 Rule 48 Transition Toolkit: On January 1, 2017 files commenced before January 1, 2012 that are not yet set down for trial will be automatically dismissed 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 with help from this toolkit.

10 Managing a mentoring relationship booklet: Practical advice on how mentors and mentees can build mentoring relationships that are productive and successful.

11 Managing a better professional services firm booklet: Loads of advice on how you can improve client communication and service at your firm.

12 Managing the finances of your practice booklet: Details of the steps you can take to better manage and improve the finances of your practice.

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 detailed 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.

lawpro.ca
Everything you need to know about LAWPRO’s insurance program

practicepro.ca
Practical resources, precedents and checklists for risk management, claims prevention and law practice management

AvoidAClaim.com
Daily updates on practice advice, claims prevention and alerts to the latest frauds
New Year’s resolutions for a healthier law practice and a new you: If you are going to read one article this is it – 15 pages of practical tips for reducing risk and avoiding claims and stress.

Is anyone listening? It’s easy to prevent communication breakdowns: This article describes specific communication pitfalls and how to avoid them in many areas of practice.

Let’s get talking: A look at communication breakdowns: Lawyers don’t always communicate as well as they could. Read this article to improve your communications skills.

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

Avoiding administrative dismissals: Rule 48 Transition Toolkit provides advice and tools lawyers and law firms can use to lessen the risk of a claim under the new rule.

Litigation claims trends: errors & insights: This article 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.

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.

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

Six things I hate to read in a real estate claim file: LawPRO President & CEO Kathleen Waters runs through the unfortunate explanations we see on all too many real estate claims files.

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.

Landmines for lawyers when drafting wills: LawPRO claims counsel Pauline Sheps outlines some of the areas of greatest malpractice danger for wills practitioners.

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.

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.

The morning after mediation: Settling a matter can require 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.

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.

For an electronic version of this brochure with links to these resources, visit practicepro.ca/topresources