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A A R E B C

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# LOSS PREVENTION BULLETIN

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*For current and regularly updated loss prevention tips and links, check out eBytes. Subscribe by email, RSS feed or visit our website often: [www.clia.ca](http://www.clia.ca)*

## ■ Bulletin # 184 Beware the Blame-Throwing Client

With the impact of a global recession now evident in every sphere of the economy, lawyers need to be especially cautious in taking on representation of clients who are themselves suffering the consequences of the economic downturn.

Clients experiencing job-loss, losses in their investment portfolios, business losses or capital losses are, in most cases, clients under stress. As such, they are looking for ways to reduce that stress and to recoup any losses they have incurred.

Increased stress upon clients leads directly to increased risk for their lawyers, and frequently, to corresponding increases in claims of negligence and malpractice. For example, a client who suffers financial loss due to declining asset values may look closely at recent transactions, carefully scrutinizing documents prepared by his lawyer for any hint of an oversight that could form the basis for a claim against the lawyer in negligence. In the field of litigation, stressed clients faced with mounting legal fees and disappointing outcomes may turn against their counsel, alleging failure to adequately advise of the potential costs of litigation or to properly predict the likelihood of success.

In either case, these blame-throwing clients, desperate to recoup any portion of their losses, will take a scatter-shot approach in attributing those losses to the work their lawyers did (or didn't) do.

The risk management message for lawyers and law firms is simply this: If ever there was a time to implement loss prevention strategies, it is now. Rigorously conduct your conflicts checks and refuse to take on work where there is any likelihood that your client could allege a

conflict of interest. Write comprehensive engagement and non-engagement letters, using language that can be plainly understood. Screen all clients, including long-term or former clients, as even work for your "decent" clients can become risky when they are under economic stress.

## ■ Bulletin #185 Top 10 Temptations to Avoid in a Recession

While the temptation to make changes in your legal practice increases during tough economic times, so do the risks. When tempted by any of the following ten scenarios, the risk-averse lawyer would do well to just walk away:

1. Entering (too quickly) into a new practice area, without taking the time for adequate preparation that should include becoming competent in the new area of law and obtaining any necessary hardware, software or other tools of practice.
2. Dabbling in areas of law not affected or else positively impacted by the recession and that are not in your primary practice area, especially complex and specialized areas such as bankruptcies, employment law or foreclosures.
3. Suing clients for fees and exercising other aggressive collection tactics - this is Loss Prevention 101. The most likely result is that your clients will counterclaim against you.
4. Taking shortcuts on files you've inherited from lawyers who have left your firm due to cutbacks or job losses.
5. Ignoring potential conflicts of interest in order to get or keep a client.
6. Employing sloppy intake procedures with the result that you are retained by "unworthy" clients or on risky matters.
7. Failing to take the time to adequately analyze risk at the outset of a matter and to clearly present that analysis to your client.

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8. Taking on incidental work for clients that may not have been contemplated by the retainer agreement and without revisiting that agreement.
  9. “Borrowing” from or otherwise misusing your trust account in order to meet overhead or other personal expenses.
  10. Turning to intoxicants, stimulants or other addictive substances or behaviours in order to cope with stress.

#### ■ Bulletin #186

##### **Book Review - *The Busy Lawyer’s Guide to Success: Essential Tips to Power Your Practice* by Dan Pinnington and Reid F. Trautz**

While the measurement of success is far from scientific, this new book from the American Bar Association’s Practice Management Section provides readers with a comprehensive selection of tried and true practice management advice that, if implemented, will almost certainly bring about measurable results.

The book focuses on practice management advice but its counsel is equally loss prevention advice. Specific loss prevention topics addressed include:

- Client service and communication
- Client selection
- Internal controls on financial transactions
- Avoiding technology mistakes that may prejudice your client or result in a breach of client confidentiality
- Preventing malpractice claims

The authors, both well-known and respected in the field of law practice management, take a step-by-step approach to instituting change in the law office. They recognize that:

*We are all creatures of habit, and old habits tend to die hard. The demands of a hectic practice and busy personal life often serve to prevent lawyers from making the changes that will help them to be more effective, efficient, and profitable...*

Their approach is simple – choose a specific tip that appeals to your sensibilities, implement it, practise it, and once it has become a habit, proceed with the next tip. They also advocate setting aside time (i.e. booking an appointment with yourself) to implement the more

significant, practice management systems-based changes that they recommend.

The book is clearly written, a quick read and replete with lists and references to further resources (many also available through the American Bar Association). While it doesn’t break any new ground and is directed primarily to American lawyers, it is a useful handbook on practice management that should be included in every solo, small firm or new lawyer’s toolkit.

*The Busy Lawyer’s Guide to Success: Essential Tips to Power Your Practice* was published in 2009 by the American Bar Association and is available for purchase online at: [www.ababooks.org](http://www.ababooks.org)

#### ■ Bulletin #187

##### **Safe and Effective Practice**

*Safe and Effective Practice*, edited by Barry Vogel, Q.C. and written by Jean Côté and others, is a loss prevention resource that has withstood the test of time. This handbook of loss prevention materials, published by the Canadian Lawyers Insurance Association and based upon materials distributed as early as the mid-1980s, remains relevant to lawyers across Canada even after all these years.

For example, the authors note five “persistent fallacies” that lawyers cling to about legal malpractice:

1. Legal negligence claims are based on a lack of knowledge or poor decision-making;
2. If I do a good job for my client, I won’t be sued;
3. Protecting myself against a client would require that I treat the client as the enemy and therefore I couldn’t properly represent their interests;
4. All legal malpractice claims involve lawyer error and I don’t make mistakes; and
5. I could never forget this matter and therefore don’t need to record all the details.

The authors explore how these beliefs fail to protect lawyers from claims and go on to detail a wide range of simple, yet effective strategies to prevent malpractice claims.

Download your own copy of *Safe and Effective Practice* in PDF format on our website at:

[http://www.clia.ca/eng/Safe\\_Effective\\_Practice\\_ENGLISH\\_final.pdf](http://www.clia.ca/eng/Safe_Effective_Practice_ENGLISH_final.pdf)