

CRIMINAL LAW – LOSS PREVENTION 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 and 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

frequently claims arise 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 your insurance program 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 claims 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 contact your insurance provider 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.

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