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All Loss Prevention Bulletins are on-line.

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■ Bulletin # 159

The Rules of Non-Engagement

A client approaches a lawyer about a personal injury claim. During the first meeting, the client gives the lawyer a copy of the motor vehicle accident report and nothing more. The lawyer never receives any further details from the client and therefore assumes that the client is not interested in pursuing the claim. There is no further contact with the client until after expiry of the two year limitation period when the client complains that the claim for damages for the injuries sustained in the accident has been lost because the lawyer did not file the statement of claim. The client further complains that the lawyer never returned calls inquiring about the status of the claim. The lawyer's file doesn't contain any meeting notes, correspondence or retainer agreement.

This is a common enough scenario. A client makes inquiries about a possible claim and fails to follow up further. The lawyer is not retained and does not take any steps to follow up on the initial meeting.

How could this lawyer have better protected himself against the ensuing claim by the client? Where a lawyer has been consulted but not retained by a client, the best loss prevention advice is to follow up on the initial meeting with a letter confirming the meeting and advising that if the client is serious about pursuing the claim, he will need to sign a retainer agreement. Furthermore, the letter should state that if the client does not respond within a specific time period, there is no solicitor-client relationship.

A similar situation can occur where the lawyer is consulted on a claim and decides not to represent the client, for whatever reason. In this case the lawyer should follow up by writing a non-engagement letter. A non-engagement letter should explicitly:

- state that no solicitor-client relationship exists;
- warn that there are applicable limitation periods for the claim (but not set out what these are); and
- recommend that the individual consult and retain another lawyer immediately.

■ Bulletin # 160

I Love CanLII

(Contributed by Tana Christianson, Director of Insurance, The Law Society of Manitoba)

I love CanLII. Canadian Legal Information Institute website (www.canlii.org) is at the top of my favourites list for internet sites. CanLII, which is funded by the Federation of Law Societies of Canada, is a wonderful free online source for Canadian legislation and case law and an ever expanding universe of legal databases.

CanLII is a great source for checking on statutes and regulations for every Canadian province (except for British Columbia). These statutes and regulations are easily searchable, printable and current. CanLII's case law collection for each province and territory continues to expand. For example, Manitoba Court of Appeal decisions going back to September 1998 are available while the Court of Queen's Bench cases go back to May 2001.

I find myself using CanLII frequently. For instance, if I am reading a newspaper or periodical article referring to a recent court or tribunal decision, a quick trip to CanLII provides me with free access to the case. It is also great for searching statutes and regulations. Using the **find** tool from the toolbar or hitting **control "f"** allows the computer to search the legislation for your keyword - much easier than flipping through a binder of statutes.

I do find that above all, I check the CanLII Manitoba Court of Appeal and Queen's Bench pages once or twice a week to keep on top of recent Manitoba decisions. At CanLII's homepage (www.canlii.org), go to Manitoba. Select the court you are interested in. Click on that court. On the Courts page, check and see the date in which it was most recently updated. Then, click on the latest year, and the latest month in that year. This way, you can pop open the most recent decisions from the Manitoba courts and scan through them while you are on hold or eating your lunch. Because CanLII is a free service, you can access it, without an account, from any computer. I love CanLII.

■ Bulletin # 161

Pitfalls of Interjurisdictional Practice

A lawyer was retained by the parents of a promising young person who had been seriously injured while visiting another province. The lawyer waited until the young person's medical condition had stabilized before drafting and filing the statement of claim in the other province. It was only then that the lawyer learned that the province where the tort had occurred had a different limitation period than the lawyer's home province and that the limitation date for bringing an action had been missed. The lawyer immediately put his insurer on notice. The insurer retained counsel in the other province who attempted, unsuccessfully, to extend the limitation period. The heavily insured, negligent tortfeasor was off the hook and the lawyer, unfortunately, was on it.

What is the moral of this story? The claim could have easily been avoided with the early retainer of an agent in the other province or some thorough initial research into limitations and procedures in that province.

The other unfortunate aspect to this claim was that the promising young person's injuries were horrific and the damages easily exceeded the lawyer's mandatory minimum \$1 million of insurance coverage. The lawyer had not purchased excess insurance and therefore was personally liable for a significant amount of money.

Some lessons from this tale:

- When you are retained to deal with a claim in another province, consider retaining an agent in the other jurisdiction to advise and assist you
- Check (and double-check) the local rules of procedure and applicable statutes, including limitation periods and then confirm your understanding and interpretation of the rules and procedures with a local practitioner or where appropriate, the local court office – never assume that rules that appear to be the same as those in your home jurisdiction will be interpreted or applied in the same way in another jurisdiction
- Seriously consider purchasing excess insurance beyond the minimum required by your law society.

■ Bulletin # 162

It's Closing Time

(Based on materials produced by SOLVE-IT Project Consultants Inc. for the Reaping Rewards seminar, copyright 2005 Saskatchewan Legal Education Society Inc.)

When is it time to close your file?

Many practitioners cannot decide when a file is complete; as a corollary problem, they cannot decide what to do with the file. The result is that such a file is left to linger in the cabinet or clutter a desk, and generally cause discomfort.

To avoid this problem and to help you decide whether it's time to close your file, you may want to refer to the file closing checklist below.

The first question: "Is the work done?" sends you squarely back to when you took instructions on the file. What is the work that you were hired to do? Now is the time to review those instructions and to consciously judge whether the "what" has been met. This is also the time to ensure that there are no further documents to register or tasks to complete to accomplish the job your client gave you.

Closing the file can take place when the outstanding financial issues have been resolved. Generally, it is more efficient and effective to identify and properly resolve any outstanding money issues at this point when they are fresh in your mind rather than at a later date when they (and you) have aged. If your fees and disbursements are all paid and there is no lingering trust balance to signal the need for another look at the file, you can proceed with closing the file.

Finally, you should ensure that the file does not contain documents that should be stored elsewhere and that you have addressed any future obligations that arise out of your retainer.

When these steps have been satisfied, you're ready to prepare the file to enter your closed file storage system.

File Closing Checklist:

- All the work is done
- The file has been billed
- The bill has been paid
- There are no outstanding disbursements
- There are no funds held in trust that have yet to be dealt with
- Original or other documents have been dealt with appropriately (returned to client or others)
- Future obligations arising from this matter have been covered off
- There is a closed file storage system in place
- The file can easily be retrieved from the closed file storage if necessary
- Everyone in the office knows who is responsible for closing files and that person understands the protocol