

The key elements of CLLAS' risk management and loss prevention program are:

- a) Risk Management Audits;
- b) Risk Management Information and Programs;
- c) Firm Policies and Procedures;
- d) Co-ordination with the Law Society Loss Prevention Programs.

Each element of the program is discussed in more detail below:

- a) **Risk Management Audits.** Audits continue to be at the forefront of CLLAS' risk management activities. This initiative was started in 2003 when one of the CLLAS member firms underwent a risk management audit by a U.S. based risk management consultant, Mr. Anthony Davis. The cost of this audit was partially underwritten by CLLAS. The audit focused on specific areas, including client intake/conflicts, docketing/electronic communication, case management/confidentiality and firm management structure. Two additional firms underwent audits with Mr. Davis in 2004, with CLLAS contributing 50% of the cost of the audits.

Given the feedback from the first three audits, CLLAS and the firms concluded that it would be more efficient and cost-effective to develop an audit program that was customized to the CLLAS firms and that would ultimately provide a feedback loop for refinement of the audit approach as the firms cycle through the process. In 2005, the Risk Management Committee retained Mr. John Walker, a Toronto-based former partner of one of the largest CLLAS firms and former member of the CLLAS Board, to develop a CLLAS-specific audit program and to conduct future audits.

The following describes the objectives, scope and phases of the professional liability risk management audits sponsored by CLLAS.

Objectives

The objectives of the audits are:

- to compile an inventory of the professional liability risk management policies and procedures employed by the firm;
- to assess the level of compliance by members of the firm with the firm's professional liability risk management policies and procedures;
- to review the firm's professional liability claims to identify any patterns that may need to be addressed; and
- to identify additional professional liability risk management techniques that the firm might consider adopting.

Scope of Audit

The original audits focused on the following professional liability risk areas and the firm's mitigation strategies with respect to these risk areas:

- Client intake;
- Conflicts of interest;
- File management;
- Confidentiality;
- Tickler systems;
- Lawyers acting in ancillary capacities, such as a director or officer, escrow agent, fiduciary or expert witness;
- Practice supervision (including controls on work assignments, peer reviews, associate reviews, and controls on opinions and audit response letters);
- Investing in clients;
- Trading in client securities and insider information;
- Practice interruptions (i.e. disaster recovery);
- Billing practices and handling of delinquent accounts;
- Assistance program for drugs, alcohol and stress;
- Handling of complaints and malpractice claims.

Audit Process

The professional liability risks faced by large Canadian law firms and the strategies that law firms can use to mitigate these risks were identified and the following detailed risk management questionnaires had been prepared for use in the audit:

- Management Questionnaire;
- Conflicts Checking System Questionnaire;
- Tickler Systems Questionnaire;
- Professional Standards Quality Control Questionnaire;
- “Man on the Street” Questionnaire.

The questionnaires were completed by reviewing the firm’s professional liability risk management policies and procedures, and interviewing firm management, administrative staff and randomly selected lawyers (“men on the street”) to determine which professional liability risk management strategies the firm employed and the level of compliance with these policies.

The audited firm received a privileged and confidential report which included the detailed results of the audit and an executive summary of key findings and recommendations. This report included completed copies of the questionnaires. The report also provided an evaluation of the level of compliance by the firm’s professionals with the firm’s professional liability risk management policies and procedures.

After the report had been delivered to the firm and senior management had an opportunity to review it, a meeting was held with senior management to discuss the report and its key findings and recommendations and to obtain the firm’s feedback on the report and the audit process.

Audit Schedule

The first risk management audit done by John Walker took place in 2006 and by June 2010, he had conducted audits of all of the CLLAS members, including those firms originally audited by Anthony Davis.

A process for regular, focused “audit updates” was agreed to by CLLAS in 2014. All the CLLAS firms have completed detailed surveys and Mr. Walker is finalizing his analysis of the information gathered. He is preparing privileged and confidential final reports for each firm that will show where that firm’s policies and procedures stand in relation to both the previous risk management audits and to the other CLLAS member firms.

It should be noted that the risk management audit findings continue to be maintained by Mr. Walker in confidence (even to the extent of not sharing them with CLLAS) in order to preserve privilege over the findings.

- b) **Risk Management Information and Programs.** In conjunction with the risk management audit process, the CLLAS Risk Management Committee has developed an interactive, computer based risk management program to be delivered at the individual lawyer level. This program builds on the loss control/risk management templates developed by Mr. Walker, with the assistance of Bluedrop Performance Learning, a consulting company that specializes in e-learning. The program has been certified for continuing professional development by the Law Societies in Ontario, BC, Quebec and New York. The program was launched on a pilot basis with six firms in the Spring of 2010. The pilot involved four of a planned 13 modules and was very well received by the firms. The Board then approved refinements to the initial four modules (based on feedback from the initial user group) and the development of the remaining nine modules. The full 13-module program was then developed and has been customized for each firm and translated into French. Firms began to use the course in July 2011. The adoption and use of the e-learning program has the practical effect of the various member firms embracing a common approach to some or all of the risk management areas covered in the program without formally applying such policies.

In 2015, the CLLAS Board reviewed the future plans for the e-learning program. After discussion, the CLLAS Board determined that the most effective course was to enable each member firm to freely customize/update the program as it sees fit. CLLAS has scheduled a risk management seminar to be held on September 21, 2016 which will be similar in format to the successful seminar held in 2013. Topics on the agenda will include recent developments in conflicts of interest and cyber security. Invitees to the seminar will include Managing Partners, General Counsels, CLLAS Advisory Board members and other representatives of the CLLAS member firms. CLLAS anticipates that risk management audits will continue to be undertaken periodically in the future.

- c) **Firm Policies and Procedures.** The Risk Management Committee, on an ongoing basis, reviews various areas of practice which either have attracted claims in the past or have a probability of doing so in the future. Its review includes an analysis of the relevant risk management policies implemented by various members. The Committee then recommends to the Advisory Board a set of key elements which it views as essential components of any firm policy addressing the area in question. Upon acceptance by the Advisory Board, the recommendations are sent to the members. It is expected that each member, within a specified period of time, will confirm that it has a policy in place covering

the relevant area and that such policy includes all the substantive elements in the recommendation. Rather than dictate a specific form of policy for all members, each member's policy must contain, at a minimum, the recommended elements.

Areas addressed to-date are:

- Lawyers acting as directors and officers;
- Conflicts of interest;
- Investing in publicly traded securities of clients;
- Lawyers involved in personal business.

By way of example, the key elements of the CLLAS risk management policies in the first two areas can be found in **Appendix K2**.

The Committee has spent considerable time refining the policy with respect to legal opinions. While the draft policy will be kept confidential to CLLAS, the critical nature of appropriate standards for issuing opinions has led to discussions with a broader group of firms (including but not limited to CLLAS firms) and these discussions are on-going.

The work on template policies continues. The Risk Management Committee is also reviewing guidelines with respect to:

- Confidentiality;
- Cyber risks; and
- Engagement documentation.

A practice note on tax opinions was finalized in 2014 and was circulated to Board members. It is to be shared internally at the firms, and posted on the CLLAS website along with the other risk management guidelines. The practice note is included in **Appendix K2**.

The initiative with respect to firm policies and procedures is a long-term one which, it is expected, will not only improve the overall standards of practice of the members but serve as a useful reminder for members each time a new set of recommendations is published that an ongoing reassessment of key policies is essential to meet changing conditions and potential risks.

d) **Co-ordination with the Law Society Loss Prevention Programs.** LawPRO provides an extensive loss prevention program known as "*practicePRO*". (See <http://www.practicepro.ca>.) The mandate of *practicePRO* is to encourage and support lawyers in managing risk and adapting to the changing practice climate in a proficient, professional and progressive manner. The key components of *practicePRO* are:

- Information – Provided through a number of communication vehicles:
 - LawPRO Magazine – LawPRO's quarterly newsletter includes articles and checklists on topics such as technology, conflicts of interest, investing in clients and related risk management areas. LawPRO also issues Special Reports on specific topics, e.g. fraud and electronic discovery.

- Articles, Tools and Resources – In addition to its quarterly publication, LawPRO provides an abundance of materials on risk management and claims prevention in all areas of law and on topics such as:
 - Areas of greatest malpractice danger;
 - Conflicts of interest and fiduciary duties;
 - Continuing legal education;
 - Duty to non-clients;
 - Electronic discovery;
 - Foreign proceedings and conflicts of law;
 - Fraud, forgery and identity theft;
 - Independent legal advice;
 - Law firm structure – managing risk through structure;
 - Law office search and seizure;
 - Lawyer/client communication and relationships;
 - Limitation periods;
 - Privacy;
 - Practice finance;
 - Practice interruptions and disaster planning;
 - Retainers;
 - Security and privacy of electronic data;
 - Subrogation;
 - Summaries of LawPRO malpractice cases;
 - Trust accounts, electronic funds transfers and banking;
 - Winding up a practice.
- The LawPRO Website (www.lawpro.ca) – A *practicePRO* section is included in the website, with case studies, checklists, articles and links to other sites.
- The Avoid-A-Claim blog – Real-time information and tips on avoiding legal malpractice claims which are provided to lawyers by RSS feed or email. (See <http://www.avoidaclaim.com>.)
- Practice Aids – LawPRO is developing a series of software-based practice aids to help lawyers run their businesses and provide services in a more practical, efficient way. Among the resources that it currently makes available are tools in the following areas:
 - Client relations (e.g. dealing with difficult clients);
 - Firm issues (e.g. conflicts of interest);
 - Technology (e.g. electronic data security);
 - Checklists and precedents (e.g. ILA checklist).
- Education – LawPRO has developed an Online Coaching Centre with online self-coaching tools to help lawyers learn the skills that are critical for becoming more productive and effective. The Centre consists of 150 modules organized into six workshops:
 - Getting Stress Hardy;
 - Powerful Communications;

- Overcoming Procrastination;
- Practice Management;
- Business Development;
- Emotional Intelligence.

LawPRO's efforts in this area have also focused on the preparation of materials for the Professional Responsibility and Practice Management Section of the Bar Admission Course and website links to Continuing Legal Education and other similar programs. In this regard, a LawPRO representative participated in the CLLAS Risk Management seminar held on April 17, 2008.

- Wellness and Balance – In recognition of the implications to the insurance program of stress, drug and alcohol abuse, workaholism and related problems, LawPRO provides funding for the Ontario Bar Assistance Program and other counseling and mentoring resources, including the Legal Profession Assistance Conference and LINK, a confidential counseling service offered by the Law Society.
- Technology – LawPRO provides a series of materials and references to assist lawyers in integrating technology into their everyday practice.

Members of CLLAS' Risk Management Committee meet with *practicePRO*'s co-ordinator on a periodic basis and *practicePRO* materials are distributed within the CLLAS firms. The firms also maintain their own employee assistance programs to augment the profession-wide programs sponsored by LawPRO. LawPRO sees CLLAS as a key participant in its risk management initiatives.