

## APPENDIX I

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 three CLLAS member firms underwent a risk management audit by a U.S. based risk management consultant, Mr. Anthony Davis. The costs of these audits were partially underwritten by CLLAS. The audits focused on specific areas, including client intake/conflicts, docketing/electronic communication, case management/confidentiality and firm management structure.

Given the feedback from these first three audits, CLLAS and its member 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 initial audits were:

- 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 were prepared for use in the audit:

- Management Questionnaire;
- Conflicts Checking System Questionnaire;
- Tickler Systems Questionnaire;
- Professional Standards Quality Control Questionnaire;
- “Person 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 (“people 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 to allow the firm to determine whether more education is needed relating to its 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 completed detailed surveys. Mr. Walker analyzed the information gathered and prepared privileged and confidential reports for each firm that 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. This second round of audits was completed by 2015.

CLLAS was in the process of undertaking its third round of risk management audits in 2020, again to be conducted by John Walker. The plan was for the third round to be conducted simultaneously by all CLLAS firms. Again, information learned in previous rounds will be used to focus this round of audits.

The process involves firm management, lawyers and staff completing detailed surveys at various levels of seniority and the preparation of privileged and confidential reports for each firm. The report will show the firm where its

policies and procedures stand in relation to both the previous risk management audits and to the other CLLAS member firms.

Given the amount of time and effort required from the firms through the audit process, it was decided, in April 2020, to suspend activity on this initiative for the time being. This decision was made due to COVID-19, to allow firms to focus their full energy on running their business in a difficult time. CLLAS and its member firms remain committed to the risk management audits. All the preparatory work has been done so that the risk management audits can be conducted once firms resume normal operations.

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.**

On September 25, 2018, CLLAS held another risk management seminar, again in Toronto and broadcast by webinar to locations of member firms outside of Toronto. There were 30 attendees in person, including Managing Partners, General Counsel, Chief Risk Officers and CLLAS Board members. The program included two outside speakers (Dan Pinnington, President and CEO of LawPRO, and Chris Mathers, former undercover RCMP officer) and addressed the following:

- Large Law Firm Claims – Mr. Pinnington drew on LawPRO’s claims database to review large law firms claims statistics and common issues leading to claims. CLLAS’ claims managers provided real-life examples and lessons learned.
- Developments in Know Your Client/Anti-Money Laundering and Technology – Mr. Pinnington reviewed staff behaviour that exposes firms to claims and how to prevent it, and reviewed client intake practices relevant to, for example, the challenge of cannabis.
- Information Security and the “Dark Web” – Mr. Mather focused on information security, red flags that signal the need for heightened due diligence, options available, and illustrations of situations where firms made – and avoided making - mistakes.

On September 21, 2016, CLLAS held a risk management seminar in Toronto and broadcast by webinar to office locations of member firms outside of Toronto. There were 68 attendees (36 in person, and 32 remotely) including Managing Partners, General Counsel, Chief Risk Officers and CLLAS Board members. Topics included:

- Recent Developments in Conflicts of Interest – the most recent changes to the rules governing conflicts of interest as well as recent developments in the case law;
- The Challenge of Outside Counsel Guidelines – the most troubling clauses regularly encountered when reviewing outside counsel guidelines and strategies for reaching an acceptable compromise with clients;
- Best Practices in Cyber Security – measures firms can take to improve their cyber security and to be better prepared to face cyber-attacks and other risks to information security; and
- Lessons Learned: From Our Firm to Yours – a list of top ten tips distilled from experiences at CLLAS firms.

In 2010, CLLAS developed an interactive, computer-based risk management program to be delivered at the individual lawyer level. This program built on the loss control/risk management templates developed by Mr. Walker, with the assistance of a consulting company that specializes in e-learning. The program was certified for continuing professional development by the Law Societies in Ontario, BC, Quebec and New York. A 13-module program was developed and translated into French. In 2015, it was concluded that the existing program would require significant investment to ensure its continued relevance, and 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 no longer has any involvement with the program.

- 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 G**.

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 also included in **Appendix G**.

A practice note on Outside Counsel Guidelines (terms of engagement that a client requires a law firm to adhere to) has been prepared and remains in draft form. These guidelines can contain provisions relating to, among other things, conflicts of interest, indemnification, and requirements regarding technology and staffing. The purpose of the practice note is to raise awareness about the terms and conditions that can be found in these Outside Counsel Guidelines. The practice note is included in **Appendix G**.

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 biennial newsletter includes articles and checklists on topics such as technology, cyber dangers, conflicts of interest, investing in clients, fraud prevention and related risk management areas. LawPRO also issues Special Reports on specific topics, e.g. fraud and electronic discovery.

- Practice Aids – LawPRO has developed a series of 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:
  - Checklists (e.g. ILA checklist);
  - Practice management precedents (e.g. law firm budget, technology usage);
  - Claims fact sheets (various practice areas);
  - Limitations period charts;
  - Lending library;
  - New lawyer resources;
  - Precedents;
  - Retainers;
  - Technology (e.g. electronic data security).
- 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.
- LawPro Alerts and 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>.)
- 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.