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# INSURANCE ISSUES: *Risk Management*

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Lawyers  
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## The buck stops here!

*You run a successful law practice thanks, in part, to your dedicated staff. These employees help you provide efficient and cost-effective services. But if your assistant makes a mistake, you are the person who has to answer to the client.*

*Learn the 10 ways that things can go wrong when you delegate, with examples from our claim files. And learn the 10 steps that you can take to protect yourself. The tips are from LIF, and from lawyers who have reported claims and now offer their advice on how to avoid a similar trap. Because the buck stops with you.*

*Turn the page to find out the 10 reasons why things go wrong and 10 tips to make things better.*

## 10 reasons why things go wrong

Reason	Claim file examples
<b>1. Simply the wrong task to delegate</b>	A lawyer allowed his assistant to give final approval to proxy materials for an annual meeting for a public company. The materials were flawed, and the lawyer must now pay the costs associated with adjourning the meeting and sending out new proxies.
<b>2. Not enough education or training</b>	A lawyer asked his assistant to file a notice of appeal of a civil trial, a task the assistant had never done before. The assistant thought (wrongly) that she had 45 days to file and serve the notice. The 30 day deadline was missed.
<b>3. Not enough oversight</b>	A lawyer received instructions to transfer property to three owners as tenants in common. Her assistant inadvertently prepared the title in joint tenancy. The mistake was not caught because the lawyer didn't review the draft carefully before execution.
<b>4. Communication breakdowns</b>	A long-time client brought a notice of civil claim into a firm. The lawyer left written instructions for her paralegal to ask for a retainer and make an appointment for the client, but the note was lost. Default judgment was taken.
<b>5. Simple oversights</b>	As a result of a mathematical error by a conveyancing assistant, a lawyer's vendor clients were overpaid on a real estate closing. The lawyer's trust account is now short.
<b>6. Not appreciating legal consequences</b>	A lawyer meeting with a potential client in relation to a slip and fall alerted her to a pending limitation, but said that he needed a retainer before he could act. The retainer was delivered to the firm right away, but no one told the lawyer. The limitation was missed.
<b>7. Not appreciating ethical consequences</b>	A firm stopped acting for a client in a small claims action. When the opposing party called to ask if the firm was still acting, the assistant disclosed that the firm had an overdue account. The client sued for breach of confidentiality.
<b>8. Danger points: staff turnovers and absences</b>	A holiday relief assistant did not realize that a client was planning to attend a settlement conference on his own, so she didn't bring the conference notice to the client's attention and he missed the conference.
<b>9. Not knowing when to go back "up the line"</b>	In determining if a client qualified for the property transfer tax exemption for first-time homeowners, a legal assistant was advised by the purchaser client that he had owned property in Ontario. She did not appreciate the need to alert the lawyer to that fact, and the client was subsequently forced to pay the tax and a penalty.
<b>10. An employee whom you cannot trust</b>	Ignoring an established firm policy, a paralegal assisting a lawyer in relation to a motor vehicle accident claim drafted and signed the notice of civil claim herself, and then filed it. The notice was defective.

## 10 tips to make things better

### 1. Create and use procedure manuals and set policies

If the task involves a process, set it out in a manual. Identify each step and who is responsible. Require the responsible assistant to regularly review the manual and keep it current.

Identify risks that can be managed through a simple policy. Create the policy – such as the one at the end of this tip, from a lawyer whose assistant inadvertently

attached a reporting letter to the client in an email sent to the opposing party – and incorporate it into your standard procedures. You will see more suggestions in the tips that follow of simple policies that can help prevent a claim.

*"Perhaps, as a policy, law firms should require five minutes between sending emails to both the client and the opposing party, so that the assistant does not get confused and send the email to the wrong party." – a lawyer*

### 2. Create and use systems

Systems keep everyone safe. From tracking limitations to tracking shelf companies, systems help to ensure that every step that you're relying on your assistant to take is, in fact, taken. Build in any necessary checks and double-checks – checklists are invaluable.

Read about how to create effective central firm diary systems in [tips #1 through #8 of \*Beat the clock\*](#), and the electronic system

benefits in [Practice Tips](#) in the Summer 2013 *Bencher's Bulletin*.

### 3. Hire the best you can

Follow good hiring practices, including talking to references and previous employers. Then monitor the work of new employees to ensure that they perform as expected.

### 4. Train

The need for proper staff training is a constant theme from lawyers who have reported claims because of mistakes made by an assistant. Appreciate that the level of training required will depend very much on both the employee's own experience and qualifications and your assessment of his or her ability to understand and manage the task. Test that assessment before you delegate.

#### *What lawyers say –*

*"Take extra time to train inexperienced staff."*

*"There needs to be better staff training with respect to deadlines that require calculations."*

*"Properly train staff to understand the*

*significance of separate limitation periods for separate accidents."*

### 5. Give clear instructions and close the loop

Be explicit and detailed, when necessary. Instructions just to "file it" don't communicate urgency, as discovered by one lawyer who asked his assistant to do just that on the last day for starting an action before new legislation came into force. Unaware of the time sensitivity, it was filed the next day, one day late.

And beware of email instructions – sending an email does not guarantee that the message has been received or read, so make sure that your assistant confirms that she "got it."

### 6. Stay involved

Maintain an appropriate level of oversight and control. This will help avoid the predicament of one lawyer who found "a staff member who chose, unilaterally, to stop generating limitation reports because she found it confusing and did not consider asking for assistance," or another who reported because "an assistant was confused and told me that a notice of civil claim had

been issued (it had not)." Do not allow anything to be filed or dealt with unless you have reviewed it first.

#### *What lawyers say –*

*"Remind young lawyers that support staff need close monitoring, particularly if you've had little say about the quality of those hired. Be cautious and have a back-up plan."*

*"Confirm that necessary documents are filed by signing off on the letter instead of one lawyer at the firm signing all outgoing mail, despite not handling the file."*

*"Insist that you see the filed notice of civil claim!"*

*"Review files personally and at regular intervals."*

### 7. Educate about fundamental legal and ethical principles and your professional responsibilities

Certain administrative functions will almost always be delegated—drafting letters, filing, handling routine inquiries. It is critical that anyone performing these routine functions clearly grasps basic legal principles, such as time sensitivities in the legal process and the potential consequences of

*continued over*



receiving documents on behalf of a client, and ethical principles, such as your duties in relation to confidentiality (*BC Code* section 3.3 and rule 3.4-26) and undertakings (including *BC Code* rules 2.1-4(b), 5.1-6, 6.1-3(c) and 7.2-11).

Educate your assistants on those basic tenets critical to a law practice. And give a context. Your staff want to be of help to you and your clients. Explaining the legal and practical aspects will help them understand the bigger picture, and appreciate why care is needed. They will also have a good sense of when to go back “up the line” and bring an issue to your attention.

### What lawyers say –

*“Constantly remind staff to be on the lookout for notices to admit.”*

*“Be sure to explain service of the notice of civil claim and the consequences for failing to do so within the timelines.”*

*And this from a lawyer who missed a mediation because the registry notice was filed without the date being noted: “Be vigilant on small claims files. Advise your staff to treat all correspondence from the provincial court registry as important items (akin to notices to admit) and dates to be noted and b’f’d accordingly.”*

## 8. Create a culture of accountability, empowerment and vigilance

Engage and empower your staff. Talk to them before you delegate any task. Determine what you are both comfortable with. Encourage them to speak up if they need more direction, training or time, or they don’t clearly understand what’s needed. Encourage them to ask themselves: “Am I being given tasks that are appropriate for delegation? If so, do I have the training, education and support that I need to perform them effectively?”

And recognize that your staff will make

mistakes in matters that they are perfectly capable of handling, just as you do. Simple oversights, including clerical errors and other inadvertent mistakes made by assistants, are the single biggest generator of claims and potential claims. Model and encourage risk management. Share risk management information from LIF that may be relevant to your staff, such as our material on limitations and deadlines, the dangers of email and practice risks in real estate. Implement recommended practices.

## 9. Recognize and manage danger points

Periods of extreme vulnerability to mistakes include staff departures, staff absences due to holidays or illness, and new staff still learning firm systems and policies. Protect yourself. The procedure manuals, firm policies and systems recommended in Tips 1 and 2 will help, but at these times you will also need to be more hands-on in any task you routinely delegate.

Your assistants will also have personal “danger” points, just as you do. Your ability to act competently is affected by stresses in your personal and work life. So is theirs. If you are concerned about any employee’s ability to manage his or her duties — for any reason — intervene before a mistake is made.

### What lawyers say –

*“This claim arose as a result of a misunderstanding on the part of a temporary employee and my reliance on her. The pleadings I had asked for were prepared on the Part 7 instead of the tort claim, and I missed that.”*

*“If an employee leaves, make sure that whoever takes over the position is made aware of all of the previous employee’s responsibilities.”*

*“Be cautious when a staff member is going through emotional upheavals.”*

### Reminder to lawyers

If a mistake is made in spite of the efforts of you and your assistants to practise safely, remember that you must report it to us immediately. That’s because you are obliged to give us immediate written notice if you become aware of a mistake or someone suggests you made one, or you face any circumstance that could reasonably be expected to lead to a claim, however unmeritorious.  
Report a claim or potential claim

*“This resulted from maternity leave coverage of a key staff member, and the replacement staff member not being detailed and organized. Ensure that all staff understand the importance of firm systems.”*

## 10. Don’t jeopardize your insurance

Read *BC Code* rule 3.4-26 and Chapter 6. They set out your ethical obligations in relation to supervision and delegation. Chapter 6 also offers best practices for supervising and training paralegals and a checklist for assessing competence (Appendix E). By meeting your duties to supervise effectively, including in relation to a designated paralegal, you are protecting yourself *and* your assistant. Although you are liable for any mistakes made by an assistant helping you on a matter, you will enjoy coverage under the Policy and we won’t subrogate or claim over against them.

A reminder that as employee thefts do not involve the negligent provision of legal services, the Policy does not cover them. Dishonest employee insurance is available on the private market. Learn more about how to prevent internal fraud with our Trust Assurance group’s sample checklist of internal controls.

