

MISSED LIMITATIONS  
AND DEADLINES

# Beat the clock

TIMELY LESSONS FROM 1600 LAWYERS

**A special risk management publication of the Lawyers Insurance Fund**  
The Law Society of British Columbia

## Limitations and Deadlines Quick Reference List (updated to June 2013)

This list is provided for reference only. It is not exhaustive, and should not replace regular review of the relevant legislation (including the Interpretation Act), rules and case law (see tips 30, 31).

Area of Law, Statute and Section	Required Step	Deadline or Limitation
<b>Administrative</b>		
Judicial Review Procedures Act, R.S.B.C. 1996, c. 241, s. 11	Apply for judicial review	No limitation unless an enactment otherwise provides and the court considers that substantial prejudice or hardship will result to any other person affected by reason of delay
Administrative Tribunals Act, S.B.C. 2004, c. 45, s. 24(1) (Act applies if specified in a Tribunal's enabling legislation)	File Notice of Appeal to Appeal Tribunal respecting a decision	Within 30 days from date of decision unless otherwise provided in a Tribunal's enabling Act, however, the tribunal may extend the time to file a notice of appeal, even if the time to file has expired, if satisfied that special circumstances exist
Human Rights Code, R.S.B.C. 1996, c. 210, s. 22(1)	File complaint pursuant to Code	Within six months of the alleged contravention
<b>Bankruptcy and Insolvency</b>		
Bankruptcy and Insolvency Act, R.S.C. 1985, c-B3, s. 81(4)	File proof of claim (relating to property in the possession of the bankrupt) with the trustee in bankruptcy	Within 15 days of date of mailing of notice by trustee
Bankruptcy and Insolvency Act, s. 168.2(b)	Give notice of intention to oppose a bankrupt's automatic discharge (to bankrupt, trustee and Superintendent)	Before the automatic discharge would otherwise take effect (see s. 168.1 to determine applicable period as may be as short as nine months)
Bankruptcy and Insolvency Act, s. 135(4)	Appeal disallowance of creditor's claim by trustee	Within a 30 day period after the service of the notice, or such further time as the court may, on application made within that period, allow
Bankruptcy and Insolvency General Rules, C.R.C. c. 368, ss. 30 and 31	Appeal decision of the registrar or to Court of Appeal from decision of a judge (by filing and serving)	Within 10 days after the day of the decision appealed from
<b>Civil Procedure, Litigation and Remedies</b>		
Limitation Act, R.S.B.C. 2012, c. 13, s. 27*	Sue for a judicial remedy or exercise a non-judicial remedy (some exceptions – see Creditors Remedies)	Not more than two years after the claim is discovered, regardless of the terms of any non-judicial remedy**
Limitation Act, R.S.B.C. 2012, c. 13, s. 16*	Commence third party proceedings for contribution and indemnity	The later of the day on which the third party claimant is served with a pleading in respect of a claim for contribution and indemnity or the first day the claimant knew or reasonably ought to have known that a claim may be made
Supreme Court Civil Rules, BC Reg. 168/2009, Rule 7-7(2)	Respond to notice to admit	Within 14 days of service of the notice
Supreme Court Civil Rules, Rule 3-5(4)	Commence third party proceeding	Within 42 days after service of the notice of civil claim (or counterclaim), absent leave of the court
Supreme Court Civil Rules, Rule 3-2(1), (3)	Apply to renew an original notice of civil claim where defendant has not been served	On application by the plaintiff before (or in many circumstances, after) the expiry of 12 months from the date the notice of civil claim was issued
Supreme Court Civil Rules, Rule 13-2(18), (19)	Apply to renew writ of execution	Within one year of the issuance of the original writ or the date of renewal of the writ
Supreme Court Civil Rules, Rule 23-6(9)	File notice of appeal of a Master's order	Within 14 days of the order or decision
Court of Appeal Rules, BC Reg. 297/2001, Rule 34(1), (2)	Apply to vary or discharge order of a justice	Within seven days after the order is made
Court of Appeal Act, R.S.B.C. 1996, c. 77, s. 14(1)	Bring an appeal or apply for leave to the court to appeal (by filing and serving)	Unless otherwise specified, 30 days running from the day after the order is pronounced
Supreme Court Act, R.S.C. 1985, c. S-26, s. 58	Apply for leave to appeal/file notice of appeal where leave not required or granted	Within 60 days after the date of the judgment appealed from/within 30 days after the date of judgment or order granting leave

Area of Law, Statute and Section	Required Step	Deadline or Limitation
<b>Corporate/Commercial</b>		
BC Business Corporations Act, S.B.C. 2002, c. 57, s. 348(2)	Name shareholder as a party to an action against a dissolved corporation	Shareholder to be added as a party to the action within two years of company's dissolution
BC Business Corporations Act, s. 349(2)	Apply as a judgment creditor to the Minister for recovery against a dissolved company's assets	Within two years of company's dissolution
Canada Business Corporations Act, R.S.C. 1985, c. C-44, s. 118(7)	Sue director(s) for liability to the company	Within two years from the date of the resolution authorizing the director's action
Canada Business Corporations Act, s. 119(3)	Sue directors for liability to employees	While still a director or within two years of the termination of the directorship
<b>Creditors Remedies</b>		
Limitation Act, R.S.B.C. 2012, c. 13, s. 14*	Commence a proceeding for a claim on a demand obligation	Within two years of a failure to perform the obligation after a demand for performance has been made
Limitation Act, R.S.B.C. 2012, c. 13, s. 6 and s. 38*	Commence a proceeding for an unpaid debt	Not more than two or, for government debt, six years after the day on which the claim is discovered
Limitation Act, R.S.B.C. 2012, c. 13, s. 7(a)* (see s. 1 definition of 'local judgment')	Sue on a local judgment for the payment of money or the return of personal property	10 years after the date on which the judgment becomes enforceable
Court Order Enforcement Act, R.S.B.C. 1996, c. 78, s. 91	Apply to renew registration of a judgment	Any time before the expiry of two years from the registration or last renewal of registration of the judgment
Court Order Enforcement Act, s. 29(1)	Apply to have foreign judgment registered in the Supreme Court	The time for enforcement has expired in the originating state or 10 years have expired since the date the judgment became enforceable in the reciprocating state
<b>Employee Relief and Compensation</b> Remember to consider limitations applicable to tort claims and Human Rights complaints (see Administrative) when considering client's options		
Employment Standards Act, R.S.B.C. 1996, c. 113, ss. 112(3) and 122	Appeal to tribunal of director's determination	30 days after the date of service of the determination if served by registered mail; 21 days if served personally, or by fax or email in compliance with s. 122
Employment Standards Act, s. 74(3)	Deliver complaint to director regarding termination	Within six months from last day of employment
Workers Compensation Act, R.S.B.C. 1996, c. 492 s. 55(2)	Apply for compensation	Within one year of the date of injury, death or disablement, unless special circumstances exist
Human Rights Code, R.S.B.C. 1996, c. 210, s. 12(5)	Action by employee for discrimination in wages	12 months from the termination of employment
Canada Labour Code, R.S. 1985, c. L-2, s. 240 (2)	Make complaint to inspector for unjust dismissal	Within 90 days from the date on which the person making the complaint was dismissed
<b>Estates and Trusts</b>		
Estate Administration Act, R.S.B.C. 1996, c. 122, s. 112 (8.1)	Give notice to public trustee where required	Within 45 days of grant of probate or resealing
Estate Administration Act, s. 66(3)	Sue in respect of disputed claims against an estate	Within six months after notice is given if the debt is due at the time of the notice or within six months of the time the debt or part thereof falls due if not due at time of notice
Wills Variation Act, R.S.B.C. 1996, c. 490, s. 3(1)(a)	Sue under Wills Variation Act	Within six months from the date of issue of probate or the resealing of probate in B.C.
Wills Variation Act, s. 4(2)	File lis pendens	Within 10 days after filing Notice of Civil Claim
Limitation Act, R.S.B.C. 2012, c. 13, s. 12(1), (2) and (3)*	Commence a proceeding based on fraud, fraudulent breach of trust or recovery of trust property	Within two years of when the beneficiary becomes fully aware of the facts enumerated in s. 12(2)
<b>Family</b>		
Family Law Act, S.B.C. 2011, c. 125, s. 147(4)	Apply for child support from stepparent	Within one year of stepparent's last contribution
Family Law Act, s. 198(2) and (5)	Apply for division of family property or debt, for pension division, or for spousal support	No later than 2 years after, for married spouses, a judgment granting a divorce or an order declaring a nullity; for spouses living in a marriage-like relationship, the date the spouses separated (family dispute resolution process may suspend running of time)

Area of Law, Statute and Section	Required Step	Deadline or Limitation
<b>Family</b>		
Family Law Act, s. 198(3)	Apply to set aside or replace an order or agreement respecting property or spousal support	No later than two years after the spouse first discovered, or reasonably ought to have discovered, the grounds for making the application
Family Law Act, s. 233	Appeal order of Provincial Court to the Supreme Court	40 days beginning the day after the order is made
Canada Pension Plan, R.S.C. 1985, c. C-8, s. 55.1(a)(ii) and (c)	Apply for division of CPP benefits (between former spouses or former common-law partners)	Within three years of death of former spouse, if spouses apart for more than one year; within four years from the date of separation or at any time with the consent of both former common-law partners
Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29, s. 19(2)	Apply to set aside the registration of a foreign order	Within 30 days after receiving notice of the registration
Interjurisdictional Support Orders Act, s. 36(5)	Appeal an order of any BC court	Within 90 days after the date the ruling, decision or order is entered as a judgment of the BC court
<b>Insurance</b> For additional insurance limitations, see the Insurance Act (life, disability, accident and sickness) and "Personal Injury and Death" (motor vehicle) below		
Insurance Act, S.B.C. 2012, c. 37, s. 23	Proceeding against an insurer in relation to property and some other contracts of insurance (see s. 2 and s. 8 for exceptions)	If property loss or damage, not later than two years after the date the insured knew or ought to have known the loss or damage occurred; in any other case, not later than two years after the date the cause of action against the insurer arose
Insurance Act, S.B.C. 2012, c.37, s. 76(1)	Proceeding against an insurer for recovery of life insurance money in the event of death	No later than the earlier of two years after the insurer receives the information mandated by the statute (s. 73) or six years after the date of death
<b>Landlord and Tenant</b>		
Residential Tenancy Act, S.B.C. 2002, c. 78, s. 46(4), s. 47(4), s. 49(8)	Apply for arbitration to dispute landlord's notice to end tenancy	Five, 10 or 15 days from the date that the tenant receives notice, depending on the landlord's reason for termination
<b>Liens</b> Other liens with limitations or deadlines include woodworkers, tugboat workers and repairers liens		
Builders Lien Act, R.S.B.C. 1997, c. 45, s. 20	Filing of lien if a certificate of completion has been issued with respect to a contract	No later than 45 days after the date on which the certificate of completion was issued
Builders Lien Act, s. 33	Sue to enforce a claim of lien and file lis pendens in support of lien action	No later than one year from the date of the filing of the claim of lien unless 21-day notice issued
Builders Lien Act, s. 14	Sue in trust	One year after head contract completed or abandoned, or completion or abandonment of improvement if no head contract
<b>Municipal Liability</b>		
Local Government Act, R.S.B.C. 1996, c. 323, s. 286(1)/Vancouver Charter, S.B.C. 1953, c. 55, s. 294(2)	Give written notice of damage to municipality or the City of Vancouver (includes actions against municipal police forces)	Within two months from the date on which the damage was sustained
Local Government Act, s. 285/Vancouver Charter s. 294(1)	Sue a municipality or the City of Vancouver for damages caused by exercise of a power conferred by an enactment	Within six months after the cause of action first arose
<b>Personal Injury and Death</b>		
Local Government Act, R.S.B.C. 1996, c. 323, s. 286(1)/Vancouver Charter, S.B.C. 1953, c. 55, s. 294(2)	Give written notice of damage to municipality or the City of Vancouver (includes actions against municipal police forces)	Within two months from the date on which the damage was sustained
National Defence Act, R.S. 1985, c. N-5, s. 269	Sue armed forces personnel	Six months after act or six months after continuing injury or damages cease
Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, s. 24(2)	Notice to ICBC in case of unidentified motorist (bodily injury/death/property damage)	Within six months after the date of the accident
Insurance (Vehicle) Regulation B.C. Reg 447/83, s. 103	Sue ICBC for Part 7 benefits (no postponement for infants)	Two years from the date of the accident or from the date of the last payment of benefits to insured; or two years from the date ICBC receives s.103(2) notice (claim made but no payment)

Area of Law, Statute and Section	Required Step	Deadline or Limitation
<b>Personal Injury and Death</b>		
Limitation Act, R.S.B.C. 2012, c.13, s. 6(1), s. 8*	Commence a proceeding to remedy an injury, loss or damage that occurred as a result of an act or omission	Not more than two years after the day on which the claim is discovered (except certain assault claims)
Marine Liability Act, S.C. 2001, c. 6, s. 14	Dependants sue person or ship causing loss for personal injury/death	Two years after the cause of action arose
<b>Tax – Personal, Property and Business</b>		
Income Tax Act, R.S.C. 1985, c. 1, s. 169(1)	Appeal to the Tax Court of Canada	90 days from the date that the notice was mailed to the taxpayer
Income Tax Act, s. 165(1)	File notice of objection to assessment	The later of 90 days from the date of mailing the notice or one year from the taxpayer's filing due date
Assessment Act, R.S.B.C 1996, c. 20, s. 33(1)	Appeal property tax assessment	No later than January 31 of the year following the year of the assessment
Property Transfer Tax Act, R.S.B.C. 1996, c. 378, s. 19(1)	Mail notice of objection to reassessment to Minister	Within 90 days of the date shown on the notice of assessment
<b>Victim Compensation</b>		
Crime Victim Assistance Act, S.B.C. 2001, c. 38, s. 3(2)	Apply for compensation	Within one year from date of the event or offence
Crime Victim Assistance Act, s. 13(2)	Request that director reconsider decision to deny compensation	Within 60 days from the date that the notice of decision was delivered
Criminal Injury Compensation Act, R.S.B.C. 1996, c. 85, s. 6	Apply for compensation	Within one year from the date of injury or death

\*The former Limitation Act, R.S.B.C. 1996, c. 266 applies to pre-existing claims discovered before June 1, 2013. The pre June 2013 Quick Reference List's references to those limitations are available [here](#).

\*\*A non-judicial remedy does not survive the expiration of a limitation period (s. 27). Therefore, it would be prudent to sue within two years of discovery.

The Lawyers Insurance Fund protects the profession and the public from the risks associated with the practice of law by providing high-quality professional liability and defalcation insurance. We draw on our knowledge and skill as experienced lawyers in providing claims and risk management, and underwriting services. Our professional and cost-effective services have been recognized as a best practice model for other professional liability insurance programs worldwide.

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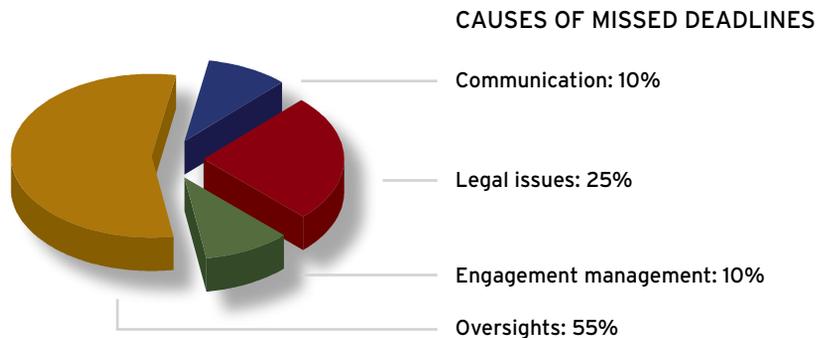


You know that sick feeling in the pit of your stomach the moment you first discover a mistake? Just talk to any one of 1,600 lawyers who missed a limitation or deadline since the start of the new millennium...

Year after year, lawyers from every area of practice—big firms and small firms, senior lawyers and new calls—fall into the same traps. In fact, one in every four reports of claims and potential claims to the Lawyers Insurance Fund is triggered by a missed limitation or deadline.

The good news is you can prevent missed deadlines by adopting the simple practices and procedures laid out in this guide. Covering over 70 risk management tips to help you prevent missed deadlines, this guide includes:

- Four sections that address each of the main causes of missed deadlines in depth;
- Examples of “what went wrong” from actual claim reports to the Lawyers Insurance Fund;
- Advice from the practising lawyers who work at the Lawyers Insurance Fund on how you can avoid missed deadlines; and
- Comments and advice from lawyers who have dealt with missed deadlines themselves, and are willing to share their experiences.



Thanks to a new system introduced in 2000 to categorize insurance claims, the Lawyers Insurance Fund can now identify the four main causes of missed deadlines: oversights; legal issue failures; engagement management failures; and communication failures (see chart above).

For simplicity, in this guide we refer to limitation periods as well as all other dates that have an impact on legal matters as “deadlines.”

### **How small mistakes can add up to big consequences**

Everyday oversights and small mistakes can have big consequences if you miss a deadline. You can expect to fork out your insurance deductible—\$5,000 or \$10,000—depending on the extent of the damages. And instead of filling your workday with billable hours, you’ll be spending a significant amount of time working with the Lawyers Insurance Fund to manage your claim. In addition to the financial fallout, you face the very real risk of losing your client and tarnishing the reputation that you have worked so hard to develop. Even if the situation is successfully repaired, you will still be on the hook for the deductible to compensate your client for the legal fees paid to new counsel.

## **BEST PRACTICES AND RISK MANAGEMENT**

This guide is full of practical risk management tips. However, setting best practices as the foundation for the way in which you and your firm practise is the single most effective risk management tool you can implement. The key components of best practices are:

### **Leadership**

Effective leaders can build a culture of best practice in every aspect of service. Expect every member of the firm to take the time necessary to produce a quality work product. Support lawyers in resisting practices and pressures that compromise quality. Set up a whistle blower system so vulnerable lawyers and staff can disclose risky practices to someone who can remedy the situation effectively and diplomatically.

**Practice groups**

Practice groups are effective forums for ongoing training. Group leaders can help ensure that work is properly delegated, and that staff and junior lawyers are effectively supervised and monitored. Using practice groups also ensures that lawyers within the group are alerted to issues and developments unique to their practice.

**Recognition**

Don't just reward high billing lawyers. Recognize the lawyers and staff who promote a culture of quality through their own high work standards, commitment to teamwork and mentorship of others.

**Client care**

It is an absolute truth that a client who feels connected at a personal level to their erring lawyer is less likely to sue. Develop an excellent bedside manner by listening, empathizing and then responding to client needs.

For more information on best practices, please refer to the contacts at the end of this guide.

**IF YOU DISCOVER A MISSED DEADLINE**

The purpose of this guide is to keep you from missing a deadline ever (or ever again). But if you do:

**Report ...**

- Your insurance policy requires you to report a claim as well as any circumstance that could reasonably be expected to result in a claim, *as soon as practicable*. Prompt reporting of missed deadlines often allows Lawyers Insurance Fund (LIF) claims counsel to take immediate steps to protect or restore your client's position, minimizing any financial loss. The policy is available in your *Member's Manual* and under Insurance on the Law Society's website.
- Reporting "as soon as practicable" may mean within a matter of hours in one case or a matter of days in another. If you don't report in time and LIF loses a chance to repair, you may lose your insurance coverage.
- Resist attempting to remedy the problem before you report, as your efforts may result in greater loss. For example, some lawyers discover a missed limitation and then make their own court application to try to repair the problem. It is clear law in BC that lawyers in this situation should retain counsel outside of their firm to make the application.

**Setting best practices as the foundation for the way in which you and your firm practise is the single most effective risk management tool you can implement.**

- Although claims and potential claims must be reported in writing to comply with the reporting requirements of the policy, LIF claims counsel are always available to speak with you first by telephone. Please see the back of this guide for our key contact list.
- LIF Reporting Guidelines, available under Insurance on the website, will help you provide us with the necessary information. You can report to us by mail, fax or email.

### **and then help us help you**

- The policy's requirement that you cooperate with LIF in the investigation, defence and repair of a matter is particularly relevant to missed deadlines, especially limitation periods. We deal regularly with very experienced repair counsel. As a result, over 20 per cent of all missed deadlines reported are successfully repaired. Some examples include:
  - » A tax practitioner miscalculated the days required to meet the deadline for filing a Notice of Objection to a client's income tax reassessment with the Canada Revenue Agency. The *Income Tax Act* contains saving provisions to allow late filings in certain circumstances. Thanks to the lawyer's timely reporting, we ensured that the necessary application was brought, presented properly and succeeded.
  - » A lawyer who was retained by a former inmate to sue the Crown for an assault that occurred while the inmate was in a remand centre missed the limitation by one week because the lawyer's file was closed, then reopened without re-entering the date in the firm's diary system. An application to postpone the running of time succeeded with the Court relying, in part, on the fact that until he was released, the inmate didn't have sufficient information about the centre's procedures to even appreciate that he had a claim.
  - » A lawyer acting on behalf of an insured claiming under a fire policy proceeded on the basis of a statutory rather than a policy limitation, despite Court of Appeal authority to the contrary. We worked with counsel to argue that those authorities were wrongly decided, and the claim was within time. The issue was debated through to the Supreme Court of Canada. Our argument ultimately prevailed, changing the law in Canada and saving the insured's action and several others that were waiting in the wings.

Let us help you. Report claims promptly to minimize the many negative consequences that can flow from just one mistake.

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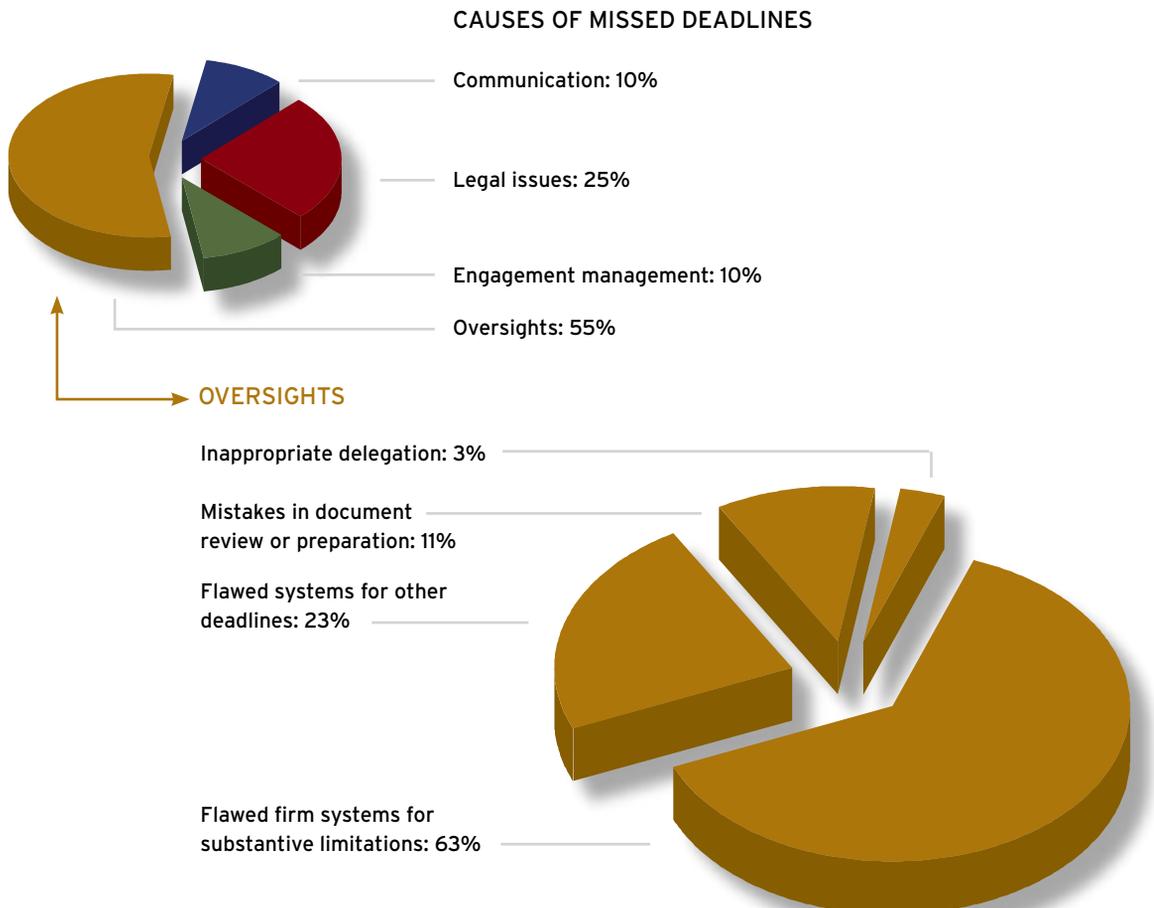




## Oversights

Oversights account for more than half of all missed deadlines. Practice style may increase the exposure, but many of these reports involve lawyers who are generally careful and systematic. It's a garden-variety limitation or deadline – nothing exotic. You know exactly what needs to be done and when it must be done, but somehow the date is still missed. What happens?

- Flawed firm systems for substantive limitations
- Flawed systems for other deadlines
- Mistakes in document review or preparation
- Inappropriate delegation



## Flawed firm systems for substantive limitations

### WHAT GOES WRONG

The majority of oversights arise because drop-dead deadline dates are missed through system problems: the absence of a necessary firm diary system; flaws in the existing system; and errors by the person using or relying on the system. By far the most common reason for failed diary systems is that lawyers simply do not properly use the diary system that exists. For example, a lawyer who failed to serve a writ in time attributed this to “not rigorously, systematically, consistently, using the firm diary system.”

#### Claim file examples

- Lawyer erred in entering the limitation date by one month.
- Diary date properly entered, but lawyer failed to respond to the system’s prompt because focus was on other aspects of claim.
- Lawyer waited until last minute to file writ. Due to problems with registry agent, writ filed a day late.
- Lawyer failed to ensure staff properly instructed prior to leaving on holiday.
- File got buried on desk.
- Firm introduced new software and limitation date incorrectly entered from old system into new.

### RISK MANAGEMENT TIPS

#### 1 Establish a central firm diary system and use it

Every firm needs one centralized system that consistently and accurately records all of the firm’s limitation dates in a timely manner. Make it easily accessible by all involved staff. Choose an appropriate person to take ultimate responsibility for supervising its implementation, use and maintenance. Record how the system is to operate, including who is responsible for what steps, in a procedures manual (See risk management tip 9).

*And whether your system is computerized or even paper-based (electronic systems offer definite advantages), make sure that it incorporates the steps outlined in tips two through eight below.*

**Every firm needs one centralized system that consistently and accurately records all of the firm’s limitation dates in a timely manner.**

## **2 Create a procedure for immediate entry into the diary system and designate a specific person responsible for that entry**

Add a section to your initial client interview or file opening sheet that clearly prompts you to consider if any limitation dates apply and write them down. Ensure that the person responsible for initial entries into the diary system reviews the sheets to check for any dates recorded and enters them into the system. The initial entry should require enough information to allow the appropriate action to be taken at the appropriate time. Create other procedures as needed to ensure that limitations that arise after the file is opened, such as renewal dates for judgments, are entered.

## **3 Note limitation dates in a prescribed area of the file cover**

Remember, as well, to include limitation dates in any practice or case management systems.

## **4 Create follow-up reminders prior to the limitation's expiry (we suggest reminders at two months, one month and two weeks)**

"Upon filing the writ either serve the writ immediately and/or insert the limitation in your calendar with a reminder at several intervals ahead of the limitation for service," advised one lawyer. "Also, arrange software on your computer calendar to send an email of important calendar events."

Practice (case) management software can be configured to generate reminders in the diary system for 14, 30 or 60 days—or whatever you'd like—in advance of the limitation. And make sure that reminders come to your attention in a timely manner.

Early notice also allows early filing and avoids the risk of missing a date because of other problems in the office. For example, one lawyer missed a limitation by three days due to multiple changes in staff and inexperience on the part of the secretary, who was now asked to do the legal assistant's work in the absence of better-trained staff. That lawyer suggested more back-up on last-hour limitations and noted: "We have now changed our system to incorporate reminders one week, two days and one day before the final limitation period expires."

Another lawyer was retained close to the proscriptio date to file a writ. She left instructions with her legal assistant to draft and file the writ while she attended a seminar, but the legal assistant failed to do so and the writ was out of time by two days. "This was an anomaly—a fall through the cracks," she said. "But it could be avoided with more reminders or flags."

## **5 Incorporate a follow-up procedure in your diary system**

Include a follow-up procedure to prompt the responsible lawyer to respond accordingly, and designate at least one alternate in case he or she cannot respond.

For example, three lawyers noted:

"Despite bring forward systems and other safeguard measures, we are human after all. Conduct regular review of all files (perhaps every six months) on an in-depth basis.

Have service of writ step to be checked off by two different people.”

“The limitation was missed through a combination of three things: (1) moving firms and getting limitations diarized at new firm; (2) inexperienced assistant; and (3) my inexperience, both generally and in the practice area. This could be avoided next time through procedures where more than one assistant reviews/accesses/follows-up diary systems...maybe even the lawyer.”

“I thought we had a pretty tight system for limitation dates—but unfortunately the system is only as good as the people using it. Limitation date bring forwards are now a *big thing* in our office—they were before too—but now I am fanatical. We have four or five checks and I am directly and personally involved in all files over which I have conduct.”

We recommend a review of your diary system each morning. Check that any reminder is noted in the responsible lawyer’s diary or e-calendar and brought to the lawyer’s attention. Consider sending a copy of the reminder to another lawyer to allow that lawyer to act as a check that the reminder was acted on.

## **6 Create a back-up diary system**

Creating a back-up diary system will help to catch those limitations that should have been entered in the central diary system, but for some reason, are missed and not entered.

One lawyer described this as “a double safeguard” now built into his diary system for all potential limitation issues. For example, require entry of all limitation reminders into your secretary’s calendar or diary, and ask your secretary to bring the reminder to the attention of another lawyer if you are unable or have failed to respond.

## **7 Enter a new date into the diary system**

Once a limitation is met, the system should require either entry of a new date into the central system or a note to the file confirming that there are no new dates. For example, the new entry should ensure a filed writ is served or renewed in time. Remove any future reminders of a limitation date that has already been met as they clog the system unnecessarily and may desensitize lawyers to the system’s legitimate warnings.

## **8 Ensure multiple limitations on one file are effectively managed**

Make sure that you have a diary system robust enough to prompt and manage multiple entries on one file. One lawyer who failed to serve a writ on one of several defendants advised: “Be particularly careful with multi-defendants, especially when some file Statements of Defence and others don’t.”

**Despite bring forward systems and other safeguard measures, we are human after all. Conduct regular review of all files (perhaps every six months) on an in-depth basis. Have service of writ step to be checked off by two different people.**

**For more information** on setting up and using effective firm diary systems, please refer to the contacts at the back of this guide.

## 9 Create a procedures manual

Set out the procedures governing your firm's diary system in a manual. Describe in detail each one of the steps that your firm's diary system incorporates. Identify who is responsible for performing each particular task and designate an alternate during that individual's absence. Require the individual ultimately responsible for the firm diary system to regularly review the procedures manual and make any revisions necessary to keep it current.

## 10 Train staff carefully

Make sure secretaries and other office staff understand important dates to note and remind them to do so as you handle the file. Reinforce diary system entries as a critical function for staff. Avoid "staff bungling" (one lawyer's description) of the diary system by encouraging the use of the procedures manual and through proper training on the system. For example, one lawyer manages the risk by "empowering support staff to take a more proactive role."

**Reinforce diary system entries as a critical function for staff.**

Another lawyer reported that he would now avoid making assumptions that notations and brief verbal direction suffice. After paying a \$10,000 deductible for missing the limitation for his client's slip and fall claim, he commented: "As counsel we rely very heavily on our staff. The busier we become the heavier that reliance becomes. All the systems that we can devise still require that we must routinely impress upon staff the need to be vigilant."

## 11 Educate new lawyers

Take advantage of the opportunity to influence new associates through an orientation process that introduces and reinforces your firm's culture of risk management. Include a thorough review of your firm's diary system, as well as your other administrative procedures and systems. And remember to integrate any new associates into your firm's practice groups.

## 12 Audit files, misses and near misses

Regular file audits serve as a quality control measure and can help to identify the reasons why limitations are not properly diarized. Include a review of the client interview or file-opening sheets to ensure that any dates recorded were properly entered into the firm's diary system. Require lawyers to physically review their own files on a regular basis for any possible limitation issues. Investigate any missed or nearly missed limitations to figure out exactly what went wrong. Decide what changes are needed to prevent the problem from happening again, and implement those preventive measures.

And for any audits, promote candid and open discussion through a culture of problem solving and education, rather than blame. Look for solutions going forward.

### 13 Recognize practice danger points

It's not particularly merry to find, as one lawyer did, that the limitation for your client's maintenance claim accrued—and passed—while you and your staff enjoyed the Christmas holidays. "Staff turnover resulted in this one slipping through the cracks," reported another lawyer.

Periods of extreme vulnerability to limitation errors include:

- Staff departures;
- Arrival of new staff without proper training on the firm's limitation system;
- Transfer of files between lawyers at the firm;
- Firm mergers; and
- Lawyer or staff absence due to holidays or illness.

Pay particular attention to the firm's systems at these times, and avoid delegating to staff who are new or simply not familiar with the system. One lawyer who relied, to his detriment, on a temporary assistant, advised: "Be aware of every detail of the diary system in place. Check and double-check the diary and the files."

### 14 Recognize personal danger points

Avoid taking on more than you can handle. Our claim files show that your ability to act competently is affected by stresses in both your personal and work life. One lawyer who missed a filing for patent protection because he was "completely overloaded" advised, "A lawyer always has the residual personal power to say 'no' to work, regardless of the business culture he finds himself in." If you are concerned about your staff's ability to manage their file load or any particular file—for any reason—intervene before a limitation is missed.

### 15 Sending an email is not a guarantee

Sending an email does not guarantee that the message has been received or reviewed. Set up a system to have your secretary confirm both, otherwise an email reminder to file a writ may result in a missed limitation.

**Staff turnover resulted in this one slipping through the cracks.**

### 16 Get organized

Delivery of the reminder isn't enough; you need to see it in order to act on it. Lawyers and staff with well-organized desks won't find a buried reminder several days too late.

### 17 Never leave filing until 4 pm on the last possible day

Avoid the dilemma of the lawyer who ended up knocking on a closed door of the Registry, after hours, on the last day for filing. You may apply to the court for leave to have the registrar open the Registry in certain emergency circumstances; see the back of this guide for more information, and call us.

## Flawed systems for other deadlines

### WHAT GOES WRONG

Missed drop-dead limitation dates aren't the only problem; claims can also result when the lawyer drops the ball and misses other deadlines. However, as with missed limitation dates, deadlines are missed because lawyers and firms either do not have the necessary systems to flag them or fail to use systems that do exist effectively, or at all.

#### Claim file examples

- Failed to review calendar and missed the date to respond to a Notice to Admit, resulting in deemed admissions prejudicial to the client.
- Did not diarize date to remit payment to third party under escrow agreement and payment missed.
- Failed to obtain order preserving claimant's filing in Personal Property Registry after Registrar sent notice warning claimant that filing would be automatically discharged after 40 days unless order obtained. Did not use any system to note the deadline.
- Lawyer retained to appeal claimant's dangerous driving conviction failed to bring appeal within 30 days of conviction. Breakdown in system.
- Lawyer acting for claimant in debt claim appeal failed to file in time as no arrangements were made for matter to be handled while lawyer on vacation.

### RISK MANAGEMENT TIPS

#### 18 Diarize, diarize, diarize

In addition to drop-dead dates managed by your firm's central diary system, you will need to catch other deadlines, from dates for service of expert reports in litigation, to dates for satisfying conditions precedent in a contract. Some deadlines may be appropriate for entry into your firm's central diary system and will be managed through that system along with limitation dates. For others, you will need to create additional systems. Review tips 2 through 8 as you may want to incorporate some or all of these steps into the system you use.

Visual reminders for lawyers and staff such as a four-month, erasable wall calendar offer a central focus and may be appropriate for tracking some deadlines. Case management software will assist with calendaring, time management and priority checks.

If your only diary system for flagging a particular deadline is an external trigger, beware. One lawyer, who relied on notice of pending deadlines from an administrative tribunal, missed a deadline when the usual notice wasn't delivered. That lawyer's new plan? "Diarize on the side of caution despite existing practice."

## **19 Take advantage of e-filing with the Land Title Office**

Real estate practitioners can now e-file key land registration documents at the Land Title Office. This is a convenient and timely way to meet deadlines.

For example, one lawyer reported that his client's purchase failed to complete on time because a winter storm delayed the courier's delivery of documents to the LTO. E-filing would have allowed registration directly from the lawyer's office, thus eliminating the need for the courier (and the insurance report).

For more information on the benefits of e-filing as a risk management tool, please refer to the resources at the back of this guide.

## **20 Implement other necessary firm systems**

Interestingly, we receive very few reports of deadlines missed due to failures in firm systems for dealing promptly with incoming faxes and mail, or acting as the registered and records office for companies, although failures in either could result in a missed deadline. It seems that firms are ensuring that mail is reviewed and attended to as required, even during lawyer absences. Firms acting as registered and records offices have systems in place to handle service on their corporate clients. However, one lawyer, acting for a corporate client, missed the deadline for filing a reply to a Small Claims action. The records clerk at the firm sent the writ directly to the client. The clerk assumed the firm was served as the registered and records office and did not know the lawyer was acting on the defence. "Have procedural reminders in place so that when the registered and records office is served, the recipient remembers to check to see if someone is handling a matter," that lawyer advised. "This will ensure that a lawyer reviews the incoming writs before they go to the client."

## **21 Add to the procedures manual**

In your firm's procedure manual for limitations — see risk management tip 9 — include rules as to when to enter a deadline into the firm diary or some other system. For example, clarify what to enter when a contract is executed with conditions or options, or an Appearance is filed. Include the procedures for any other systems that are used either to track deadlines or, for systems such as dealing with incoming faxes or mail, to avoid missing a deadline.

## **22 Train staff carefully, educate new lawyers, audit files, recognize practice and personal danger points, be wary of emails, get organized and file early**

See risk management tips 10 to 17 for details.

**If your only diary system for flagging a particular deadline is an external trigger, beware.**

## Mistakes in document review or preparation

### WHAT GOES WRONG

Mistakes in either document review or preparation can have big consequences. Our analysis of reports shows that many missed deadlines could be prevented if the lawyer had just reviewed documents in the file carefully, or at all.

#### Claim file examples

- Lawyer acting for claimant in a slip-and-fall action failed to name the housing cooperative as owner and occupier of the deck where the incident occurred. Did not read all details of corporate search.
- Claimant in personal injury matter tells the lawyer that the accident occurred two days later than it did, and lawyer failed to notice correct date in medical records.
- Lawyer retained to appeal orders made pursuant to the *Health Act* requiring remedial measures to upgrade a private water system. Lawyer failed to review orders and missed the reference to the 10-day appeal period provided for in the *Health Act*.

Other times, the problem would have been avoided simply by careful review at the document preparation stage, with particular care to the small clerical mistakes that can occur.

#### Claim file examples

- Lawyer retained on the eve of proscriptio date to commence action on promissory note unknowingly used a stale-dated form. Writ not in compliance with prescribed form and may be a nullity.
- Lawyer retained to apply for patent protection of claimant's new technology. Through staff error, wrong drawings submitted with application and patent rights may be lost or reduced.
- A writ filed just prior to expiry of the limitation period omitted an intended defendant and the endorsement did not accurately state the cause of action against each defendant. Lawyer failed to read writ before signing.

**Our analysis of reports shows that many missed deadlines could be prevented if the lawyer had just reviewed documents in the file carefully, or at all.**

## RISK MANAGEMENT TIPS

### 23 Take it slow

Take the time to properly review your file materials—including any written instructions from your client—rather than relying on memory. Never assume that something is cookie-cutter. “Review the file before signing off on pleadings that appear to involve a routine situation,” advised one lawyer. Remember to pay particular attention to dates and double-check these against client documents. Train your staff accordingly.

Another lawyer missed a limitation in multiple claims for a single client because her staff had not properly separated out all of the available information and attended to all limitation system requirements for each claim. “Be vigilant in regular reviews of files for limitations at the outset or when new information is received,” she advised.

And for documents that you or your staff prepare, remind yourself and your staff to take a thorough second (or third) look for inadvertent clerical errors before any document is finalized.

### 24 Detective work

To ensure you name the proper party in legal documents, stay alert to clues available in your file material. Pay attention to the defendant’s pleadings—if you have named the wrong party, the Statement of Defence will contain key denials that signal your error. For example, one lawyer overlooked a defendant’s pleading that another driver was liable in a multi-car collision and thus missed the limitation period. “Cause of error? My oversight,” he reported. “Risk management tip? Pay attention.”

Clues about mistaken identity will also be found in answers to interrogatories. Don’t get so caught up in pursuing the claim or lackadaisical about it that you fail to review the information available to you, pick up on any clues and take appropriate action.

### 25 Read carefully before you venture into unfamiliar territory

Whether you are dealing with unfamiliar legislation, court rules or other procedures, review the material carefully if you are not familiar with the process. One lawyer acting for clients with *Criminal Injury Compensation Act* claims read the legislation, but not carefully enough, and missed the time to appeal a denial of the claim.

### 26 Precedent and technology traps

Word processing and document management software simplify the use of precedents and templates in creating documents. Remember that one size does not fit all, and avoid the blind use of a precedent without careful review of the new document.

## HOT SPOT ●

### ● 27 Contractual forms (including insurance policies)

Any contract may contain deadlines. If you are acting against an insurer, review the policy of insurance carefully at the outset to determine if there are any specific limitation periods that have been incorporated as contractual terms.

## Inappropriate delegation

### WHAT GOES WRONG

Delegation is critical to any successful law practice. However, deadlines are sometimes missed because legal assistants, paralegals, articulated students and even junior lawyers are assigned tasks that should not be delegated, or are not provided with the necessary training or supervision to handle the task.

#### Claim file examples

- Lawyer did not review affidavits of service, but left assistant to ensure proper service. Inexperienced assistant did not understand requirements for service, and one defendant not served in time.
- Lawyer relied on staff to file certificate of pending litigation against title. Limitation period to enforce claim of builders lien expired before lawyer noticed that certificate filed in court registry, but not in Land Title Office.
- Lawyers retained to sue on behalf of claimant for medical malpractice. Articling student gave wrong limitation date to paralegal.
- File delegated to junior lawyer who was unsuited to the specific area of practice. The junior lawyer failed to ensure that the client responded to outstanding requests from a discovery within time stipulated by court order.

### RISK MANAGEMENT TIPS

#### 28 Consider the task

Some tasks lend themselves well to delegation, which can free up your time for those matters in which your legal expertise is needed. Others, such as recognizing a potential limitation issue, require a lawyer's knowledge and experience and simply cannot be appropriately or ethically delegated (see Chapter 12 of the *Professional Conduct Handbook*). Also, consider the frequency with which the task is performed. Relying on staff to remember the subtleties of certain processes that are rarely used may simply be

**Some tasks lend themselves well to delegation, which can free up your time for those matters in which your legal expertise is needed. Others, such as recognizing a potential limitation issue, require a lawyer's knowledge and experience.**

unreasonable. Either deal with the task yourself, or provide the additional instruction or supervision needed to make sure that it's done properly. "Avoid placing too much reliance on support staff," one lawyer reported.

For tasks appropriate for delegation one lawyer advises, "invest in staff training." In that report, the lawyer noted that her secretary didn't know that an appeal of a Provincial Court matter required service as well as filing within certain deadlines. In another report, a lawyer missed a limitation because the title search was conducted at the date of the search instead of the date the incident occurred. "Be mindful that it is critical to instruct your support staff (if they are conducting the search) in a more defined manner, ensuring that the search is reflective of the date of incident," he advised.

Other tasks appropriate for delegation still require your careful oversight. For discrete tasks, one lawyer advises: "If preparation of materials is delegated, take the time to instruct and review outcome." Even if a task is performed routinely, you may still need to check in with your staff on a regular basis. For example, a lawyer caught when his legal assistant relied on a motor vehicle insurer's practice of not requiring service on defendants, recommended, "frequent file reviews between lawyer and legal assistant and periodic staff meetings to discuss possible pitfalls."

## **29 Consider the employee**

If the task is appropriate for delegation, the level of training and supervision required will depend very much on 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 routinely delegate. Once delegated, make sure that your employee is properly handling the task.

Delegation to an associate may be as risky as delegation to staff. One lawyer found that an associate who was assigned responsibility for filing and serving a writ in a collection matter missed a limitation because of "a lack of understanding of civil litigation basics." An inexperienced lawyer likely needs the advice and support of a senior lawyer, and appropriate supervision will ensure both are given.

Even if the associate has the necessary technical skills, a mismatch between the lawyer and the file will create problems. Be careful of removing yourself so far from the details of the retainer that your ability to identify tasks or files that have been inappropriately delegated is lost. For example, one lawyer found that "a limitation was missed because of procrastination by a junior lawyer." That lawyer's new plan? "Increased frequency of review of delegated files."

**Even if a task is performed routinely,  
you may still need to check in with  
your staff on a regular basis.**



The Law Society  
of British Columbia



Practice  
Checklists  
Manual

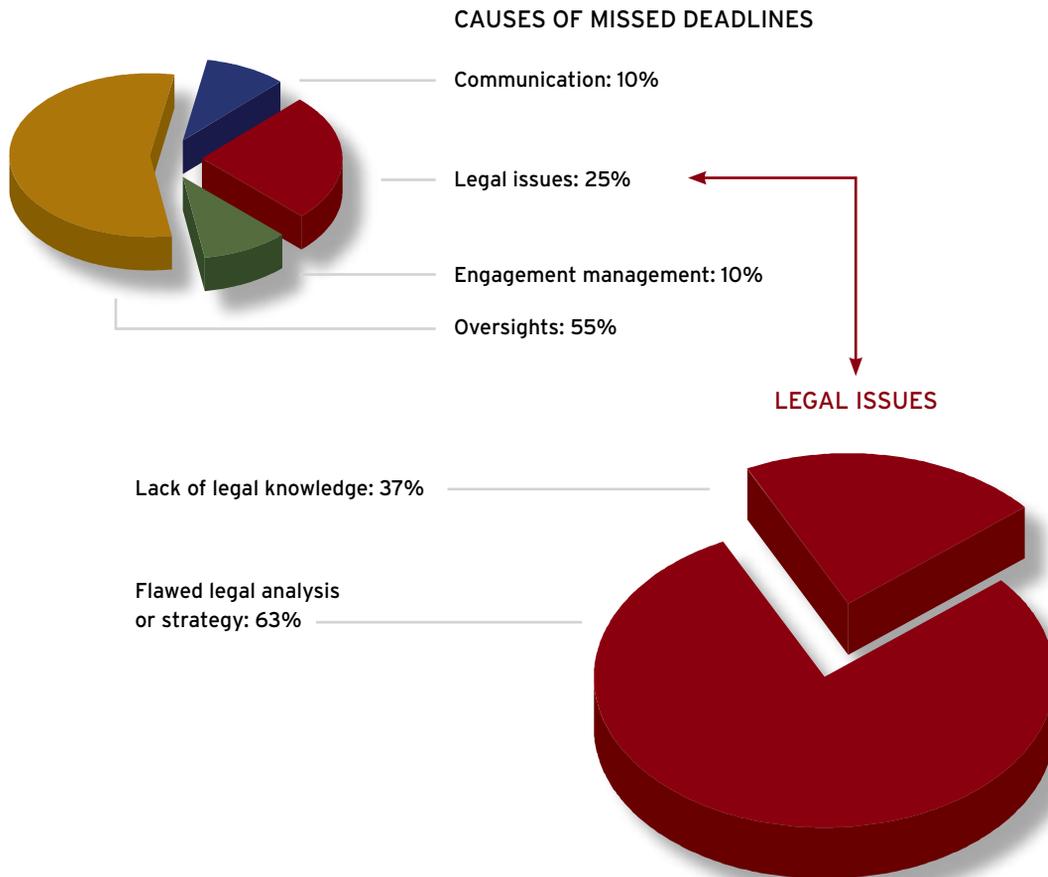


Legal Issue Failures

## Legal Issue Failures

In 25 per cent of missed deadline reports, the lawyer is sufficiently competent in the area of law to act, but the loss is still caused by mismanagement of the specific legal issues. This is an interesting result, given that legal expertise is the very reason for a lawyer's retainer. These mistakes occur because of either:

- Lack of legal knowledge
- Flawed legal analysis or strategy



## Lack of legal knowledge

### WHAT GOES WRONG

Many missed deadlines occur because the lawyer simply does not know what the deadline is. Although the lawyer is competent enough to accept the retainer, the lawyer doesn't appreciate that his or her knowledge of the law is deficient in a certain area.

#### Claim file examples

- Lawyer for common-law spouse missed limitation period in *Wills Variation Act* claim. The lawyer was unaware of a recent change in the law granting status to common-law partners to claim under the Act.
- Infant's Part 7 action not commenced within two years of accident, as lawyer erroneously believed that running of time postponed.
- Lawyer representing claimant in a slip-and-fall matter failed to commence action against disability insurer within one year of denial. The lawyer did not know the law.
- Lawyer acted for immigrant applying to stay in Canada on compassionate and humanitarian grounds. Application rejected by Immigration Canada. Lawyer failed to seek leave to appeal the decision, as he was unaware that an appeal could be brought.
- Lawyer retained by claimant to advance slip and fall claim arising out of a fall outside of an Ontario subway station. The lawyer was unfamiliar with Ontario legislation and failed to retain and instruct Ontario counsel to commence action within one year of fall as required by Ontario's *Railways Act*.

### RISK MANAGEMENT TIPS

#### **30** Be realistic about your own knowledge of the law

One lawyer who filed, but failed to serve, a notice in a bankruptcy proceeding, got caught "trying to dabble in an area" he wasn't very familiar with. His advice to lawyers? "Stick to areas you know or, if venturing into a new area, consult someone with more experience." In another report, a lawyer who gave wrong advice about the applicable limitation in a claim for misappropriation described his mistake as: "an assumption of knowledge of the law without verifying the assumption." His advice: "Research everything!"

If you are practicing in an area that you are not entirely familiar with, it's your duty to research that area and determine any deadlines that might apply. The Law Society's practice checklists are an excellent tool to help you flag deadlines that you might other-

wise miss. For more information on these and other useful resources that will help you navigate in unfamiliar waters, please see tip 31 and the back of this guide.

Remember, you may not be completely familiar with procedural requirements in very basic matters such as civil litigation. The rules for Small Claims and the Supreme and Appellate Courts are replete with deadlines. Read the rules, then act.

### **31 Use the Quick Reference List**

A lawyer who missed the 10-day appeal period under the *Bankruptcy and Insolvency Act* (believing she had 30 days) suggested posting really short deadlines on the Law Society website, so that lawyers can quickly find the ones that may be early or obscure. The Lawyers Insurance Fund took that suggestion to heart when we created a quick list of the limitations and deadlines that you might face in a general practice. Look at the Limitation and Deadlines Quick Reference List included in this publication, and on the Insurance section of the Law Society web site, as a starting point for your research.

### **32 Just do it**

Sometimes, the right decision is simply to go ahead and take a step that may be required to protect your client's rights, even if it might later prove unnecessary. Here's some advice from a lawyer who wrongly advised his client that he did not qualify for Canada Pension Plan (CPP) benefits, relying on an incomplete statement from CPP: "I failed to fully understand how disability CPP worked and placed false reliance on a computer generated document. In future, I would always advise the client to apply for CPP and let CPP determine entitlement."

### **33 Recognize the law's changing nature**

Death, taxes and change are the true constants in life. You may not particularly like any of them, but at least recognize that your knowledge of the law in any particular area is only as good as you are current. A focused practice brings the benefit of continuing education and knowledge of that area. If you are not current in the law, you cannot safely rely on your knowledge.

## **HOT SPOTS** ●

### ● **34 Foreign jurisdictions**

If the litigation is in a foreign jurisdiction, get immediate advice. As several lawyers now know, there are even differences between BC and Alberta over something as simple as the effect of failing to serve pleadings in time. And even if you are suing in BC, the limitation period of the jurisdiction in which the cause of action arose may apply.

Sometimes, the involvement of another lawyer in that other jurisdiction leads to a false sense of security about limitations. For example, a lawyer acting for infants entitled to dependants' relief under Ontario legislation relied on the estate lawyer to alert him to any limitations and thus missed the deadline. The BC lawyer's advice: "Don't procrastinate—take early steps to find out the foreign limitation—and don't rely too much on legal counsel in another jurisdiction where there is no retainer."

Retain counsel, if necessary, to give you the correct advice on limitations in jurisdictions that lawyer knows best.

### ● **35 Municipal limitations**

The law clearly states that a claim against a municipality for a breach of a duty of care in tort triggers the two-year limitation in the *Limitation Act*, not the six-month limitation in Section 285 of the *Local Government Act*. However, the two-month notice provision in the *Local Government Act* must still be met. Although these provisions may not appear complex, they require some specific knowledge or experience that may be outside that of a general practitioner unfamiliar with suing municipalities. For more information, please see the *Alert!* bulletins issued October 2000 and February 2002, which are available under Insurance on the Law Society's website.

### ● **36 Part 7 benefits**

Section 103 of the *Insurance (Motor Vehicle) Act* requires Part 7 actions to be brought within two years of either the date of the accident or the last Part 7 payment to the insured. The failure to commence the Part 7 action in time allows the Insurance Corporation of British Columbia (ICBC) to argue that the amount of the tort award ought to be reduced by the value of the Part 7 entitlement. *There is no postponement for infants.*

### ● **37 Insurance claims (non-automobile)**

There are three components to any claim under an insurance policy: giving notice; filing a proof of loss; and, if coverage or payment is denied, suing for indemnity. The time limits may be governed by statute or by the specific provisions of the policy, or both.

From property to disability claims, determining the applicable limitation requires a detailed analysis of the contract of insurance, the *Insurance Act* and related case law. To be safe, assume that the limitation runs one year from the date of loss, not the filing of the proof of loss.

### ● **38 Personal injury claims arising out of employment**

If you are retained to sue for damages in a tort claim, find out if your client may have been acting in the course of employment. If there is any doubt, consider making a provisional application under the *Workers Compensation Act* for benefits within one year of the accident.

**From property to disability claims, determining the applicable limitation requires a detailed analysis of the contract of insurance, the *Insurance Act* and related case law. To be safe, assume that the limitation runs one year from the date of loss.**

A lawyer acting for a claimant regarding the wrongful death of her spouse failed to advise his client to file a provisional application for Workers' Compensation Board (WCB) benefits. When the Workers' Compensation Appeal Tribunal determined that the death arose out of and in the course of the spouse's employment, his client was out of time to apply for benefits. "As this was a personal injury and WCB matter, a Statement of Claim and an application for compensation should be filed at the same time, before the limitation date," he reported.

### ● **39 Claims involving the police**

If your tort claim involves the police, you must find out and name as a defendant the level of government that employs them (federal, provincial or local). If the employer is a municipality, you must still meet the two-month notice provision in the *Local Government Act* (see municipal limitations above).

### ● **40 Builders lien claims**

Although an action to enforce a claim of lien must be filed within one year, the owner may give the lien claimant 21-days notice under the *Builders Lien Act* to start an action and register a certificate of pending litigation. The 21-day period begins to run on the date of personal service or on the deemed date of delivery, eight days after the mailing of the notice. There is an absolute presumption that notice mailed in accordance with the section has been received, even if there is proof to the contrary.

The notice sections may create a problem if your office is listed as the address for service in the affidavit of claim of lien, as you may have moved offices, merged firms or stopped acting for the lien claimant. Practise defensively. Have the lien claimant's address listed as the address for service in the affidavit of claim of lien. Advise the lien claimant in writing, at the time the affidavit of claim of lien is filed, to contact you immediately upon receipt of a 21-day notice. This will give you time to commence an action, if so instructed. And remember that the action must be commenced in the court registry in the municipality where the land is located. Or, if the land is not in a municipality or there is no court registry in the municipality, commence the action in any registry in the judicial district where the land is located.

### ● **41 Tax**

There are a number of specific limitations that govern the right to appeal an assessment by a taxing authority. It is important at the outset to determine the authority upon which the tax has been levied and then to consult the statute and/or regulations that govern the taxing body to determine what specific requirements there may be with respect to bringing an appeal.

**Stick to areas you know or, if venturing into a new area, consult someone with more experience.**

## Flawed legal analysis or strategy

### WHAT GOES WRONG

Flawed legal analysis or strategy mistakes arise when the lawyer knows the deadline, but does not think through all the legal issues or appreciate the strategies necessary to achieve the legal ends.

#### Claim file examples

- Lawyer acting for claimant injured because of an unsafe deck failed to appreciate the need to investigate the facts in a timely manner. Lawyer did not realize that the deck installer and designer were different and failed to add the installer as a defendant in time.
- Lawyer acting for motor vehicle claimant where other vehicle was municipal police vehicle failed to turn his mind to the municipal aspect of the claim, and missed the requisite two-month notice.
- Lawyers acting for client to subdivide property when environmental damage from operations of client's oil well tenant was discovered. Lawyers pursued rent increases from tenant, but failed to advise client of option to sue oil companies in nuisance and trespass for environmental damage.
- Lawyer retained following denial of coverage by property insurer for damage from grow-op. Failed to commence action within one year of loss as required under the policy, as he was concentrating on claim in negligence against insurer for failure to advise of reduced coverage.

### RISK MANAGEMENT TIPS

#### 42 Think early

When opening a file, think through all limitation issues. Determine what investigation of fact or law will be needed. "Ensure close attention is paid to limitations—this requires thinking, not just going through the motions," one lawyer reported. Another lawyer cautioned: "Beware of concentrating on other, more straightforward, more remunerative files, and continually putting off engaging 'hard' matter. Do not put off dealing with difficult matters; they will only get more difficult as time goes on."

This can be particularly important when an action may have to be commenced in a foreign jurisdiction, when a municipality or other government authority may have exposure, or where an insurance policy may also be available to respond to a loss. In one report, a lawyer incorrectly named the Attorney General of Canada instead of the Attorney General for BC when suing the RCMP. The advice: "due diligence!" and "careful

consideration of the conclusions reached in any review of a research memo.” Another lawyer, acting for a claimant in an action for damages arising from an assault outside a pub, failed to name the receiver of the pub as a party. His advice: “Be alive to liability issues when dealing with a receiver.”

And think ahead. One lawyer did not issue a Part 7 writ as his client’s injuries appeared insignificant. The extent of the injuries became apparent much later. That lawyer’s advice? “Issue a Part 7 action forthwith notwithstanding the apparent insignificance of the injuries.”

### **43 Investigate early**

Once you have considered all the potential limitation issues, determine what factual investigation is needed. Although the *Limitation Act* may allow adding new defendants or commencing a new action against previously unknown defendants after the limitation period has expired, there is no substitute for early investigation. Think of your client’s claim as a story peopled with characters who have contributed to the loss. Make sure you identify and name them all. And prepare yourself for a plot that may be difficult to decipher—determining when a cause of action arose can be as difficult as figuring out “whodunit”. Consider the use of John Doe defendants where appropriate and ensure that all appropriate plaintiffs have been correctly named.

### **44 File early**

Have you been retained just before the possible expiry of a limitation period? Follow this piece of advice from a lawyer who failed to alert his legal assistant to a pending limitation for commencing an action in debt: “Issue all writs immediately.”

Even if the limitation is not pending, give yourself enough time to correct a mistake if one is made before the limitation passes. Consider this rule of thumb for two-year limitations. File and serve the writ within 18 months of the cause of action arising.

Early filing also allows you to “ferret out the facts,” as one lawyer puts it. Another lawyer acting in a commercial host claim named the owner of the property, but not the company that actually operated the business. That lawyer’s advice? “Sue earlier. Proceed to examination for discovery before the limitation period has expired.” If it is too early to conduct discoveries, interrogatories will provide some basic information that may be helpful. In claims against insurance companies, one lawyer advises: “Do not wait. Commence litigation proceedings because limitation dates in these claims are unusual and subject to uncertainty.”

**Do not put off dealing with  
difficult matters; they will only  
get more difficult as time goes on.**

#### **45 Don't rely on one source**

Our claim files show that failing to name the proper party often occurs because the lawyer relies on a single source to identify the defendant, and does not pause to consider whether that source may be fallible. Documents such as police reports, medical reports and business licences can contain incorrect information. Insurance companies may name the policy owner rather than the alleged wrongdoers in their correspondence to you. Your client may not remember the name of the wrongdoer accurately. Look for corroboration by talking to witnesses and counsel for other parties. Search public records.

For example, one lawyer acting for a claimant injured in a fall on a bus relied on ICBC and a plate search to name the appropriate bus company, only to discover after the limitation that the bus company's name was changed. Had he contacted counsel for the transit authority before commencing his action, as he recommended in his report, the owner might have been named correctly and in time.

#### **46 Ensure your pleadings are complete**

The endorsement to the writ must specify a cause of action. If there is more than one cause of action, each must be pled in the writ to avoid missing the limitation period for that particular claim. For example, in suing for medical malpractice, a claim that informed consent was not given is a cause of action that must be pled separately.

#### **HOT SPOT ●**

#### **● 47 Adding Parties**

We receive the most reports of missed limitations because of flawed legal analysis or strategy from lawyers failing to add all parties to the litigation. Although adding a party may require an order and not simply an amendment to the Statement of Claim, report to LIF before taking any steps.

**We receive the most reports of missed limitations because of flawed legal analysis or strategy from lawyers failing to add all parties to the litigation. Although adding a party may require an order and not simply an amendment to the Statement of Claim, report to LIF before taking any steps.**



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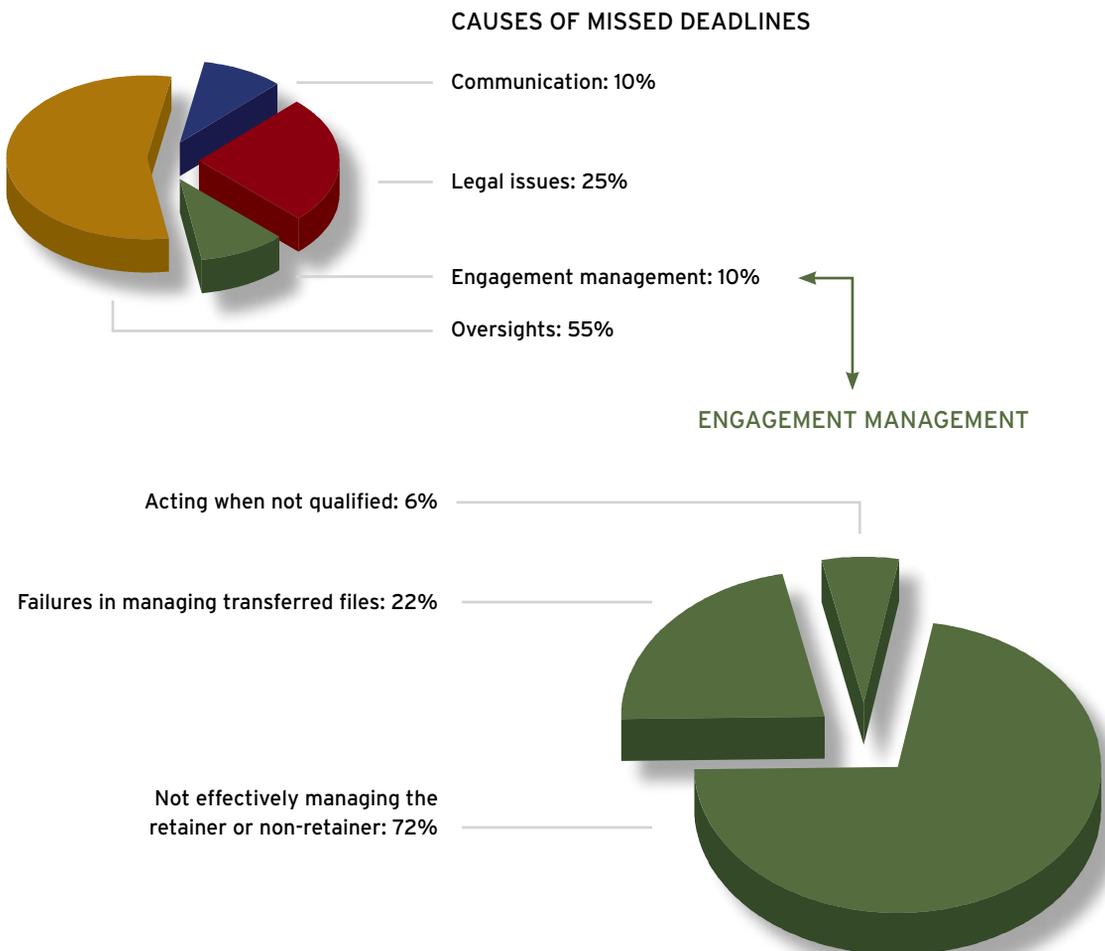


## Engagement Management Failures

# Engagement Management Failures

Some professional liability claims have no connection whatsoever to the quality of the legal product the lawyer delivers. Rather, they arise because of the lawyer's approach to doing business with clients. If a lawyer does not appreciate how critical it is to manage all aspects of the engagement, that lawyer increases the risk of claims arising through:

- Not effectively managing the retainer or non-retainer
- Acting when not qualified
- Failures in managing transferred files



## Not effectively managing the retainer or non-retainer

### WHAT GOES WRONG

Over two-thirds of the missed deadlines that arise from engagement management issues occur because of misunderstandings between the lawyer and client (or potential client) about the existence or scope of the lawyer's retainer. Or the lawyer concludes his or her involvement without warning of potential deadlines.

Misunderstandings around the retainer can arise when the claimant thinks the lawyer is retained, but the lawyer thinks he or she is not. In other situations, the lawyer is retained but the *scope* of the retainer is not clear. Often the lawyer is acting on a specific matter and a tangential issue arises. Or, as in the 'unbundling' context, the lawyer is responsible only for certain discrete tasks in a legal matter usually handled in its entirety by a lawyer.

#### Claim file examples

- Lawyer meets with potential client wishing to bring a *Wills Variation Act* claim, and sends retainer letter for client to sign and return. Letter doesn't clearly state that lawyer will not act without signed retainer letter. *Wills Variation Act* action not started in time. Lawyer said he was not retained; claimant said lawyer was.
- Lawyer retained by a housing cooperative to deal with contractor over construction deficiencies. She doesn't think to advise her client of applicable limitation to sue an architect involved in the original construction, as she does not consider this part of her retainer.
- Lawyer assists claimant by drafting pleadings for a Small Claims action, where claimant will represent herself. Notice of Claim failed to properly identify corporate claimant, and claimant blames lawyer. Lawyer had written to claimant recommending that she get a company search, but letter may not have been sufficiently comprehensive.

Claims can arise even when the lawyer clearly was *not* retained. These include situations in which the lawyer is consulted but not retained, and fails to warn that deadlines may apply. In other situations, the lawyer may be retained but the deadline passes after the retainer is concluded.

**Claims can arise even when the lawyer clearly was *not* retained when the deadline was missed.**

### Claim file examples

- Lawyer met once with potential family law client, but did not advise of the one-year limitation for a common-law spouse to seek maintenance. Potential client returned after limitation expired.
- Lawyers retained to advance claimant's defamation action. Writ filed but due to strategic concerns not immediately served. Lawyers subsequently discharged, but failed to advise claimant to ensure service within one year of filing.

## RISK MANAGEMENT TIPS

### 48 Send retainer letters to new clients

One lawyer who failed to issue a writ for a personal injury claim in time reported his error as “not knowing what is (or was) the scope of my retainer.” Clarify what you will and will not do, and pass the risk of what you won't do back to the client. Written confirmation, in clear and unambiguous terms, reduces the risk of a misunderstanding and provides proof of your position, if needed.

Documenting the retainer also presents an opportunity to provide a new—or existing (see below)—client with superb service right from the start. The retainer letter is your chance to create an excellent initial impression with a clear explanation of the various items that many lay people find confusing. Sample retainer letters are available in the Practice Support section of the Law Society's website.

### 49 Send an abbreviated retainer letter to existing clients

Avoid the lengthy formal retainer letter by excluding material the client already knows, given your existing relationship. Adopt a less formal tone, but include what you will and will not do, and any other critical aspects of the retainer.

### 50 Send letters that clarify the retainer to clients for whom you are already acting and open a new file

The scope of the retainer may need to be revisited—and then confirmed in writing—if a new matter arises during the retainer. This helps to avoid confusion in cases where a client has been injured in multiple accidents or casually seeks advice on an unrelated matter.

One lawyer, acting for a client in a commercial dispute, was asked to look into a dispute between the client's wife and her disability insurer. The lawyer opened the new matter as a sub-file of the first. He did not take further steps or alert the client to the limitation. When the client's commercial file was closed, the sub-file was closed, as well. The limitation was missed. “Open a file for each problem; avoid use of sub-files,” that lawyer advised.

## **51 Confirm your non-retainer in writing and include advice on deadlines**

Develop a standard practice of advising prospective clients of applicable deadlines and that time limits might apply to prevent recovery, and confirm that you do not consider yourself retained in the matter. A lawyer consulted on an occupier liability's claim failed to warn of a pending limitation. His advice? "Always use a non-engagement letter when giving preliminary advice and waiting for prospective clients to take the next step. This protects against running limitation periods." At a minimum, follow this lawyer's advice: "Keep notes on unretained clients." And if you are concerned that you may need to rely on the warnings in a non-retainer letter at a later date, consider sending your letter by registered mail.

Sample non-engagement letters are available in the Practice Support section of the Law Society's website.

## **52 Beware of instructions that will lead to a missed deadline**

Protect yourself from the fall-out of a client's decision not to pursue a viable cause of action in time. "Don't accept instructions to accommodate and comply with a client's wishes if the client isn't prepared to take full and complete advice before giving those instructions," one lawyer advised. In that matter, a client who missed the limitation for applying for CPP credits blamed the lawyer whom she instructed not to apply. The client was negotiating the settlement herself, and asked the lawyer simply to document the agreement. Another lawyer followed instructions to sue only the contractors and not the owner in a slip and fall claim. The limitation expired and the claimants then decided to try to sue the owner. He advises: "Confirm instructions not to commence an action in writing, or send the client away!" At a minimum, make a note to file or detail the advice and your client's instructions as an entry in your time docket.

Be particularly sensitive to prospective clients who are troubled, and be alert to protect yourself. One lawyer attributes the claim against him to a "bad choice of client," accepted because he felt sorry for the client. In that claim, the client signed the retainer agreement, but the lawyer never received the required fee. The lawyer took no steps, but never specifically advised the client of the limitation, and the date passed.

**Clarify what you will and will not do, and pass the risk of what you won't do back to the client. Written confirmation, in clear and unambiguous terms, reduces the risk of a misunderstanding and provides proof of your position, if needed.**

### **53 Send disengagement or wrap-up letter with limitation advice**

If you withdraw from an ongoing legal matter, include a clear warning of any impending or future deadlines in your disengagement letter. If the matter is concluded, advise in writing of any future deadlines that must be met to preserve or protect the client's position. A sample closing letter is available in the Practice Support section of the Law Society's website.

## **HOT SPOTS ●**

### **● 54 Estates**

If you are considering acting for an estate, determine whether the executor is also a potential claimant under the *Wills Variation Act*. If so, you should discuss whether the executor wishes to act as executor or to commence a *Wills Variation Act* claim, and you should advise the executor of the six-month limitation period under the Act.

### **● 55 Judgment creditors**

A judgment is only "good" for 10 years and must be renewed by commencing a new action with respect to the judgment before expiry of the initial 10-year period. By virtue of section 91 of the *Court Order Enforcement Act*, judgments registered against land must be renewed every two years. Practise defensively and advise the judgment creditor in writing, at the time the judgment is rendered or registered against land, of the requirements for renewal. Put the onus on the client to provide timely instructions prior to expiration of the two or 10-year period.

**Develop a standard practice of advising prospective clients of applicable deadlines and that time limits might apply to prevent recovery, and confirm that you do not consider yourself retained in the matter.**

## Acting when not qualified

### WHAT GOES WRONG

In 10 reports, lawyers actually accepted retainers when they were clearly not qualified to act. The problem is much more serious than not knowing an applicable deadline. In these reports, the lawyers' lack of knowledge was so fundamental they should have declined to act.

#### Claim file examples

- Lawyer acting for owners of property being expropriated missed a one-year limit under the *Expropriation Act* for claiming for additional compensation (lost rent). Lawyer had a matrimonial practice, and no experience with expropriation work.
- Criminal lawyer acts for motor vehicle accident claimant and serves writ on ICBC, but did not realize that he needed to serve the vehicle owner and driver as well. Writ expired.

### RISK MANAGEMENT TIPS

#### 56 Think before you agree to act

Some areas of law are so outside the realm of your experience that you are simply not competent to act. If your ability to act competently is in doubt, bail out. For example, one lawyer reported his mistake as “acting in a matter beyond my expertise.” He recommends, “staying within your comfort (competency) zone.” Otherwise, follow risk management tips 30 through 41.

#### 57 Appreciate your ethical obligation

A sophisticated client knows a lawyer's limits. A naïve client relies on you to recognize your limits. Remember your ethical obligation to act only in areas in which you are competent:

*Before accepting a retainer, a lawyer must be satisfied that he or she has the ability and capacity to deal adequately with any legal matters to be undertaken. (Professional Conduct Handbook, Chapter 3, Rule 2. See also Rule 1.)*

**Some areas of law are so outside the realm of your experience that you are simply not competent to act.**

## Failures in managing transferred files

### WHAT GOES WRONG

When you inherit a file you inherit an increased risk of reporting a negligence claim. Why? Our claim files show that you will likely assume that the previous involvement of a lawyer means the matter is well in hand, and thus adopt a more casual approach to the file. These mistakes can arise when a file is transferred between lawyers in the same firm or to a lawyer at an entirely new firm. Sometimes the deadline is missed simply because the new lawyer does not carefully review the file. In other cases, a lawyer misses a deadline because he or she fails to investigate the matter thoroughly, assuming that the previous lawyer has done so.

#### Claim file examples

- Lawyer took over motor vehicle accident file from a former associate of firm. Reviewed file some time later and learned that limitation for commencing Part 7 action elapsed in the intervening time.
- Lawyer took conduct of matrimonial litigation for wife, but failed to note that previous counsel had received an offer to settle, which remained open for acceptance. When husband's business began serious decline, lawyer failed to recommend acceptance of the outstanding offer, and the deadline for acceptance passed.
- Lawyer retained to pursue action against tow truck driver/owner involved in a single vehicle accident. File previously carried by two other lawyers, and new lawyer conducts no independent investigation into accident. Prior to examinations for discovery, lawyer advised by ICBC that the named defendants had no involvement in the accident.

An additional risk of a transferred file is the increased chance that the deadline won't be properly entered into the new system. Examples from personal injury files are predominant, but there are others.

#### Claim file examples

- A lawyer who was retained to apply for trademark protection failed to pay the registration fees within six months of the allowance notice and the trademark application was deemed abandoned. The limitation was captured in his predecessor's system, but not in the new firm's system.
- Lawyer assumed conduct of collections file. Judgment had been registered against two different properties at different times prior to lawyer assuming conduct of file. Registration of judgment expired against one title and the property was transferred.

## RISK MANAGEMENT TIPS

### 58 Read the file

Although much of the legal work-up may already be done, these files require that you dedicate time to their careful and thorough review. Read the transferred file from the bottom up. Once your review is complete, you should have seen—and considered—every single document in the file.

### 59 Recognize the heightened tendency to assume (wrongly)

Inheriting a file from a previous lawyer can give a false sense of security that all appropriate steps have been taken because a lawyer has handled the matter. It's also easy to assume that your new client knows about any outstanding matters that must be addressed. Where appropriate, ask the transferring lawyer for information about outstanding issues. If you do make any assumptions, communicate those assumptions to the client and ask the client to confirm.

Transferring files within a firm heightens the risk of mistakes occurring through erroneous assumptions. Clients assume that the new lawyer knows everything, as the firm itself has collective knowledge. Senior lawyers assume that juniors know all of the procedural steps to be taken. Junior lawyers assume that the more experienced senior lawyer has done everything properly so far. Don't assume—ask.

### 60 Plan for changes and file transfers

Any expectation that a lawyer is unlikely to leave a firm is probably unrealistic. Plan for the contingency of a file transfer and create systems that will avoid anything slipping between the cracks.

For example, one transfer led to a missed limitation for suing a property insurer. In this claim, the firm had no adequate system for monitoring the limitation while the file was being transferred, and the limitation passed while the file was in transition. “Develop a proper file management system that tracks files for all lawyers—so each knows the date issues in other lawyers' files, as well as their own files,” that lawyer recommends.

### 61 Drop a “goodbye, good luck (and there's a pending deadline)” note

When leaving a firm or transferring a file, alert your successor to any deadlines that apply, particularly any that are time sensitive. Connect first in person and then send the confirming note.

**Any expectation that a lawyer is unlikely to leave a firm is probably unrealistic. Plan for the contingency of a file transfer and create systems that will avoid anything slipping between the cracks.**



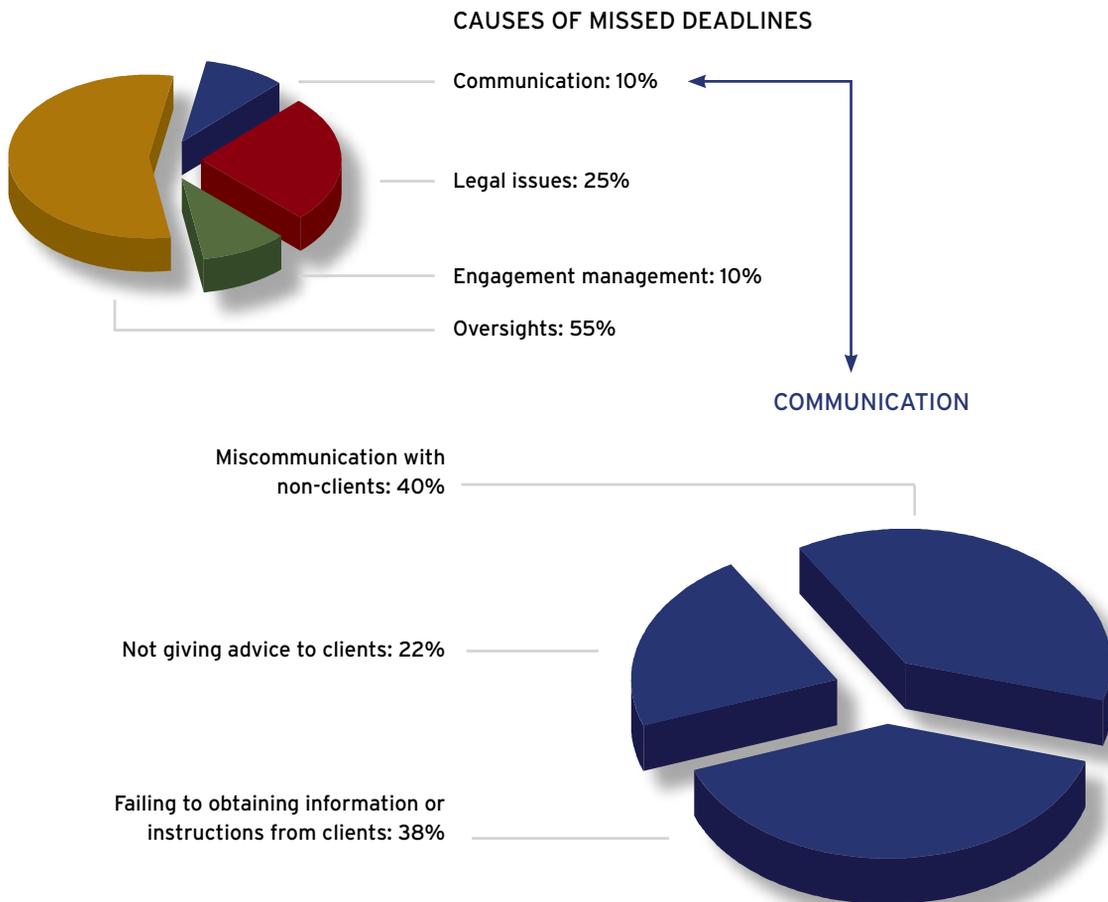
A group of four business professionals (three men and one woman) are gathered around a table, looking at a document. The image is overlaid with a blue tint and a large, semi-transparent graphic of a hand reaching down from the top. The text "Communication Failures" is centered in the lower half of the image.

## Communication Failures

# Communication Failures

The remainder of all missed deadlines occur because the lawyer fails to communicate effectively – to listen, to ask, or to explain. Without a successful exchange of information between the lawyer and client (or others) the information critical to meeting a deadline is lost. Here’s why:

- Not giving advice to clients
- Failing to obtain information or instructions from clients
- Miscommunication with non-clients



## Not giving advice to clients

### WHAT GOES WRONG

Lawyers not only need to stay on top of deadlines but they also need to make sure that their clients are aware of and understand them. When clients do not appreciate deadlines, the chances of missing a deadline are increased.

#### Claim file examples

- A lawyer was retained in a motor vehicle accident claim. The claimant's mother instructed the lawyer to take no further steps as she wanted to negotiate directly with ICBC. The lawyer did not warn the client of the two-year limitation and after the limitation period had passed, the mother instructed the lawyer to file a writ.
- Lawyer allegedly failed to preserve claimant's right to seek maintenance from former common-law spouse. Limitation passed. Lawyer failed to realize that claimant did not understand consequences of not seeking maintenance.
- Lawyer acted for lender with respect to mortgage security. No payments made under mortgage and limitation period to enforce may have passed. Lawyer never discussed limitation issue at time of loan.

### RISK MANAGEMENT TIPS

#### 62 Assume at your peril

Don't fall into the trap of assuming that your client knows or appreciates a deadline. This is easy to do when dealing with a routine matter or a sophisticated client. There is no downside to giving advice, especially if a client might be embarrassed to disclose his or her ignorance of the deadline. Even a client with considerable legal knowledge still requires you to shed light on critical check-in points—limitations and deadlines. Explain what information or action, if any, you require from the client in order to meet the limitation, and the consequences to the client of a missed deadline.

#### 63 Use checklists

The Law Society's practice checklists are an excellent tool to help you flag any deadline that you might consider routine or known to your client. See the Practice Support section of the Law Society's website for the checklists.

**The Law Society's practice checklists are an excellent tool to help you flag any deadline that you might consider routine or known to your client.**

## Failing to obtain information or instructions from clients

### WHAT GOES WRONG

Avoid the common pitfall of assuming that a certain fact is true without verification from the client. This mistake can occur in two scenarios. In the first, the lawyer fails to ask or listen effectively to obtain the facts necessary to meet the applicable deadline.

#### Claim file examples

- The lawyer acted for a claimant in a motor vehicle accident claim. The lawyer didn't question the client, and failed to discover that there were multiple rear end collisions and multiple vehicles involved. The lawyer named only one driver/owner as a defendant, and part of the claim may be lost.
- Lawyer retained to sue "responsible persons" for remediation costs under the *Waste Management Act*. More than two years after the act came into force lawyer learned that he had incorrectly named a bare trustee, rather than the beneficial owners of the land as the plaintiff.
- Failed to determine the exact date of the receipt of notice. Missed limitation to sue for builders lien after receipt of 21-day notice.
- A lawyer acted for a plaintiff in motor vehicle injury claim. He wrongly assumed medical expenses were being paid by ICBC as Part 7 benefits, and did not confirm this. The limitation passed and the claim may be lost.

In the second scenario, the lawyer makes an assumption about the client's intentions, rather than seeking specific instructions.

#### Claim file examples

- Lawyer did not advise claimant of appeal period after loss on 18A application and assumed that client did not want to appeal. Client asked about appeal several days after expiry of time limit.
- Lawyer failed to obtain instructions from client to bring an appeal of an adverse decision on a tax matter within 30 days.
- Lawyer acted for a convict beaten in a penitentiary. Lawyer lost contact with the client and failed to file writ. Limitation missed.

## RISK MANAGEMENT TIPS

### 64 Devote time and care to initial client interview

Devote enough time and attention to the initial interview. Encourage your client to provide you with all of the information relevant to the matter. Ensure that your client understands your questions. A thorough interview at the outset will help you identify, for example, the “lurking” involvement of a municipality or an insurer.

### 65 Face-to-face meetings are best

Hold face-to-face meetings to ensure that information exchanged between you and your client is clearly understood. According to numerous studies, 93 per cent of our communication is non-verbal. Not only do in-person meetings help to ensure effective communication, but they can also demystify lawyers and the legal process. A client who is comfortable with you will be more open and willing to offer information.

### 66 Make effective communication a personal priority

As with any skill, practice makes perfect. Make a conscious decision to devote enough time and attention to ensure that your client understands your question, and that you understand the response. Listen through to the end, not just to when you think you have the gist of what is going on. Make training and refresher courses on effective communication a personal priority and a priority in your office.

### 67 Use checklists

Use the Law Society’s online practice checklists to help you flag issues where you may need to probe your client for true facts, rather than relying on assumptions. These checklists are available in the Practice Support section of the Law Society’s website.

**Hold face-to-face meetings to ensure that information exchanged between you and your client is clearly understood.**

### 68 Remember your role

As a lawyer, your role is to seek informed instructions from your client, and then act in accordance with those instructions. Not only do you have a duty to your client to take instructions, but by doing so, you pass the risk of a wrong decision back to the client, where it belongs.

## HOT SPOT ●

### ● 69 Insurance claims (non-automobile)

During the initial meeting with your client, it is absolutely essential that you obtain sufficient particulars to allow you to determine that the insurer has been given notice and a sufficient proof of loss has been forwarded.

## Miscommunication with non-clients

### WHAT GOES WRONG

Communication difficulties with other lawyers, as well as with various other individuals providing information or services relevant to your client's matter, also lead to missed deadlines. Sometimes a deadline is missed because of a misunderstanding with opposing counsel. Other times, a lawyer retains another lawyer to act as an agent, and the ball gets dropped because of miscommunication between the two. Other slips occur in circumstances where a non-lawyer agent is used. These slips tend to occur because the lawyer fails to ensure that the need for timeliness is communicated. And finally, mistakes happen when the lawyer simply does not devote the time and attention necessary to ensure that the message is clearly understood by either the lawyer or the recipient.

#### Claim file examples

- Lawyer thought he had an understanding with opposing counsel with respect to late filing of factum. Opposing counsel refuses to consent to order to extend time for filing in context of acrimonious litigation.
- BC lawyer retained by Washington State counsel to file writ in BC motor vehicle accident action. Lawyer filed writ and returned it to Washington counsel without advising of the need to effect service on defendant. Assumed Washington counsel would serve writ.
- Lawyer retained to file for Convention Priority trademark protection in Hong Kong. Letter of instruction to agent in Hong Kong does not come to the agent's attention until after the final date for filing.
- Lawyer retained by claimant to provide opinion as to the viability of action to recover damages in "leaky condo" matter. Lawyer wrote to municipality to obtain documentation but did not clearly put municipality on notice of a potential action.

## RISK MANAGEMENT TIPS

### 70 Put it in writing

Not only does writing help avoid misunderstandings, but it can give you the necessary evidence to defend your position. A motor vehicle insurance adjuster told one lawyer that the driver was not at fault for an accident. The limitation passed, and the insurer reversed its position. That lawyer's advice? "Never rely on the oral advice of the adjuster. Get them to commit in writing." Another lawyer recommends: "Always name a John Doe and do not rely upon disclosure received solely from the insurer."

### 71 If it's time sensitive, pick up the phone

Do not rely on faxes, couriers, postal services or emails to ensure that urgent messages actually come to the recipients' attention in time. Speak to a live body, and confirm in writing.

### 72 State your needs clearly

Communicating with others ranges from instructing agents to take steps on your client's behalf to obtaining information from outside sources. Whatever the reason for your contact, bring home the importance of your message. Ask for confirmation that your message has been understood, and that you can rely on the information you have received.

**Do not rely on faxes, couriers, postal services or emails to ensure that urgent messages actually come to the recipients' attention in time. Speak to a live body, and confirm in writing.**

[Click here for a current list of Key Contacts and Resources](#)

# Key Contacts and Resources

Do you have any questions about the information in this guide or other insurance matters? The Lawyers Insurance Fund is here to serve you in a prompt, courteous and professional manner. Please direct your questions as follows:

Lawyers Insurance Fund professional staff			
<b>General email</b>		insurance@lsbc.org	
<b>Director of Insurance</b>	Susan Forbes, QC	sforbes@lsbc.org	604 443-5760
<b>Program Administrator</b>	Margrett George	mgeorge@lsbc.org	604 443-5761
<b>Claims Supervisor</b>	Murray Patterson	mpatterson@lsbc.org	604 443-5762
<b>Claims Counsel/Policy Advisor</b>	Kerry Sheppard	ksheppard@lsbc.org	604 443-5756
<b>Claims Counsel</b>	Ian Maclaren Edna Ritchie Megan Swail Christopher Bolan Kate McLean Leanne Wood Jonathan Corbett Surindar Nijjar	imaclaren@lsbc.org eritchie@lsbc.org mswail@lsbc.org cbolan@lsbc.org kmclean@lsbc.org lwood@lsbc.org jcorbett@lsbc.org snijjar@lsbc.org	604 443-5765 604 443-5763 604 605-5352 604 605-5349 604 605-5377 604 443-5755 604 605-5327 604 605-5314

<b>For telephone advice about reporting a claim or potential claim that relates to a missed limitation or a specific area of law:</b>	<b>Contact</b>
<b>Missed limitations</b>	Ian Maclaren, Leanne Wood, Jonathan Corbett, Megan Swail or Christopher Bolan
<b>Administrative</b>	Megan Swail or Ian Maclaren
<b>Bankruptcy / insolvency</b>	Murray Patterson, Christopher Bolan or Megan Swail
<b>Builders liens</b>	Christopher Bolan, Edna Ritchie or Kate McLean
<b>Civil litigation</b>	Leanne Wood, Christopher Bolan, Megan Swail, Jonathan Corbett, Kate McLean, Ian Maclaren or Edna Ritchie
<b>Commercial</b>	Christopher Bolan, Kerry Sheppard, Murray Patterson, Surindar Nijjar, Edna Ritchie or Kate McLean
<b>Commercial leases</b>	Kerry Sheppard, Christopher Bolan, Surindar Nijjar or Murray Patterson
<b>Construction</b>	Kate McLean, Christopher Bolan or Megan Swail
<b>Corporate</b>	Surindar Nijjar, Kerry Sheppard, Christopher Bolan or Murray Patterson
<b>Creditors remedies</b>	Megan Swail, Christopher Bolan, Murray Patterson or Edna Ritchie
<b>Criminal</b>	Megan Swail or Edna Ritchie
<b>Defamation</b>	Ian Maclaren, Christopher Bolan or Jonathan Corbett
<b>Family</b>	Edna Ritchie or Megan Swail
<b>Foreclosures</b>	Megan Swail, Murray Patterson, Edna Ritchie or Christopher Bolan
<b>Insurance</b>	Kate McLean, Leanne Wood, Megan Swail, Jonathan Corbett or Ian Maclaren
<b>Intellectual property</b>	Ian Maclaren
<b>Lost cheques, lost shares</b>	Murray Patterson or Surindar Nijjar
<b>Personal injury and motor vehicle</b>	Ian Maclaren, Leanne Wood, Jonathan Corbett, Megan Swail or Christopher Bolan
<b>Personal property (PPSA)</b>	Kerry Sheppard, Christopher Bolan or Surindar Nijjar
<b>Real estate</b>	Surindar Nijjar, Megan Swail, Edna Ritchie, Christopher Bolan or Murray Patterson
<b>Securities</b>	Murray Patterson, Christopher Bolan or Kate McLean
<b>Tax</b>	Kate McLean, Christopher Bolan or Murray Patterson
<b>Wills and estates</b>	Megan Swail, Kerry Sheppard, Leanne Wood or Surindar Nijjar
<b>For advance rulings on whether an activity, person or entity is covered under the insurance policy</b>	Margrett George, Kerry Sheppard, Christopher Bolan, Leanne Wood or Surindar Nijjar
<b>For general information, unrelated to claims or potential claims</b>	Margrett George or Susan Forbes, QC

**Visit the Lawyers Insurance Fund online ([www.lawsociety.bc.ca](http://www.lawsociety.bc.ca))**

Bookmark the Insurance section of the Law Society's web site for information on:

- Insurance Policies (coverage and reporting of claims or potential claims)
- Reporting Guidelines
- Coverage Enquiries and Rulings
- Insurance Issues: Program Reports
- Risk Management
- New Initiatives

**For more information on best practices:**

Barbara Buchanan, Practice Advisor

Direct: 604 697-5816

E-mail: [advisor@lsbc.org](mailto:advisor@lsbc.org)

**For more information on setting up and using systems:**

Dave Bilinsky, Practice Management Advisor

Direct: 604 605-5331

E-mail: [daveb@lsbc.org](mailto:daveb@lsbc.org)

**For Practice checklists and sample letters:**

Refer to the Law Society's practical, online checklists available from the Practice Support section of our web site to help you flag limitations and deadlines. Sample retainer letters and non-engagement letters are also available in this section.

For **Alert! bulletins**, information on the benefits of e-filing, and other risk management publications (including this one):

See Risk Management under the Insurance section of the Law Society's website

**Other useful resources**

*British Columbia Limitations Manual* (LexisNexis Canada). For more information, visit [www.lexisnexis.ca](http://www.lexisnexis.ca)

*UBC Law Review Table of Statutory Limitations*

The Canadian Bar Association has practice advisory panel members who offer free consultations in specific areas of the law. For a list of panellists, call (604) 687-3404 or Toll Free: 1-888-687-3404. CBA members can access the list online at [www.cba.org/bc](http://www.cba.org/bc)

**After-hours court filings**

If it is the last day of a limitation period and the Registry is closed, you can seek leave to have the Registry open. See the notice "Civil Emergency After-Hours Applications", on the BC Supreme Court web site ([www.courts.gov.bc.ca/sc](http://www.courts.gov.bc.ca/sc)) and contact the on-call Deputy District Registrar at 604 833-4642.

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