

## LPIC helps lawyers comply with anti-money laundering legislation

A detailed, Web-based Guide designed to help lawyers comply with the many obligations they face under the federal government's new anti-money laundering legislation is now available online on the practicePRO website.

The guide is the major element of a comprehensive program launched by LPIC to assist lawyers in dealing with the new *Proceeds of Crime (Money Laundering) Act (PCMLA)*.

The four-part program consists of:

1. an eight-page bulletin which provides lawyers with an overview of the key obligations they face under the Act. Copies of the bulletin were mailed to all lawyers in mid-May;
2. a detailed Web-based Guide that reviews obligations under this legislation. Go to [www.practicepro.ca/mlguide.asp](http://www.practicepro.ca/mlguide.asp) to download version #1 of this Guide. The statement of the law in version #1 is current to May 17, 2001. The Guide will be updated regularly to reflect

changes in the Act, Regulations and Guidelines over the next 12-18 months;

3. a Draft Compliance Manual, being jointly produced by LPIC and the Law Society of British Columbia. This manual, which will assist law firms in implementing a compliance regime, should be available for download from the practicePRO website by late June;
4. an e-mail news service, to which lawyers can subscribe to receive notification of updates to the Web-based Guide or other news relevant to the proceeds of crime legislation. Go to [www.practicepro.ca/mlnotice.asp](http://www.practicepro.ca/mlnotice.asp) to subscribe to this list.

### October deadline looms

Although the exact timing remains uncertain, lawyers could be required to have a compliance regime in place and to commence reporting suspicious transactions as early as October 2001.

The full text of both the bulletin and Web-based Guide are available online through the practicePRO website at [www.practicepro.ca/mlguide](http://www.practicepro.ca/mlguide).

### Employed lawyers may be exempt

Contrary to earlier interpretations (and to what is stated in the bulletin), it now appears that many in-house counsel and other employed lawyers are not in fact caught by the provisions of the Act. This is discussed in more detail in the section of the Web-based Guide titled *What "Legal Counsel" Activities Trigger PCMLA Obligations*.

### Solicitor-client privilege issues

Under the PCMLA, communications protected by solicitor-client privilege is given full protection in some circumstances, and no protection in others. As well, you must fully disclose

*continued on page 2*

### Use the online COACHING CENTRE by September 15 to save \$50 on your 2002 insurance premium

Do you need to enhance your skills in the areas of time management, coping with stress, communications, procrastination, or business development? LPIC's online COACHING CENTRE (the "OCC") is an innovative a web-based self coaching tool that can help you with these critical skills.

Because we believes the OCC will help lawyers avoid claims and be more successful in the practice of law, LPIC will give you a \$50 premium discount, to be applied against your 2002 insurance

premium, for using the OCC. To qualify for this discount, you must **complete three modules of the OCC**, and complete the online Survey and Declaration by **September 15, 2001**, indicating you have done so,

On average each module takes only 10 to 15 minutes to complete. As the OCC is Web-based it allows you to work at a time and place of your choosing.

Visit the practicePRO web site at [www.practicepro.ca](http://www.practicepro.ca) to access the OCC.

## IN THIS ISSUE

### TitlePLUS Newsbriefs

Two innovative new products – LawyerMortgage.com and RealtiPLUS 2.5 – put TitlePLUS at the leading edge of the conveyancing and title insurance marketplace. See pages 3-4

RealtiPLUS

### Case management

LPIC examines how 100% Case Management will significantly change civil litigation practice and procedure and provides some tips to help you prepare for the July deadline. See pages 5-7

## LPIC Annual Report online

An A (Excellent) rating from a leading rating organization capped a year that, by many measures, was one of the most successful yet for LPIC. This is the key message of the 2000 LPIC Annual Report, mailed to lawyers this spring.

Among the key accomplishments cited in the current annual report are:

- **Significant reductions in the base premium for each of the last five years:** Base premiums for 2001 are at \$2,800 per lawyer, 50 per cent lower than the \$5,600 premium in effect in 1995.
- **Continued growth in LPIC's Excess Insurance business:** LPIC now provides close to 650 firms with additional coverage above the primary program's coverage limits.
- **Reductions in overall claims costs and claims reported in 2000:** Costs fell 13 per cent to \$52.7 million, led by an \$8 million decline in indemnity payments; the number of new claims reported stood at 1,800 compared to 2,000 a year ago.
- **Record results for TitlePLUS:** As well as growing its policy volumes by 75 per cent, TitlePLUS increased its penetration among financial institutions and launched RealtiPLUS, the fully integrated desktop for the real estate bar.
- **Innovative practice tools from practicePRO:** A *Special Report on Litigation* highlighted the

The full text of the 2000 Annual Report, including all charts and graphs, is also available online at [www.lpic.ca](http://www.lpic.ca).

increase in litigation claims; a new e-learning initiative – the online COACHING CENTRE – helps lawyers address the soft skills issues that often give rise to a claim; and a new booklet, *Managing the Practice of Investing in Clients*, helps lawyers address

the need to understand and manage the issue of taking an equity interest in a client's business.

On the financial side, LPIC reported net income of just under \$4 million, an asset base of \$394 million and equity of \$63.6 million.

## Key dates to note

### July 15, 2001

Third quarterly insurance premium instalment is payable for lawyers paying by quarterly instalments.

### July 30, 2001

Real estate and civil litigation transaction levies and forms are due for the quarter ended June 30, 2001.

### October 15, 2001

Fourth and final quarterly insurance premium instalment is payable for lawyers paying by quarterly instalments.

### October 31, 2001

Real estate and civil litigation transaction levies and forms are due for the quarter ended September 30, 2001.

### November 1, 2001

Deadline for e-filing 2002 liability insurance applications.

### November 15, 2001

Deadline for filing 2002 liability insurance applications.

### January 31, 2002

Real estate and civil litigation transaction levies and forms are due for the quarter ended December 31, 2001.

To file transaction levies online, visit [www.lpic.ca](http://www.lpic.ca), and click on *File Online*. You will be prompted to enter your unique, confidential password as well as your Law Society number. If you do not yet have a password but wish to obtain one, you can request a password through the *File Online* page. As well, you can access a forgotten password electronically by visiting *File Online*. You can also use this password to file your 2002 LPIC insurance application starting October 1, 2001.

*continued from page 1*

information that has traditionally been treated as "confidential" in the solicitor-client context.

Advisory Services at the Law Society of Upper Canada has posted a document on its website that reviews the issue of solicitor-client

privilege and confidential information. It is available at [www.lsuc.on.ca/pdf/laundering.pdf](http://www.lsuc.on.ca/pdf/laundering.pdf)

On May 23, 2001 the Federation of Law Societies passed a resolution to take steps to deal with these problems. It is available at [www.flsc.ca/english/publications/resolution2001moneylaundering.htm](http://www.flsc.ca/english/publications/resolution2001moneylaundering.htm).

The Federation is seeking to delay the proclamation of the PCMLA to enable it to express its concerns to the federal government, and to seek amendments to address these concerns. Ultimately it will review the possibility of mounting a constitutional challenge of the relevant sections of the PCMLA if necessary.

## TitlePLUS launches online insurance application at [www.LawyerMortgage.com](http://www.LawyerMortgage.com)

TitlePLUS has taken the first major step towards the era of online real estate deals with the launch of LawyerMortgage.com, a website that allows lawyers to apply online, in real time, for TitlePLUS coverage for their mortgage-only transactions.

The site, a joint initiative of TitlePLUS and Cakesoft Inc., guides lawyers through the application process, and generates all of the required title insurance documentation associated with the transaction.

Consumers and lawyers benefit from LawyerMortgage.com in numerous ways:

- Streamlined due diligence: LawyerMortgage.com significantly reduces the amount of time and associated costs that lawyers spend on searches and inquiries,

requiring, for example, only one subsearch of title, in most circumstances. This feature, combined with the ease of use of the online application itself, reduces the amount of time the lawyer spends on the actual transaction, while still ensuring the consumer receives professional service and independent legal advice.

- Cost savings: The premium for LawyerMortgage.com title insurance coverage is only \$60 (plus a \$5 processing fee and taxes) – significantly less than the cost of obtaining title insurance coverage for mortgage-only transactions in the conventional manner.

- Funds may be advanced instantly: Because lawyers using the site are working in a live environment, they almost always receive instant approval of title insurance coverage and the authorization to advance to clients the required cash before the mortgage is registered on title. Lenders have the security they need through the title insurance policy, which is effective as of the advance of funds.
- 24/7 access: Because the application process is electronic and easy to use, lawyers can quickly complete their work anywhere, anytime.

For more information on LawyerMortgage.com visit [www.titleplus.ca/Content/Lawyers/lawyer mortgage.asp](http://www.titleplus.ca/Content/Lawyers/lawyer mortgage.asp).

## RealtiPLUS™ 2.5, the one-stop desktop, harnesses technology for real estate bar

The June launch of RealtiPLUS 2.5 – “the integrated real estate desktop” – helped lawyers take a major step towards the online, fully automated office of the future.

The new software conveyancing program, developed jointly by TitlePLUS and CAKEsoft Inc., provides lawyers with a single, fully unified desktop from which they can perform virtually all of the functions involved in purchase, sale and mortgage transactions, including:

- production of documents, such as search and inquiry letters, closing documentation, and reporting letters;

- file management;
- database access and management;
- online electronic search of properties in Teraview®;
- online, seamless application for TitlePLUS title insurance protection for the transaction.

RealtiPLUS significantly streamlines real estate practice, reducing the time it takes to complete transactions from data entry to generation of closing documents by up to 30 per cent.

Lawyers using RealtiPLUS work on a single data platform, entering all information pertaining to the transaction only once; this data

automatically pre-populates all other relevant functions, such as the TitlePLUS application, various search and inquiry letters that are generated by the system, and even the Teraview® search windows. The software produces the appropriate requisition letters, reporting letters and closing documents. To facilitate the move to electronic registration, RealtiPLUS 2.5 also automatically generates the companion paper documents for e-reg™, including the Document Registration Agreement (DRA). Extensive databases, template

*continued on page 4*

## TitlePLUS insures farm properties

TitlePLUS has launched its Farms program, providing TitlePLUS coverage for purchases and refinancings of farm properties valued at up to \$1 million. The Farms

program applies to all farm properties, irrespective of whether the farm is an operating business. Coverage for these properties is available only through the

TitlePLUS Dial-In program at (416) 598-5899 or 1-800-410-1013. Premiums will vary based on the purchase price or mortgage amount.



## TitlePLUS Focus: A TitlePLUS newsletter



This new publication, launched by TitlePLUS for its subscribers and other real estate lawyers, provides an overview of recent developments at TitlePLUS, including insights into some of the claims and the advantages of TitlePLUS legal

services coverage. It also provides tips on how to make the best use of TitlePLUS in real estate transactions. To obtain a copy, e-mail [titleplus@lpic.ca](mailto:titleplus@lpic.ca) or call (416) 598-5899 or 1-800-410-1013.

## “Credits” for title insurance and the Rules of Professional Conduct

Some suppliers (not TitlePLUS) appear to be offering incentives to lawyers purchasing title insurance policies. A letter circulated by one software supplier states that “every time you order [a title insurance policy], you will receive a credit from ... to the cost of the software package. The more you order, the closer you get to free software.”

Lawyers being offered these incentives should be mindful of the Rules of Professional Conduct:

- Rule 2.02 (11): A lawyer shall not receive any compensation, whether directly or indirectly, from a title insurer, agent or intermediary for recommending a specific title insurance product to his or her client.
- Rule 2.02 (12): A lawyer shall disclose to the client that no

commission or fee is being furnished by any insurer, agent or intermediary to the lawyer with respect to any title insurance coverage.

The commentary goes on to address the fact that there cannot be acceptance of any hidden fees by the lawyer, including the lawyer’s law firm, any employee or associate of the firm, or any related entity.

*continued from page 3*

letters, forms and applications, and an up-to-date precedent library further streamline the process.

A major advantage of RealtiPLUS 2.5 is its integration with Teraview®, the online search facility. As well as

pre-populating the Teraview® search windows, RealtiPLUS 2.5 imports data from an online property search back into the system. Now in testing is the facility to

pre-populate the e-reg™ software with data from the lawyer’s electronic RealtiPLUS file, thus further reducing the need for duplicate entry.

**For more information on RealtiPLUS, visit [www.titleplus.ca/content/lawyers/default.asp](http://www.titleplus.ca/content/lawyers/default.asp).**

# Case Management:

## A new way to manage civil cases

By Cynthia F. Martin,  
LPIC Claims Examiner

Effective July 3, 2001 100% Case Management will arrive in Toronto. This innovative new system for managing most civil cases is designed to reduce delay, decrease unnecessary costs and to facilitate early and fair resolution of civil disputes.

There will be many changes to the practice and procedure of civil litigation as a result of case management. Lawyers and their clients will be met with greater involvement in their cases by Judges, Masters and other court personnel who will be much more dynamic concerning both timing and management issues of civil cases as they move through the litigation process. A new approach to both the pace and style of practicing litigation will be required to efficiently manage these changes.

This article introduces you to some of the key features of 100% Case Management and provides you with some practice tips so that you will be ready for July 3, 2001.

### RULE 77 – Case Management Procedure

Rule 77 sets out the procedure for case management. Presently this rule applies to approximately 25 per cent of eligible civil cases in Toronto. Amendments to Rule 77 which also become effective on July 3/01 provide that all newly commenced actions in Toronto will be case managed unless otherwise excluded by Rule 77.

#### Rule 77 Highlights to note:

#### Commencing a Proceeding

1. All actions and applications commenced after July 3/01 will be case managed except family, estates, construction liens, mortgage, bankruptcy, class actions, Toronto Simplified Rules actions, and Toronto commercial list actions.

2. Upon issuing a claim the plaintiff must choose standard or fast track.

3. A team of judges and a case management master will be assigned to your case. The master will hear all master's issues (i.e. motions, case conferences) arising from the case.

4. New important time limits begin to run upon issuance:

- Within 180 days of commencing the proceeding, the plaintiff must file a case timetable, agreed to by all parties, for completing productions, discovery and related motions. This means that counsel have to either agree on scheduling or must seek a case management master to set a timetable. If you fail to do so the master will fix a timetable. If a party fails to meet a deadline set by the timetable the possible sanctions include a dismissal of the proceeding or striking out the defence, with cost consequences.

- Within 180 days of commencing a proceeding either a defence must be filed or default judgment obtained, otherwise the action will be dismissed by the Registrar as abandoned. The dismissal of an action as abandoned has the same effect as a dismissal for delay.

#### Mediation

A second set of time limits begin to run once the first statement of defence is filed even if there are defendants who have not yet been served. These include:

- Within 30 days of the filing of the first defence the parties must select a mediator pursuant to rule 24.1. If they fail to do so a roster mediator is automatically assigned by the Local Mediation Coordinator.
- Within 90 days of the filing of the first defence, a mandatory mediation session must be completed (or parties must agree to

postpone the mediation by an additional 60 days in a standard track case).

- Each party must serve a statement of issues at least seven days before the mediation. The pleadings and documents of central importance to the case must be included. If a party fails to serve a statement of issues or to attend within the first 30 minutes of the mediation, the mediator may cancel the session and file a Certificate of Non-Compliance.

## Discovery

Within 150 days (fast track actions) or 240 days (standard track actions) from the filing of the first defence all production, discovery and any motions arising therefrom must be held.

## Motions

There are a number of new and unique features concerning Toronto case management motions:

- The same case management master or judges will hear all interlocutory matters within an action.
- Motions must be brought on a case management motion form (77C) with or without a motion record or supporting material.
- A variety of procedures may be used to conduct the motion: personal attendance, by telephone or video conference, in writing or by fax.

## Case conference

Case conferences are one of the most useful tools of case management. Rule 77.13 sets out the procedure. The key features are:

- Case conferences may be convened at any time at the request of a party or on the initiative of the case management master or judge.
- The conference may be conducted in person, or by telephone or video conference.
- The conference can have many purposes: for the presiding master or judge to review and amend the case timetable; to explore resolution of contested issues; to refer certain issues to alternative dispute resolution (on consent); to make procedural orders without the necessity of a formal motion; to give whatever directions may be necessary for the conduct of a proceeding; to incorporate flexibility into the management of the proceeding to meet the needs of the litigants; to discuss and manage the issues raised by counsel.

## Settlement Conferences

The Rule 77 settlement conference is similar to a Rule 50 pre-trial conference but with important differences.

Settlement conferences are the second forum pursuant to the case management rule to facilitate a resolution of the case, the first opportunity being the mandatory mediation. Noteworthy elements of case management settlement conferences are:

- The settlement conference is mandatory and must take place no later than 150 days after the first defence is filed in fast track cases and 240 days in standard track.
- All discoveries, production of documents, motions and experts'

reports must be completed at least 10 days before the conference.

- A settlement conference brief must be more extensive than the old pretrial memos. It shall contain not only a summary of facts, issues and law but also a list of witnesses, a summary of their evidence, transcript excerpts, expert reports, and pleadings.
- The trial date is assigned at the settlement conference in fast track actions (standard track action trial dates are set at Trial Scheduling Court).
- The parties may be directed by the case management judge or master to attend the settlement conference.

## Trials

Fixed trial dates are a key feature of case management. Litigants will not only have the benefit of certainty of a trial date but will experience reduced costs because of less wasted preparation time by counsel. Counsel will be able to plan their schedules more efficiently as they will no longer have to double and triple book. Trial dates are as set out in 'settlement conferences' above.

## Trial Management Conferences

Trial management conferences are available to deal with trial related issues such as how the trial will be conducted- the order and number of witnesses, ways to streamline the presentation of evidence and the length of the trial. They can be arranged upon the initiative of counsel or the Court.

## Call-Over Court

The existing backlog of cases (with estimates ranging from 46,000 to 49,000) will be brought into case management by 2004.

To deal with the backlog of cases a system of “Call-Over Courts” has been created which will run for one year. The key features are as follows:

- Call-Over Court Notices will be sent to counsel of record in all non-case managed cases starting with the earliest cases.
- Approximately six weeks’ notice of the hearing is given.
- The Notice should be completed by counsel and returned to the Call-Over Court Co-ordinator within seven days prior to the hearing.
- The purpose of the Court is to determine the status of non-case managed cases and to assist in reaching a resolution if the case cannot be easily disposed of.
- If all parties agree the case is settled, no attendance is required. Simply advise the Court that the matter has been settled in full, dismissed or abandoned by completing and returning the Notice.
- If the action is pending counsel for all parties must attend to speak to the matter
- Motions, on proper notice, can be brought to the Call-Over Court.
- Pre-trial and trial dates may be set if counsel or unrepresented parties are present.

- If no one attends the Call-Over Court date a trial date will be set to start approximately four

weeks after the Call-Over court date.

## Practice Tips: Getting ready for case management

1. Case management is driven by deadlines so be very careful of the timetabling requirements
2. Prepare a checklist for each file to ensure that you are tracking the steps and timetable deadlines accurately. Your file management system should be set up to automatically generate a timetable at a pre-programmed time.
3. As a plaintiff thoroughly learn your case at the outset rather than waiting for discoveries. This way you will be better able to anticipate major steps in a proceeding and deal with potentially controversial interlocutory matters as soon as possible.
4. Whether acting for plaintiff or defendant, develop a draft timetable at the outset of your retainer. If you determine that the timelines set out in the case management rules are too short for a particular case, tailor your draft timetable accordingly and bring it to the first case conference, with reasons for the variation in timetabling at the earliest opportunity. Discuss the timetable well before the case conference with the other side.
5. Communicate with your client about the timetable. It has to work for both of you.
6. All case managed cases are subject to mandatory mediation so address the choice of mediator early on. Otherwise the court will appoint a mediator on your behalf.
7. Consider if you can bring any intended motions at a scheduled case conference. This will have the benefit of one rather than two or more attendances which, besides being an efficient use of the Court’s and your time, will keep your client’s costs down.
8. Anticipate a Call-Over Court Notice on old files by retrieving the file and contacting your client and opposing counsel as soon as possible. If the matter has been settled, abandoned, or otherwise disposed, notify the court at least seven days before the Call-Over Court date. If the case is pending, make the attendance as useful as possible by preparing a draft timetable to assist at the Call-Over Court. Consider whether an early pretrial would be of assistance and discuss the timetable with opposing counsel.

## Conclusion

Mandatory case-management is a system designed to be more efficient and cost effective for litigants. While it will no doubt have its

growing pains, the system is clearly less cumbersome and considerably more flexible in its approach to managing litigation.

## E-mail: The subject line is key

E-mail tends to be a very common, casual and quick way to communicate. In 1999, more than 400 billion e-mails were sent in the United States (compared to just over 200 billion pieces of regular mail delivered by the U.S. Postal Service).

The problem with e-mail is that senders tend not to take very much time in drafting their messages. Many use short forms or partial sentences. Subject lines often do not properly describe the contents of the message.

Next time you are drafting the subject line for an e-mail message, carefully consider how people will use this information. It is what people will first see when they receive the message. It will likely play a big part in their decision to read the message at that time. Later on, it is also what people will use to find the message if they keep it. And it will stay with the message if it is forwarded to someone else, or sent back to you as a reply.

For example, what tells you more: "letter" or "Second draft of reporting letter for your review"?

The subject line is very important. Take time to put a reasonable description of what the message is all about. It will help to get your message read.

If you want to receive basic and practical legal technology tips by e-mail on a biweekly basis sign-up for practicePRO Tech Tip at [www.practicepro.ca/pptip.asp](http://www.practicepro.ca/pptip.asp)

- Dan Pinnington  
Director, practicePRO

## Significant Stats

### 1 in 7 LPIC claims is caused by procrastination

Procrastination is the single most common time management problem, and is the second most common cause of claims against lawyers in the LPIC claims portfolio. Procrastination accounted for 4,608 claims (15.3 per cent of all claims) between January 1, 1989 and July 31, 2000. These claims cost LPIC almost \$52.5 million.

If procrastination is an issue for you, please visit practicePRO's online COACHING CENTRE for help in dealing with this problem. The modules in the Overcoming Procrastination workshop will help you to overcome procrastination and work smarter, not harder. Modules 1-8 will help you organize and prioritize. Modules 9-15 will provide new time management skills. Modules 16-18 equip you to delegate more effectively. Modules 19-21 will help you think differently about your work and give you a sense of control over your time. You'll find the online COACHING CENTRE at [www.practicepro.ca](http://www.practicepro.ca)

### LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LPIC)



President: Michelle Strom

LPIC news is published by the Lawyers' Professional Indemnity Company (LPIC) to update practitioners about LPIC's activities and insurance programs, and to provide practical advice on ways lawyers can minimize their exposure to potential claims.

Editor: Dagmar Kanzler  
[kanzlerd@lpic.ca](mailto:kanzlerd@lpic.ca)

Tel: (416) 598-5800 or 1-800-410-1013  
Fax: (416) 599-8341 or 1-800-286-7639  
[www.lpic.ca](http://www.lpic.ca)

#### Disclaimer:

This publication includes techniques which are designed to minimize the likelihood of being sued for professional liability. The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.

