

An effective intake procedure creates the foundation for a good working relationship with your client. When there is a good working relationship and good communication between the lawyer and client, the risk of an errors and omissions claim is significantly reduced.

An effective intake procedure includes:

- a good conflicts checking system
- an in-depth interview at the intake stage
- an effective client screening process
- an analysis of your practice workload, your resources, and personal commitments
- an analysis of your competencies in the practice area
- appropriate retainer agreements, engagement letters, and declination letters

In this article I address conflicts. The other components of an effective intake procedure will be covered in subsequent articles.

Conflicts are a concern both ethically and from a risk management perspective. Chapters 6, 6A and 7 of our Legal Ethics Handbook (www.nsbs.ns.ca/handbook/handbk_jan17_01.pdf) deal with the issues of conflict of interest. Take the time to re-read them.

Representing more than one party is always risky and frequently results in claims, because the parties' interests are at odds.

All good conflicts checking systems should:

- be integrated with other office systems
- require that the conflicts check be done in a consistent format and be completed by persons trained and responsible to do the check
- be easily accessible to everyone in the office
- require that the check be documented in the file for names checked and who completed the check
- require that there be a check before an appointment is set; before a file is opened and when any new party enters the case
- require a double check when the file is opened to confirm the conflict check was done
- check for previous names (surname and given) and for the various spellings of names

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- require that all persons or entities connected with the case, and their connection to the client are entered into the system
- include in the list, lawyers in the firm, other staff and close relatives of staff and lawyer
- include one-time consultations

Even with a good conflicts checking system some conflicts may arise during representation. You should develop a policy to handle conflicts as they arise and this policy should be communicated to the client in your engagement letter/retainer agreement.

The Supreme Court of Canada in *R v. Neil* [2002] 5 C.J. No. 72 and [2002] 3 S.C.R. 631, discussed the various aspects and dimensions of duties to the client, including loyalty, candor, commitment and avoidance of conflicting interest. The court also stated that the general rule is that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another current client – even if the two mandates are unrelated – unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyer reasonably believes that he or she is able to represent each client without adversely affecting the other.

Take a minute to complete the “Conflicts of Interest Checklist” (located on the LIANS website at www.nsblcf.ca) to evaluate your firm’s exposure in the area of conflicts.

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