

Insurance/Liability for Delegated Tasks and Functions

Stephen McLellan, Legal Counsel

Direct Supervision Required

6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

A lawyer also has complete legal responsibility for delegated tasks and functions = It is the lawyer's error regardless of who actually made the error

LAWYERS' PROFESSIONAL LIABILITY INSURANCE GROUP POLICY

- **Individual Insured** means a **person who has caused or is alleged to have caused an Occurrence** and who is a member or former member of the Law Society
- **Occurrence** means an **error** in the rendering of **Professional Services** to others
- **Professional Services** are services normally provided or supervised by a lawyer within the scope of a usual lawyer-client relationship

Bottom Line = the lawyer is “the person who has caused the error” in the rendering of professional services to others

Note: Non-lawyers are NOT insured under the CLIA Group Policy

- Staff and legal assistants DO NOT have a duty of care to clients for tasks or functions delegated to them.
- Staff and legal assistants are NOT held to a standard of care for tasks and functions delegated to them.
- The lawyer has the duty of care to clients.
- The lawyer is held to a standard of care.

Vicarious Liability does not apply to delegated tasks or functions...

Vicarious liability is not a discrete tort. It describes the responsibility that one person may have for the torts of another because of the relationship between them.... It does not displace the personal liability of the tortfeasor. It merely provides the plaintiff with an alternative defendant who is more likely to be solvent, to have liability insurance, or to be able to spread the loss in some other way. [*The Law of Torts*, Philip H. Osborne (Irwin Law; 6th Ed)]

The lawyer is the tortfeasor = *directly* liable for errors made while performing delegated tasks and functions

Legal Profession Act

29.1 The *practice of law* is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person that require the knowledge and skill of a person trained in the law, and includes the following:

- a) giving advice or counsel to others with respect to their legal rights or responsibilities or the legal rights or responsibilities of others;
- b) drafting or completing legal documents or agreements that affect the legal rights of an entity or person;

The *practice of law* includes drafting or completing legal documents or agreements that affect the legal rights of an entity or person.

A lawyer is permitted to delegate the task of drafting legal documents to a non-lawyer, but because the lawyer is the only person responsible for the document and its use, it is the lawyer and not the staff or assistant who is engaged in the practice of law.

Professional Services are services... supervised by a lawyer within the scope of a usual lawyer-client relationship [Policy Definition]

The *practice of law* includes giving advice or counsel to others with respect to their legal rights or responsibilities or the legal rights or responsibilities of others.

The lawyer is not permitted to *delegate* the task or function of giving advice to others with respect to their legal rights.

Non-lawyer staff must understand that are prohibited from providing any sort of advice to others with respect to their legal rights

Note: the coverage analysis provided in this presentation would not necessarily apply, as this scenario creates the possibility of the non-lawyer being independently liable to the person who relied on the non-lawyer's advice.



Delegation Checklist

This delegation checklist can be used for delegating tasks or receiving assignments.

- What is the assignment? What is the deliverable?
- How does the assignment fit into the larger legal matter? What's the context?
- What's the scope of the assignment? Are there particular must-haves?
- What resources are available? (e.g., precedents; existing research; other staff to assist)
- When are the check-in points? How should we check in? (e.g., in person meeting; online; email)
- What's the timing? What's the agreed to deadline?
- What else do I need to know? (e.g., client specific needs)
- When will there be a debrief / constructive feedback? In what format?
- What's the next assignment? Step?

<https://www.practicepro.ca/practice-aids/checklists/delegation-checklist/>

The lawyer is responsible for the **Individual Deductible**:

- **\$5,000** for all claims on which damages are paid, *unless* a real estate matter, missed limitation period or claim arising from a conflict
- **\$7,500** for missed limitation period or handling of a real estate matter;
- **\$10,000** for a claim arising from a conflict

Questions?