



Ineffective Assistance of Counsel Claims – LAWPRO is here to help

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The appeal ground of ineffective assistance by trial counsel is steadily on the rise, as most recently demonstrated by the Ontario Court of Appeal case *R. v. Trought*, [2021 ONCA 379](#). Lawyers need to know how to best protect themselves while complying with their ethical responsibilities to their former clients. The first step is to contact LAWPRO. Without LAWPRO's help at an early stage, you may find you have taken a misstep that can have significant consequences to your standing, your insurance coverage, and your personal exposure to a later civil suit.

In responding to allegations of ineffective assistance or other allegations, LAWPRO retains experienced, respected and highly effective criminal defence lawyers. LAWPRO assists with issues of waiver of privilege and ensures that a lawyer has the full benefit of the Court of Appeal's [Practice Direction Concerning Criminal Appeals](#) and [Superior Court Protocol](#) addressing allegations of ineffective assistance of counsel so that the lawyer's reputation/conduct is not tarnished unfairly or without an opportunity to respond.

If LAWPRO is unaware of a matter, it cannot help. Moreover, not reporting a matter to LAWPRO can heighten risk to both personal reputation and of a potential future civil claim. Failing to report an ineffective assistance appeal or reporting late can cause a denial of insurance coverage should there later be a civil claim in which the lawyer becomes a defendant in an action for damages. And it is no longer just criminal bar lawyers who face the risk of claims from "ineffective counsel" appeals. Members of the immigration bar are seeing this issue raised with increasing frequency. LAWPRO counsel are experienced in assisting both criminal and immigration bar lawyers through the risks that these appeals/allegations can mean for them.

When to Report

A lawyer who has a policy with LAWPRO should report the matter to LAWPRO as soon as they are placed on notice that allegations of ineffective assistance have been raised in any circumstance or are being investigated or considered. Ideally an Insured should report if they suspect an allegation might be forthcoming. It is a term of a lawyer's insurance policy with LAWPRO. Condition E of the Policy states:

E. Providing notice of CLAIM:

If during the POLICY PERIOD the INSURED first becomes aware of any CLAIM or CIRCUMSTANCE(S), such INSURED shall immediately give written notice thereof or cause written notice to be given to: Lawyers' Professional Indemnity Company (LAWPRO)

The INSURED shall furnish promptly thereafter to the INSURER all information on the CLAIM or CIRCUMSTANCE(S) which is in the INSURED'S possession or knowledge.

If a CLAIM is made against an INSURED, such INSURED shall immediately forward to the INSURER every demand or originating process received by such INSURED.

Examples of points in time when a lawyer should report a claim to LAWPRO include:

- A former client's new appeal counsel writes or calls you and asks to receive a copy of your file, advising of their intent to investigate allegations of ineffective assistance (or similar wording).
- Crown counsel contacts you and asks for your cooperation with an affidavit to respond to an appeal.
- You yourself decide or think your conduct fell below the standard of care or there might be an issue on a file you handled, and you intend or think you should alert your client to this.
- You learn a former client is seeking to set aside a guilty plea and alleges they received improper or incomplete advice from you.

On the other side of the equation, if you are counsel on an appeal or have been retained by a client to investigate allegations of ineffective assistance against your client's former lawyer you can write a letter to the former lawyer and request that they report the matter to LAWPRO.

The takeaway is that LAWPRO has a strong success rate in responding to allegations of ineffective assistance of counsel and other allegations against the criminal bar, but LAWPRO cannot assist if it does not know about them. These allegations should be reported to LAWPRO as soon as possible. When in doubt – report it to us.

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