



# ERRORS & OMISSIONS

A periodic update from the  
Lawyer's Professional Indemnity Company

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## Claim changes and branching out in '93

As the economic climate changes, so do the claims against lawyers. In 1991 and 1992 there were many high value claims made against lawyers from investors, mortgagees, and disgruntled clients who had lost money on their investments as a result of the fall of real estate values.

What's happening in 1993? So far the claims have not diminished in number but the average value has decreased.

The following table illustrates the number and value of claims in the first quarter of 1993 as compared to the first quarter of 1992.

	Number of Claims	Total Value	Average Value
1992 (Jan-Mar)	724	\$7,658,071	\$10,577.45
1993 (Jan-Mar)	848	\$7,025,557	\$8,284.85

In this economy, many lawyers are branching out into various new areas of practice in order to make ends meet. The following is an example of the type of claim which can result.

The real estate practitioner had previously acted for the client in connection with the

refinancing of an investment property. When the client returned several months later and requested the lawyer's help in filling out forms for the eviction of tenants, the lawyer's instinctive response was correct. The lawyer indicated he was **not** an expert in landlord and tenant law and attempted to refer the client elsewhere. The client persisted. As a gesture of goodwill, the lawyer did a favour, for a minimal fee, and helped the client complete the forms.

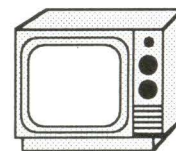
Unfortunately, the client had unknowingly violated the *Rental Housing Protection Act* and was fined. Guess who is now making a claim against a lawyer?

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## Loss prevention video debuts in June

As promised in an earlier Bulletin, our loss prevention video will be distributed province wide in June. We encourage you to stand back and re-examine your own practice with a view to making it "Claim Proof".

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## Personal Injury: the threshold debate continues...

Lawyers who have been consulted with respect to potential personal injury claims arising from auto accidents which occurred after June 20, 1990 should be aware of the recent decision of the Ontario Court of Justice in *Dalgleish v. Green*. In that case, which was a pretrial motion, Mr. Justice Weekes determined that three injuries suffered by a 74-year-old woman should cross the threshold in the OMPP. A 15-inch abdominal scar should cross notwithstanding the unlikelihood anyone else will see the scar. The word "serious" should be given a dictionary meaning. Therefore soft tissue injuries to the plaintiff's back and neck which curtailed her activities and her ability to do her housework were serious and should cross the threshold. Finally, the loss of the plaintiff's spleen should also cross the threshold. It was held to be an important bodily function even though the risk of the body requiring the assistance of the spleen was found to be minimal. The court was of the view that the

test to be applied is subjective and that wherever there is ambiguity in the statute it should be determined in favour of the plaintiff whose rights are truncated by the statute. Mr. Justice Weekes also held that the onus on the threshold issue should be on the defendant.

Any lawyer who has advised against the commencement of a lawsuit should consider the soundness of that advice in view of this decision. It is anticipated that the Court of Appeal will determine the appeal in *Meyer v. Bright* on an expedited basis. Until that time claims which would be extinguished by an expiring limitation period should be considered carefully in view of the uncertainty in the case law.

**Roger G. Oatley**  
*Oatley, Purser*