

The new \$80+ million world of claims costs

In 2010, the number of errors and omissions (E&O) claims reported to LAWPRO exceeded 2,000 and associated costs topped the \$80 million mark for the fourth consecutive year – a clear sign that we have arrived at a new era in professional liability claims. This is a significant increase from the \$55 million to \$65 million in annual E&O claims costs that LAWPRO typically saw in the earlier part of this decade. We look at claims trends in the E&O program over the past decade, and at some possible explanations for why costs today are up close to 50 per cent in 2010 compared to the start of this decade.

The number of lawyers in practice is up – and they’re reporting more claims

Between 2000 and 2010, the number of lawyers in private practice and insured under the LAWPRO program increased close to 30 per cent to about 22,500 from about 17,400 – that’s 5,100 more lawyers in practice.

Not surprisingly, the number of claims reported has been steadily climbing: As graph #1 shows, since 2005 we have seen a consistent increase in the number of claims reported each year to LAWPRO. For example, between 2005 and 2010, the number of claims reported to LAWPRO increased 20 per cent to 2,231 claims in 2010 from 1,855 in 2005. The slight decrease in claims reported last year compared to 2009 was encouraging. But the question remains: Is this result a blip – or the start of a new trend that will see claims level off in the 2,000 range?

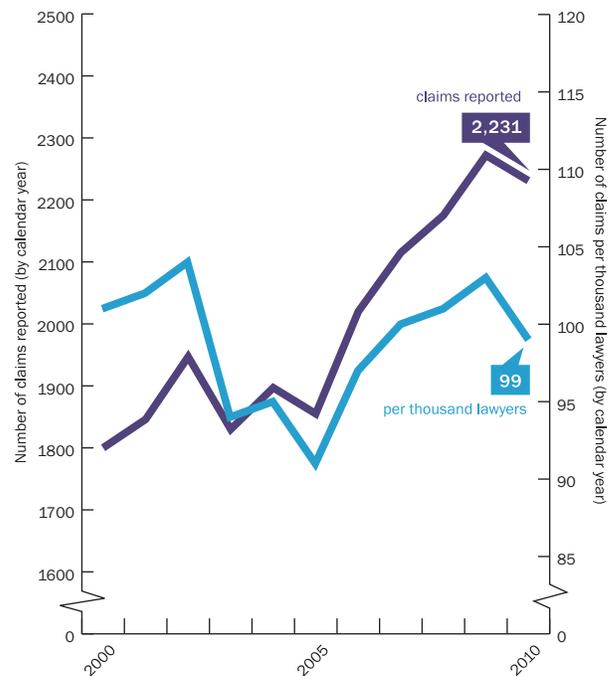
More telling is the consistent increase in claims frequency. As graph #1 also shows, the number of claims reported per 1,000 lawyers has trended upwards consistently over the past five years and now stands at 99 – compared to 91 in 2005. In other words, in 2010 we received 99 claims for every thousand lawyers in practice compared to 91/1,000 lawyers in 2005.

These increases also affect the number of files that LAWPRO must handle: Despite a concerted and successful effort on the part of our claims teams to close more files, the number of open files managed stands at 3,139 – the highest it has been in the last decade (see graph #2.)

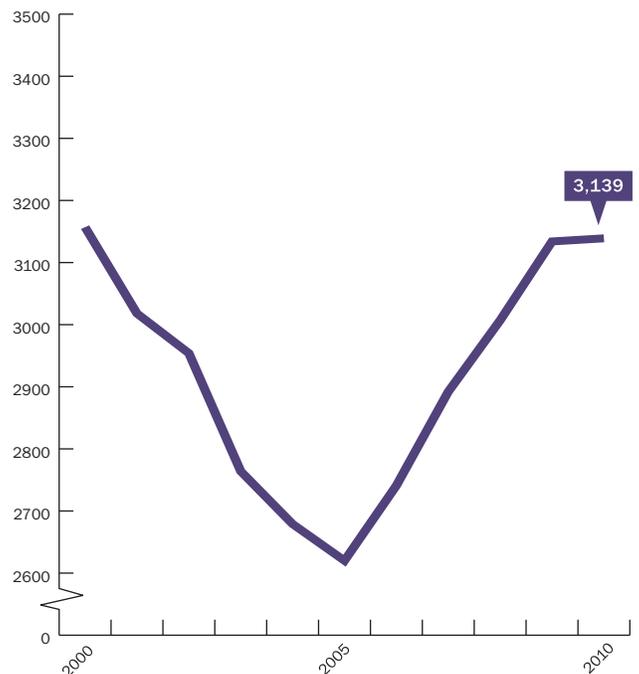
Claims are more costly – i.e., the average cost per claim has increased 21 per cent

A good indication of what is happening with claims costs is the average cost per claim file.

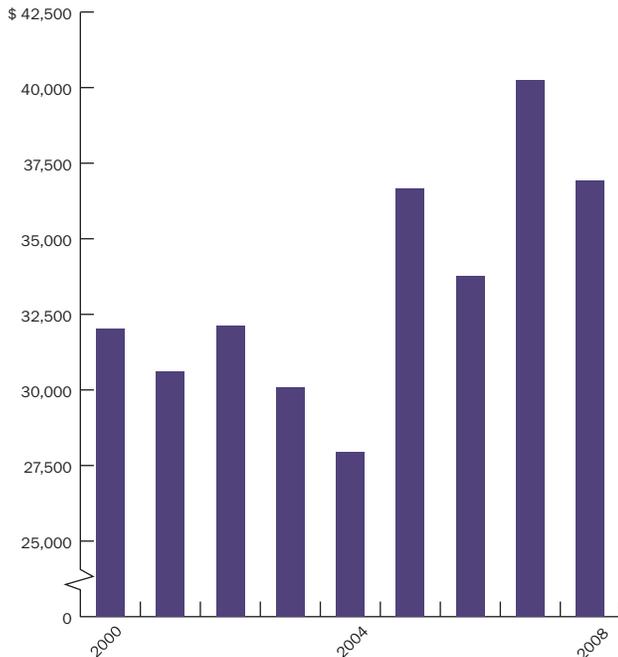
1. Number of claims reported & frequency
(by calendar year as at December 31, 2010)



2. Number of open claims files



3. Average cost per claim at 38 months after start of year in which claim was reported



As graph #3 illustrates, the average cost per claim file is also on the increase. In the first five years of the decade, the average cost of a claim was about \$30,500; for the years 2005 to 2008*, that average cost per claim jumped to almost \$37,000 – a 21 per cent increase.

Average defence costs over the same period – 2000 to 2008 – increased only 14 per cent.

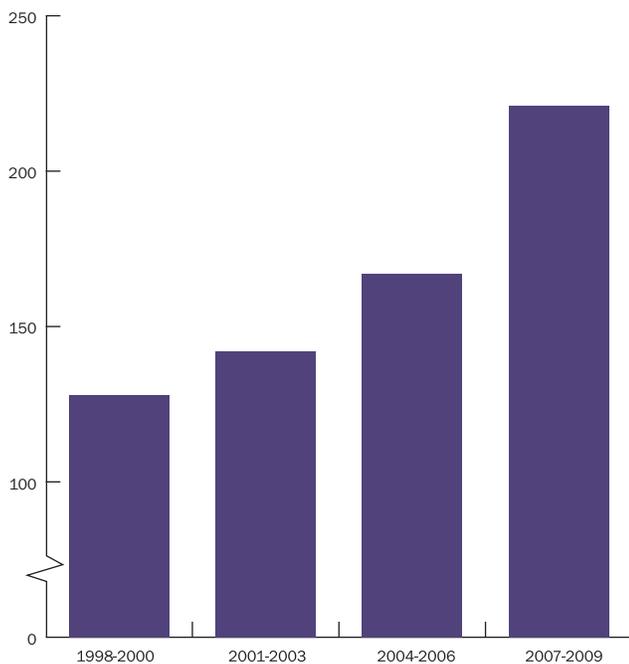
Claims are more complex – and cost more to resolve

One indication of the increasing complexity of claims is the number of large claims that cost more than \$100,000 to resolve.

As graph #4 shows, the number of these claims has increased more than 54 per cent since the start of this decade to 241 claims in 2008 that cost more than \$100,000 to resolve from 137 such claims in 2000. In 2009, there were 211 such claims – but 31 per cent of the more than 2,200 claims for this year are still unresolved. As it is the more complex and costly claims that take longer to resolve, the number of claims that top the \$100,000 mark in 2009 is likely to end up being higher.

When we dig deeper into these large claims, we see that the biggest increase is in claims in the \$100,000 to \$500,000 range. For example, between 2000 and 2008, the number of claims in this range went to 219 in 2008 from 116 such claims in 2000 – an 89 per cent increase.

4. Number of claims reported with a value greater than \$100,000 (as at February 28, 2011)



Costs are up in all areas of practice – but real estate leads the pack

As graph #5 on the following page demonstrates, real estate and litigation consistently account for the majority of claims costs in the E&O program.

For the past five years, real estate claims have represented more than 35 per cent of claims costs incurred; that number shot up to 42 per cent in 2010 – but as real estate claims tend to settle more quickly and the costs associated with these claims are paid earlier in a claims cycle compared, for example, to difficult litigation claims, we expect the proportion of real estate claims for 2010 to eventually be in the 35 per cent range.

However, some numbers are telling. The number of real estate claims rose to 681 in 2010 from 467 in 2001 – an increase of 46 per cent. The cost of real estate claims rose even more dramatically – to \$24.2 million in 2008 from \$11.6 million in 2001 – a 108 per cent increase.

* Note: because costs for 2009 and 2010 are management projections and because of the high number of open claims for these years it is difficult to determine actual average costs for these years: However based on current estimates of \$85 million in costs, the average cost per claim could top the \$40,000 mark in 2010.

The impact of rising house prices

Certainly rising house prices were a major contributing factor to the rising cost of real estate claims.

In the last year alone, the average price of a home in Ontario rose close to four per cent to \$360,000. In Toronto – where many real estate deals are done and claims reported – the average home price rose more than five per cent to \$454,000.*

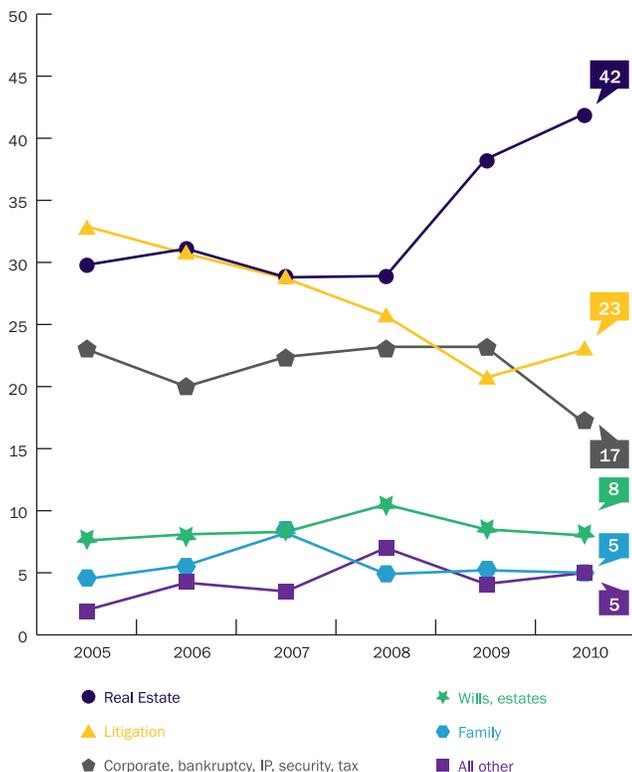
Between 2000 and 2010, the average price of an Ontario house went from \$180,000 to \$360,000 – a 100 per cent increase.

Claims trends in other practice areas

Litigation: Between 2000 and 2008 the cost of litigation claims increased to \$21.5 million from \$17.8 million – a 21 per cent increase.

Corporate-commercial: The cost of corporate-commercial claims (including bankruptcy, intellectual property, securities and tax law) increased to \$18.5 million in 2008, up from 15 million in 2000 – a 24 per cent increase.

5. Distribution of claims by area of practice
(% of gross claims costs as at February 28, 2011)



* Source: CREA statistics via www.livingin-canada.com/house-prices-canada.html

There has also been a definite upward trend in both the number and cost of claims in family law and will and estates law.

Family: The cost of family law claims jumped 110 per cent to \$4 million in 2008, up from \$1.9 million in 2000.

Wills and estates: The cost of wills and estates claims rose to \$8.4 million in 2008 from \$3.2 million in 2000 – a 162 per cent increase.

Metrics that matter: E&O claims

Claims at a glance

Number of claims reported (2010)	2,231
Gross claims case costs (2008)*	\$82.3 million
Number of claims files >\$100,000 (2000)	137
Number of claims files >\$100,000 (2008)	241

LawPRO's trial record in 2010

- won 12 of 13 trials
- successful on one matter taken to trial in 2009 but judgment released in 2010
- won seven of eight appeals (all appellants had lost their cases in the first instance)
- won 19 of 25 summary judgment applications plus on three claims claimants capitulated prior to summary judgment hearing date

LawPRO recoveries

Approximately \$1 million in recoveries in 2010

Survey of insureds

Results of our annual survey of LAWPRO insured lawyers with closed claims:

- 98 per cent say they are satisfied with how LAWPRO handled the claim;
- 88 per cent say they are satisfied with our selection of counsel;
- 86 per cent say they would have the defence counsel firm represent them again; and
- 84 per cent say LAWPRO received good value for defence monies spent.

* Because more than 30 per cent of claims reported in 2009 and 50 per cent of claims reported in 2010 were still open as of February 28, 2011, when these numbers were generated, only projections for these two years are available. LAWPRO expects claims costs in these years to be in the \$85 million range, based on current trends.