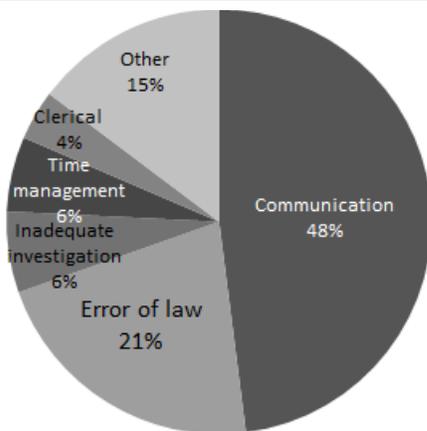


Quick stats*

- Average **38 claims** per year
- Average cost **\$718,500** per year
- Average cost per claim: \$18,800
- Average 2 years before claim reported
- Longest claim reporting time: 21 years

Common errors



LAWPRO sees a lower number of malpractice claims flowing from criminal cases as compared to other areas of law, but criminal claims have been trending up in recent years. Lawyer/client communication errors cause 54% of the criminal claims – no other area of law comes close to this figure. No doubt this reflects the nature of criminal matters.

The resolution of a criminal matter can have a significant impact on a client, and clients that are unhappy with an outcome frequently complain that they weren't properly informed of the implications of entering a plea. Criminal convictions are often appealed on the basis of "ineffective assistance of counsel" - whether the allegation has any merit or not. The allegations made on appeal may include failing to properly review Crown disclosure, failing to mount the defence requested by the client, not calling a particular witness, etc. See reverse page for more examples of the most common criminal claims.

Many types of criminal claims are preventable. Lawyers should take steps to ensure the client understands the strengths and weaknesses of his case and the implications of entering a plea. Because they will need to be referenced in the event of a claim, document these conversations and the instructions that were received. See reverse page for more steps that can be taken to reduce exposure to a criminal claim.

Speakers and resource materials

We can provide knowledgeable speakers who can address claims prevention topics. Email practicepro@lawpro.ca

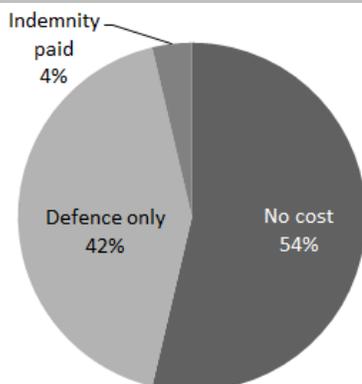
Visit practicepro.ca for resources including LAWPRO Magazine articles, checklists, precedents, practice aids and more.

Hot topics in criminal law claims

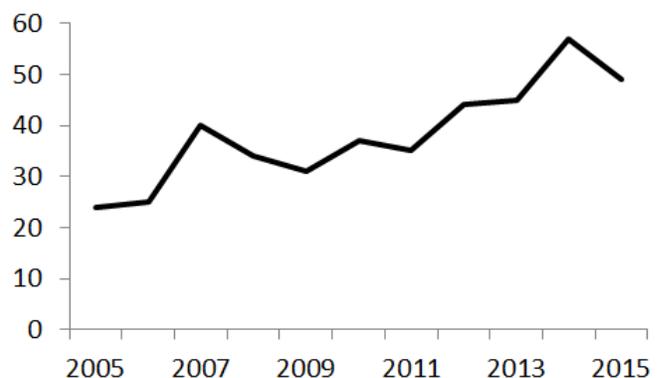
It is critical that clients are clearly informed of the implications of plea or other outcomes of their matter.

We have seen a spike in claims where lawyers failed to understand the consequences of advising a guilty plea in light of the amendments to the *Immigration and Refugee Protection Act*.

Resolution of claims



Count of criminal claims



*All claim figures from 2005-2015. All costs figures are incurred costs (April 2016).

Risk management tips

Take the time to ensure the client understands your recommendations

Failing to effectively communicate with the client is the biggest claims pitfall in the criminal law area. Often a quick decision based on the lawyer's many years of experience may obscure the fact that the client doesn't fully understand the course of action the lawyer recommends and potential outcomes from it.

There is a real risk that clients may later regret their choices and make a claim against the lawyer. To guard against this, provide your analysis of the case, the plea options available, your recommendations, and a reminder that the plea decision is the client's alone. It may not be required to document ALL your communications with the client, but it is good practice to do so as much as possible.

Discuss potential consequences of pleading guilty (and document it)

While criminal law is traditionally a lower claims-risk area of law, those claims we do see often involve a failure by the lawyer to communicate all the long term ramifications of pleading guilty to a charge. For instance, a truck driver pleading guilty to DWI may find out later that he may have difficulties with his job if he can't cross the U.S. border. A non-Canadian client sentenced to six months or more may lose the right to apply for residency. Be sure to document your conversations with the client in this regard.

Promptly notify LAWPRO of any appeals based on "ineffective assistance of counsel"

A client may appeal a guilty verdict based on grounds that the trial lawyer provided ineffective assistance. The appellate lawyer may ask the trial lawyer to sign an affidavit supporting this ground of appeal. If asked to do so, you should call LAWPRO right away so that we can advise whether preparing an affidavit is necessary, and if so, how it can be done so that privilege is maintained and there is no admission of negligence.

Meet with client in your office when possible

Client meetings held at the courthouse while awaiting appearances sometimes lead to poor documentation of the content of the meeting, and incomplete understanding by the client of what was explained.

Most common malpractice errors

Lawyer/client communication errors (48%)

- Dispute over whether client's instructions were followed regarding a plea to a charge or a reduced charge
- Failing to fully advise clients of potential consequences of pleading guilty
- Failing to clarify court dates, with consequences for client if lawyer or client doesn't show up
- Failing to ensure the client understands or agrees with the strategy to be taken in court, often resulting in claims of "ineffective assistance of counsel"

Errors of law (21%)

- Overlooking viable defences when advising a client to plead guilty
- Failing to understand consequences of advising a guilty plea in light of *Immigration and Refugee Protection Act*

Time Management (6%)

- Failing to properly calendar a court date
- Failing to proceed with an appeal in the allowed time
- Missed limitations for civil actions relating to the criminal matter, such as suing for malicious prosecution or appealing forfeiture of property

Inadequate investigation of fact or inadequate discovery (6%)

- Failing to obtain evidence or information that could assist the client at trial
- Failing to properly determine whether the client is required to attend at court
- Failing to consider whether client is fit to stand trial