

# LAWPRO

magazine

MAY 2016 VOL 15.2

**2015** Annual  
Review  
FINANCIAL RESULTS EXPLAINED

STABLE  
ADVICE  
TRUSTWORTHY  
PROFESSIONAL  
SECURITY  
COVERAGE

## upcoming events

### May 3, 2016

Law Society of Upper Canada  
The Six-Minute Estates Lawyer 2016  
*Safe practices: Reducing the "risky business" factor*  
Deborah Petch presenting  
Toronto, ON

### May 18, 2016

Durham Region Law Association  
CPD  
*Reducing risk in your family law practice*  
JJ Earle-Miller presenting  
Oshawa, ON

### May 18, 2016

Advocates' Society  
Practice Management Essentials: Managing Your Way to Trial Success  
*Communication is key: Avoiding negligence claims*  
Ian Hu presenting  
Toronto, ON

### May 25, 2016

Canadian Italian Advocates Organization  
Annual General Meeting  
*Wellness, disaster planning and claims*  
Ian Hu presenting  
Toronto, ON

### May 26, 2016

Canadian Defence Lawyers  
Annual General Meeting Conference  
*Adverse cost insurance*  
Ian Hu presenting  
Toronto, ON

## recent events

### March 29, 2016

Durham College Legal Assistants Program  
*Malpractice risk management for law clerks and legal assistants*  
Nora Rock presented  
Oshawa, ON

### March 2, 2016

Protect Your Boundaries  
LandPRO Conference 2016  
*Why title insurance is not boundary insurance*  
Ray Leclair presented  
Toronto, ON

### March 3, 2016

Law Society of Upper Canada  
Six Minute Administrative Lawyer  
*Limited scope retainers*  
Dan Pinnington presented  
Toronto, ON

### March 8, 2016

Ontario Bar Association  
Surveys and Boundaries:  
Closing the Deal Successfully  
*Surveys and title insurance*  
Ray Leclair presented  
Toronto, ON

### March 9, 2016

Ontario Bar Association  
Ethical issues: OBA Citizenship and Immigration Section  
*Walking the tightrope: Avoiding and resolving ethical issues in immigration law*  
Ian Hu presented  
Toronto, ON

### March 28 and March 30, 2016

Georgian College Law Clerks Program  
*Malpractice risk management for law clerks and legal assistants*  
Nora Rock presented  
Barrie, ON

### March 31, 2016

Law Society of Upper Canada  
Oatley McLeish Guide to Motor Vehicle Litigation 2016  
*How to avoid a Rule 48 claim*  
Domenic Bellacicco presented  
Toronto, ON

### April 6, 2016

Durham Region Law Association  
Durham Region Law Association – Rule 48 CPD  
*Rule 48: Avoid administrative dismissals*  
Ian Hu presented  
Oshawa, ON

### April 18, 2016

Ontario Bar Association  
OBA Ethical Issues: What to Do, When to Do It, and Who to Call  
*Relationship with clients*  
Ian Hu presented  
Toronto, ON

### April 19, 2016

Hamilton Law Association  
30<sup>th</sup> Annual Joint Insurance Seminar,  
Hamilton Law Association  
*Rule 48: Avoid administrative dismissals*  
Ian Hu presented  
Hamilton, ON

### April 21, 2016

Law Society of Upper Canada  
13<sup>th</sup> Annual Real Estate Law Summit  
*Some eye-opening issues from the trenches at LAWPRO*  
Rosanne Manson presented  
Toronto, ON

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Know any law  
students or young  
lawyers who  
might enjoy our  
Student Edition?

The Student Edition of *LAWPRO Magazine* features articles, checklists and quizzes designed to help prepare law students for the transition into practice. Please encourage the students and new lawyers in your life to contact us (at [communications@lawpro.ca](mailto:communications@lawpro.ca)) for a free subscription!

Publications Mail Agreement No. 40026252  
Return undeliverable Canadian addresses to:  
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## e-briefs

### Don't miss out – have you seen our recent emails?

The full content of these newsletters is available at [practicepro.ca/enews](http://practicepro.ca/enews). To ensure you receive timely information about deadlines, news and other insurance program developments, please make sure LAWPRO has your up-to-date email address and that you have added [service@lawpro.ca](mailto:service@lawpro.ca) to your contacts.

## Webzines

### Serving Indigenous clients

January 21, 2016

Are you ready to represent your first Indigenous client? This webzine shares insights from Ontario Indigenous lawyers about how to serve Indigenous clients effectively and respectfully, and warns all lawyers about the claims risks associated with getting it wrong.

### Finding your blue sky

September 16, 2015

This issue focused on the unique stressors faced by lawyers and law firms, some of the repercussions of not dealing with these factors, and strategies to address them. Read about ways lawyers and law firms can access help, or change their approach or their environment, so that they can offer their best selves to clients, family and friends.

## Insurance Reminder

### Transaction levy filings overdue

March 9, 2016

Reminder to lawyers about overdue transaction levy filings.

## Key dates

### April 30, 2016

Real estate and civil litigation transaction levies and forms are due for the quarter ended March 31, 2016.

### April 30, 2016

Exemption forms from lawyers not practising civil litigation or real estate and wanting to exempt themselves from quarterly filings are due.

### July 31, 2016

Real estate and civil litigation transaction levies and forms are due for the quarter ended June 30, 2016.

### September 15, 2016

File your LAWPRO Risk Management Declaration by this date to qualify for the \$50 premium discount on your 2017 premium for each LAWPRO-approved CPD program (to a maximum of \$100) completed by this date.

## LAWPRO Alert

Thousands of pre-2012 matters will be automatically dismissed January 1, 2017.

February 3, 2016

LAWPRO's Rule 48.14 Transition Toolkit, available at [practicepro.ca/rule48](http://practicepro.ca/rule48), provides advice and tools lawyers and law firms can use to lessen the risk of a claim under the new rule.

LAWPRO  
magazine

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LAWPRO Magazine is published by Lawyers' Professional Indemnity Company (LAWPRO) to update practitioners about LAWPRO's activities and insurance programs, and to provide practical advice on ways lawyers can minimize their exposure to malpractice claims. The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.

*The comments in this publication are intended as a general description of the insurance and services available to qualified customers through LAWPRO. Your policy is the contract that specifically and fully describes your coverage and nothing stated here revises or amends the policy.*

[lawpro.ca](http://lawpro.ca)  
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# Stable. Advice. Trustworthy. Security. Professional. Coverage.



The words that appear on our cover describe how LAWPRO served its insureds in 2015.

An insurance company can call itself a success if it provides **stability** in an unpredictable environment. Insurance allows the economy to grow by providing a place where it is safe for insureds to navigate day-to-day challenges and unpredictable events. With a primary professional liability premium that has remained constant for 6 years, LAWPRO's stability is a strong platform for the success of our insureds.

However, stability can be threatened by all types of changes. For instance, thousands of pre-2012 civil lawsuits will be automatically dismissed January 1, 2017. LAWPRO developed resources to give **advice** on how to best avoid a dismissal. As the January 1, 2017 deadline approaches, an increased number of motions for status hearings is expected. To avoid the anticipated end-of-the-year rush, LAWPRO strongly encourages lawyers not to wait until October, November or December to bring a last-minute motion. Our Rule 48.14 Transition Toolkit, which can be downloaded at [practicepro.ca/rule48](http://practicepro.ca/rule48), provides advice and tools lawyers and law firms can use to lessen the risk of a claim under the new rule. In 2016, we will take every opportunity to remind our insureds of the administrative dismissal deadlines. This includes speaking engagements, articles, social media and LAWPRO Alerts.

When LAWPRO was created as a result of the 1995 Insurance Task Force, it was decided that the new insurance entity would be accountable to an independent Board of Directors that ensures the company satisfies regulatory requirements and is managed in a commercially reasonable manner. This kind of mature governance structure testifies to LAWPRO's commitment to **trustworthiness** and accountability.

In "Financial results explained" on page 4, you will see that our prudent and studied approach to management has resulted in **security** for LAWPRO and for our insureds. In 2015, our financial strength merited an A rating (Excellent) from A.M. Best Co. and provided a predictable foundation on which to plan for continued security for our insureds in the years to come.

The results you will see on the pages of this issue of the LAWPRO magazine, taken together, demonstrate our commitment to **professionalism**. The "Primary E&O program review" articles discuss the stand we took in influential cases, the efforts we made to repair claims as well our innovations to improve how we work. We are proud to stand behind our insureds and the insurance coverage we offer.

And what about that coverage? The primary E&O **coverage** provided by LAWPRO is tailored in many ways to changes in the profession. The policy is updated every year to address issues that arise. In 2015, that meant expanding the range of programs approved for the LAWPRO Risk Management Credit and providing those same credits to qualifying paralegal partners. Beyond that, the TitlePLUS title insurance coverage is unique in the marketplace. Because of its legal services coverage that includes all professional services the lawyer provides for the real estate transaction, it is the most comprehensive title insurance policy broadly available in Canada.

Looking back on 2015, the primary program's 20<sup>th</sup> anniversary celebration year, I am proud of the sustained level of comfort LAWPRO has offered to the Ontario bar and I look forward to facing the challenges and opportunities of 2016.

Kathleen A. Waters  
President and CEO

# Financial Results Explained

## Income statements

### A Net premiums: \$120.7 million

Net LAWPRO revenues in 2015 were \$120.7 million. Premiums from the mandatory insurance program were \$5.8 million higher than in 2014, with the increase driven in part by the net increase in the number of insured lawyers purchasing insurance coverage in 2015.

### B Net claims: \$80.7 million

Incurred claims and adjustment expenses for 2015 were \$80.7 million, a decrease of \$18.8 million compared to 2014. The 2015 results benefitted from a \$27.5 million net reduction to reserves due to favourable development of prior fund years' loss experience.

The discount rate used to value claims liabilities increased, at December 31, 2015, to 2.18 per cent; up from 1.95 per cent at December 31 of the previous year. Tracking the discount rate causes an adjustment to the amount reserved to pay future claims costs (it reflects current and projected interest rates on investments). The slight increase in the discount rate in 2015 was a beneficial development in that it allows us to set less money aside since we expect to earn slightly more interest on our reserves over time.

## Statement of Profit or Loss

Stated in thousands of Canadian dollars

2015 Annual Report

Lawyers' Professional Indemnity Company

FOR THE YEAR ENDED DECEMBER 31		2015	2014
<b>Income</b>			
	Gross written premiums	\$ 127,842	122,149
	Premiums ceded to reinsurers (note 11)	(7,081)	(7,229)
	Net written premiums	120,761	114,920
	(Increase) decrease in unearned premiums (note 10)	(91)	(20)
<b>A</b>	<b>Net premiums earned</b>	<b>120,670</b>	<b>114,900</b>
<b>D</b>	<b>Net investment income (note 5)</b>	<b>18,541</b>	<b>26,472</b>
	Ceded commissions	1,828	1,679
	<b>\$ 141,039</b>	<b>143,051</b>	
<b>Expenses</b>			
	Gross claims and adjustment expenses (note 9)	\$ 80,372	104,847
	Reinsurers' share of claims and adjustment expenses	373	(5,262)
<b>B</b>	<b>Net claims and adjustment expenses</b>	<b>80,745</b>	<b>99,585</b>
<b>C</b>	<b>Operating expenses (note 15)</b>	<b>17,999</b>	<b>16,830</b>
	Premium taxes	3,836	3,665
	<b>102,580</b>	<b>120,080</b>	
	<b>Profit (loss) before income taxes</b>	<b>\$ 38,459</b>	<b>22,971</b>
	Income tax expense (recovery) (note 14)		
	Current	\$ 10,027	6,220
	Deferred	(12)	(309)
	<b>10,015</b>	<b>5,911</b>	
<b>E</b>	<b>Profit (loss)</b>	<b>\$ 28,444</b>	<b>17,060</b>

Accompanying notes are an integral part of the financial statements.

### C General expenses: \$18 million

LAWPRO's general expenses in 2015 were \$1.2 million higher than in 2014, but still slightly lower than budgeted, as a result of disciplined cost containment efforts.

### D Investment income: \$18.5 million

Investment income in 2015 was \$18.5 million, \$8 million less than the \$26.5 million earned in 2014, but still slightly above what was budgeted for the year. With respect to its investments, LAWPRO was required to report a write-down of \$3.7 million in unrealized losses on equity securities that met the International Financial Reporting Standards (IFRS) definition of "significant or prolonged decline."

### E Net income: \$28.4 million

LAWPRO experienced total net income for 2015 of \$28.4 million (compared to net income of \$17 million in 2014). In 2015,



## Statement of Comprehensive Income

Stated in thousands of Canadian dollars

2015 Annual Report

Lawyers' Professional Indemnity Company

### FOR THE YEAR ENDED DECEMBER 31

	2015	2014
<b>Profit (loss)</b>	<b>\$ 28,444</b>	<b>17,060</b>
Other comprehensive income (loss), net of income tax:		
Items that will not be reclassified subsequently to profit or loss:		
Remeasurements of defined benefit obligation, net of income tax expense (recovery) of (\$190) [2014: (\$206)]	(526)	(570)
Items that may be reclassified subsequently to profit or loss:		
Available-for-sale assets		
Net changes unrealized gains (losses), net of income tax expense (recovery) of \$1,054 (2014: \$2,517)	2,923	6,979
Reclassification adjustment for (gains) losses recognized in profit or loss, net of income tax (expense) recovery of (\$1,489) [2014: (\$1,929)]	(4,129)	(5,349)
Reclassification adjustment for impairments, recognized in profit or loss, net of income tax expense of \$979 (2014: \$227) (note 5)	2,716	630
<b>Other comprehensive income (loss)</b>	<b>\$ 984</b>	<b>1,690</b>
<b>Comprehensive income</b>	<b>\$ 29,428</b>	<b>18,750</b>

Accompanying notes are an integral part of the financial statements.

due to recent stability in claims counts and severity, the Company updated certain assumptions underlying the actuarial valuation approach it uses to predict the future cost of past years' as-yet-unpaid claims and related adjustments. These updates affected projected net cash outflows, and as a result, reduced the amount of reserves required to be retained for affected program years. The net impact of these changes was a \$27.6 million decrease in reserves, which has a corresponding positive impact on net income.

LawPRO experienced total net income for 2015 of \$28.4 million (compared to net income of \$17 million in 2014).

### F Other comprehensive income: \$1.0 million (after tax amounts quoted)

In the category of other comprehensive income, LAWPRO earned \$1.0 million in 2015 relating predominantly to the return on its equity securities. This compares to 2014 other comprehensive income of \$1.7 million.

After including \$28.4 million in net income (see E for details), shareholder's equity was \$238.0 million at the end of 2015, up from

\$208.6 million at the end of 2014 – for a year-over-year increase of \$29.4 million.

### Minimum Capital Test: a key solvency benchmark

The Minimum Capital Test (MCT) is designed to ensure that a financial institution's assets are sufficient to meet its present and future obligations.

For the MCT calculated at December 31, 2015, LAWPRO's score is 268 per cent – up from 251 per cent on December 31, 2014, and above the 220-230 score for which the company aims.

2015 was the first year of a three year phase-in to new, stricter MCT requirements. Without the benefit of the phase-in, the MCT would have been 242 per cent, closer to the preferred range but still slightly above it. ■

# Claims report

## Projected claims costs for 2015 lower than expected, but time management challenges loom

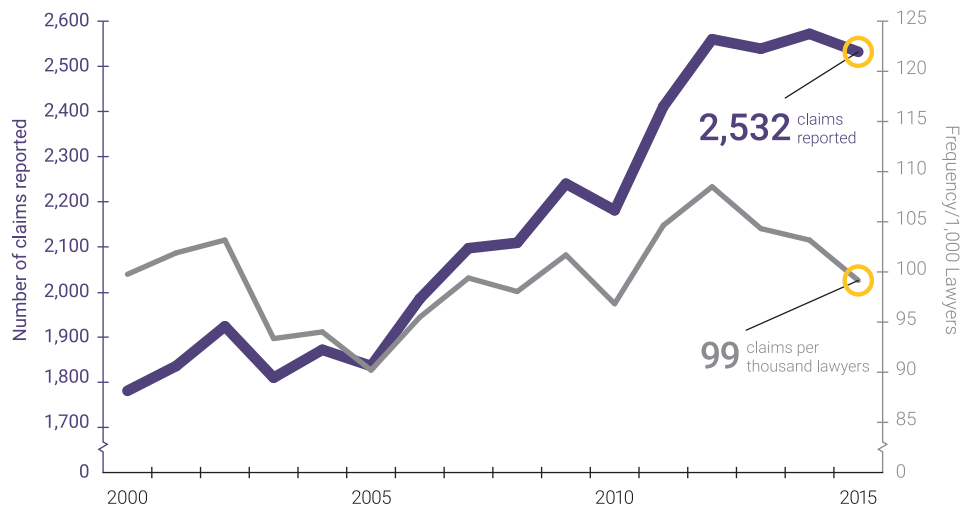
Between 2010 and 2014, annual claims costs were verging on a worrisome \$100 million plateau. As claims costs for 2015 come into focus, there are indications that we retreated slightly down the side of that \$100 million mountaintop, perhaps as far down as the \$81 million mark. Claim numbers have also decreased – a development that has translated to a 2015 claims rate of 99 claims per 1,000 lawyers, down from 103 in 2014, and below 100 for the first time in five years (see Figure 1). However, it's important to keep in mind that these small adjustments are not statistically significant changes.

While it takes many months after a claims year for the numbers to stabilize, this is certainly good news, though what it means in the broader context remains an open question. The best-case scenario would be that 2015 results are the beginning of a retreat from a high-water mark. The worst case: that we are witnessing the calm before a storm triggered by the new January 1, 2017 deadline for the administrative dismissal of long- delayed civil litigation lawsuits.

Regardless of how things turn out, a better-than-budget claims year provides a welcome cushion of stability that will help LAWPRO weather future challenges.

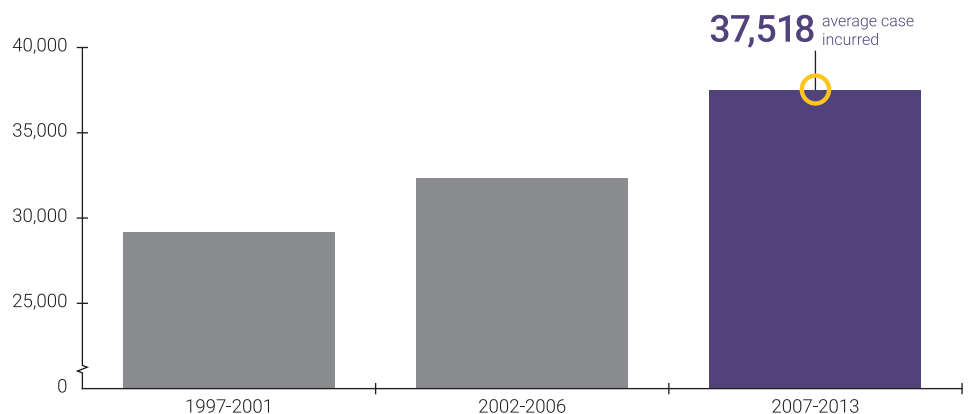
**FIGURE 1**  
Number of claims  
reported and frequency\*

\* By report year, as at February 29, 2016



**FIGURE 2**  
Average cost per claim  
at 38 months after start of year  
in which claim was reported\*

\*As at February 29, 2016



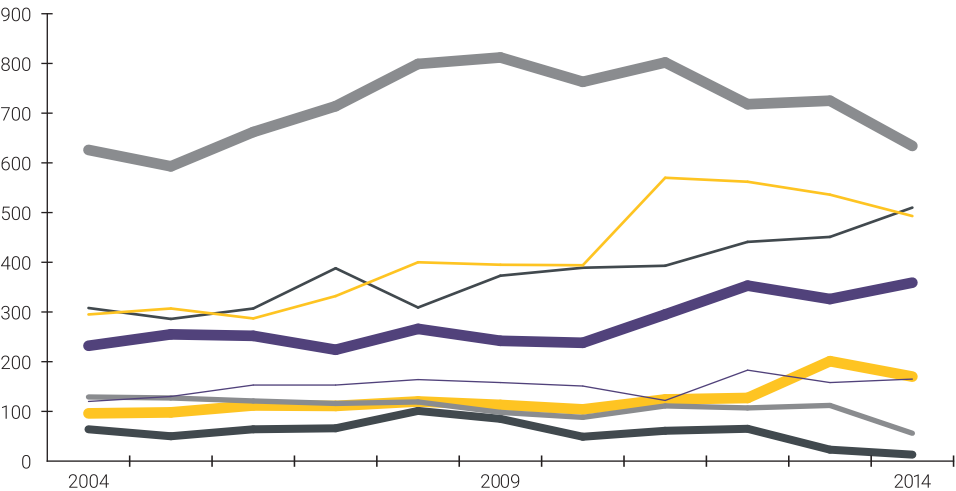


### Claims by cause of loss

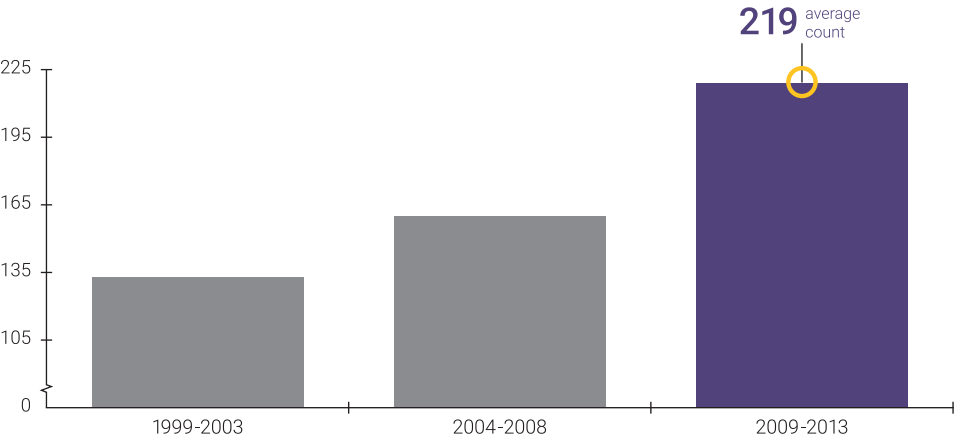
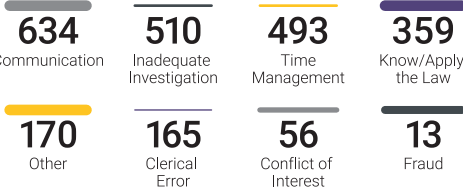
Because it takes time for claims to develop and be investigated, by the end of 2015 we were developing a fuller understanding of the causes of loss for claims that were reported in the previous year. The figure below reports cause of loss trends to the end of 2014, based on the information that was available at February 29, 2016.

While communication remains the leading cause of claims, inadequate investigation and time management have, over the last decade, switched positions multiple times as the second and third most important causes of loss. As the January 1, 2017 deadline for getting pre-2012 actions onto the trial list approaches, it is reasonable to expect that time management will continue to be a significant driver of claims. For this reason, supporting lawyers in developing strategies to manage litigation file deadlines has been an important goal of our risk management education program in the past few years.

The causes of loss that showed the greatest year-over-year increases in 2014 were inadequate investigation and a failure to know or apply the law. These two causes have something in common: lawyers who make these kinds of mistakes have failed to take the time to learn what they need to learn – whether about the facts, or about the law – to handle a file effectively. Not taking sufficient time with files can be the result of pressure to take on more files than a lawyer can competently handle; but it can also flow from internal factors like procrastination. Whatever the root cause, the growth in the number of these claims makes it clear that risk management depends on a willingness to learn, both by communicating effectively with clients, and by taking advantage of opportunities for continuing professional development.



**FIGURE 3**  
Reported claim count  
by cause of loss by fund year\*  
\*As at February 29, 2016



**FIGURE 4**  
Average number of claims  
reported per annum with  
a value greater than \$100,000\*  
\*As at February 29, 2016

## Claims by area of practice

The distribution of claims across the various areas of practice continued, in 2015, to follow established trends. The “spread” between litigation-based and real estate-based claims increased slightly in 2015, while recent shifts in the incidence of corporate law and wills and estates claims moderated. The overall pattern for the year, however, revealed no surprises.

LAWPRO monitors claims trends both for underwriting purposes and to assist us in identifying areas of focus for our communications. For example, our observation of the upward trend in litigation claims encouraged us to focus on communicating about forthcoming changes to the administrative dismissal regime, while the stability of the rest of the pattern made 2015 a good year to publish a *LAWPRO Magazine* issue devoted to stress management and career satisfaction, issues relevant to lawyers from all practice areas.

**FIGURE 5**  
Distribution of claims  
by area of practice\*  
(% of gross claims costs)

\*As at February 29, 2016

**37.18%**  
Litigation

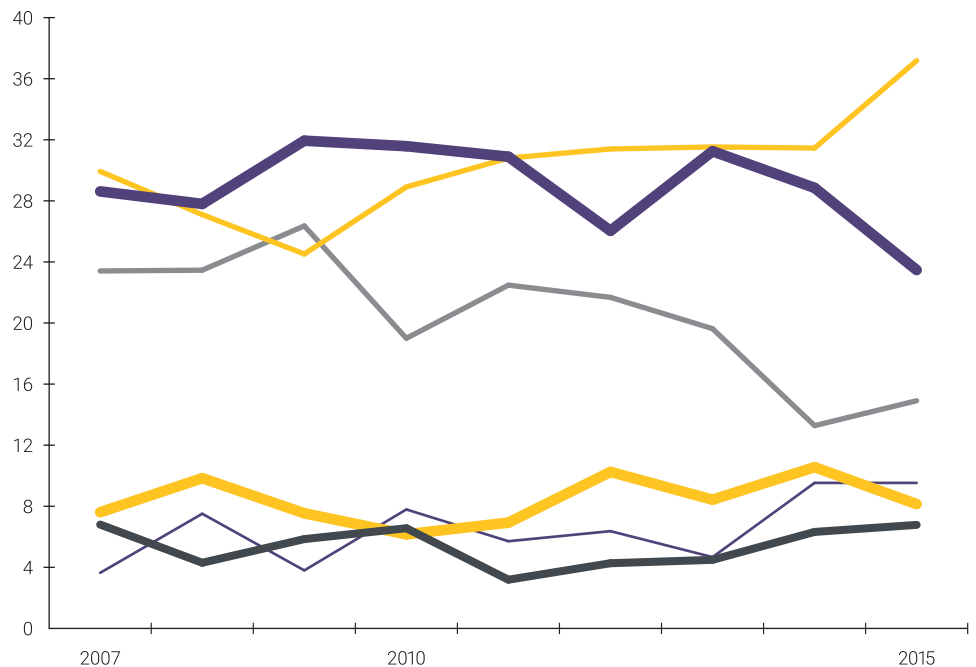
**23.47%**  
Real Estate

**14.91%**  
Corp/Bank/  
Sec/Tax/IP

**9.53%**  
All Other

**8.14%**  
Wills,  
Estates

**6.78%**  
Family



## upward trend in litigation claims

encouraged us to focus  
on communicating about

forthcoming changes to  
the administrative  
dismissal regime

## Our 2015 claims handling report card

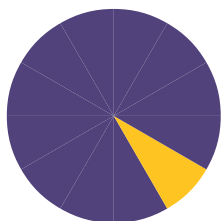
LAWPRO's professional indemnity coverage has been trusted by Ontario lawyers for over twenty years. The importance of responsive, well-designed malpractice coverage is never better appreciated than in hindsight; that is, after working with us to resolve a claim. To ensure that we are meeting lawyers' expectations, we invite lawyers to reply to a satisfaction survey after their claims are closed. The chart on the next page shows the results, which have been consistently high since we introduced the survey.

Providing insureds with good value for their insurance money and matching them with courteous, experienced counsel is important; but effective representation is equally fundamental to our insureds' satisfaction. LAWPRO manages claims costs by making strategic

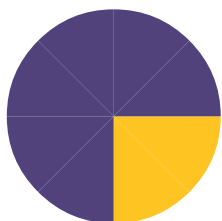
decisions about dispute resolution methods. While many claims are resolved through negotiation, mediation or arbitration, we go to trial a few times each year where the circumstances warrant – often to ensure that we set precedents that will support lawyers in the long term.

Here's a summary of the in-court results we achieved in 2015:

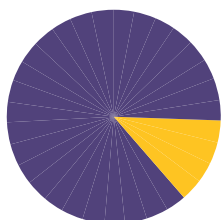
In 2015, we:



**Succeeded in 11 out of 12 matters that went to trial and for which a decision was rendered;**



**Succeeded in 6 out of 8 appeals argued; and**



**Won 27 out of 31 summary judgment motions completed.**

See page 16 for highlights of some of the cases where we successfully defended lawyers in 2015.

LAWPRO counsel also take steps, where reasonable, to recover costs through the enforcement of judgments and costs orders, and by pursuing reimbursement from third parties.

The annual survey of LAWPRO E&O insureds with a closed claim indicated the following:

97%

said that they were satisfied with how LAWPRO handled the claim;

89%

said they were satisfied with our selection of counsel;

88%

said they would have the defence counsel firm represent them again; and

87%

said LAWPRO received good value for defence monies spent.

# Coverage

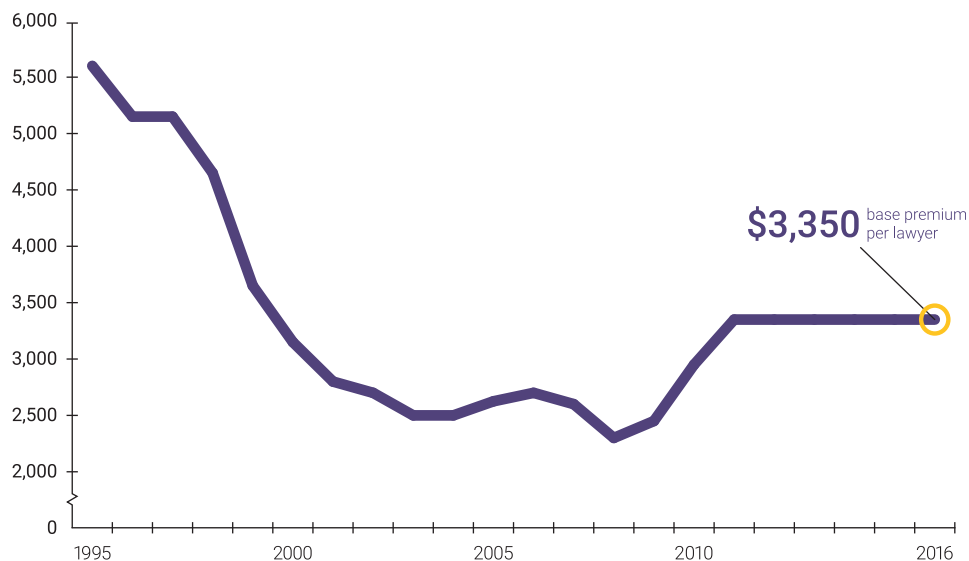
## LAWPRO coverage subject to continual review

Experiencing a little déjà vu when renewing your professional indemnity insurance in recent years? You're not mistaken – LAWPRO's base premium for the Law Society's mandatory insurance program has not changed since 2011 (see Figure 6, below). But the stability of the premium belies a continual effort, on the part of LAWPRO underwriters, to stay ahead of developments in both malpractice risk and practice management.

Innovations introduced for the 2015 policy included the following:

- e-learning courses from Homewood Health were approved for the LAWPRO Risk Management Credit;
- paralegal partners became eligible for Risk Management Credit savings;
- policy definitions for "employee" and "prescribed penalties" were expanded in response to coverage and claims experience; and
- terms of coverage for the work of non- licensee professionals in multidisciplinary partnerships (MDPs) were clarified.

**FIGURE 6**  
Base premium per lawyer



The base premium is, of course, a starting point – new lawyers, part-time practitioners, and lawyers who restrict their practice to criminal and/or immigration law pay reduced premiums, while lawyers exposed to additional risks, or who are have stopped practising

but want enhanced run-off protection can tailor their coverage accordingly. Figure 7 provides an overview of lawyers participating in various coverage options in 2015:

Figure 7

## Participation rates for discounts and coverage options

Feature	No. of lawyers participating as of Jan. 31, 2015	No. of lawyers participating as of Jan. 31, 2016
<b>New call discount</b> 20 to 50 per cent base premium discount for those called in the last one to four years	4,575	4,812
<b>Part-time practice</b> 50 per cent base premium discount for eligible lawyers	1,772	1,856
<b>Restricted area of practice option</b> 50 per cent base premium discount for immigration/criminal law practitioners	1,556	1,569
<b>Innocent Party buy-up</b> Increase in Innocent Party sublimits up to as much as \$1 million per claim/aggregate	3,394 (based on \$249/lawyer)	3,390 (based on \$249/lawyer)
<b>Run-Off buy-up</b> Increase limits for past services from \$250,000 per claim/aggregate to as much as \$1 million per claim/\$2 million aggregate	1,027	1,107
<b>Real Estate practice coverage</b> Required for all lawyers practising real estate law in Ontario. Sublimit coverage of \$250,000 per claim/\$1 million aggregate	7,676	7,861

# Service

## Streamlined and responsive



LAWPRO's Customer Service and Underwriting department makes or receives over 40,000 customer phone calls each year.

The subject matter of these calls is varied and challenging. Professional indemnity insurance is a complex product, and we offer a wide range of coverage options from which lawyers can choose. To improve our capacity for supporting lawyers in making the arrangements that suit them best, we added three new Program Coordinators in 2015, bringing the total to 17.

Of these new staff, two are bilingual – a choice designed to support us in providing bilingual service consistent with the Law Society of Upper Canada's By-Law 2. We also increased our capacity for delivering French telephone services by providing French immersion training for two other employees. With respect to written service, we added translations of our overdue premium and reminder notices to the list of forms we offer in French.

When not on the phone, our Program Coordinators handle your written inquiries. In 2015, that meant reviewing 22,995 pieces of mail – a 5 per cent increase over the previous year.

## Service improvement initiatives in 2015

Customer needs, technological developments, and regulatory changes are some of the drivers behind innovation in our Customer Service and Underwriting department. Service initiatives in 2015 included:

- introducing functionality on the "My LAWPRO" account management webpage, that permits users to request and receive a certificate of insurance (proof of coverage) within minutes;
- identifying and implementing changes under the Law Society program to better accommodate *pro bono* law initiatives; and
- implementing a process to better ensure early and consistent identification, reporting, and handling of complaints involving the Customer Service and Underwriting department. ■



# LAWPRO repairs in 2015

## Resuscitating dismissed actions

In the past few years, LAWPRO's claims repair program has been increasingly occupied with the work of attempting to restore actions to the trial list. Rule 48, which permits the administrative dismissal of actions for delay, has been responsible for over \$10 million in claims costs over the past three years. LAWPRO in-house and defence counsel have expended a great deal of effort to limit those costs by arguing for the restoration of dismissed actions.

The provisions that have governed that work include:

- 1) Rule 48.14(1) (since January 1, 2015, Rule 48.14(1)) – Registrars' orders dismissing actions for delay;
- 2) Rule 48.15 (revoked on January 1, 2015, and not replaced) – Registrars' orders dismissing actions as abandoned.
- 3) Rule 48.14(13) – (since January 1, 2015 – Rule 48.14(7)) – Dismissal for delay at status hearings.
- 4) Rule 48.11 – (unchanged by rule amendments) – Restoring actions to trial lists.

While the cases discussed below were decided under the "old" rules in force prior to January 1, 2015, this "old" case law may be considered relevant to motions under the "new" rules. Rule 48.11 remains

unchanged in any event. For further discussion, see "Applying old case law to the new Rule 48.14."<sup>1</sup>

### Setting aside registrars' dismissal orders

Until it was repealed on January 1, 2015, the "old" Rule 48.14(1) provided that if an action was not placed on a trial list within two years after the first defence was filed, the action would be dismissed by the registrar 90 days after a status notice was served on all parties.

The "new" Rule 48.14(1), which came into force that same day, provides that an action will be dismissed by the registrar for delay if the action has not been set down for trial by the later of the fifth anniversary of the commencement of the action, and January 1, 2017. Therefore, no actions were administratively dismissed in 2015.

Applications to set aside administrative dismissal decided in 2015 were governed by the "old" Rule 48.14(1), because the dismissals predated the rule amendment. However, in several cases, LAWPRO counsel persuaded the courts to take the five-year "no administrative dismissal" provision in the "new" Rule 48.14(1) into account, when applying the contextual approach developed under the case law governing the setting aside of registrars' dismissals predating January 1,

<sup>1</sup> LAWPRO Magazine, January, 2016, vol. 15.1, p. 26

2015. That is, the courts recognized that if the “new” Rule 48.14(1) had applied to the cases they were considering, the case would not have been dismissed in the first place, since five years had not passed since the action was commenced.

In one such case, the Ontario Superior Court of Justice overturned the dismissal of an action by plaintiff investors against their financial advisors.<sup>2</sup> The court adopted a contextual approach in deciding to set aside the dismissal, considered the five year period provided by the “new” Rule 48.14(1), as well as the undesirability of the plaintiff being required to commence another action against his solicitor, where the defendant was not prejudiced by restoring the action.

In another decision,<sup>3</sup> the Court of Appeal decided that the registrar’s dismissal should be set aside. It held:

- The court’s bias is in favour of deciding matters on their merits rather than terminating rights on procedural grounds.
- The court should be concerned primarily with the rights of the litigants, not with the conduct of their counsel.
- The court must consider not only the plaintiff’s right to have its action decided on its merits, but also whether the defendant has suffered non-compensable prejudice as a result of the delay, whether or not a fair trial is still possible, and even if it is, whether it is just that the principle of finality should nonetheless prevail.
- The prejudice that the court must consider is to the defendant’s ability to defend the action that would arise from steps taken following dismissal, or which would result from restoration of the action following the registrar’s dismissal.

## Rule 48.15 – Action dismissed as abandoned

In deciding whether to reinstate actions dismissed as abandoned pursuant to the “old” Rule 48.15, two courts referred to the fact that Rule 48.15 was abolished as of January 15, 2015, and analogous situations folded into the “new” Rule 48.14(1). If the “new” Rule 48.14(1) had applied, the five-year period running from the dates of the commencement of both actions would not have expired, and the actions would not have been dismissed. After considering this and all other relevant facts, and applying the contextual approach, one

court set aside the registrar’s dismissal order, while a second court declined to do so.

In a case in which a S.A.B. claim was pursued promptly post-accident but a tort action against the same insurer was somehow forgotten,<sup>4</sup> the Master set aside the dismissal order. Clients should not suffer for their counsel’s inadvertence. The Court of Appeal’s judgments in *MDM Plastics Limited v Vincor*,<sup>5</sup> and *H.B. Fuller Company v. Rogers*<sup>6</sup> evidence a swing of the pendulum in favour of reinstating actions. The plaintiff never intended to abandon her action, and her motion to reinstate was brought promptly. Restoring the action would not prejudice the defendant. Finally, under the new Rule 48.14(1), the action would only have been dismissed in July, 2016, five years after the issuance of the statement of claim.

In another accident case,<sup>7</sup> the Divisional Court declined to give any weight to the amendments to Rule 48.14, in view of: 1) the two year delay in moving to set aside the registrar’s order; 2) the plaintiff’s solicitor’s egregious non-system for handling dismissal notices and orders; and 3) prejudice to the defendant’s ability to defend the damage claim caused by the delay.

## Rule 48.11 – Actions struck off trial list

The “old” Rule 48.11 was carried forward unchanged into the amended Rule 48. Therefore, the Court of Appeal’s judgment in *Carioca’s Import & Export Inc. v. Canadian Pacific Railway Limited*,<sup>8</sup> will continue to apply.

In *Carioca*, the Court of Appeal followed the test it developed in *Nissar v. Toronto Transit Commission*,<sup>9</sup> but gave it a more liberal spin. The *Nissar* test is to be applied where refusing to restore an action to the trial list would result in its dismissal, for instance, a registrar’s dismissal under Rule 48.14. Otherwise, the test is whether the action is ready for trial.

The plaintiff is not required to account for delay on a month-to-month basis. Rather, the issue is whether the plaintiff presented an “acceptable explanation” for the delay. Actions should be tried on their merits when an “acceptable explanation” is presented. The context of the action and any other relevant factors must be considered. These will include the overall progress of the action before it was listed for trial, the circumstances of how the action

<sup>2</sup> 2015 ONSC 1650 (Div.Ct.)

<sup>4</sup> 2015 ONSC 6028

<sup>6</sup> *Supra*, n. 3

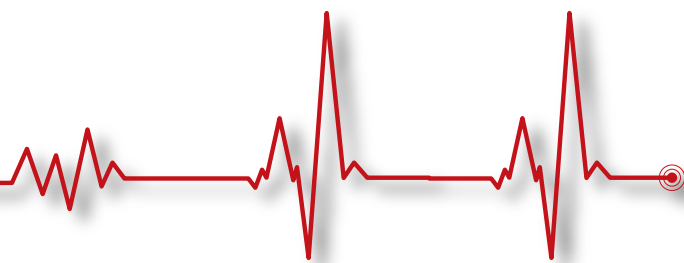
<sup>8</sup> 2015 ONCA 592, 128 O.R. (3d) 143

<sup>3</sup> 2015 ONCA 173, paras 26, 27, 28, 37

<sup>5</sup> 2015 ONCA 28

<sup>7</sup> 2015 ONSC 4626 (Div.Ct.)

<sup>9</sup> 2013 ONCA 361, 115 O.R. (3d) 713



came to be struck from the trial list, and the conduct of all parties. The mere passage of time cannot be an insurmountable hurdle in determining prejudice. The defendant is not required to offer evidence of actual prejudice; however, the court is entitled to consider the defendant's conduct in light of its assertion of prejudice.

## Status notices and hearings

Status notices ceased to be issued as of January 1, 2015. Status notices received by parties prior to January 1, 2015 under the “old” Rule 48.14(13) ceased to have effect on that date, unless a status hearing had already been scheduled or the action had already been dismissed.

In a case about alleged damage to a residential pool by a company hired to clean it,<sup>10</sup> Swinton J., applied the contextual approach mandated by *Carioca*, and set aside the Master's order dismissing this action for delay.

Justice Swinton allowed the appeal for the following reasons:

- The Master failed to consider all of the evidence which demonstrated that the litigation delay was adequately explained from the date the defence was served until the status notice was issued by the court;
- The Master erroneously calculated the period of litigation delay. The correct period of assessment for litigation delay starts from the time the action is defended until the status notice is generated;<sup>11</sup> and
- The Master required “cogent,” “compelling” and “convincing” evidence to explain the litigation delay when the settled case law simply requires an “adequate” or “passable” explanation;<sup>12</sup> and
- The Master ignored undisputed evidence that the defendant sustained no prejudice from the litigation delay. The Master erroneously relied upon the mere passage of time and bald assertions that defence witnesses might not be available without any evidentiary foundation.

## Conclusion

The Rule 48 set aside motions decided in 2015 were generally favourable to plaintiffs. Some courts were willing to consider the five year dismissal window in the amended rules, even where the new rule was not strictly applicable. A bias towards determination on

## Critical dates under the new Rule 48.14:

- New Rule 48.14 is effective January 1, 2015
- Actions commenced on or after January 1, 2012 automatically dismissed without notice 5 years after commencement
- Actions commenced before January 1, 2012 automatically dismissed January 1, 2017
- Dismissals will occur without notice to parties or their counsel

the merits was emphasized. Solicitors' errors should not be visited on their clients, if the defendant is not prejudiced. A contextual approach was applied, not only in setting aside registrars' dismissals, but also dismissals at status hearings, and motions to restore actions to the trial list.

While LAWPRO had some success in arguing these motions in 2015, we are concerned that the January 1, 2017 deadline prescribed under the new rules will trigger a wave of administrative dismissals of actions commenced before January 1, 2012. These dismissals will occur without notice to the parties, and given the newly-extended timeframe for bringing actions to trial, there is a risk judges may be less amenable to arguments about the reasonableness of delays. We highly recommend that lawyers begin reviewing the status of their files well before the January 1 deadline. For tips about how to protect your files from unexpected dismissal, see our Rule 48 Toolkit at [practicepro.ca/rule48](http://practicepro.ca/rule48) ■

Debra Rolph is Director of Research at LAWPRO.

<sup>10</sup> 2015 ONSC 7348 (Div.Ct). See also *Fant v. Caterpillar Tunneling Canada Corp.*, 2015 ONSC 6889

<sup>11</sup> *Kara v. Arnold*, 2014 ONCA 871

<sup>12</sup> *Carioca's, supra*, n. 8

# LAWPRO defends its insureds

When identifying cases that merit a formal defence (or appeal), LAWPRO counsel consider a range of strategic factors, including whether the case has the potential to alter the standard of care applicable to professional legal services. This article summarizes a sampling of those claims in defence of which we went to court in 2015.

## Family law

Two notable judgments in 2015 involved family lawyers.

The court dismissed a multi-million dollar claim against a family lawyer arising from his negotiation of a marriage contract. The client alleged that the lawyer should have advised him to negotiate a “down-side protection clause,” so that, if his income did not increase during the course of the marriage, he would not be obliged to make any equalization payment to his wife. The court held that even if the lawyer were obliged to recommend such a clause, which he was not, there was no evidence that the wife would have agreed to it. Even

if the contract had allowed the husband to avoid any equalization payment, a court would likely have awarded the wife support in an amount totalling what the husband eventually paid her by way of settlement. She had no assets, and no employment prospects. The claimant established neither liability, nor damages.<sup>1</sup>

The second family law judgment also arose from the negotiation of a marriage contract. In this case, the court summarily dismissed a multi-million dollar claim against two lawyers. Under that contract, the wife waived support and equalization payments in exchange for a long-term stream of employment income, and other benefits. When the marriage ended shortly thereafter, she was immediately dissatisfied. For five years, she unsuccessfully attempted, with the help of independent legal and financial advisors, to renegotiate almost every element of the marriage contract.

She never sued her husband to re-open the marriage contract. Instead, she sued her own lawyer, and also the lawyer for the family corporation. She alleged that she did not receive adequate disclosure from her husband, and that she failed to adequately understand the nature and consequences of the marriage contract. She alleged that the marriage contract was one-sided and failed to protect her rights.

The solicitors pleaded that her action was statute barred. Secondly, they argued that the entire proceeding was an abuse of process because, if her allegations of lack of knowledge and understanding were true, then she had an avenue available to her under s. 56(4) of the *Family Law Act* to seek redress from her husband.

The court accepted both arguments, and dismissed the action. The action was commenced more than two years after the plaintiff discovered or ought reasonably to have discovered her claims.

<sup>1</sup> 2015 ONSC 5456



Secondly, it was unfair to permit her to treat her solicitors as *de facto* guarantors of her support and equalization rights, particularly where they had no right to contribution or indemnity from the party responsible for her support and equalization: her husband.<sup>2</sup>

## Real estate

S.A.Q. Akhtar, J. struck out an action brought against a real estate lawyer. The plaintiff alleged that the lawyer, by drafting an affidavit for signature by one individual, allowed a second individual to defraud the plaintiff, and that the lawyer was therefore liable to the plaintiff for his loss of equity in two properties. The court held that the words of the affidavit were those of the affiant, and not of the lawyer, as was the representation that the content contained therein was true. To hold otherwise would expose lawyers who draft affidavits to liability claims, and potentially put them into a position of adversity with their clients.<sup>3</sup>

In another case, a solicitor acted on the discharge of two mortgages. Several years later, the lenders alleged that the discharges were fraudulent. Fortunately, the solicitor had retained photocopies of the plaintiffs' actual citizenship cards and their then current driver's licences, as well as signed and witnessed authorizations to discharge their mortgages. The action against him was dismissed.<sup>4</sup>

LAWPRO regularly cautions lawyers against representing parties on both sides of a real estate transaction or who are otherwise adverse in interest, and urges lawyers to consider the *Rules of Professional Conduct* relating to conflicts of interest. Nevertheless, we still see claims arising out of circumstances in which there has been such a conflict. In a matter we defended in 2015, a plaintiff's action against a solicitor was dismissed, notwithstanding that he acted for both the plaintiff purchaser, and for the vendor. In this case, the evidence demonstrated that the solicitor did not prefer the vendor's interests. In fact, he was able to obtain from the vendor concessions that an "independent" lawyer could not have obtained. While the plaintiff did suffer losses in the transaction, nothing the solicitor did or did not do caused the plaintiff's losses – the losses arose from factors beyond his control.<sup>5</sup>

## Civil litigation

LAWPRO counsel appeared before the Supreme Court of Canada in an attempt to overturn a Court of Appeal of Ontario order upholding a finding of contempt against a lawyer. The lawyer had returned money held in his own trust account to the client to whom it belonged, despite the fact that there was a Mareva order in place with respect to the funds. In arguing that the finding of contempt should be overturned, LAWPRO counsel argued, among other grounds, that civil contempt requires a finding of "contumacious intent", and that retaining the funds in the trust account would have conflicted with other duties that the lawyer owed the client. These arguments were not persuasive, and the court dismissed the appeal.<sup>6</sup>

Finally, LAWPRO successfully argued for the striking out of a pleading on the basis that it disclosed no cause of action against a litigation lawyer. The claims, which alleged numerous torts against the lawyer and her associates, were either premature, or improperly pleaded, or incapable of proof. The Court of Appeal also found that the claim was an abuse of process. It was designed to frustrate pending medical malpractice actions against the plaintiff, where the defendant lawyer represented the plaintiff's patients.<sup>7</sup>

As the foregoing shows, LAWPRO does not hesitate to seek summary judgment, go to trial, and even pursue appeals in cases in which a vigorous defence is warranted. Also helpful is Rule 2.1 of the *Rules of Civil Procedure*, which allows for the dismissal of actions which are frivolous and vexatious on their faces, without the necessity of bringing motions.<sup>8</sup> For a report on LAWPRO's rate of success in these matters, see "Our 2015 claims handling report card" on page 9. ■

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Debra Rolph is Director of Research at LAWPRO.

<sup>2</sup> 2015 ONSC 3081

<sup>4</sup> 2015 ONSC 3683

<sup>3</sup> 2015 ONSC 4807

<sup>5</sup> 2015 ONSC 6217

<sup>6</sup> 2015 SCC 17, dismissing appeal from 2013 ONCA 530

<sup>7</sup> 2015 ONCA 631

<sup>8</sup> 2015 ONCA 733





# The practicePRO initiative

## Helping your practice run in high gear

There are many parts of a successful practice. A breakdown in any one area can impede client service or even lead to a malpractice claim. The practicePRO initiative provides lawyers with tools to keep their practices running smoothly while warning against new hazards that could throw a wrench into the works.



**90** events

**287** Risk Management Credit programs

**50,000** attendees

### Events and workshops

Nearly 90 events and programs held by law associations, firms and continuing professional development providers around Ontario featured risk management content from LAWPRO. 287 programs were approved for the LAWPRO Risk Management Credit, reaching a combined audience of 50,000 attendees.

### Top downloaded resources in 2015

The articles, checklists, and practice aids on practicePRO.ca were downloaded over 611,000 times in 2015, a 15 per cent increase from the year before. The most popular were:

- 1** E-discovery reading list
- 2** Commercial transaction checklist
- 3** Protecting yourself from cybercrime dangers
- 4** General retainer letter precedent
- 5** LAWPRO fraud fact sheet
- 6** **NEW:** Real estate malpractice claims fact sheet
- 7** 20 steps for a successful student-to-lawyer transition
- 8** **NEW:** Limited scope representation resources
- 9** Employee departure checklist
- 10** Managing the lawyer/client relationship booklet



## The new Rule 48.14

Helping lawyers manage the transition rules for the new Rule 48.14 of the *Rules of Civil Procedure* is a high priority for the practicePRO program.

- The Rule 48 Transition Toolkit provides advice and tools lawyers and law firms can use to lessen the risk of a claim.
- LAWPRO speakers embarked on sixteen Rule 48 presentations in 2015, with more planned for 2016.

## Critical dates under the new Rule 48.14:

- New Rule 48.14 is effective January 1, 2015
- Actions commenced on or after January 1, 2012 automatically dismissed without notice 5 years after commencement
- Actions commenced before January 1, 2012 automatically dismissed January 1, 2017
- Dismissals will occur without notice to parties or their counsel

## Limited scope representation resources

There is a greater risk of claims due to poor communications and inadequate investigation in a limited scope retainer. The practicePRO program offers the following resources to help:

Best practices tip sheet

Process flow chart for lawyers

Retainer agreement (family law)

Checklist of services

### Handouts to help clients:

What is limited scope representation?

Limited scope representation flowchart

Tips for keeping your family lawyer's legal fees down

## Fraud and cybercrime prevention

Law firms continue to be lucrative targets for cyber criminals. The AvoidAClaim blog posted over 170 fraud warnings in 2015, based on more than 2,000 suspicious emails forwarded from lawyers around the world. Most were bad cheque scams, however others involved "spear phishing" attempts to redirect funds, and malware that can lock up firm data until a fee is paid.

## Malpractice claims fact sheets

The Malpractice claims fact sheets include claims statistics, common scenarios, and tips for avoiding claims in a specific area of law.



# Know your limits

Knowing your limits may sound like sobering advice, but for lawyers in private practice, knowing the limits of your insurance coverage can help you manage risk.

## Limits per claim, and limits in the aggregate

There are two general types of limits: per claim (the maximum amount payable for any one claim within a policy year) and aggregate (the maximum amount payable for all claims over a period of time). For lawyers in Ontario, the standard practice limits for the primary professional liability program – the mandatory coverage required by the Law Society for lawyers in private practice – are \$1 million per claim and \$2 million in the aggregate over the year.

The standard per claim limit includes related claims in the firm. So if, for example, an associate's error leads to a client suing the associate

and the partners in the firm, the available limit for all of the lawyers in that scenario together will be capped at \$1 million.

## Sublimits

Insurance policies will often have different limits for different types of claims based on the type of risk involved. Under the Law Society program there are six types of claims that are subject to sublimits: Innocent Party Coverage, Real Estate Practice Coverage, Limited Trust Account Overdraft, Claims Brought by Corporate Employers, Limited Cybercrime Coverage, and Prescribed Penalties.

Claims subject to a sublimit are treated differently in several ways. Perhaps the coverage isn't available to all lawyers, but only those who qualify (e.g. Real Estate Practice Coverage and Claims Brought by Corporate Employers). It can mean that the type of defence provided by LAWPRO will differ (e.g. Prescribed Penalties and Claims Brought by Corporate Employers). And despite lower limits being generally offered, there may be the option to increase a sublimit (e.g. Innocent Party Coverage).

Below are three examples of how claims that are subject to a sublimit can be treated differently:

### INNOCENT PARTY COVERAGE

When lawyers commit intentional wrongs (dishonest, fraudulent, criminal or malicious acts or omissions), no coverage is available under the basic practice coverage. But if there's an innocent lawyer who might also be sued, the policy addresses this exposure by endorsement. "Innocent Party Coverage" is

## Run-off limits

Lawyers who are no longer in private practice and are exempt from paying the Law Society program premiums are provided with \$250,000 in run-off coverage limits (per claim and in the aggregate) for no additional premium. Lawyers should be aware, however, that this is a one-time limit and unlike the limits for practising lawyers, is not reinstated annually. Lawyers can apply to increase this limit to \$500,000 per claim and in the aggregate or to \$1 million per claim with \$2 million in the aggregate.

required for lawyers (and paralegal partners/shareholders) who practise in circumstances where they can be vicariously responsible for the acts or omissions of other lawyers.<sup>1</sup> The basic \$250,000 sublimit can be bought up to \$500,000 or \$1,000,000 per claim and in the aggregate.

### LIMITED CYBERCRIME COVERAGE

Lawyers have some relief from a general exclusion relating to claims arising from “Cybercrimes” (a defined term). Each year, lawyers are provided with \$250,000 (per claim/in the aggregate) coverage for described losses arising from a cybercrime, such as certain types of data theft or loss arising from an intruder gaining electronic access to funds held in trust by the lawyer and involving the lawyer’s professional services. There is no option to buy a higher sublimit (“buy-up”) than this sublimit, and firms are encouraged to investigate other insurance options such as dedicated privacy and network insurance.

### PRESCRIBED PENALTIES

While coverage usually doesn’t apply to claims for fines or penalties, lawyers are provided with limited coverage for defending certain types of penalties under the *Excise Tax Act* or *Income Tax Act*. Unlike the standard “duty to defend” that applies to most types of claims, lawyers are reimbursed up to the \$100,000 sublimit, after the lawyer has been successful in defending these types of claims upon final resolution.

the size of the firm, the amounts that underlie the files the firm works on, and the volume of work.

It is very important to know how a firm’s excess insurance will respond to claims that have a sublimit under the Law Society primary insurance program. The LAWPRO optional excess program, for example, generally provides law firms with additional per claim and aggregate limits of between \$1 million and \$9 million, but there may be gaps in coverage if the underlying limits/sublimits are not bought-up. For this reason, we strongly encourage firms that carry LAWPRO excess coverage to buy-up the limits/sublimits for Run-off Coverage and Innocent Party (if applicable), in order to better avoid any gaps between the point under the primary program when a standard limit/sublimit would be exhausted and the threshold before the excess policy would be expected to respond.

If excess professional liability insurance won’t respond to claims that are subject to a sublimit, it may be because those types of claims are better captured in other types of insurance products, such as fidelity, crime or cyber insurance policies. An experienced insurance agent or a broker should be able to help you with this.

For more information on limits or the optional LAWPRO excess professional liability insurance program, please contact our Customer Service and Underwriting Department to speak with a Program Coordinator at 416-598-5899 or 1-800-410-1013, by email at [service@lawpro.ca](mailto:service@lawpro.ca), or you may visit our website at [lawpro.ca](http://lawpro.ca). ■

Victoria Crewe-Nelson is Assistant Vice-President, Underwriting at LAWPRO.

## Excess and other types of insurance

Lawyers and law firms who want more comfort than what the applicable Law Society primary program limits can provide should consider excess professional liability insurance. Deciding what excess limit amounts to purchase will often depend on the areas of practice,

<sup>1</sup> Sole practitioners, licensee firms with only one lawyer, or lawyers practising alone in a law corporation may opt to purchase Innocent Party Sublimit coverage.

Has your firm grown?  
Are you taking on  
more risk?

LAWPRO  
**excess**<sup>TM</sup>  
Insurance



It may be time to consider Excess insurance. Assess your firm’s exposure at [lawpro.ca/excessexposure](http://lawpro.ca/excessexposure) or call us at 1-800-410-1013.



# TitlePLUS program update

## We're listening

The theme for 2015 has been listening to our subscribers, customers and stakeholders. In 2015, the TitlePLUS®<sup>1</sup> program responded to requests and client needs with a number of improvements to products and services.

## Higher policy amounts

For those doing higher value deals, we worked to introduce higher policy amounts. The following options are now available: residential purchase, mortgage-only and OwnerEXPRESS® (existing owner) policies up to \$5 million; and, Ontario commercial and farm purchase and mortgage-only policies up to \$2.5 million.<sup>2</sup>

## Plain and simple pricing

TitlePLUS pricing remains competitive and all inclusive. As always, TitlePLUS residential and commercial purchase policies include legal service coverage<sup>3</sup> and all mortgages insured under the same policy – for the same price. Mortgage-only policies also contain legal service coverage.

## Simplified policy coverage

In 2015, to make it easier for you to explain TitlePLUS coverage to your clients, revisions were made to the TitlePLUS Supplementary Coverage Endorsement for Residential Properties.

## Technology – the way of the future

Technology can help lawyers be more efficient in their real estate practices. Through the integrated TitlePLUS policy application and

LawyerDoneDeal's RealtiWeb®<sup>4</sup> program, you can – with a click of a button – prepopulate information to generate a TitlePLUS policy and multiple closing documents. This saves time by reducing data entry and minimizes the risk of errors.

This integration was recognized by one of Canada's largest lenders which selected LawyerDoneDeal's Virtual Intermediary Program (VIP®) as one of its electronic mortgage communication portals. With VIP, lawyers receive instructions electronically through a secure portal ensuring prompt and accurate delivery, and eliminating faxes or couriers. Lawyers can communicate electronically with lenders making the exchange of information effortless and instantaneous – from follow up, built-in reminders and status updates to requests for funds and final reporting.

## New Condo Select

Similar to the New Home Program, New Condo Select was launched in 2015. It offers title insurance policies that are pre-underwritten for an entire condo development. Lawyers now have access to a faster and simpler title insurance application process on more projects than ever before. If the condo they are doing a deal for has been selected for the program, much of the information is prepopulated for them in the application.

TitlePLUS insurance is the  
only title insurance option  
embedded in the VIP portal.<sup>5</sup>

<sup>1</sup> The TitlePLUS policy is underwritten by Lawyers' Professional Indemnity Company (LawPRO®).

<sup>2</sup> Additional search requirements may apply to some policies over \$1 million; please call for details.

<sup>3</sup> Excluding Québec policies. Please refer to the policy for full details, including actual terms and conditions.

<sup>4</sup> RealtiWeb and VIP are registered trademarks of LawyerDoneDeal Corp. and are used under licence.

<sup>5</sup> Choice of title insurer remains with the client in consultation with the lawyer acting on the transaction

\* Registered trademarks of Lawyers' Professional Indemnity Company.

## The fight to stop fraud

The TitlePLUS department is always alert to the red flags of fraud. In 2015, the program declined \$6 million in policy coverage for potentially fraudulent transactions. The program also either declined coverage or attached a special exception to coverage for transactions totaling \$662,500 involving properties with a history of use as illegal grow operations.

## Claims update

Over the last number of years, the rate of claims for the program has remained relatively flat. The average indemnity payment on a TitlePLUS claim (based on claims closed as of December 31, 2015) was approximately \$6,000 and 90 per cent of claims were resolved for less than \$10,000.

In our ongoing efforts to provide excellent customer service, over 200 more TitlePLUS claims files were closed in 2015 than in 2014. ■

## TD Canada Trust Mortgage Instructions Delivered

# Right To Your Inbox



TD Canada Trust has selected LawyerDoneDeal as an additional option for electronic mortgage processing. Trusted by more than 6,500 lawyers and their staff across Canada, LDD simplifies the entire mortgage application process, providing streamlined interaction between you and TD Canada Trust.

### Save valuable time and money

- Reduce data entry with pre-populated fields and eliminate faxes or phone calls for any given transaction;
- Receive instructions, prepare documents, complete/submit request for funds, and complete/submit final report;
- Built-in reminders for new instruction packages, request for funds and final reporting help you meet your deadlines;
- Simplified request for funds and final reporting process includes pre-populated data from TD.

### Even more benefits with RealtiWeb® and TitlePLUS® Title Insurance

- Seamless process easily integrates data to and from your RealtiWeb file;
- Streamline your title insurance process with the built-in integration to TitlePLUS Title Insurance.

### If you are a RealtiWeb® user

The mortgage instructions will be in your RealtiWeb Inbox.

### If you are not a RealtiWeb user

The mortgage instructions will be in your LDD WebDocument Retrieval Inbox at [lawyerdonedeal.com/dr/](http://lawyerdonedeal.com/dr/).

### Receive TD mortgage instructions in your inbox today

For more information or to subscribe, connect with your **LDD Sales Rep, TitlePLUS Consultant** or call **1-800-363-2253**.



[titleplus.ca](http://titleplus.ca)



[ldd.ca](http://ldd.ca)

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# An active corporate citizen

LAWPRO's Corporate Social Responsibility program keeps us active in the community. Our dedication to being a responsible, involved and accountable corporate citizen of the many communities in which we are a part is focused on four principal areas:

## Fostering the legal community and access to justice

- LAWPRO collaborated closely with the Ontario Justice Education Network (OJEN) to develop A Foot in the Door: A Classroom Resource on Real Estate and Housing Law in Ontario to help build the financial and legal literacy of high school students. Modules include Developing Your Negotiation Skills, Rental Housing, and Purchase and Sale of a Home.
- In September 2015, LAWPRO devoted an issue of *LAWPRO Magazine* to the topic of wellness and balance for lawyers. Content included tips about coping with the day-to-day stresses of law practice, how to find a career path that provides happiness and professional satisfaction, how to identify and support a colleague who is struggling, a wellness self-assessment, and advice about how to engage the law office team. To view the "Finding your blue sky" magazine and a complete list of *LAWPRO Magazines*, visit our website [practicepro.ca/LawPROmag/default.asp](http://practicepro.ca/LawPROmag/default.asp)
- The fourth annual Caron Wishart Memorial Scholarship was presented to University of Toronto Faculty of Law student, Vivian Lee.
- LAWPRO was a sponsor of the Canadian leg of the Magna Carta exhibition celebrating the document's 800<sup>th</sup> year. The Magna Carta and its companion document, the Charter of the Forest, set the groundwork for many concepts that continue to define democratic life today. As symbols of justice, they also act as powerful reminders that those who govern do so only by the consent of the people.



Ray Leclair, Bradley Wright, Janet Minor, Joanne St. Lewis, Robert Lapper, and Dan Pinnington with the Magna Carta.



## Providing a healthy and rewarding workplace

- In 2015, LAWPRO French-speaking staff created “Franco LAWPRO,” an internal French conversation and networking group. At meetings, members practise French conversation skills and exchange information about translation strategies and related resources. Franco LAWPRO members also maintain a lexicon of established translations.



*A group of LAWPRO employees in their work boots volunteering for Habitat for Humanity.*



*Toys donated to Toy Mountain by the Customer Service and Underwriting department in their sixth annual Secret Santa event.*

## Respecting the environment

- Efforts to use less paper continued. LAWPRO began releasing its Annual Report in electronic format, with a simple postcard instead of a printed report.
- In 2015, 98.8 per cent of our insured lawyers filed electronically helping us reduce the amount of paper used in our renewal process.

## Supporting the broader Canadian community

- In 2015, LAWPRO staff-led events and denim Friday contributions resulted in a total of \$27,615 for five chosen recipient charities: Toronto Children's Breakfast Club, Anaphylaxis Canada, Fanconi Canada, Good Shepherd Ministries, and Toronto Humane Society.
- As part of LAWPRO's charity day program, employees may spend a day working with a charity of their choice. In 2015, employees

donated 17 days in support of their chosen charities. Charities that benefited from help by LAWPRO staff included Kol Hope for Children, Habitat for Humanity, Rethink Breast Cancer, Fanconi Canada, Belmont House, and the Daily Bread Food Bank.

- This year, other staff-led charitable initiatives included:
  - Donation of frozen lasagna by staff to the Good Shepherd Homeless Shelter – company record of 1,775 pounds of food donated this year;
  - Customer service “Secret Santa” toy drive for Toy Mountain;
  - Collection of canned goods for the Daily Bread Food Bank; and
  - Sale of daffodil pins in support of cancer research. ■

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Sarah Van Schepen is Communications Coordinator at LAWPRO.

## Limitations: They wrote the book

We are excited to announce the recent publication, by Lexis-Nexis Canada Inc., of *The Law of Limitations, Third Edition*. The first two editions were written prior to the coming into force of the *Limitations Act, 2002*, so this new edition is the first to cover cases decided under the new Ontario regime.

Although Ontario cases receive the most coverage, the scope of the text is Canada-wide.

Since publication of the second edition, Saskatchewan, New Brunswick, British Columbia, and Nova Scotia have fundamentally reformed their limitations regimes, and this edition brings readers up-to-date on the related jurisprudence.

The third edition contains new sections on wrongful dismissal, class proceedings, tolling agreements, and dispute resolution. It also has greatly expanded treatments of negotiable instruments, insurance contracts, assault and sexual assault claims, and limitations governing federal statutes.

LAWPRO takes special pride in this publication because Debra Rolph, our Director of Research, is one of the two authors added for the edition (the other is Daniel Zacks of Clyde & Co). In his Preface, lead author Graeme Mew describes Debra Rolph as a “living encyclopedia of the law of limitations.” *The Law of Limitations, Third Edition* puts that encyclopedic knowledge at lawyers' fingertips.

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