

# Coverage: Same base premium... but Ontario lawyers saved \$5 million in 2012. How?

Despite claims costs in \$100 million territory, LAWPRO kept its base premium stable at \$3,350 per lawyer from 2011 to 2012. Not all lawyers, however, pay the base premium. Careful claims analysis allows us to offer discounts to insureds such as newly-called lawyers, lawyers who practice part-time, and lawyers who practice exclusively in the low-claims areas of criminal and/or immigration law.

For the 2012 policy year, we increased the discounts available to these groups, to a maximum of 50 per cent off the total premium.

## New calls:

discount in each of the first four years:

year 1: **50%**                      year 2: **40%**  
year 3: **30%**                      year 4: **20%**

Part-time practice:  
**50% discount**

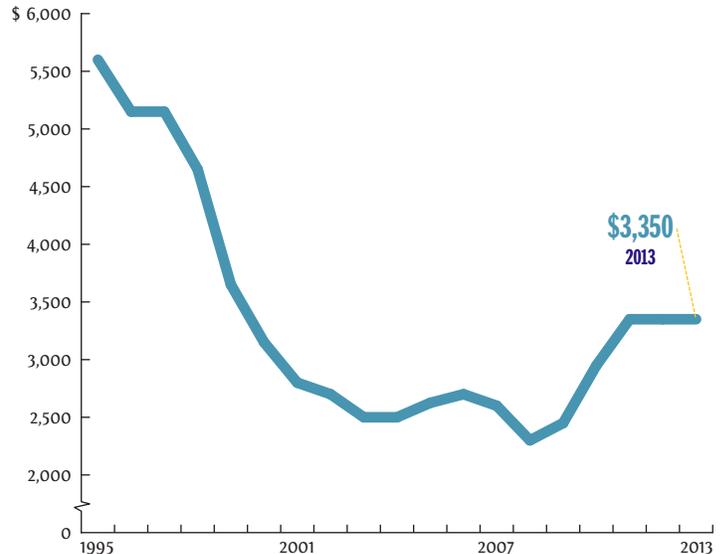
Criminal and/or  
immigration only:  
**50% discount**

We also introduced a new reduction in the premium for the Real Estate Practice Coverage Option (REPCO): **Down to \$250 per real estate practitioner.** That's just half of what this coverage cost when it was first introduced.

**The result of these cuts?  
\$5 million in savings  
for lawyers.**

What's more, the lawyers who saved money tend to either be especially vulnerable to tough economic times themselves (because they're just starting out in practice, or working part-time), or to be able to pass on those savings to clients of modest means (criminal and immigration law clients).

Base premium per lawyer



Coverage option	Feature	No. of lawyers participating as of Jan. 31, 2012	No. of lawyers participating as of Jan. 31, 2013
New call discount	20 to 50 per cent base premium discount for those called in the last one to four years	3,975	4,690
Part-time practice	50 per cent base premium discount for eligible lawyers	1,463	1,562
Restricted area of practice option	50 per cent base premium discount for immigration/criminal law practitioners	1,383	1,484
Innocent Party buy-up	Increase in Innocent Party sublimits up to as much as \$1 million per claim/aggregate	3,309 (based on \$249/lawyer)	3,471 (based on \$249/lawyer)
Run-off buy-up	Increase limits for past services from \$250,000 per claim/aggregate to as much as \$1 million per claim/\$2 million aggregate	891	963
Real Estate practice coverage	Required for all lawyers practising real estate law in Ontario. Sublimit coverage of \$250,000 per claim/\$1 million aggregate	7,255	7,376

# Convenient and responsive service for a diverse and growing bar

A record-breaking 24,012 lawyers filed LawPRO professional indemnity coverage applications in 2012, with 97 per cent of those choosing to file online. We invite you to visualize the reduction in environmental impact that the shift to electronic filing has made!

But electronic filing has benefits beyond saving paper: prepopulated forms let lawyers complete the process faster with less potential for error; 24/7 access lets them file any time of the day or night; and less manual data entry means we can accommodate an increasing number of filers without adding staff every year (saving you money!).

However, computers will never replace customer service. Our successful transition to electronic filing could not have happened

without constant two-way communication. Each year, our customer service department sends out more than a dozen email reminders, and places communications messaging in a wide range of internal and external publications. Customer service representatives receive tens of thousands of inbound telephone calls (29,218 in 2012) each year from insureds, and a similarly large number of written communications. Many inquiries require investigation and follow-up, often with supporting information provided.

LawPRO's customer service department is committed to providing timely, comprehensive and courteous support to each online visitor, recognizing that levels of familiarity with online processes vary.

## Excess coverage: Providing peace of mind carefully tailored to firm size and needs

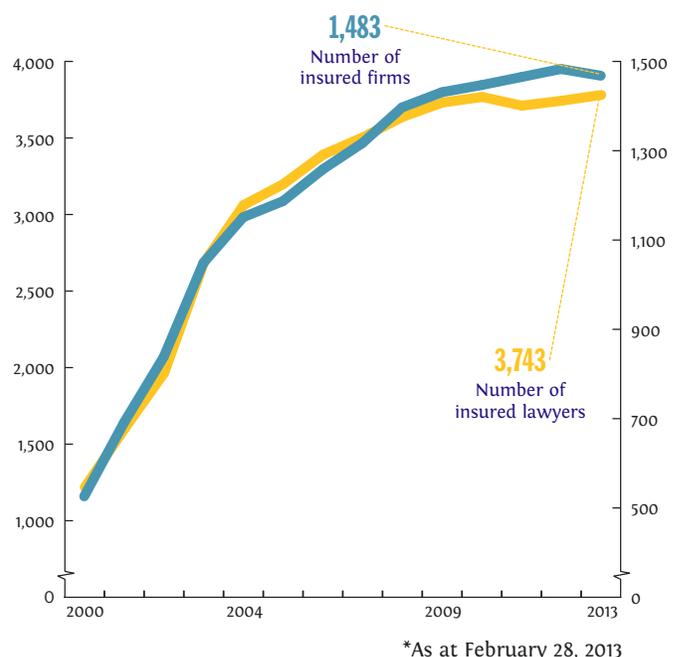
A quick skim of pages 8-10 will make it clear that the rate of claims is growing: No lawyer practising in Ontario can afford to ignore this trend. But the risk of claims is not uniform across the bar: a range of factors – area of practice, number of years in practice, dollar value of transactions, to name a few – can influence the likelihood of a particular firm's risk exposure. Even a fairly small firm can find itself at risk of a claim or cluster of claims that would quickly exhaust the coverage offered under the mandatory insurance program.

Excess coverage is not just for large firms.

LawPRO's Excess Insurance program, which offers coverage beyond the limits of the mandatory program and up to \$9 million per claim/\$9 million in the aggregate, is specifically targeted to small and medium-size firms. In 2012, 1,483 firms representing 3,743 lawyers chose to purchase their excess coverage from LawPRO. Thirty-five of those purchased LawPRO Excess coverage for the first time.

2012 brought with it the first-ever indemnity payment under our Excess program. Other claims filed under the program, though not yet resolved, have reserves applied against them. Might the members of YOUR firm benefit from the peace of mind that comes with knowing you have coverage in place for a claim that exceeds the mandatory policy limits? Contact us at 1-800-410-1013 or 416-598-5899 or via email at [service@lawpro.ca](mailto:service@lawpro.ca) for more information about Excess Insurance or to request a quote.

LawPRO Excess Insurance program\*



# We're there: Claims for 2012 top \$100 million

## The new reality

We have been bracing for this reality: 2012 marks the third year in the past four in which claims costs, once internal claims handling costs are included, have exceeded the \$100 million mark. What we hoped would turn out to be an anomaly has now solidified into an undeniable trend.

While this is bad news in itself, what gives us even greater pause is that the claims *count* that underlies these high costs is also growing: by February 28 of this year, 2,560 claims for the 2012 policy year had been reported, compared to 2,468 for 2011.

This growth in claims count is worrisome because it means that the high claims cost for 2012 cannot be dismissed as relating to a handful of specific claims that were exceptionally expensive (see Figure 1).

## The claims rate story

It may be tempting to attribute the growth in claims count to the year-over-year growth in the number of lawyers in private practice in Ontario. However, that explanation only makes sense if the rate of claims – the number of claims reported per 1,000 lawyers – remains stable over time. But as the yellow line in Figure 1 demonstrates, there were 108 claims per 1,000 practising lawyers in 2012, compared to 107 in 2011. Five years before, in 2007, the claims rate was under 100 claims per thousand.

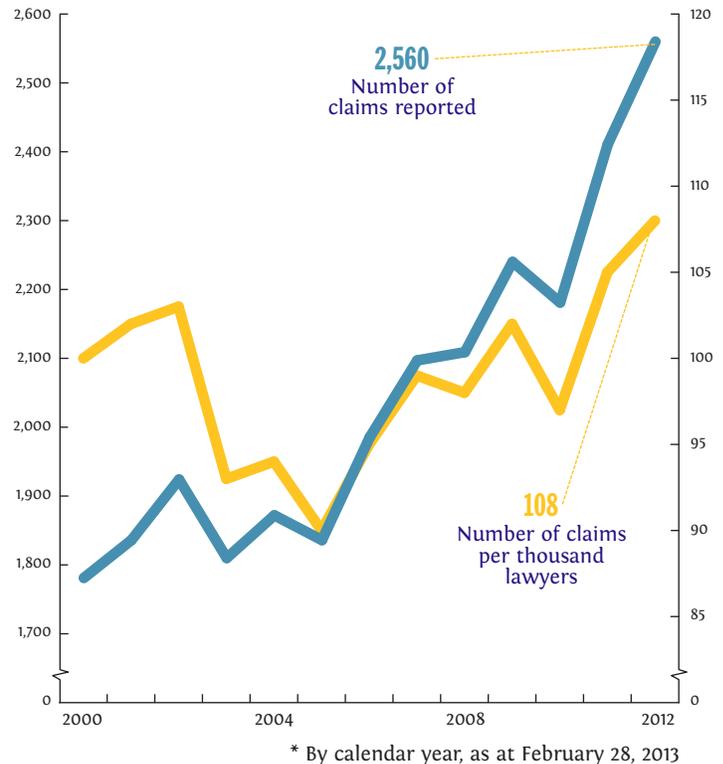
In other words, not only are there more lawyers in practice each year, but each lawyer is more likely than ever before to be subject to a claim.

## What kinds of claims are sparking the trend?

By now, lawyers should be used to hearing that communication-based claims top the list of what we call “causes of loss”. That fact remained true in 2012, with 779 of the 2,560 reported claims attributed to communication errors.

If you study Figure 2 opposite, however, you will spot two cause of loss developments that are giving us cause for concern. The pink line tracks a notable spike in the number of claims related to time management errors. These include claims that flow from, for example, expired limitation periods; or the administrative dismissal of actions under Rule 48 of the *Rules of Civil Procedure*.

Figure 1: Number of claims reported & frequency\*



The green line tracks a less dramatic but still relevant upward trend in the number of claims based on a lawyer's failure to know or apply the law.

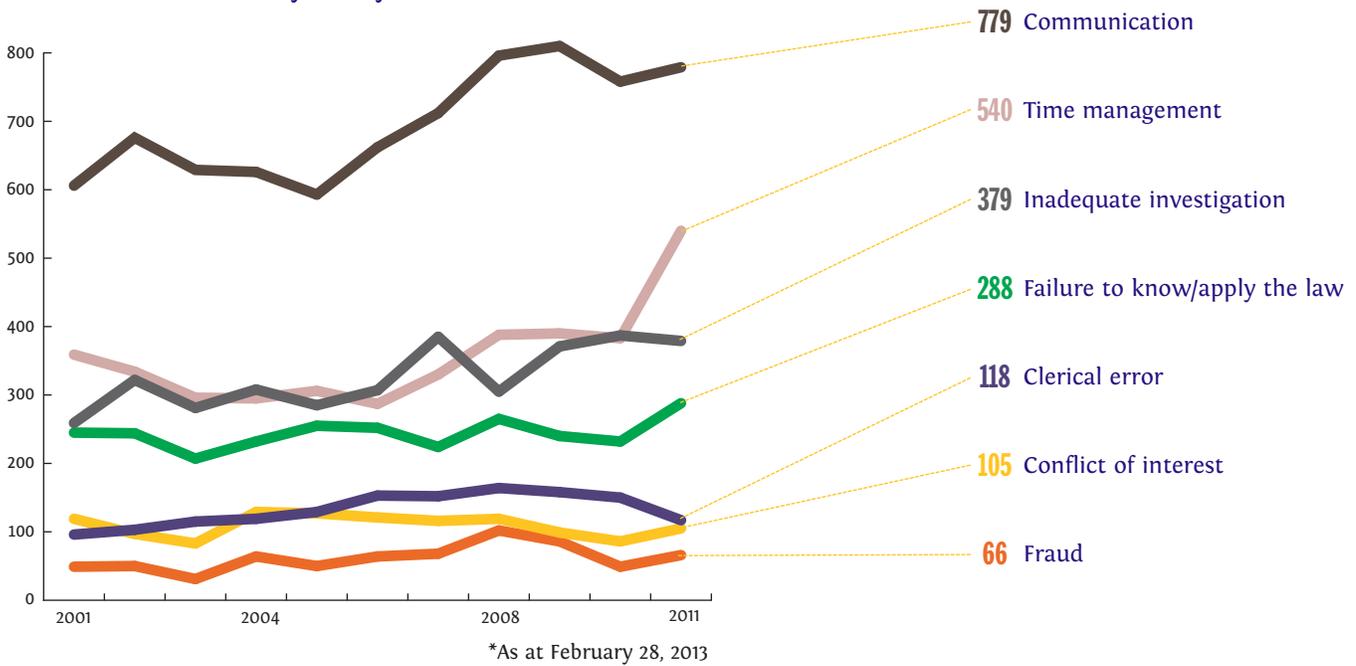
## Claims data takes time to “firm up”

It takes time to resolve a claim. For this reason, the number of claims that LawPRO has open in any given year usually exceeds by a significant margin the number of claims *reported* in that year. At the end of 2012, there were over 3,500 claims open in our system.

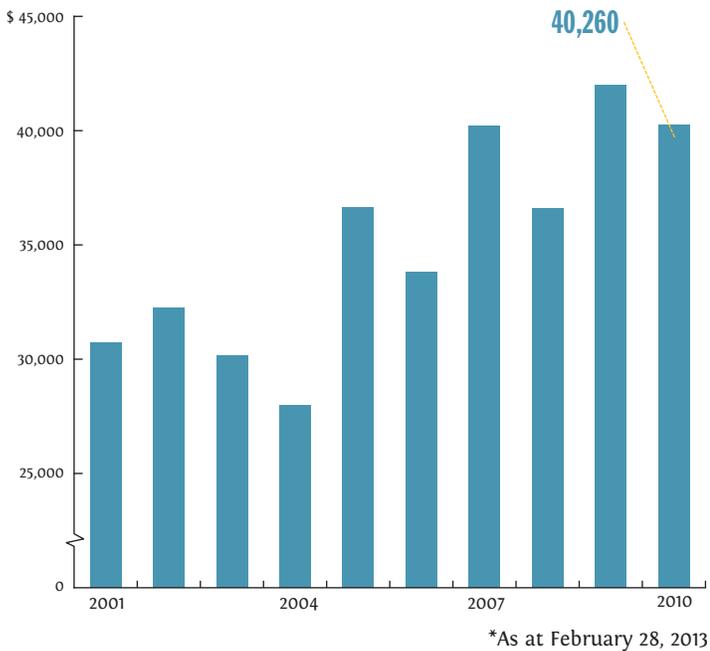
The time it takes to resolve claims (or even get a good handle on the likely cost) means that we don't have a clear picture of average claims costs for a particular policy year until well beyond the end of that year. Figure 3 below represents our best estimate of the average cost of a claim in those years for which the claim-specific reserves have begun to “firm up”.

Figure 4 provides a dramatic illustration of the recent growth in the number of claims for which costs exceed \$100,000.

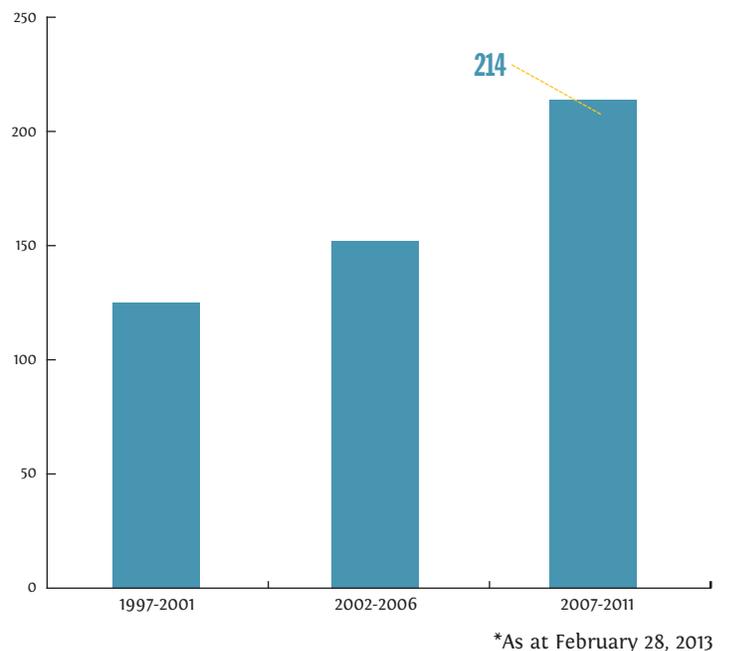
**Figure 2: Reported claim count by cause of loss by fund year\***



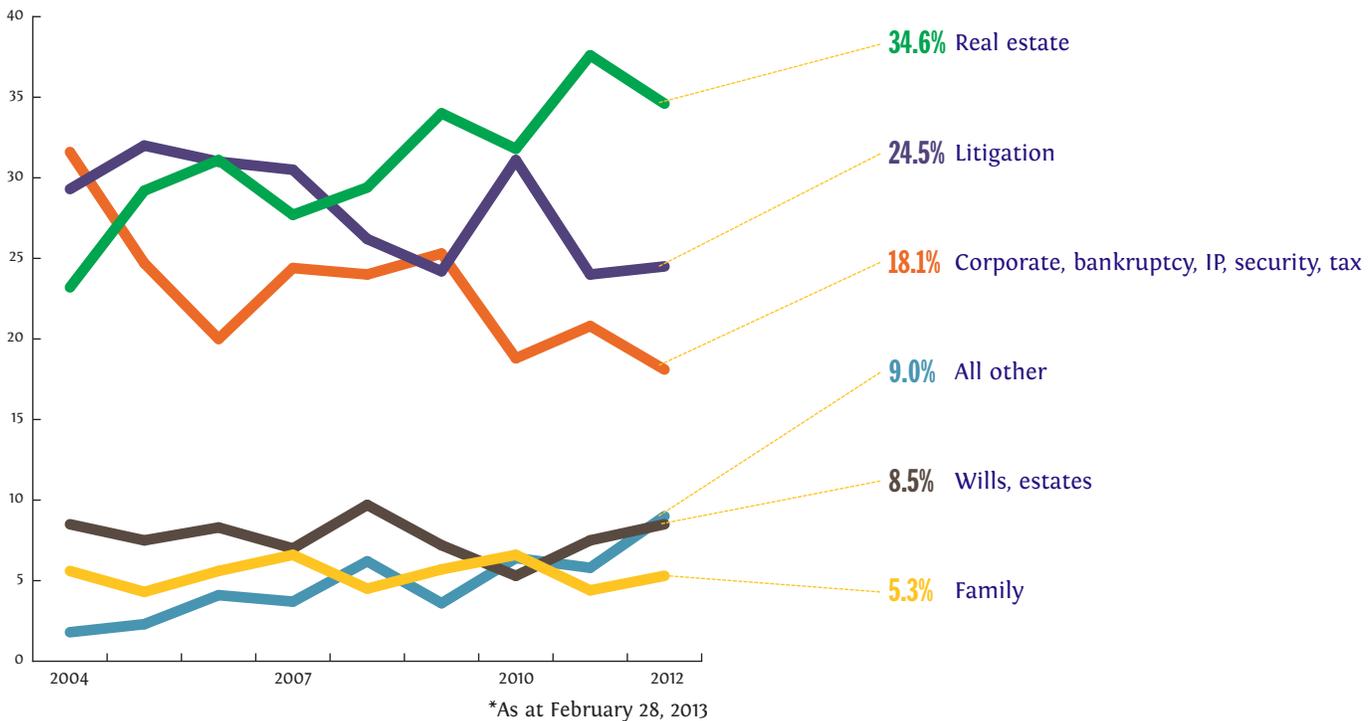
**Figure 3: Average cost per claim at 38 months after start of year in which claim was reported\***



**Figure 4: Number of claims reported with a value greater than \$100,000\***



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



### What about area-of-practice?

As we’ve reported in recent years, real estate and civil litigation continue to be the areas of law with the first and second highest count and cost of claims (see Figure 5 for costs data). The spike in time management claims mentioned above, however, has had a discernible impact on the “spread”. When we compare gross claims costs for 2011 (as at February 29, 2012) and for 2012 (as at February 28, 2013), real estate claims slipped

slightly from 35.6 per cent of costs for 2011 to 34.6 per cent for 2012. Litigation claims captured more of the costs “pie”, increasing from 22.9 per cent to 24.5 per cent.

Other areas of claims cost growth? Wills and estates (grew 0.6 per cent) and family (grew 0.1 percent). While we were pleased to see a decrease in claims costs in the corporate/commercial law area (down to 18.1 per cent from 22.4), this may be a temporary slip related to a slowdown in commercial deals and corporate M&A.

## Keep your clerks, assistants, and other staff in the loop!

Law office staff play a key role in risk management.

Your staff are your risk management front line: They update your tickler system, maintain your files, relay client messages, conduct searches, and handle many other tasks that have a direct impact on your firm’s successful avoidance of malpractice risks.

We believe that much of the content we publish in *LawPRO Magazine* and in our webzines is just as relevant to clerks and legal assistants

as it is to lawyers. Recently, several law office staff have expressed interest in receiving our publications directly. Not only do we welcome these requests, but we’re planning to create content tailored specifically to law clerks and legal assistants.

**Is there a member of your staff who might like to receive *LawPRO Magazine* and our newsletters?** Please encourage him or her to get in touch with us directly at [communications@lawpro.ca](mailto:communications@lawpro.ca), or by calling Nora Rock at 416-598-5809.

# Stemming the tide: Claims management track record

LawPRO requires lawyers to report all claims as promptly as possible, even if the likelihood that the claim will be successful is relatively low. In many cases, early reporting gives LawPRO a better shot at “repairing” an error and reduces the likelihood of an allegation of late reporting which could jeopardize coverage altogether.

## Claims costs: Indemnity costs lower than ever

The claims management efforts of our internal and external counsel led to 44 per cent of claims closed within 2012 to be closed without any payment, and 87 per cent to be closed without an indemnity payment.

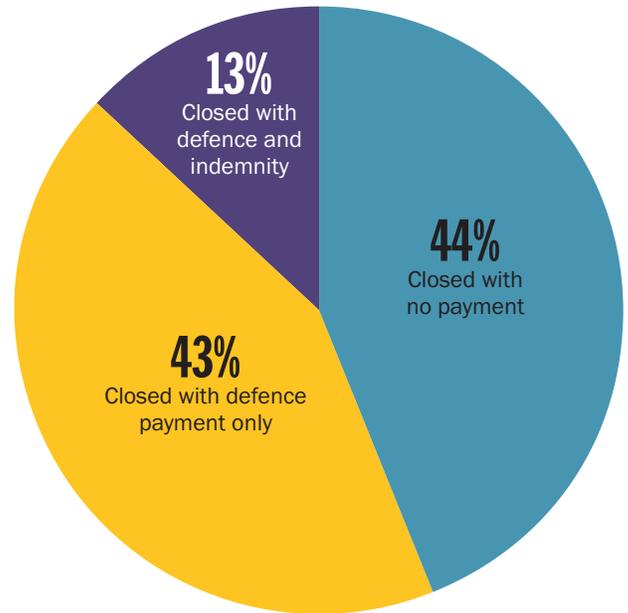
## Litigation record: Continuing success in the courts

While many claims require the expenditure of defence costs, LawPRO has an excellent track record in the courts. In 2012, LawPRO counsel:

- Was successful in all **6 of 6** matters that went to trial and for which a decision was rendered;
- Was successful in **2 of 2** appeals argued; and
- Won **18 out of 25** summary judgment applications made.

## Over \$1.7 million in costs recovered

Whenever chances of success warrant efforts to pursue recoveries, LawPRO takes active steps to enforce judgments, file writs and pursue their execution, and collect reimbursement from third parties responsible for costs. LawPRO counsel were successful in 197 such efforts in 2012, recovering over \$1.7 million. For more details, and for examples of three such recoveries, see “Recoveries: Large or small, every recovery counts” on page 14.



## LawPRO survey results

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

- **86 per cent** said that they were satisfied with how LawPRO handled the claim;
- **74 per cent** said they were satisfied with our selection of counsel;
- **79 per cent** said they would have the defence counsel firm represent them again; and
- **78 per cent** said LawPRO received good value for defence monies spent.