

Claims report

Administrative dismissal of actions: Was 2016 the calm before the storm?

Claims trends in 2016 seemed to follow now-familiar patterns – certain types of claims increased, others abated, and overall claims costs continue to hover around the \$100 million mark. However, in the final months of the year, LAWPRO claims personnel saw an increase in claims due to administrative dismissals under the new Rule 48 of the Rules of Civil Procedure, a trend that we expect will continue in 2017.

Claims count and frequency

As of February 28, 2017, there were 2616 claims reported or reopened in 2016 – the highest number in the past ten years, but only slightly – a 4 per cent increase over the previous year. The high count of reported claims resulted in a claims frequency – the ratio between the number of practising lawyers and the number of claims – of 100.5 claims per 1,000 lawyers. This rate is similar to 2015. The chart [below] shows the trend in both claims reported and claims frequency.

FIGURE 1

Number of claims reported and frequency*

* By report year, as at February 28, 2017

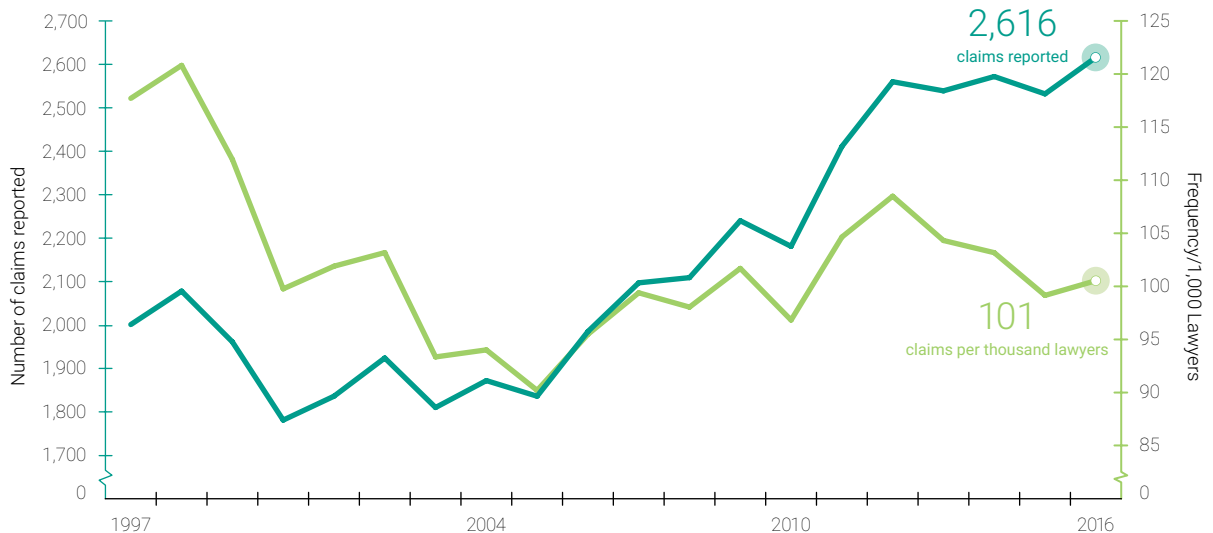
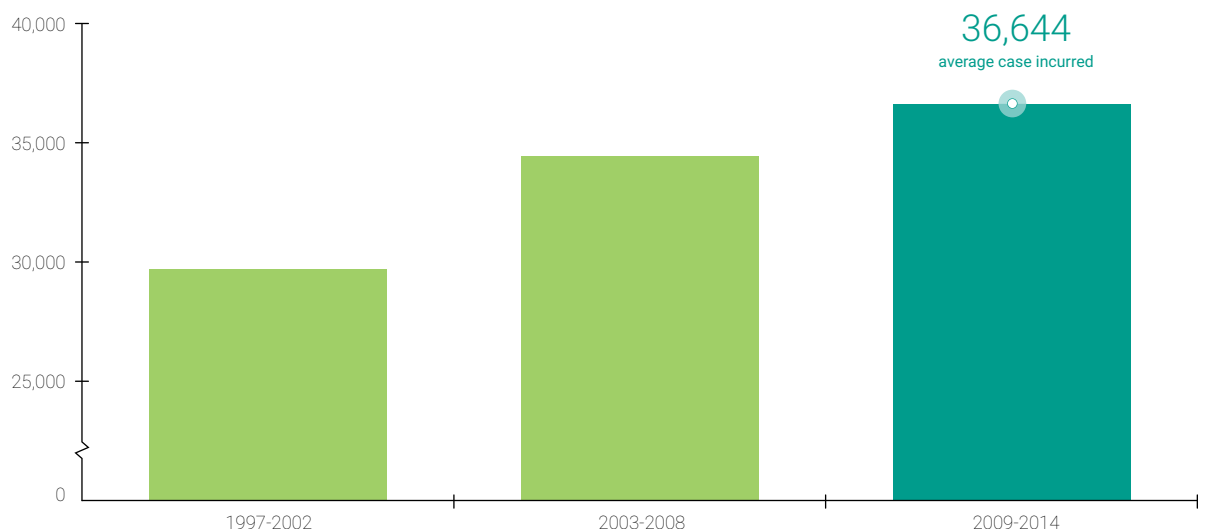


FIGURE 2

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

* As at February 28, 2017



Claims by cause of loss

Because the investigation of newly-reported claims takes time, it takes a year or more for the causes of newly reported claims to come into focus. The figure below reports cause of loss trends to the end of fund year 2015, based on the information that was available at February 29, 2017.

Communications mistakes

Problems with lawyer-client communication remain the most important cause of claims, accounting for 28 per cent of claims in 2015. In addition, certain other causes, notably inadequate investigation and time management errors continue to show an upward trend. In an environment where clients expect more in less time, it continues to be a challenge to always listen carefully, ask deep questions, and take the time to carefully understand all reasonable scenarios.

Rule 48 transition

LAWPRO underwriters are predicting an increase in the number of claims attributed to time management as courts begin to dismiss claims under Rule 48. In the closing months of 2016, LAWPRO counsel began to receive calls from insureds who were having difficulty obtaining adverse parties' consent to timetables under Rule 48.14(4) – an important means of avoiding a dismissal order. LAWPRO has already received notice of a few dozen such potential claims, and we anticipate an increase in the number of such claims in 2017 as court offices across the province begin sending out communications about claims that have been dismissed under the new rule.

FIGURE 3

Reported claim count by cause of loss by fund year*

* As at February 28, 2017

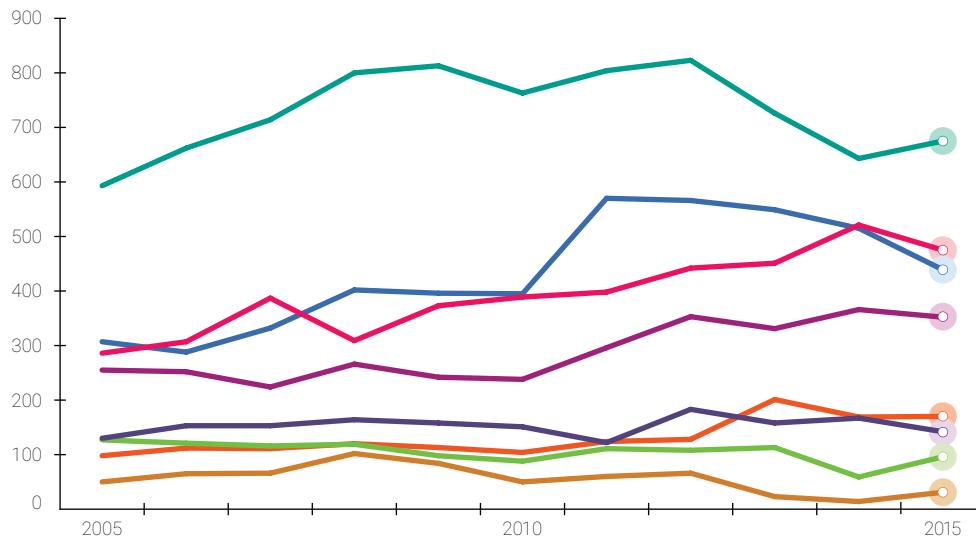
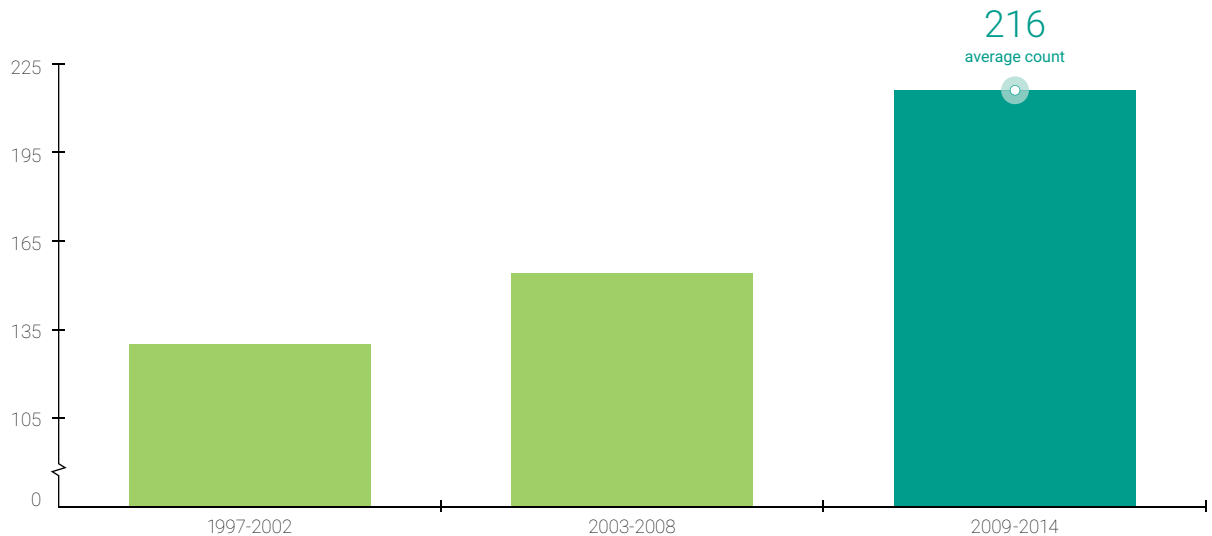


FIGURE 4

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

* As at February 28, 2017



Claims by area of practice

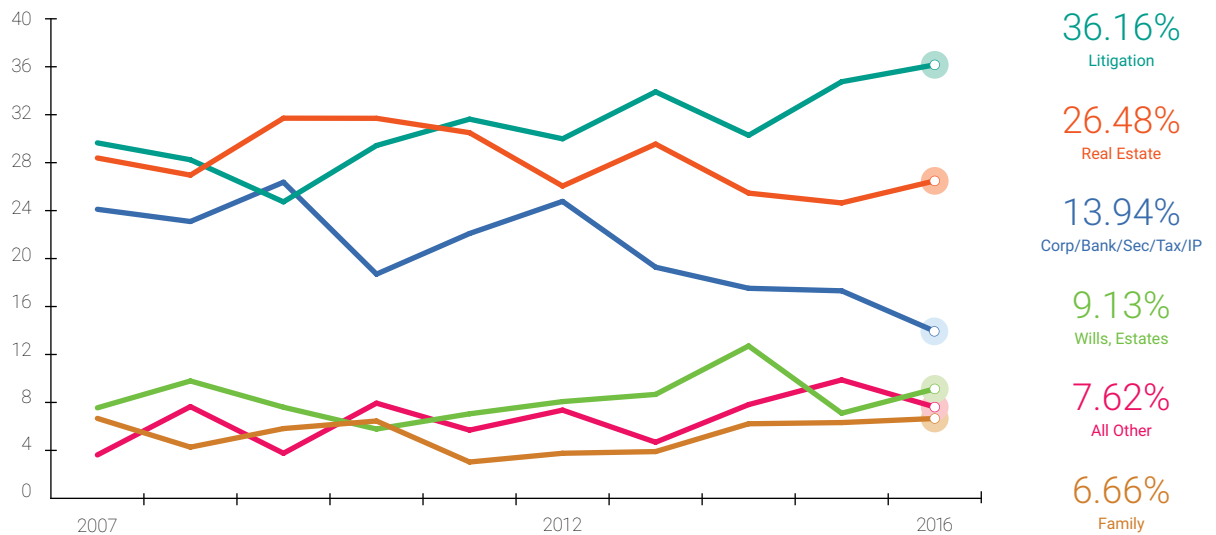
As has been the case for many years, litigation and real estate continue to be the areas of practice that generate the most claims. A recent upward trend in litigation-based claims levelled off somewhat in 2016, but as these claims are typically driven by deadline-related errors, we expect the number to increase again in 2017 as courts begin to dismiss five-year-old actions without prior notice to counsel.

LAWPRO continues to monitor the growth in family law and wills and estates claims. To some extent, growth in cost of claims in these areas reflects increases in the value of real estate, especially in urban centres.

FIGURE 5

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

* As at February 28, 2017



Our 2016 claims handling report card

In 2016, 97 per cent of insureds who completed a satisfaction survey reported that they were satisfied with our efforts in resolving the claims. LAWPRO defense counsel received high approval ratings, with approximately 90 per cent of insureds stating that they would have the same counsel represent them again. LAWPRO resolves claims through courteous and close collaboration between the insured, internal counsel and staff assigned to the file, and in cases where they are retained, external counsel.

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.

87% said they would have the defence counsel firm represent them again.

90% said they were satisfied with our selection of counsel.

87% said LAWPRO received good value for defence monies spent.

Managing claims costs requires that LAWPRO counsel make strategic dispute resolution choices. While many claims are resolved through negotiation, mediation or arbitration, we go to trial where the circumstances warrant, typically in an effort to establish precedents that will support lawyers in the long term.

Here is a summary of our litigation results in 2016:

In 2016, we:



Succeeded in 9 out of 12 matters that went to trial and for which a decision was rendered



Succeeded in 3 out of 4 appeals argued*

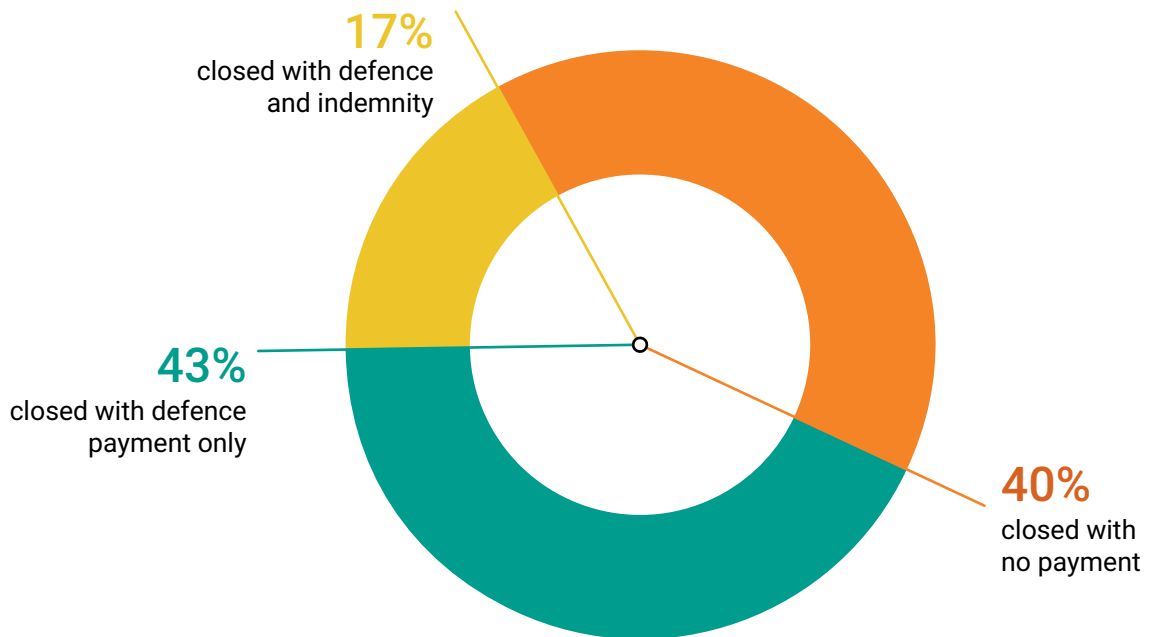


Won 31 out of 34 summary judgment motions completed*

See page 14 for highlights of some of the cases where we successfully defended lawyers in 2016.

FIGURE 6

Claims by disposition (outcome)



* Updated May 1, 2017.