

### Quick stats

#1 claims area by count

#1 claims area by cost

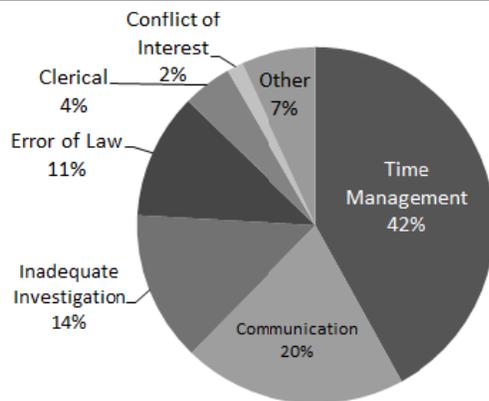
Average **842 claims** per year

Average cost **\$24.2 million** per year

Average cost per claim: \$26,700

Average of 2 years before claim reported

### Common errors



Litigation claims, always near the top of the LAWPRO claims count (alternating some years with real estate), saw an increase after 2009 due to Rule 48 administrative dismissals. Amendments to Rule 48.14 as of January 2015 have reduced these claims, but there are still risks for lawyers who don't move their files along.

Lawyer/client communication is also a significant source of claims in this area. Misunderstandings around actions the client expected the lawyer to take, or the expected outcome/cost of a case, often result in claims. Proper documentation of instructions, detailed notes of client conversations and reporting letters can help LAWPRO defend these claims should they arise.

Claims involving inadequate discovery of fact or inadequate investigation are the third most common source of plaintiff litigation claims. These involve the lawyer not taking time or thought to dig deeper and ask appropriate questions on the matter.

See reverse page for the most common plaintiff litigation errors and more steps that can be taken to reduce exposure to a malpractice claim.

### Speakers and resource materials

Rule 48 Transition Toolkit ([practicepro.ca/Rule48](http://practicepro.ca/Rule48)) and Limited Scope Representation Resources page ([practicepro.ca/limitedscope](http://practicepro.ca/limitedscope))

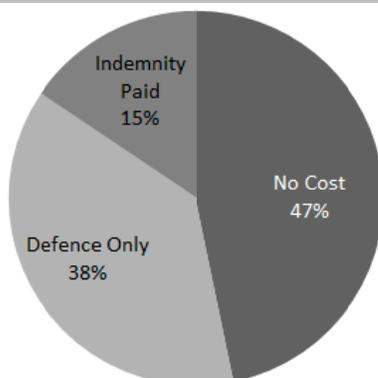
We can provide knowledgeable speakers who can address claims prevention topics. Email [practicepro@lawpro.ca](mailto:practicepro@lawpro.ca)

Visit [practicePRO.ca](http://practicePRO.ca) for resources including LAWPRO Magazine articles, checklists, precedents, practice aids and more.

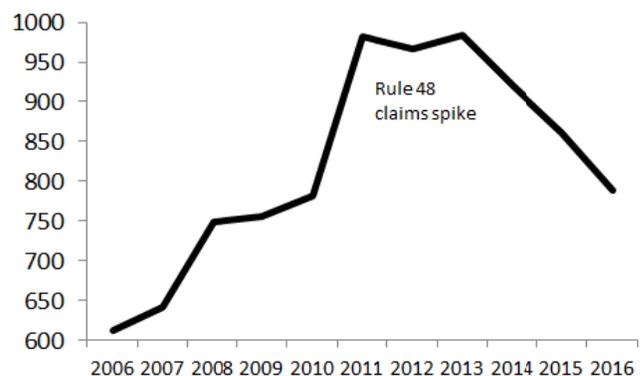
### Hot topics in litigation claims

- Familiarize yourself with the requirements under the new Rule 48.14, and in particular, the 5-year rolling dismissal date.
- Prevent communications claims by ensuring clients understand the process, timing, costs and likely outcome of their matter
- Avoid the unintentional expansion of retainers by having a clear intake and retainer process.

### Resolution of claims



### Count of litigation claims



## Most common malpractice errors

### Risk management tips

#### **Avoid administrative dismissals.**

Under the new Rule 48.14 of the *Rules of Civil Procedure*, matters commenced after January 1, 2012 will be dismissed on a rolling basis five years after commencement. These dismissals will happen without notice to the parties. Use the *Rule 48 Transition Toolkit* ([practicepro.ca/rule48](http://practicepro.ca/rule48)) to help you avoid administrative dismissal claims.

#### **Familiarize yourself with the Limitations Act, 2002.**

We continue to see claims related to lawyers' unfamiliarity with the limitations rules. Take the time to review the rules and the related jurisprudence: See practicePRO's limitations resources at [practicepro.ca/limitations](http://practicepro.ca/limitations).

#### **Have written confirmation of instructions and advice.**

As in all areas of law, this is crucial to helping LAWPRO defend you in the event of a claim as you may have no recollection of the details years later. Take notes on your conversations with the client, and document in writing things like the details of settlement offers, the scope of your retainer (especially in limited retainer cases), your advice on accepting offers, and the likelihood of winning or losing a case and the costs involved.

#### **Create more detailed docket notes.**

Like the resolution above, this has the benefit of helping protect you in the event of a claim (e.g. "Conference with client re risks and costs of litigation" is much better than just "Conference with client re lawsuit.") It will also help you determine if you are making money on a particular case by giving you a better understanding of the amount of time you and your staff are spending on it.

#### **Talk to clients more often. Don't rely solely on email.**

Lawyers are increasingly using emails to communicate with clients, and this is resulting in misunderstandings. Clients and lawyers read things into emails that aren't there, miss the meaning of what is said, or read between the lines and make assumptions. During a long litigation matter, arrange some face-to-face meetings, or at least a phone call if distance is an issue.

#### **Time management and procrastination (42%)**

- Failing to issue a claim within two years of the date when a claimant knew or ought to have known that he/she had a cause of action/claim
- Failing to commence an action for injuries sustained in a motor vehicle accident before the expiry of the two-year (from date of discovery) limitation period
- Failing to prosecute an action in a timely fashion, leading to admin dismissal of the action for delay

#### **Lawyer/client communication errors (20%)**

- Failing to manage client expectations, specifically: failing to clearly explain the risks and cost implications of litigation; failing to realistically explain the chances of success in proposed litigation; encouraging false hopes and unrealistically high expectations
- Failing to ensure that the client understands your advice and recommendations, and you understand your client's instructions
- Failing to provide client with a breakdown of settlement monies when obtaining instructions to settle, including "take home" amount for how much the client will receive, and how much will be paid to lawyer as costs, disbursements, & HST

#### **Inadequate investigation of fact or inadequate discovery (14%)**

- Failing to name proper defendants due to improper review or lack of corporate searches, property searches, motor vehicle accident reports, and police investigation files
- Failing to name proper insurer as defendant due to an unidentified, uninsured or underinsured claim
- Failing to name all proper plaintiffs such as corporate entities and *Family Law Act* claimants
- Failing to assess the file properly due to lack of expert reports, medical reports, and investigation reports