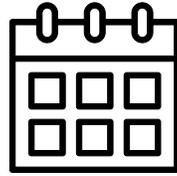


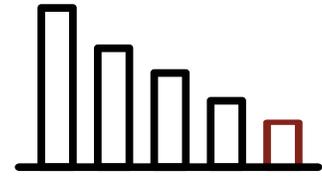


## # 3 claims area by cost

- average total cost \$10.1 million per year



## Average 180 claims per year



## # 5 claims area by count

## RISK MANAGEMENT TIPS



### Carefully document instructions, advice and steps taken

Taking detailed notes and documenting client conversations can minimize misunderstandings. Claims often involve a dispute over what was said and done, or not said and done, or confusion over who was to look after which tasks. LAWPRO's [Checklist for Commercial Transactions](#) has a detailed list of matters to consider when communicating with clients.



### Follow the firm's conflict checking system and take action on conflicts

Most law firms have rigorous conflicts checking systems that do a good job of catching potential conflicts. The problem is that these warnings are often ignored. Listen to your instincts and ask yourself "who is my client"? You can't always objectively judge your own conflicts, so get the opinion of someone outside the matter. Send clients for ILA when appropriate. Keep in mind that conflicts can unexpectedly arise in the middle of a matter. If there's a real or potential conflict, decline or terminate the retainer, even if it means turning down work for a good client or turning down substantial fees.



### Take time to catch and consider all the details

Whether it is misreading (or not reading) information on a corporate document, not doing a title search on a corporate lease matter, or failing to ensure that two merged corporations don't lose a 'grandfathered' exemption, rushing or taking shortcuts can come back to haunt you. Take the time to do the job right, even if it takes a bit longer or involves coming back on another day. Make sure clients understand the risks if they instruct you to take shortcuts (usually to reduce fees), and that those discussions are documented. Do not be pushed into taking shortcuts that make you uncomfortable.



### Do not dabble in areas outside your expertise

Corporate/commercial law is complex and diverse, so don't stray outside your area of expertise. If necessary, recommend your client retain the services of an expert in specialized areas like tax, IP or franchise law if you don't have a thorough knowledge of those fields.

# COMMON MALPRACTICE ERRORS

## Communication - 40%

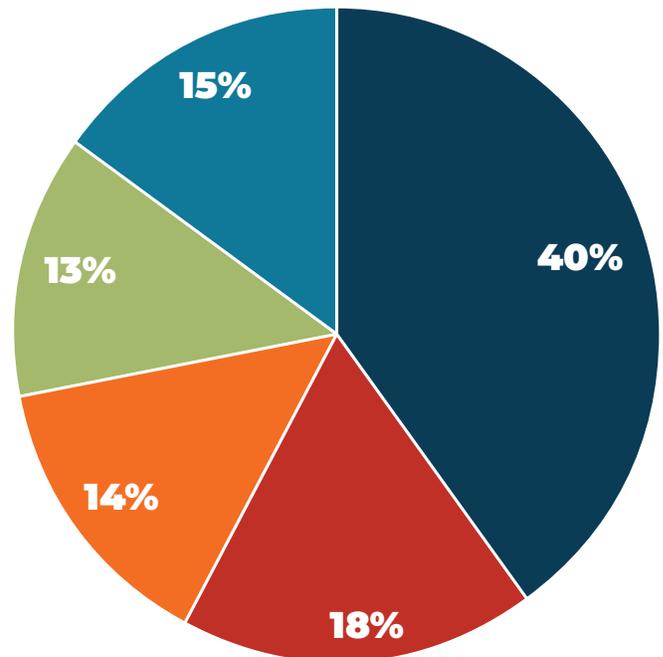
- Failing to follow client's instructions to file articles of amendment or articles of amalgamation.
- Failing to specify the limits of the retainer in writing, including which services the lawyer will perform and which actions the client or third-party (e.g., an accountant) will take.
- Contents of document (e.g., a lease or shareholder agreement) do not reflect the client's instructions (or those of outside expert, e.g., an accountant).
- Failing to document in writing that a client instructed you to take a course of action on a transaction that was different from the one you recommended.
- Retainer did not clearly specify work that was to be done by the lawyer and/or outside expert (e.g., accountant or tax expert).
- Minute book not kept up-to-date.
- Failing to inform a franchisor client about the disclosure requirements under the Arthur Wishart Act.
- Failing to explain to a client the consequences of a personal guarantee in a commercial lease, mortgage or other transaction involving security.

## Inadequate investigation - 18%

- Provisions in lease and sublease(s) are not coordinated.
- Not doing a title search on a commercial lease matter.
- Misreading (or not reading) information on a corporate document or search result.

## Errors of law - 14%

- Taking on a complex corporate transaction that the lawyer is not capable of handling, or failing to obtain specialist advice for specialized issues (e.g., tax or IP issues).
- Failing to properly protect a security interest or priority status under the Personal Property Security Act.



## Conflict of interest - 13%

- Acting simultaneously for members of the same family and their business or corporate entities.
- Not sending client for ILA when appropriate.
- Acting for a corporate client and providing legal services on the side to an employee of the client.

## Other - 15%

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

We can provide knowledgeable speakers who can address claims prevention topics.

Email [practicepro@lawpro.ca](mailto:practicepro@lawpro.ca)

\*All claim figures from 2008-2018. All cost figures are incurred costs as of January 2019

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