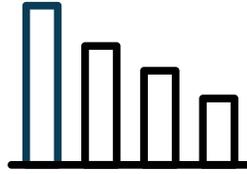




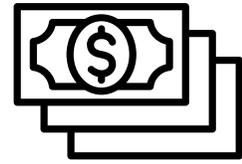
1 claims area by cost

- average total cost \$22.7 million per year



1 claims area by count

- average 744 claims per year



**\$30,400 average cost
per claim**

RISK MANAGEMENT TIPS



Familiarize yourself with Limitations and Notice Periods

We continue to see claims related to lawyers' unfamiliarity with the limitations rules and notice periods. In addition to issuing a claim within the applicable limitation period, lawyers need to know notice provisions that apply in certain cases (ex: Crown and municipal liability, construction lien matters). Take the time to review limitations and notice periods on the practicePRO [Limitation Period Resources](#) page.



Keep your files moving using practice management tools

Consider the key deadlines and the steps you will need to take to move your client's matter forward. Identify the appropriate limitations periods and diarize them. Use practice management software and tickler systems to alert you to approaching deadlines and to keep your files moving. For more time management tips, visit practicepro.ca/timemanagement.



Avoid administrative dismissals

Under 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](#) to help you avoid administrative dismissal claims.



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 or video call if distance is an issue.



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.

COMMON MALPRACTICE ERRORS

Time management - 46%

- Failing to issue a claim prior to the expiration of the applicable limitation period when a claimant knew or ought to have known that he/she had a cause of action/claim
- Failing to diarize for key steps in the litigation
- Failing to prosecute an action in a timely fashion, leading to admin dismissal of the action for delay

Communication - 18%

- 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, and HST

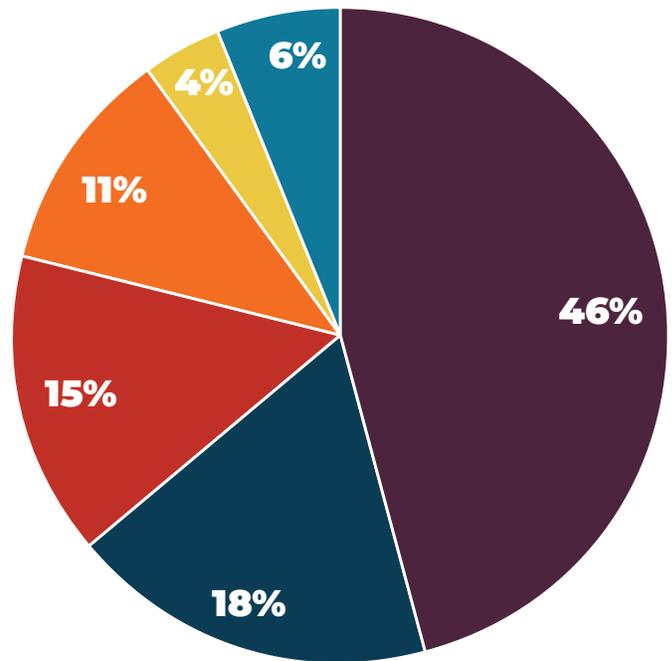
Inadequate investigation - 15%

- 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

Errors of law - 11%

Clerical and delegation - 4%

Other - 6%



Check out the [Rule 48 Transition Toolkit](#) and [Limited Scope Representation Resources](#) page

For more practice management tips for litigation, visit practicepro.ca/litigation

Visit 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

*All claim figures from 2009-2019. All cost figures are incurred costs as of May 2020

©2020 Lawyers' Professional Indemnity Company. LAWPRO is a registered trademark of Lawyers' Professional Indemnity Company. All rights reserved. This publication includes techniques which are designed to minimize the likelihood of being sued for professional liability. 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.