

# Primary E&O Program Claims



**Insurance can be a source of stability and calm in a storm and a foundation from which to rebuild after a storm has passed.**

2020 was an alarming year in an unpredictable world. It often seemed to be a year on pause.

But the legal profession did not stop. The number of insured lawyers in Ontario continued to grow at a steady pace. In 2020, the number of full premium equivalent (FPE) lawyers insured under the LAWPRO primary E&O program increased by over 2% to just over 28,600 FPE lawyers, up from about 27,900 in 2019.

These lawyers found innovative ways to work and advocate for their clients during a global pandemic and LAWPRO continued alongside them to provide the stability and security they expect.

## Fewer claims, but likely not for long

For the first time in recent years, the number of new claims decreased slightly in 2020. Widespread and long-lasting health and safety restrictions led to reduced economic activity and, for many, a reduction in legal activity. Less legal work meant fewer claims.

In 2020, LAWPRO dealt with 2,768 reported claims, a decrease of 11.3% from the 3,121 reported in 2019. Claims frequency was down slightly to 93 claims per thousand lawyers, as compared to 106 claims per thousand lawyers last year.

Litigation-related claims showed a particularly substantial decline, largely due to the temporary court closures and delays associated with implementing virtual court access.

However, with the increase in technological availability and competency, along with the gradual re-opening of Ontario's economy and in-person legal proceedings, LAWPRO expects this temporary decrease in claims to reverse. LAWPRO anticipates deferred activity and claims from 2020 to show up in subsequent years.

Despite seeing approximately 11.3% fewer claims in 2020, total claims costs only decreased by 2.7% (from \$76.7m to \$74.6m). Coupled with a reduction in premiums and levies in 2020, this led to financial impacts discussed further below.

## The types of claims we saw, and didn't see

As in past years, the largest percentage of reported claims were related to real estate (27%) and litigation (24%). However, the number of real estate-related claims decreased to 609 in 2020, from 648 the previous year. Litigation-related claims had an even larger decrease to 549 in 2020, from 822 the previous year.

This reduction in litigation and real estate-related claims (two areas particularly affected by closures due to the pandemic) account for most of the decline in new claims for 2020. Claims in the family and criminal areas were also down, while labour/employment and wills/estates claims were up.

## Meeting challenges, closing claims

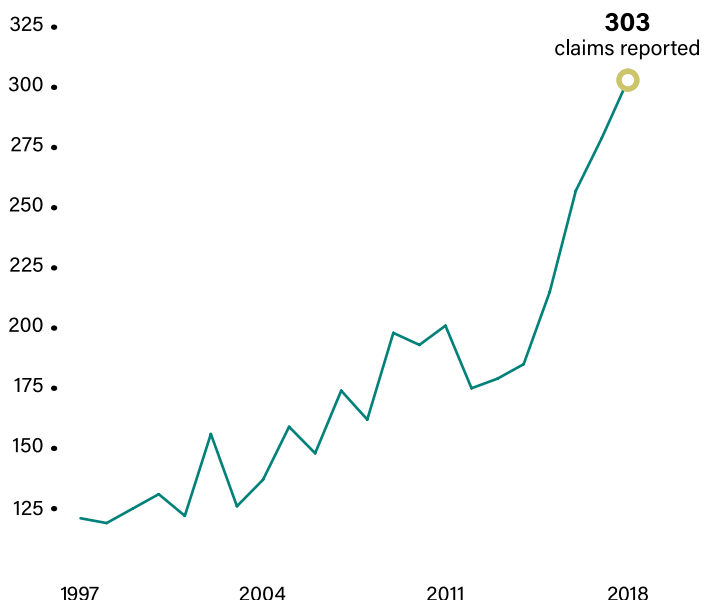
Like others, LAWPRO's operations were disrupted by the pandemic. But LAWPRO's staff and counsel quickly rose to these challenges. Despite the restrictions imposed throughout much of the year by stay-at-home orders and other health and safety requirements, LAWPRO closed 3% more files in 2020 than in 2019. Of these files, 88% of claims were closed without any indemnity payment, an increase from 86% in 2019.

LAWPRO's claims management philosophy is to resolve claims quickly in situations where there is liability, defend vigorously if the claim has no merit, and avoid economic settlements.

In 2020, LAWPRO won two of four matters brought to trial and in which a decision was rendered, succeeded in the one appeal we argued, and won 7 of 13 summary judgment motions at first instance.

**FIGURE 1**  
**Number of claims reported with a value greater than \$100,000\***

\*As at December 31, 2020



## Causes of loss

The investigation of claims can take up to a year or more after an initial report. For this reason, LAWPRO is cautious when interpreting short term fluctuations in the cause-of-loss data. This is particularly important for a year as anomalous as 2020.

In 2020, inadequate investigation and communications errors tied – at 609 each – for the cause of the highest number of claims followed by time management and errors of law.

There were 609 communication-related claims in 2020, a decrease from 724 the previous year. Similarly, there were 309 time management-related claims in 2020 compared with 494 the previous year. The reduction in time management-related claims was a direct result of the closing of the courts and follows the long-term trends we have observed since 2011, when 570 time management-related errors were reported. The previous highs and subsequent reduction in time management errors were caused by the introduction of Rule 48, which led to a temporary increase in administrative dismissals and a corresponding temporary increase in time management claims.

# Coverage and Insurance Options

## Putting insureds first

In 2020, LAWPRO maintained a base premium of \$2,950. Because of extraordinary circumstances, LAWPRO offered premium deferrals for part of the year.

Cost-cutting measures, including a wage and hiring freeze and a reduction in operational expenses, were implemented in order to prudently respond to budgetary pressures.

One of the hallmarks of the LAWPRO E&O insurance program is its flexibility. Lawyers have a number of options to tailor their insurance coverage to their specific needs – often with the added benefit of reducing the actual premium payable below the base premium level. The number of lawyers availing themselves of these options continues to increase, as indicated in Figure 3.

## Policy changes

To reflect changing events and the evolving understanding of claims and lawyer practices, the primary policy is updated annually. For 2020, changes included a refinement of the definitions under the policy for “spouse,” “dishonest conduct,” and the “circumstances” in which notice of a claim or potential claim must be provided.

Starting in the 2021 policy year, Innocent Party coverage will be included in the base coverage and required for all insureds. Accordingly, the base premium for 2021 is \$3,000. The inclusion of Innocent Party coverage will reduce the total premiums paid by more than 70% of Ontario lawyers by \$75. Roughly 30% of Ontario lawyers will see their annual premium increase by \$25 or \$50 because of this change.

## Notable reduction in levies collected

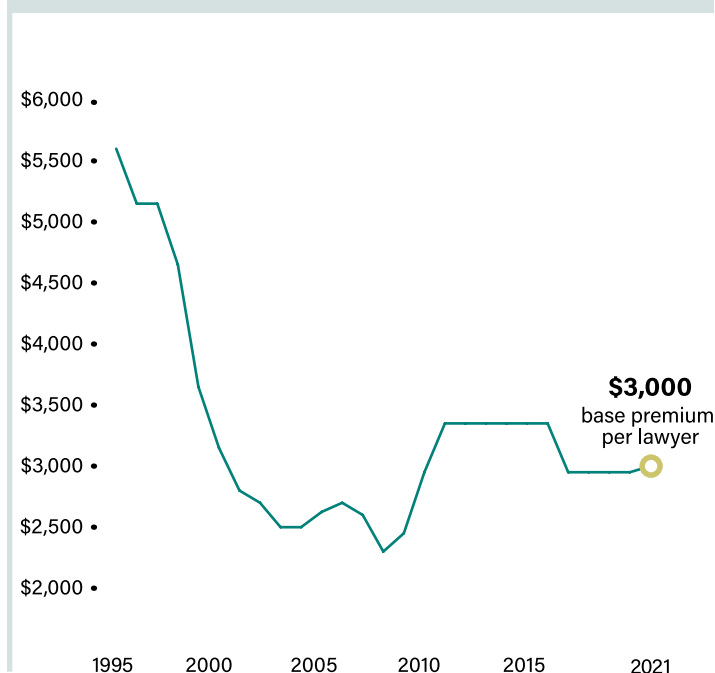
In addition to the modest reduction in premiums collected in 2020, there was a more notable reduction in transaction levies, which are particularly vulnerable to market forces. These levies reflect the higher risk of claims associated with real estate and civil litigation and impose per-transaction surcharges in those areas. The reduction in activity within these areas led to a substantial reduction in collected levies and a budgetary shortfall for LAWPRO.

Real estate and litigation continue to be the costliest areas of law with respect to claims. The use of levies to impose a fair distribution of claims costs among the profession helps LAWPRO to use risk-rating levers to benefit the program and insureds.

## Coverage for new lawyers and those retiring

For new or retiring lawyers, LAWPRO offers reduced premiums to address their reduced risk profiles. New lawyers see fewer claims than those with more experience, which may be partly due to new calls often having less responsibility over various files than their senior colleagues. LAWPRO responds to the reduced risk inherent in new calls by providing premium discounts to new lawyers with

**FIGURE 2**  
**Base premium per lawyer**



**FIGURE 3**

Coverage Option	No. of lawyers participating as of December 31, 2020
<b>New Lawyer Discount</b> 20% to 50% base premium discount for those called in the last one to four years	<b>6,796</b>
<b>Part-Time Practice</b> 50% base premium discount for eligible lawyers	<b>2,245</b>
<b>Restricted Area of Practice Option</b> 50% base premium discount for immigration/criminal law practitioners	<b>1,739</b>
<b>Innocent Party buy-up</b> Increase in Innocent Party sublimits up to as much as \$1 million per claim/aggregate	<b>3,898</b>
<b>Run-Off buy-up</b> Increase limits for past services from \$250,000 per claim/aggregate to as much as \$1 million per claim/\$2 million aggregate	<b>1,483</b>
<b>Real Estate Practice Coverage Option</b> Required for all lawyers practising real estate law in Ontario. Sublimit coverage of \$250,000 per claim/\$1 million aggregate	<b>8,786</b>

less than four years of practice. This discount ranges from 50% of base premium (for lawyers with less than one full year in practice) to 20% of base premium (for lawyers with between three and four years in practice).

For lawyers that are retiring or leaving private practice and provide notice of such, LAWPRO offers Run-Off coverage of \$250,000 per claim and in the aggregate, at no charge. Additional coverage options are available for lawyers who need more protection beyond that amount.

## Excess Insurance

Since it was established in 1997, LAWPRO's optional Excess insurance program has posted consistent annual growth in revenues and numbers of law firms (and lawyers) insured under the program. An impressive 1,557 firms received their excess insurance from LAWPRO as at the end of 2020, 211 of which chose the maximum \$9 million limit option.

With 121 new firms opting to buy excess coverage from LAWPRO, our client base saw approximately 12% growth from the previous year. The Company's retention rate on excess business of 92% is evidence that this program meets the needs of the small and medium-sized firms of fewer than 50 lawyers that it is designed to serve.

LAWPRO's Excess program insures approximately 15% of the lawyers employed in firms of 50 or fewer lawyers. Prudent underwriting and solid claims management have helped ensure that the Excess program is a successful line of business for LAWPRO.

## The TitlePLUS Program

The TitlePLUS program is the only wholly Canadian-owned title insurance program available in Canada. It is underwritten by LAWPRO and protects not only Canadian homeowners and lenders, but also lawyers through included legal services coverage which covers errors and omissions made by the lawyer for the entire transaction, excluding properties in Quebec and OwnerEXPRESS policies.



## Service

### Working from home; working for insureds

LAWPRO's Underwriting & Customer Service department is the point of contact for licensees seeking to renew, change, or inquire about their insurance options, including the primary policy. A new account is established soon after a lawyer is called to the Ontario bar, and existing accounts are adjusted as lawyers move their practice or move out of private practice entirely.

This year, customer service saw a 4% increase in correspondence volume. At the same time, health and safety restrictions meant this correspondence, and most company operations, had to be carried out

remotely. Like much of the Ontario workforce, many staff members had to adapt to more flexible work hours to accommodate care-giving responsibilities.

Nevertheless, the customer service team adapted quickly and was able to sustain response times and meet client needs, delivering service levels throughout the year that were on par with previous years.

LAWPRO takes its commitment to customer service seriously. Consisting of approximately 25 team members, the department is responsible for maintaining accurate records for all insureds; policy drafting; creation of program guides, forms, and other explanatory materials; underwriting optional coverages; processing filings; and, answering questions from licensees.

In 2020

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