



2019 Annual report

LAWPRO[®]
Lawyers' Professional Indemnity Company

● **Managing more** More claims + More responsibility + More insureds



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This report is available at lawpro.ca. To obtain copies of this report, please contact the Claims Prevention and Stakeholder Relations Department.
Pour obtenir une copie de ce rapport annuel, veuillez contacter le département de la prévention de réclamations et relations avec les intervenants.

About LAWPRO

LAWPRO provides primary errors and omissions insurance coverage for Ontario lawyers, Excess insurance for law firms and TitlePLUS title insurance across Canada.

Our mission

to provide insurance products and services that enhance the viability and competitive position of the legal profession through the values of

Professionalism

Integrity

Innovation

Leadership

Service

In 2019

LAWPRO provided:



LIABILITY INSURANCE:

almost 28,000

members of the
Law Society of Ontario



EXCESS INSURANCE:

1,500

law firms



TITLEPLUS:

over 21,000

Title insurance policies



The changes the world has experienced from when we started production of this Annual Report just a few months ago are staggering. The COVID-19 pandemic has brought rapid and vast transformations in almost every aspect of our lives. These transformations have also affected the legal profession and LAWPRO, and will continue to do so in significant ways.

In fulfillment of the mandate given to us by Convocation more than two decades ago, LAWPRO navigates a careful balancing act: keeping revenues high enough to be commercially viable and satisfy regulators that the company is financially healthy, while handling claims and carefully controlling premiums to maintain affordability and properly reflect the cost of risk.

The financial statements in the following pages demonstrate our attention to maintaining a stable and reliable base for our insureds, even with changes like those brought on by the COVID-19 pandemic. We remain financially healthy because we have planned for scenarios similar to what we are now experiencing as part of the risk management strategies put in place by our Board and our corporate governance process.

LAWPRO will continue to pay claims when mistakes are made and will adapt to meet the challenges we will face in the remainder of 2020 and future years. Good claims service and financial stability not only protect Ontario lawyers, but also indirectly, the public. I believe the trust given to LAWPRO by the Law Society of Ontario and its members has been well earned given the company's consistent performance as seen in this Annual Report. LAWPRO will continue to serve and support Ontario lawyers in 2020 as we tackle together the challenges of the COVID-19 pandemic.

Andrew J. Spurgeon

Andrew J. Spurgeon
Chair



What a difference a few months makes. The first draft of these remarks were written in late January. As I rewrite them to reflect the incredible events and changes of the last several weeks, 2019 seems like a distant memory. Like most businesses and law firms, LAWPRO has moved to a work from home protocol and we are adjusting well to this new paradigm. And like the 28,000 lawyers we insure, we look forward with a sense of trepidation, about the changes we will see in the coming months and beyond.

As detailed in this report, LAWPRO ended 2019 as a strong company in a healthy financial position. At the end of the year, our Minimum Capital Test result was 242 per cent, slightly above the top end of the preferred range set by the LAWPRO Board. Thankfully, with the strength of our 2019 results, and the risk management planning our Board does in contemplation of catastrophic events, I am confident that LAWPRO remains in a solid financial position, despite the rapid market decline in early 2020 and the resulting drop in our Minimum Capital Test result.

We are experiencing a global reset - for the economy, for how business is done, and how we live our lives. Looking forward, I expect there will be further changes and new pressures on LAWPRO and the lawyers we insure. Many firms are seeing changes in demand – down or up – depending on the kind of work they do and who their clients are. Variations in the amount or type of work that lawyers are doing and economic changes will undoubtedly result in changes to the claims that LAWPRO will see. In the past, economic downturns have driven up the count and cost of claims as clients want out of deals and blame their lawyers for their financial problems. We will respond and adapt to these changes as required. An increase in claims costs may mean an increase in the LAWPRO premium.

In 2019 we handled almost 3,000 new claims and closed the year with just over 4,000 open claims files. Only 14 per cent of our claims files are closed with an indemnity payment. In other words, we successfully defended lawyers on 86 per cent of our files. I'm very proud of the complimentary feedback we receive from the lawyers for whom we have handled claims.

I thank everyone on the LAWPRO team for stepping up and responding to the challenges and changes we have faced over the last several weeks. My senior management team is working hard to make and support the changes we are facing, and the LAWPRO Board of Directors is engaged in a discussion about how LAWPRO should prepare for and respond to the changes the company will face. In the coming months, and thereafter, we will all strive to provide the same level of service to you. LAWPRO will continue to be there to support lawyers and protect the public.

Daniel E. Pinnington

Daniel E. Pinnington
President & CEO

Taking care



Managing more claims

Rising to the challenge of *more*

In each of the last two years, the number of lawyers insured under the LAWPRO program has increased by approximately two per cent. In 2019, the company provided E&O coverage to just over 27,900 lawyers, up from 27,300 in 2018.

More licensees means more potential claims. But LAWPRO is meeting that challenge with its own “more:” more efficiencies, more value, and more assistance.

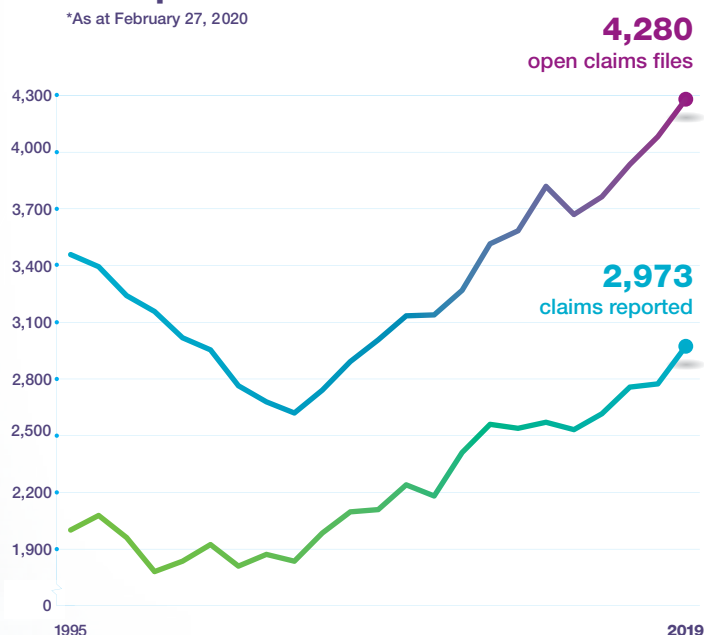
More closures of claims

In 2019, LAWPRO received 3,121 reported claims, an increase of seven per cent over the 2,909 reported in 2018. This is primarily due to the growing size of the profession, as the frequency of claims per 1,000 lawyers has remained relatively consistent since 2011.

LAWPRO has taken steps to address the increase in reported claims. We added more claims professionals in 2019 to ensure all claims are dealt with in a timely and effective manner. This means more file closures and more resolutions of claims. As well, LAWPRO is constantly adding more practice management content to our AvoidAClaim blog and practicePRO website. These resources help the profession avoid claims in the first place.

Number of claims reported and open claims files

*As at February 27, 2020



LAWPRO survey results



The annual survey of LAWPRO E&O insureds with a closed claim indicated the following

96 per cent

said that they were satisfied with how LAWPRO handled the claim

87 per cent

said they were satisfied with our process of selecting defence counsel

86 per cent

said they would have the defence counsel firm represent them again

88 per cent

said LAWPRO received good value for defence monies spent

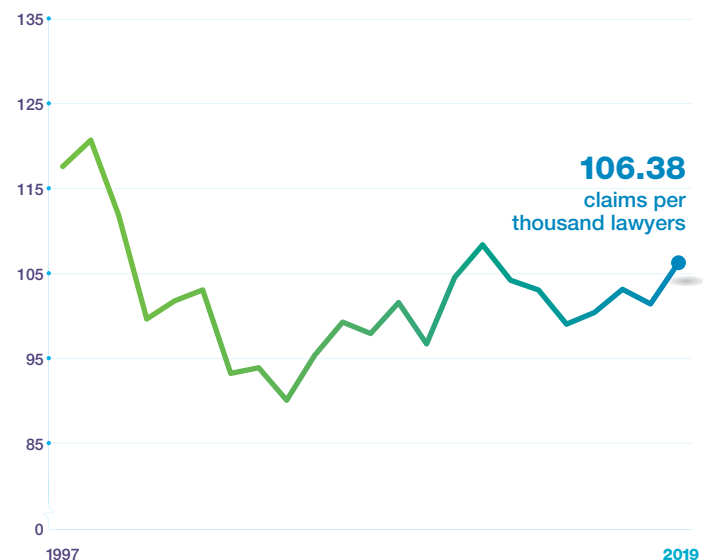
More reported claims doesn't have to mean more payouts

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 2019, LAWPRO won nine of ten matters brought to trial and in which a decision was rendered, 16 of 19 summary judgment applications, and all three summary judgment appeals brought by claimants. LAWPRO was also able to avoid the costs of trial altogether by obtaining 15 favourable claimant capitulations prior to summary judgment motions.

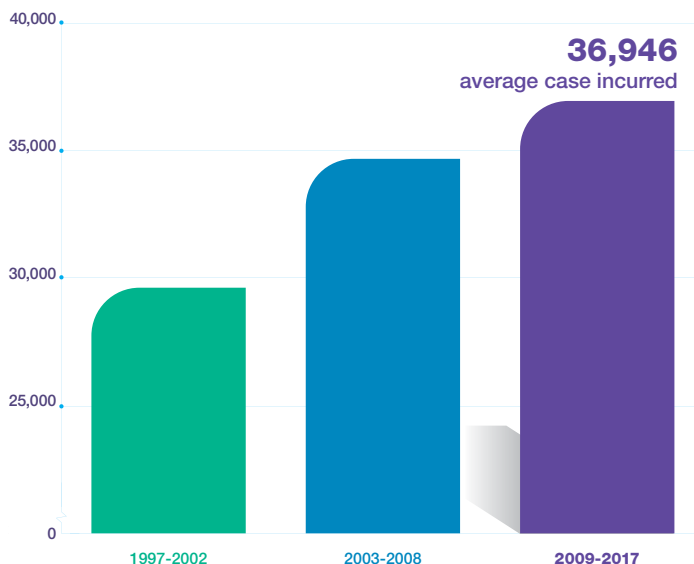
Number of claims per 1,000 lawyers

*By report year, as at December 31, 2019



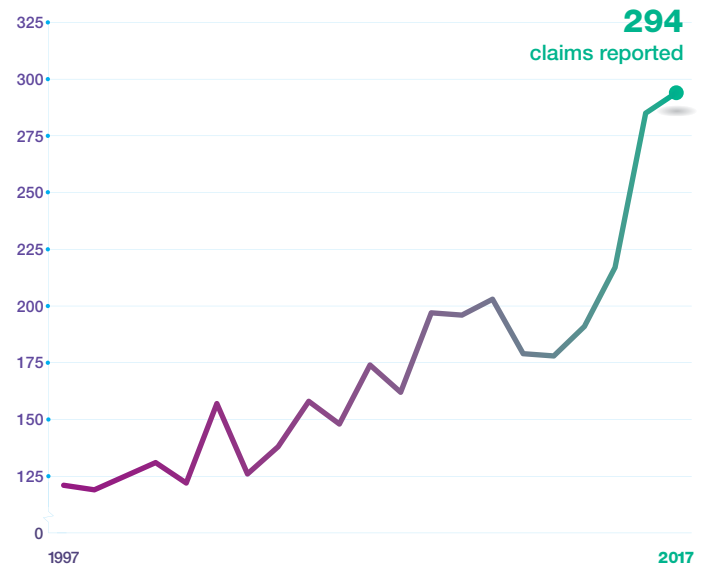
Average cost per claim

at 38 months after start of year in which claim was reported*
*As at February 27, 2020



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

*As at February 27, 2020



Areas of loss

Continuing the pattern we have seen for almost 20 years, litigation and real estate were once again the areas of law that saw the most claims. 2019 saw 822 litigation-related claims, up from 723 the previous year, and 648 real estate-related claims, up from 579. As a share of total claims last year, litigation accounted for 31 per cent and real estate accounted for 24 per cent.

The increase in litigation and real estate-related claims accounted for almost all of the total increase in new claims. Because of this asymmetry in claims among practice areas, LAWPRO continues to apply transaction levies to new files opened by licensees in real estate and non-family civil litigation.

LAWPRO will continue to monitor areas of loss, and take steps to address current and upcoming trends. After non-family civil litigation and real estate, the next-highest areas of concentrated claims were wills & estates and family law, accounting for 10 per cent of total claims each.

Causes of loss

The investigation of claims can take up to a year or more after an initial report. LAWPRO takes care to distinguish between short-term fluctuations and systemic common errors. Our data continues to show consistent long-term trends that Ontario lawyers should be aware of.

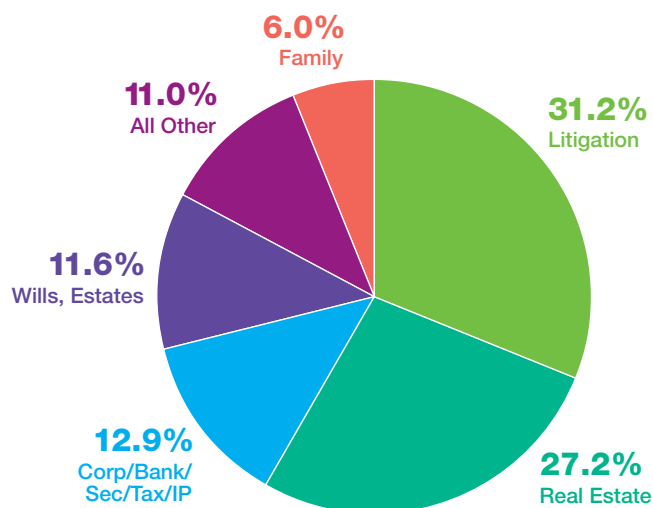
Communication errors were once again the most common causes of claims in 2019. There were 724 communication-related claims in 2019, an increase from 644 the previous year.

We also saw more time management-related errors in 2019: 494 compared with 418 the previous year. This is a reduction from the high of 570 time management-related errors we saw in 2011. This confirms LAWPRO's expectations following the introduction of Rule 48, which led to a temporary increase in administrative dismissals and a corresponding temporary increase in time management claims.

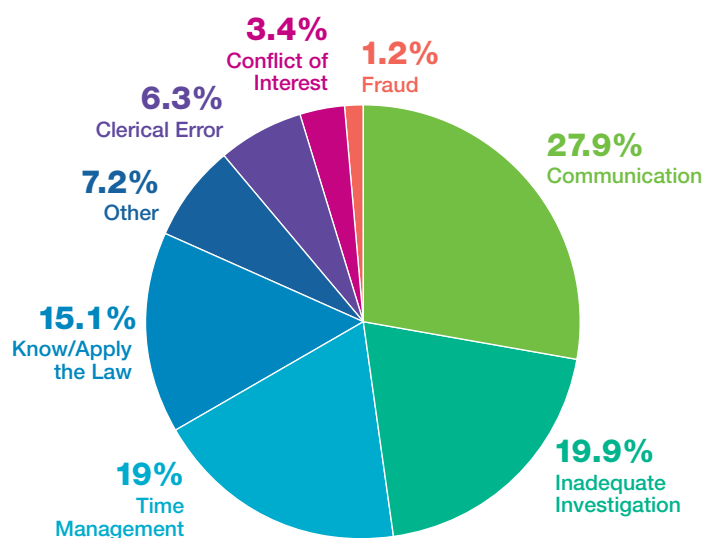
In general, we continue to see that communication errors, inadequate investigation, time management, and errors of law are the four most common causes of claims in Ontario, in that order.

2019 Distribution of claims by area of practice* (% of gross claims costs)

*As at February 27, 2020



Reported claims count by cause of loss in 2019



Coverage and insurance options

More value for premiums collected

In 2019, LAWPRO once again successfully managed projected claims costs through claims management and cost containment efforts, together with investment income. Despite seeing more claims in 2019 than the previous year, LAWPRO is once again able to maintain the base premium level of \$2,950.

This base premium has been unchanged since the 2016 policy year. 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 shown in the chart to the right.

In terms of coverage, LAWPRO focused on refining the details and terms of the Primary Policy, leading to more clarity for all parties. As examples, for the 2020 policy year, LAWPRO refined the definitions under the Policy for “spouse,” “dishonest conduct,” and the “circumstances” in which notice of a claim or potential claim must be provided, in order to reduce confusion and unpredictability for our licensees. For more information on these changes, please see the October 2019 issue of *LAWPRO Magazine*.

Fair distribution of claims costs

In 2018, the civil litigation levy was raised to address the long term trend of increasing costs in this area. This complements the already-existing levy applied to real estate transactions. These fees align

the cost of insurance with its associated risks and pursues a fair balance among Ontario lawyers in private practice. Real estate and non-family civil litigation continue to be the most expensive areas of law for LAWPRO claims.

Although the number of civil litigation and real estate claims continues to increase at a greater rate than other areas of law, the current transaction levies of \$100 for civil litigation transactions and \$65 for real estate transactions continue to adequately address this asymmetry. LAWPRO acts carefully on risk-rating decisions, and

Base premium per lawyer



Coverage Option



No. of Lawyers participating as of January 31, 2020

New Lawyer Discount 5,645

20 to 50 per cent base premium discount for those called in the last one to four years

Part-Time Practice Discount 2,258

50 per cent base premium discount for eligible lawyers

Restricted Area of Practice Option 1,754

50 per cent base premium discount for immigration/criminal law practitioners

Innocent Party buy-up 3,836

Increase in Innocent Party sublimits up to as much as \$1 million per claim/aggregate

Run-Off buy-up 1,415

Increase limits for past services from \$250,000 per claim/aggregate to as much as \$1 million per claim/\$2 million aggregate

Real Estate Fraud Coverage Option 8,646

Required for all lawyers practising real estate law in Ontario. Sublimit coverage of \$250,000 per claim/\$1 million aggregate

our analysis will continue over the long term to continue to gain perspective and determine long-term implications.

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 often having less responsibility over various files than their senior colleagues. LAWPRO responds to the reduced risk inherent in new lawyers by providing premium discounts to those with less than four years of practice. This discount ranges from 50 per cent of base premium (for lawyers with less than one full year in practice) to 20 per cent 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

LAWPRO's Excess program insures approximately 15 per cent 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.

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 1,535 firms representing 3,829 lawyers received their excess insurance from LAWPRO as at the end of 2019—202 firms chose the maximum \$9 million limit option.

With 116 new firms opting to buy excess coverage from LAWPRO, our client base saw approximately three per cent growth from the previous year. LAWPRO's retention rate on excess business of 94 per cent 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.

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).

The TitlePLUS program participated in the fight against real estate fraud to the benefit of all who want a crime free real estate market, by declining over \$2.5 million in TitlePLUS policy coverage for potentially fraudulent transactions in 2019.

Service

More convenience. More ease-of-use. More value.

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. In 2019, the primary policy for more than 27,900 lawyers in private practice was renewed following the Law Society of Ontario's convocation.

LAWPRO takes its commitment to customer service seriously. Consisting of approximately 25 team members, the department is responsible for maintaining accurate records for all insured; policy drafting; creation of program guides, forms, and other explanatory materials; underwriting optional coverages; processing filings; and answering questions from licensees. LAWPRO receives approximately 31,000 phone calls a year, along with approximately 25,000 pieces of correspondence. Every call and email is important to us.



In 2019, LAWPRO introduced new efficiencies to our renewal process, including “one-click” renewal options for currently exempt lawyers seeking to renew that exemption without any changes. These efforts to streamline the process create more convenience for lawyers, and provide our team with more time to address each licensee's needs. ■

Managing more

responsibility

Repairs

When potential claims are expeditiously reported to LAWPRO, we are often able to rectify the problem and prevent actual claims from arising. Our counsel know how to best address issues such as missed limitation periods, rectifications of powers of attorney, and misnomer amendments.

Here are a few examples of cases where LAWPRO successfully repaired potential losses in 2019.

Will interpretation: One win; countless winners

A single decision that dramatically alters the common law can have ramifications for countless non-parties that rely on the status quo. Such was the case with 2018's *Milne Estate (Re)* decision in the Ontario Superior Court.

In that case, two testators had structured their affairs using primary and secondary wills that gave their executors discretion to divide the distribution of the estate between the two wills in whatever manner they best saw fit (and would avoid unnecessary probate fees or other costs). This was a common estate-planning technique that had been adopted by numerous other estate lawyers in Ontario.

In the original decision, the probate judge questioned the validity of this approach. Specifically, the judge found that the discretion granted to the executors to determine which assets fell in which will was invalid, and meant one of the two wills was a nullity for lacking certainty of subject matter.

This decision threatened not only the estate seeking probate, but countless other estates in Ontario where a lawyer had used similar language to divide assets between a primary and secondary will. This could potentially lead to an untold number of professional negligence claims in the future if those estate planning documents all became nullities.

Thankfully, the estate, with the assistance of LAWPRO, appealed the probate judge's decision to a panel of the ONSC Divisional Court, and LAWPRO was successful in having the probate judge's original decision overturned. The panel agreed that it was an error of law for the probate judge to apply the trust principles of "certainty of subject matter" to estate planning documents that were not, in fact, trust documents themselves. The common practice of using both a primary and secondary will and granting discretion to executors to divide certain assets between the two wills was affirmed as appropriate, to the benefit of numerous other Ontario wills & estate lawyers.

Limitation periods: Filing a day late, but not an appeal short

There is sometimes an itch at the back of a litigator's mind: Does that limitation period expire tomorrow or today? The potential for small mistakes to lead to big consequences means missed limitation periods are some of the most common causes of claims LAWPRO sees.

In this case, a licensee inadvertently filed a notice of appeal one day after the expiration of the 30-day limitation period. The Respondent was not willing to consent to an extension of the limitation period,

and took the position that the error barred pursuing the appeal any further. The error was reported to LAWPRO, and steps were immediately taken to rectify it.

A motion was filed to extend time to deliver a notice of appeal. The Respondent took the position that they would be prejudiced by granting an extension to the limitation period. The Respondent pointed to the time and costs associated with continued litigation, and the risk that they would not be able to recover any judgment or costs awarded against the Appellant, who was not a resident of Canada. The Respondent also pointed to the Appellant's pattern of breaching court orders throughout the litigation.

LAWPRO and the Appellant argued that it was only the prejudice that would arise because of the one-day delay in filing the notice of appeal that was relevant, not any prejudice caused by the appeal itself. Since the Appellant had a bona fide intention to appeal, a reasonably meritorious claim, and there was no relevant prejudice to the Respondent, the extension should be allowed.

The court agreed with LAWPRO and the Appellant that there was "clearly no merit to [the Respondent's] prejudice argument." The failure to file the notice of appeal within the time limit was not the fault of the Appellant, and was due to inadvertence on the part of counsel. The court also found that the Appellant's pattern of default and breached orders was irrelevant in this case, as the Respondent had previously been able to secure payment for previous cost orders and rectify those past defaults. The court affirmed that denying a motion such as this due to a lack of merit was a very high bar.

With LAWPRO's assistance, the extension was allowed, the error was rectified, and the appeal was allowed to continue.

Misnomers: A defendant by any other name

When a plaintiff is unsure of the identity of the person or persons that caused them harm, it is common practice to file suit against unnamed defendants using placeholder names in order to avoid looming limitation periods.

In this case, the Plaintiff suffered harm from allegedly negligent medical care during a series of procedures. The complications from these procedures included a temporary coma and negative reactions to certain drugs that were administered. Because of sedation and the Plaintiff's comatose state during a portion of their medical stay, they were unsure of the identity of all persons that contributed to the alleged medical malpractice.

The original Notice of Claim, therefore, included allegations against an unnamed "Dr. Doe" and "Nurse Doe." During the discovery period, the Plaintiff identified six additional medical professionals

that were potential defendants in the suit. However, instead of amending the original Notice of Claim to add these defendants and substitute their names for the placeholder pseudonyms, the Plaintiff brought a second claim against the new defendants.

After some additional discovery, the Plaintiff then brought a motion to substitute the names of the new defendants for the pseudonyms included in the original Claim. The new defendants objected to this process, alleging that the motion to address the “misnomer” in the original claim (that being the placeholder pseudonyms) was an abuse of process, as they were not provided with notice of the original claim and were already defendants in the second claim brought by the Plaintiff.

Although the judge found that the process by which the new defendants were brought into the lawsuit was not optimal (such as the existence of the second, parallel claim), it was not an abuse of process as it was within the Plaintiff’s rights to take prophylactic steps to ensure their claims against the new defendants were not statute barred.

The judge allowed the misnomer application and agreed with LAWPRO that the original pleadings adequately pointed the “litigation finger” at all but one of the new defendants that the plaintiff sought to now explicitly name in the original Claim. It was not relevant whether the new defendants had been given actual notice of the pleadings, but rather whether, if presented with those pleadings, the proposed defendant could reasonably see that they were a potential subject of the allegations raised.

Easy fixes are easier (and safer) with LAWPRO’s assistance

A typographical error in an important legal document can, thankfully, often be resolved without serious harm or headache. Particularly if there is no party opposing its rectification. However, it’s still important for counsel to alert LAWPRO to the existence of these fixable errors, as LAWPRO counsel can ensure the most efficient and effective steps are taken to put things as they are intended.

In one recent case, it was discovered that a continuing power of attorney document inadvertently made reference in the appointment clause to the attorney being appointed “for personal care.” This, despite the fact that the document was intended to provide the attorney with the power to deal, not with personal care, but with property. The erroneous language made the document ineffective for its purpose.

By the time this error was discovered, the client had become incapacitated, and the document could not be rectified without court approval.

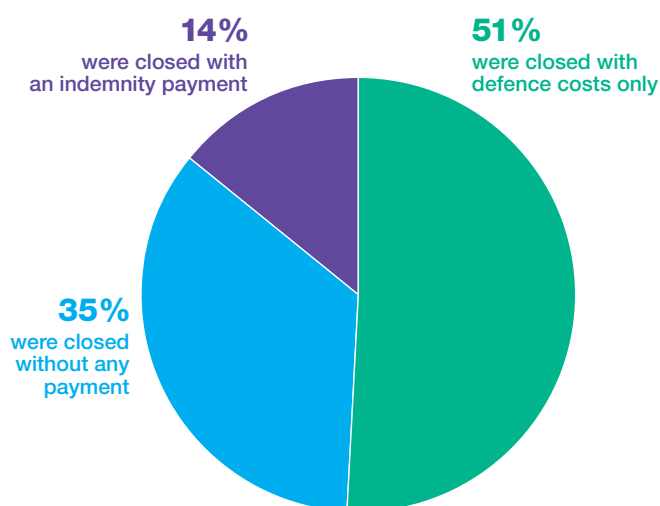
LAWPRO was alerted and quickly assisted the licensee in obtaining a court-approved rectification, removing the erroneous reference to “personal care,” and replacing it with the word “property.” The order was stated to be effective *nunc pro tunc*, and additional negative cost and consequences flowing from the mistake were avoided.

An ounce of prevention is worth a pound of cure

Every year, LAWPRO resolves potential claims before they become actual claims. In 2019, 86 per cent of claims were closed without any indemnity payment, and 35 per cent of claims were closed without any defence costs whatsoever.

Immediately notifying LAWPRO of potential errors or omissions means steps can be taken to resolve the situation before it develops into a malpractice claim. If you make an error, or believe you could be accused of making an error down the road, don’t try to resolve the problem on your own. A call to LAWPRO means we can provide expedient and experienced advice and assistance. ■

Claims by disposition (outcome)



Defending lawyers in court

LAWPRO tries to resolve unfounded accusations without litigation, but sometimes claims can only be resolved in court. When a reasonable defence is available, LAWPRO will step in to help licensees assert their rights.

A few examples of defences successfully advanced by LAWPRO in 2019 on behalf of insureds are described on the next few pages.

Real estate – Claims by non-clients

The solicitor-client relationship is the foundation for most negligence suits against lawyers. Claims brought by non-clients are the exception, but they still must be defended when they arise.

In a recent real estate dispute, LAWPRO successfully represented a Licensee in a case brought by a non-client, which affirmed the high bar such plaintiffs must reach and the narrow circumstances in which such negligence claims will be allowed.

The Plaintiff was the alleged victim of mortgage fraud. The plaintiff claimed this fraud was perpetrated by the Licensee's client. The underlying transaction involved a primary mortgage through an institutional lender, which required that the remainder of the purchase price be paid by the Licensee's client personally. However, the client made clandestine arrangements for the Plaintiff to provide these funds as a secondary private mortgage lender, in contravention of the primary mortgage agreement.

The Plaintiff never received the promised equitable mortgage interest in the property, and was unable to seek restitution against the alleged fraudster client. The Plaintiff sued the Licensee for negligence on the grounds that he either owed a duty of care to the Plaintiff as a third party, or, in the alternative, that they had established a solicitor-client relationship through two short pieces of correspondence.

LAWPRO successfully assisted the defendant in having the claim dismissed. The judge agreed the Licensee's communications with the Plaintiff included language that presumed the Plaintiff would obtain independent legal representation and advice. There was therefore no solicitor-client relationship. As well, the Licensee could not be responsible for professional negligence to the Plaintiff as a third party, as the lawyer had no actual knowledge that the plaintiff would rely on any legal advice they provided.

Real estate – A bad deal doesn't mean bad legal advice

Clients who enter into improvident deals will sometimes cast about for someone to blame. Often, their lawyer is an easy target. But lawyers must do the best with the hand they're dealt, and sometimes bad outcomes are beyond the lawyer's control.

In a recent real estate matter, a Plaintiff negotiated and signed a deal to sell property to a purchaser. The Plaintiff was in dire financial straits, as their mortgage on the property was in arrears and foreclosure was imminent. The purchaser was aware of the Plaintiff's financial situation, and used this lack of bargaining power to negotiate a very "one sided" deal, as described by the judge. In the end, the Plaintiff never received any money from the transaction.

The Plaintiff sued the purchaser for fraud, conspiracy, negligent misrepresentation, and breach of contract. The plaintiff also sued their own lawyer in professional negligence for allowing the deal to complete. The Plaintiff alleged that the Licensee should have advised them to terminate the agreement.

The Licensee maintained that by the time they were retained, the agreement had already been signed, and they had no ability to improve the deal at that point. The Plaintiff's lack of bargaining power prevented any renegotiation.

One potentially damaging issue that arose in the trial was the Licensee's minimal contemporaneous notes of conversations and meetings. Judges will often favour the client's testimony over their lawyer's when supporting documentation is not available. However, in this case, the judge found that the Licensee's testimony was more reliable than that of the Plaintiff. The judge noted that, in multiple instances, the Plaintiff's testimony-in-chief was contradicted by other evidence provided in cross-examination and examinations for discovery. As such, the Plaintiff's general lack of credibility led the judge to depart from that expectation.

LAWPRO successfully assisted the Licensee in proving that they met the standard of care, even with a paucity of supporting notes and documentation. The judge found that the Licensee advised the Plaintiff to obtain additional valuations for the property before closing, and this advice was ignored. The judge also found that the Licensee had made efforts to improve the deal for the Plaintiff, but the buyer had made clear there was no room to negotiate because of the Plaintiff's dire financial situation.

As well, the judge found that even if the Licensee had breached the standard of care, there would have been no damages in this case, because the Plaintiff would not have been in a better position if they had terminated the deal before closing. There was no evidence that another buyer was available, and the Plaintiff faced imminent foreclosure and personal liability on any shortfalls from the mortgage.

Personal injury – Second guessing a settlement

Unfortunately, settlements don't always put an end to disputes. In a recent personal injury case, a Plaintiff brought a second cause of action after settling the original claim on the basis that the settlement agreed to by the parties was a product of fraud, and the defendant's lawyer (the "Licensee"), doctor, and insurer conspired to deny them information that would have led to a more generous settlement.

The Plaintiff had been involved in a vehicular accident and sued for personal injury. The defendant's insurer arranged for the Plaintiff to be assessed for the purposes of a neuropsychological medical report. No report was delivered before a settlement offer made by the Plaintiff was accepted.

Approximately 16 months after the settlement was finalized, the Plaintiff brought a new claim against the Licensee and other parties. The plaintiff alleged that the medical report was required to be disclosed under the *Rules* and, had they been provided with the report, they would have been able to obtain a more generous settlement.

The claim was founded on, *inter alia*, the tort of conspiracy, and alleged the Licensee conspired with the doctor and insurer to injure the Plaintiff through suppression of the report, either using lawful or unlawful means.

LAWPRO successfully assisted the Licensee in having the claim in conspiracy dismissed as disclosing no reasonable cause of action. To succeed under the tort of conspiracy, the Plaintiff was required to show that the defendants' predominant purpose was to injure the Plaintiff. The judge found that this could not be made out on the pleadings.

While the Plaintiff also pleaded "unlawful act" conspiracy, the judge found that this also could not be made out, as a failure to comply with the *Rules* was not an "illegal act" in this context, because there were additional remedies under the *Rules* to compel compliance or address failure to deliver a medical report.

Wills and estates – Collateral attacks

Legal fees are often the basis for client disputes—sometimes with the other side's client.

In a recent will dispute, the testator's widow and accountant were originally named trustees of the estate. One of the testator's children (the "Challenger") challenged the validity of the will, and retained litigation counsel (the "Licensees") accordingly. The will challenge was settled through mediation, and the terms of the settlement provided for the payment of both parties' legal fees from the estate's assets.

Two months after the settlement was approved, the estate trustees sought invoices from the Licensees supporting their legal fees. The Licensees refused to provide these invoices on the basis that the estate had not been their client, and was therefore not entitled to such documents.

Eighteen months after that, the estate brought a claim for an accounting of the Challenger's lawyers' fees under the *Solicitors Act*, on the basis that the estate was entitled to an accounting pursuant to section 9 of the *Act* as a "party not being the principal" that paid a bill of costs.

The Licensees sought summary judgment to dismiss the claim because it had been brought more than 12 months after the bill was issued and paid, there were no special circumstances to justify

the accounting, and the claim constituted a collateral attack on the court-approved settlement.

LAWPRO counsel successfully assisted the Licensees in having the claim dismissed. The judge found there were no special circumstances that justified an accounting more than 12 months after the bill was issued for various reasons, including: the estate was represented by sophisticated counsel; there was no patent evidence of overcharging; there was no explanation for why the estate waited so long to bring their claim; and, the terms of the settlement were generally quite favourable to the beneficiaries of the estate. The judge also agreed that the claim was an impermissible collateral attack on the court approved settlement, which foreclosed the parties from "renegotiating" its terms, including legal fees.

LAWPRO subsequently successfully assisted the lawyers in having an appeal of this decision dismissed, for the same reasons found by the lower court judge.

Lawyers for lawyers

A malpractice claim doesn't necessarily mean a lawyer made a mistake, but a defence still needs to be raised. Of the 12 matters taken to trial in 2019, LAWPRO won nine, with two more under reserve. LAWPRO was also successful on 16 of 19 summary judgment motions and won all three summary judgment appeals brought by claimants. LAWPRO provides effective assistance and prides itself on defending licensees. ■

In 2019



SUCCESSFUL ON
SUMMARY JUDGMENT MOTIONS

16 out of 19

SUCCESSFUL ON
SUMMARY JUDGMENT APPEALS

all 3

SUCCESSFUL ON
MATTERS TAKEN TO TRIAL

won 9 out of 12

practicePRO

Top 2019 initiatives to help lawyers succeed

An important focus for LAWPRO is to help lawyers avoid claims before they happen. LAWPRO's practicePRO risk management initiative is a widely-recognized and well-respected provider of tools and resources to help members of the practising bar identify practice risks and take steps to minimize their claims exposure. A few examples of our resources are highlighted on the right.

Corporate/commercial webzine

This webzine features an updated corporate/commercial malpractice claims fact sheet and articles on delegating responsibly and the importance of being aware of limitation periods on corporate matters.

First Timer's Going to Court Cheat Sheet

Going to court for the first time can be an intimidating experience for a lawyer. This cheat sheet covers what to wear, where to stand, the expected decorum and other topics that will help build the confidence of a lawyer facing this new experience.

LAWPRO Magazine - The Student Issue

Includes articles on the importance of mentors, common practice pitfalls and 20 tips for making the transition from student to lawyer.

Limitation Period Resources

Two charts help lawyers navigate Ontario's limitation periods and notice periods: *Limitation and notice periods chart* and *Limitation and notice periods – real property chart*.

Real estate resources

The real estate webzine looked at four easily avoidable errors that can cause big problems after closing and included an updated version of the real estate malpractice claims fact sheet.

Flowchart for a sale by a non-resident helps lawyers navigate when dealing with the sale of a property by a non-resident seller where there is no s.116 clearance certificate on closing.

The Real estate file management checklist helps keep track of the many steps in a transaction and enable effective communication with clients.

The Fraud Fact Sheet: Real Estate explains ID impersonations, property flips, value frauds, and phishing scams that are successfully duping lawyers and law clerks.

Construction lien flowchart

Follow this chart to help determine whether the new *Construction Act* or old *Construction Lien Act* applies to a construction law matter and which processes should be followed when lienning a project. ■



Find these and more
at practicepro.ca.

Responsibility

CSR activities reinforce our values

Our continued commitment to our corporate social responsibility (CSR) program shines through our contributions to the profession, employee wellness and the broader Canadian community.

Fostering the legal community

- LAWPRO encourages employee involvement in a wide range of professional associations and groups that represent diverse segments of the legal profession. These activities help us gain insight into members' priorities and concerns, and allow us to highlight how LAWPRO's efforts and activities are supporting the legal community.
- LAWPRO sponsorship of the annual award of the Caron Wishart Memorial Scholarship, in its eighth year, went to University of Toronto Faculty of Law student Gordon Lee.
- LAWPRO hosted the annual National Association of Bar Related Insurance Companies (NABRICO) conference in Toronto and connected with member companies from around the world to share knowledge and expertise.

Promoting wellness and balance

- LAWPRO promotes well-being by providing approximately one-half of the funding for the Law Society's arm's-length Member Assistance Program (MAP). LAWPRO promoted the program in presentations, online and through social media. We also published a *LAWPRO Magazine* dedicated to mental health in January 2020 entitled "Finding your way: Coping with health and wellness issues."
- In 2019, LAWPRO continued its Equity, Diversity and Inclusion initiative in partnership with the Canadian Centre for Diversity and Inclusion ("CCDI"). In furtherance of its EDI journey, LAWPRO rolled out the option to add pronouns to email signatures and/or business cards to be more inclusive of transgender and non-binary people. Many free online educational programs were also made available to staff to create awareness and encourage dialogue on EDI issues.

Supporting the broader Canadian community

- Each year, LAWPRO staff nominates and votes on charities for inclusion in the company's Denim Friday charitable giving program. Employee donations are matched by LAWPRO. In 2019, contributions to the charities raised \$35,297.54. Donations of \$7,059.51 went to each of Fanconi Canada, Ovarian Cancer Canada, the Toronto Humane Society, the Good Shepherd Refuge Social Ministries, and The Equality Effect. In addition, staff-led initiatives included donations of 264 lasagnas to the Good Shepherd Homeless Shelter (this translates to 3,960 servings of hot meals), and collection of non-perishable food items on World Kindness Day for the Daily Bread Food Bank.
- LAWPRO encourages employees to take a paid day off each year to volunteer at an eligible charity. In 2019, employees donated nine days in support of their chosen charities, such as International Justice Mission, Daily Bread Food Bank and CP24 CHUM Christmas Wish program.
- As part of the Canadian Blood Services "Partners for Life" program, a group of LAWPRO employees pledge annually to donate a certain number of units of blood. In 2019, staff donated 31 units - enough to save up to 93 lives (an increase from 29 units in 2018).
- In 2019, the Underwriting and Customer Service department participated in the Shoebox Project for women impacted by homelessness, with donations of clothing and essentials. ■

