

LAWPRO

2021 year in review



Our mission

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

About LAWPRO

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

Professionalism

Integrity

Innovation

Service

Leadership

Our values underscore our commitments

1/2 of the funding for the Member Assistance Program

Corporate Social Responsibility at LAWPRO is informed by a spirit of community and accountability, while acknowledging that we are governed and profoundly shaped by our unique role as the provider of the primary professional liability insurance program for all lawyers in Ontario.

Promoting health and wellness

With mental health remaining a focus throughout the pandemic, LAWPRO provided approximately one-half of the funding for the Law Society's arm's-length Member Assistance Program (MAP). We also provided popular free CPD programs on mental health and resilience in response to the desire for dialogue and resources around this topic.

Helping to provide an environment to nurture employee mental health has remained a vital point of focus at LAWPRO. A number of initiatives were made available for ongoing support including the Employee Assistance Program and lunch & learn sessions.

17 presentations at law schools and colleges

Supporting our future legal community

LAWPRO's support of law students included 17 presentations at schools and colleges. LAWPRO sponsorship of the annual award of the Caron Wishart Memorial Scholarship, in its 10th year, went to University of Toronto Faculty of Law student Peter Tross.

Giving back to the Canadian community

With over 90% of employees participating in LAWPRO's employee-led charitable giving program, we saw an increase of donations from the previous year reaching a new record for LAWPRO. Employee funds raised are matched by LAWPRO.

90% participation in charitable giving program

Highlighting the importance of inclusion

LAWPRO continued its Equity, Diversity and Inclusion (EDI) journey in partnership with the Canadian Centre for Diversity and Inclusion. Various free webinars were facilitated, and resources shared by the EDI Advisory Group to raise awareness and initiate dialogue.

In 2021, LAWPRO embarked on a journey towards Reconciliation in several intentional ways: through an Acts of Intention challenge, donations to Indigenous led charitable organizations, and engaging in a day of learning on the National Day for Truth and Reconciliation. 108 Acts of Intention were performed by staff.

108 Acts of Intention



LIABILITY INSURANCE:

almost 30,500

members of the Law Society of Ontario



EXCESS INSURANCE:

1,625

law firms



TITLEPLUS:

over 26,000

Title insurance policies

Remarks of the Chair



As the Chair of LAWPRO's Board of Directors I am proud of the company's unflagging determination to support Ontario lawyers and protect the public they serve. LAWPRO has and continues to successfully navigate the many changes and challenges visited upon it as a result of the COVID-19 pandemic.

With more than 30,000 lawyers insured under the primary program, our work to offer an efficient, effective, and accountable mandatory E&O insurance program is described in this report. As a program that specializes in insurance for the legal profession, the company has a deep understanding of malpractice risks and claims trends. It is also well positioned to identify and cope with emerging risks and respond to the evolving nature of legal services work.

While LAWPRO maintains an intimate understanding of the role of and challenges faced by members of the Bar, we are also a regulated insurance company that must address industry issues including solvency requirements and effective claims management. LAWPRO's finances are measured, in part, by the Minimum Capital Test (MCT).

The MCT is used by financial regulators to measure whether a property and casualty insurance company's assets are sufficient to meet its present and future obligations. The MCT ratio compares liability risks including unpaid claims and unearned premiums with credit risks such as investments and receivables. As of December 31, 2021, LAWPRO's MCT was 241%, slightly above the internally set preferred band of 215% to 240%. There are many external factors that can adversely affect our MCT like unpaid claims, interest rates and equity market performance.

In 2023, there will be a completely new factor which will impact upon LAWPRO's MCT. This factor is the implementation of a new *International Financial Reporting Standards* regulation, IFRS 17, which is required by LAWPRO's regulator, the Financial Services Regulatory Authority (FSRA).

IFRS 17 is a new worldwide financial reporting standard applicable to the financial statements and reporting requirements of insurance companies. Like all other insurers, LAWPRO must completely overhaul its financial statements and reporting methodologies effective, January 1, 2023. We are in the process of implementing the new standards and meeting the deadline.

Based on input from our external advisors, actuarial and accounting professionals, we don't expect to have a full understanding of the impact of IFRS 17 on our MCT ratio until at least the middle of 2023. Our strong MCT position at the end of 2021 will help give us the opportunity to make any required adjustments, which might include a premium increase, as we experience the changes brought on by the new regulations.

I invite you to read this report which outlines the claims experience of the last year, our financial position, free risk management programs we are known for, and an overview of LAWPRO's optional programs.

The solid foundation of LAWPRO's financials means you can be confident that the company's mandate of public protection and commitment to premium affordability for the Bar can be met going forward.

Andrew J. Spurgeon

Andrew J. Spurgeon
Chair

Remarks of the President & CEO



In 2021, LAWPRO was deeply involved in the process of implementing two of the largest projects in its history.

The first project is an ambitious plan to modernize our core technology systems and improve the user experience for both our insureds and employees. By working with established technology providers, we are creating purpose-built systems that integrate policy administration, billing, underwriting, claims management, and analytics. The project is complex as it involves transitioning the many data sources that feed our underwriting, claims, actuarial, insured and firm information databases, reviewing and updating hundreds of document templates, and building integrations with our other existing systems and the third parties with which we share data. It's an exciting yet daunting project that will benefit the organization through greater efficiencies from improved workflows and automation. This will help LAWPRO implement new financial reporting requirements which flow from the Financial Services Regulatory Authority's (FSRA) adoption of the International Financial Reporting Standards new IFRS 17 – Insurance Contracts Reporting Standard (IFRS 17).

The second major project we undertook in 2021 was the exciting launch of the better, faster, and lawyer-centric TitlePLUS experience. This project includes an intuitive application website, the implementation of TitlePLUS Legal Counsel Fees to recognize the work of lawyers, separate owner and lender policies for more clarity, faster underwriting and issuance, and fewer administrative roadblocks. Importantly, the new TitlePLUS will be accessible on multiple platforms including titleplus.ca, RealiWeb, and Unity. A Bar-related title insurance company is an important factor in keeping real estate transactions under the purview of lawyers and we are proud of our commitment to supporting them with TitlePLUS title insurance.

I'd like to take this opportunity to reflect on LAWPRO's focus on offering the best coverage at the lowest possible premium. Over the past 10 years, the company's combined operating ratio has averaged at 107%. This means that, on average, we lose 7 cents on every dollar of premium before investment income. This ratio reflects our mandate to offer the best coverage possible at the lowest possible price. LAWPRO investments generally make up this loss and allow us to meet all regulatory requirements and remain a going concern regardless of any threats we might face in the future.

LAWPRO actively looks for ways to support the profession, our communities, employee wellness, and the environment. For example, each year LAWPRO staff nominate and vote on charities to include in the company's charitable giving program. In 2021, employee funds, matched by a corporate donation, supported five employee chosen charities. In addition, LAWPRO embarked on a journey towards Reconciliation in several intentional ways: through an Acts of Intention challenge, donations to Indigenous led charitable organizations, and engaging in a day of learning on the National Day for Truth and Reconciliation.

Lastly, I am proud of the practical help we offer the Bar to lower their risk, help them succeed and support our community. This means providing recorded, free, risk reduction professional development presentations, and easy-to-use resources and tools that help lawyers avoid common errors. Refer to page 23 for a list of our top resources that can be downloaded or viewed for free and at your convenience from the practicepro.ca website.

We continue to focus on finding ways to adapt, be resilient and offer coverage that meets the needs of our insureds.

Daniel E. Pinnington

Daniel E. Pinnington
President & CEO



Solid performance despite ongoing challenges

COVID-19 and its wide-spread impact continued to force LAWPRO to adapt the Primary Program in 2021. Changes were made to improve the customer experience, strengthen LAWPRO's capital position, and streamline processes for greater operational efficiency.

In 2021, Ontario began a slow recovery which translated into more work for many lawyers. M&A activity was up, the real estate market was hot, courts opened up or litigants were able to proceed remotely. However, the recovery is not complete and there are hurdles facing legal consumers and practitioners including court delays, uncertainty about administrative processes (such as when administrative suspensions will resume), a near-perfect environment for using electronic communications to perpetrate frauds, and continuing health and wellness concerns for law firm members who are often isolated.

Claims

Through the extended period of adaptation to pandemic challenges, LAWPRO successfully implemented new processes to maintain the same high level claims handling we are known for. While our place of work did not return to normal, we found that claims numbers started to regain their usual pace.

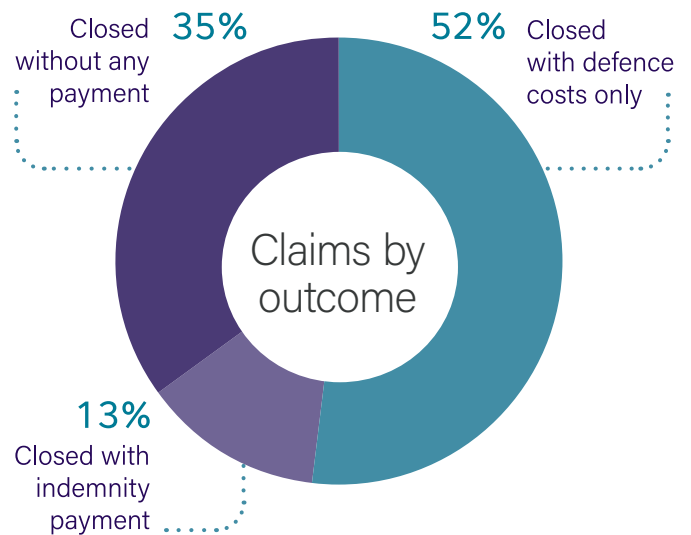
LAWPRO dealt with 3,193 new reported claims in 2021, an increase of 15% over 2020, and slightly more than the 3,121 reported in 2019.

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

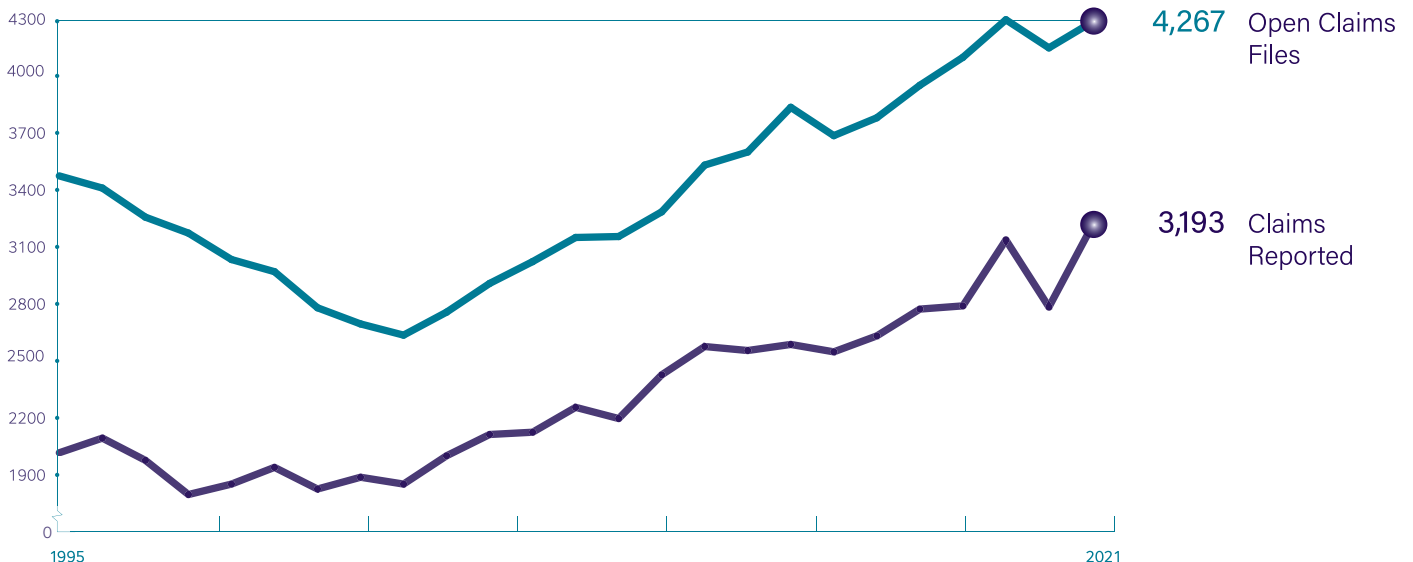
The largest percentage of reported claims in 2021 continued to be related to real estate (27%) and litigation (also 27%). The number of real estate-related claims increased to 719 from 609 in 2020, while the number of litigation-related claims increased to 699 from 549 in 2020. The number of litigation claims is still fewer than the 822 seen in 2019 which may reflect the pandemic-related hold on administrative dismissals, as courts are not yet pursuing administrative dismissals. Once the hold has been lifted, we may see a corresponding increase in claims numbers.

Meeting challenges, closing claims

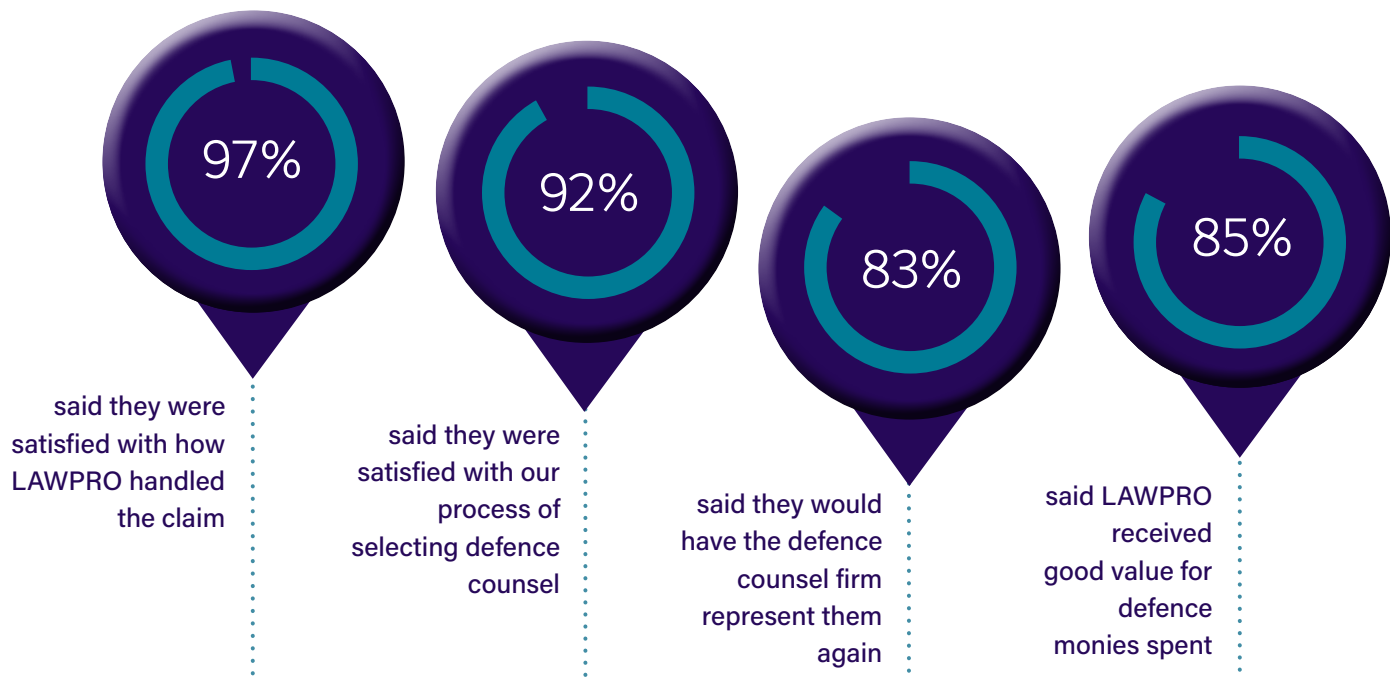
Despite the restrictions imposed throughout much of the year by stay-at-home orders and similar health and safety requirements, LAWPRO closed more claims in 2021 than in any of the past 10 years and closed 5% more files than in 2020. Of these files, 87% were closed without any indemnity payment, and 35% were resolved without payment of any kind.



Number of claims reported and open claims



LAWPRO survey results:



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.

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.

However, inadequate investigation, communication errors and time management mistakes continue to cause the most claims on a consistent basis.

In 2021, there was a sharp drop in claims caused by lack of time management largely due to changes brought on by the pandemic, such as the tolling of limitation periods reducing the quantity of claims brought on by missed limitation periods.

Communications challenges and inadequate investigation

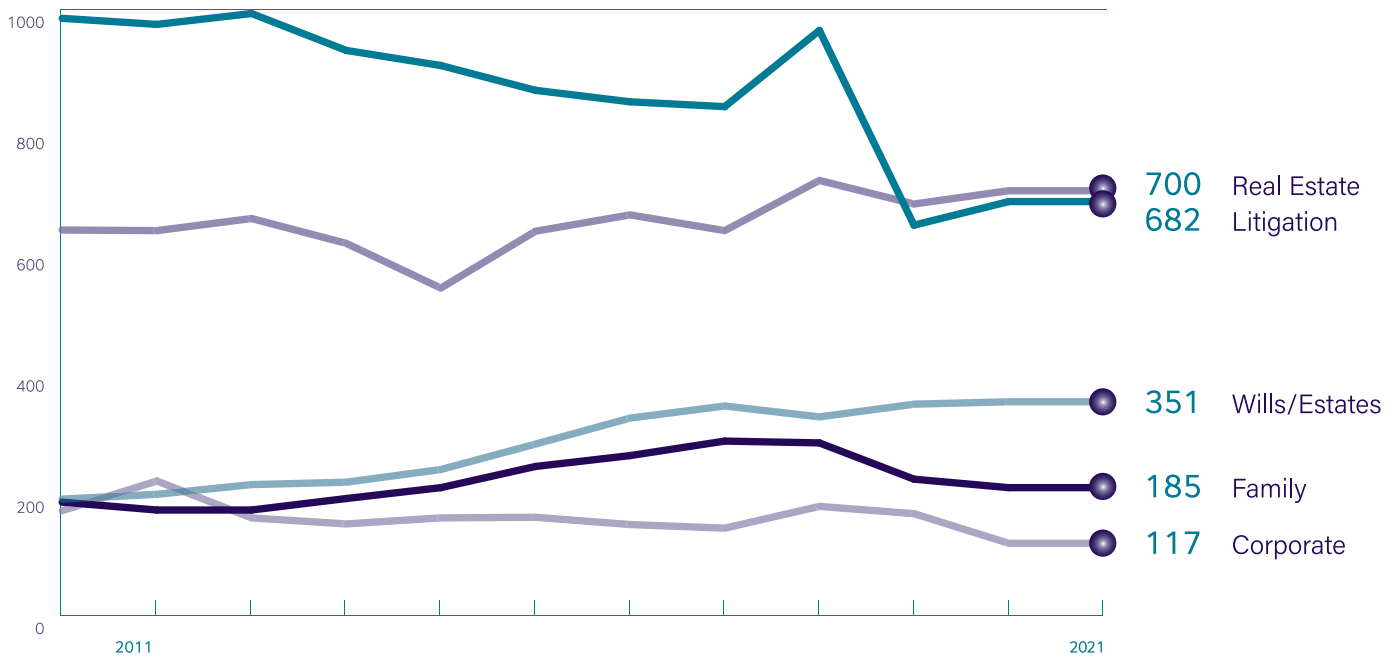
Communications and inadequate investigation continued to cause challenges for insureds. We often see claims related to lawyers who have not uncovered all the facts or developed a sufficient understanding of a client's matter. This is categorized as inadequate investigation and led to 649 claims in 2021.

Whether it is misreading or not reading information on a document, not conducting a search or not researching thoroughly it is important to make sure clients understand their risks and that those discussions are documented.

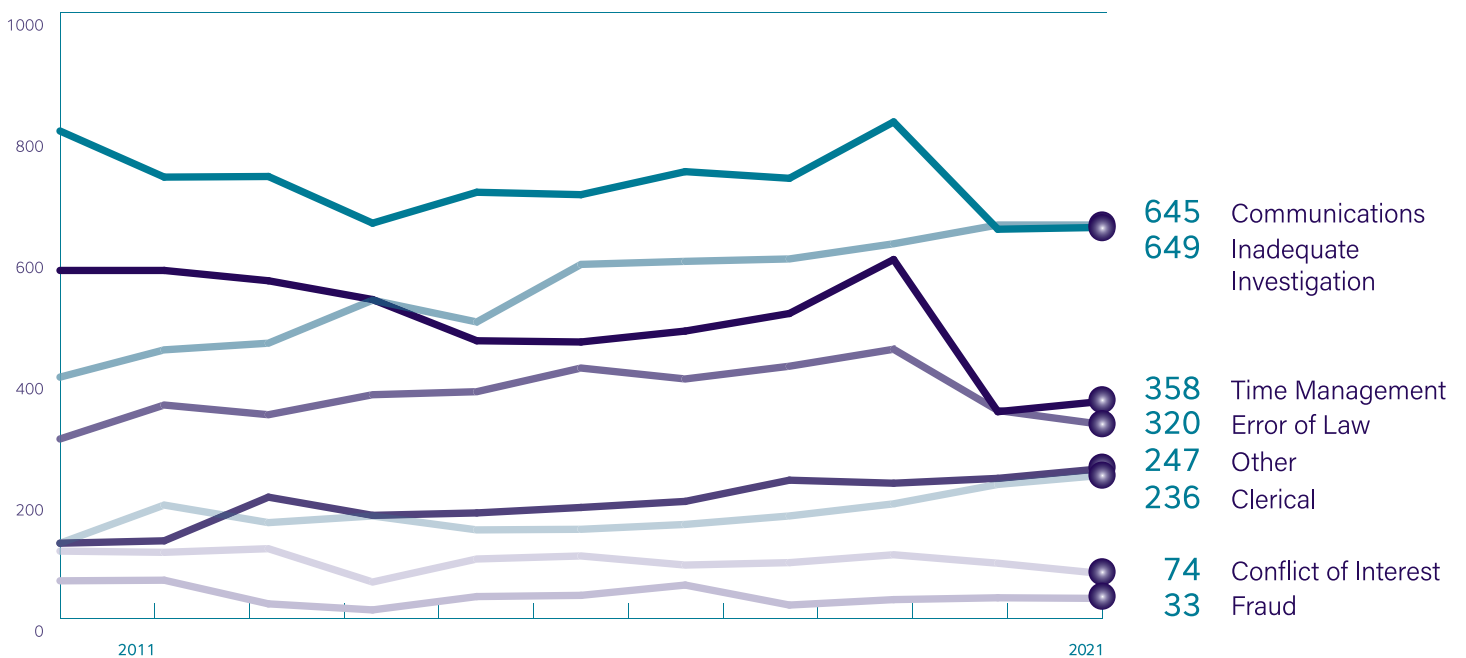
We encourage lawyers, to ask about clients' circumstances to ensure everything is taken into account. Not knowing key information can cause significant problems. To reduce this risk, ask open-ended questions during client intake and throughout the retainer. Inform your client early which documents you will need from them and follow-up with them with further questions as they arise. A reporting letter to confirm understanding of the facts and instructions for next steps a valuable risk management step.

Communication breakdown is another common cause of claims and led to 645 claims in 2021. Keeping clients up-to-date on the status of their matters by explaining obligations and deadlines that will arise and the potential ramifications are important details to avoid these types of errors. Take detailed notes and confirm client conversations in writing to minimize misunderstandings and manage client expectations. And again, a final reporting letter detailing what the lawyer did and the advice given can be a great help if a claim occurs. When sending correspondence to your client or third parties ask them to confirm receipt of that correspondence and don't hesitate to follow-up. Provide clients with written retainer agreements including the cost of your services. For model retainer agreements, refer to our [practicePRO.ca Retainers and Non-engagement](https://practicePRO.ca/Retainers%20and%20Non-engagement) page.

Distribution of claims by area of practice



Reported claims count by cause of loss



Coverage and insurance options

Expanded coverage for all Ontario lawyers

The number of “full premium equivalent” (FPE) lawyers insured under the LAWPRO mandatory E&O program increased by almost 3% to 29,384 in 2021.

LAWPRO expanded the scope of the primary E&O policy by including Innocent Party coverage within the mandatory base coverage. While this necessitated a small increase in the base premium level by \$50 to \$3,000, it meant an overall savings of \$75 for over 20,000 Ontario lawyers, as well as broader protection for every insured.

The annual LAWPRO premium paid by most Ontario lawyers is significantly lower today than it was in the past – something not found with just about any other type of insurance. In fact, in 2016 the base LAWPRO premium was \$3,350 -- \$350 more, or 10% higher than today.

If the base premium of \$5,600 charged when LAWPRO was created were to be adjusted for inflation today, the premium would be \$9,105.59. In other words, today’s premium of \$3,000 (adjusted for inflation) is 32.95% of what it was in 1995.

One of the hallmarks of the LAWPRO E&O program is its flexibility. Lawyers have several 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.

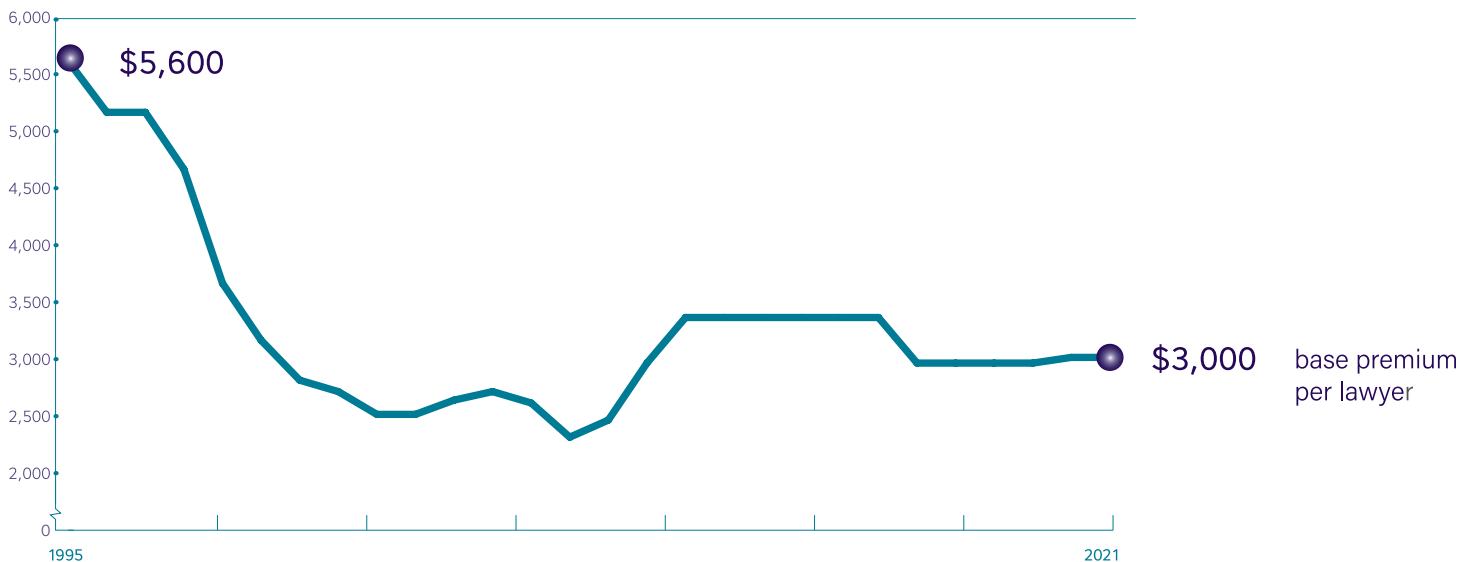
Coverage for new and retiring lawyers

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 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% 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.

Base premium since inception

(as at December 31, 2021)



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 1,625 firms received their Excess insurance from LAWPRO as at the end of 2021—218 of which chose the maximum \$9 million limit option.

With 164 new firms opting to buy excess coverage from LAWPRO, our client base saw approximately 3% growth from the previous year. The Company's retention rate on excess business of 94% 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.

TitlePLUS title insurance

The TitlePLUS product and service was completely reengineered in 2021 with new features, policy wording, pricing structure, and website. Our goal was to make TitlePLUS more competitive and useful. The new TitlePLUS needed to be more customer oriented, easier to use, more accessible, and address lawyer misconceptions. This meant we needed to not only address the technology platform, but the policy itself, how lawyers ordered it and how they interacted with us. The new platform was developed based on feedback from legal professionals and was built to address their need for fast, convenient title insurance without sacrificing comprehensive coverage. TitlePLUS title insurance is the only wholly Canadian-owned title insurance product in Canada. Learn more about the new TitlePLUS on page 24.

TitlePLUS is underwritten by LAWPRO and protects not only Canadian homeowners and lenders, but also lawyers through included legal services coverage that covers errors and omissions made by the lawyer for the entire transaction, excluding properties in Quebec and Existing Owner policies.

Many lawyers pay less than the base premium

Coverage discounts

New Lawyer Discount

20% to 50% discount for those called in the last 1-4 years

6,973
Insureds

Part-Time Practice Discount

50% base premium discount for eligible lawyers

2,394
Insureds

Criminal or Immigration Practice

50% base premium discount

1,767
Insureds

11,134 insureds took advantage of the discounts above

Service

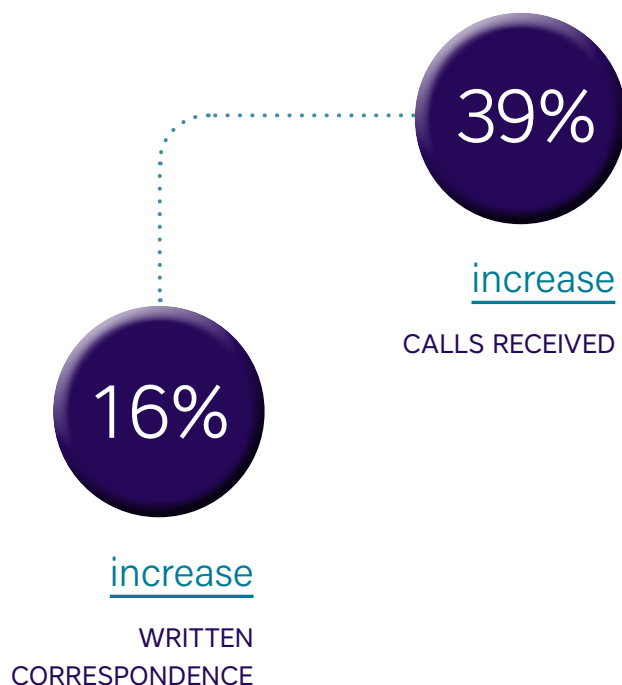
New technologies, same great service

LAWPRO's Underwriting & Customer Service department is the point of contact for licensees seeking to renew, change or inquire about their insurance options. 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 2021, the primary policy for more than 29,384 FPE lawyers in private practice was renewed following the Law Society of Ontario's convocation.

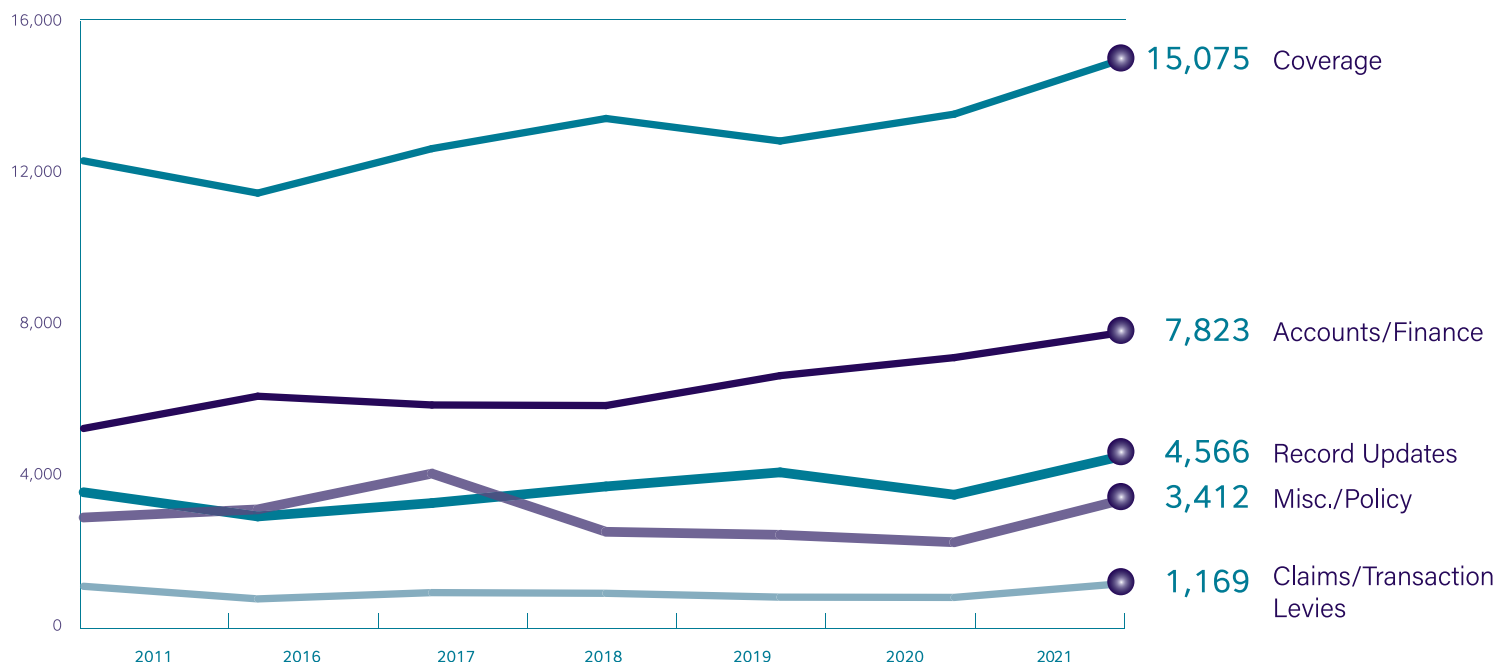
In 2021, Customer Service completed its second year as a virtual call and support system. In addition to the added complications of coordinating a remote workforce, LAWPRO saw a 16.4% increase in written correspondence and an almost 39% increase in calls received. That's over 30,000 pieces of correspondence to manage. Correspondence received is more than just coverage queries. It includes applications such as increased run-off, new applications for primary coverage, excess applications, increased innocent party limits, exemption forms, notices about lawyers leaving and joining firms, and refund requests.

LAWPRO addressed this increase in volume through the introduction of a new cloud-based virtual call system and automated queue callbacks to better respond to customer inquiries in effective, convenient, and expedient ways.

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, program guides, forms, underwriting optional coverages, processing filings, and answering questions from licensees.



Communications by Topic





LAWPRO successfully repairs

When LAWPRO is quickly alerted to potential claims, we are often able to rectify the problem and prevent loss and further lawsuits from arising. Our counsel know how to best address issues such as alleged failure to immediately disclose settlement agreements, disputes over jurisdiction to extend limitation periods, setting aside dismissal orders, and rectification of trusts.

Here are a few examples of cases where LAWPRO successfully repaired potential losses in 2021

1. The problem with *Pierrengers*: Settlement risks in multi-party litigation

Usually, it's safe to assume that a defendant and plaintiff aren't on the same side. However, in multi-party disputes, settling with only one defendant can alter the "landscape of the litigation" and impact this assumption. This can often happen with *Pierrenger*-type agreements, where a defendant or defendants agree to assist the plaintiff with their claim against a co-defendant in exchange for a resolution of the claims against them. Suddenly, parties that were adverse in interest are now allies. Witnesses who were expected to testify *against* the plaintiff may now provide evidence that *supports* the plaintiff's position.

Keeping this change a secret from the remaining defendant(s) and the court can be seen as an abuse of process and have serious consequences, including a stay of the entire action.

In this repair matter handled by LAWPRO, the plaintiff came to an agreement with one group of defendants to settle their claim in exchange for certain cooperation. The agreement was disclosed to the court and remaining defendants 10 days after being finalized. At that time, the remaining defendants requested production of the settlement agreement. The plaintiff's counsel disclosed some terms of the agreement, but initially refused to provide the entirety of the settlement agreement for approximately three months.

The non-settling defendants then moved to stay the action, asserting that the delayed disclosure of the terms of the settlement agreement amounted to an abuse of process. This placed the plaintiff's counsel at risk of a malpractice claim if the entire claim was dismissed.

LAWPRO assisted the plaintiff in successfully arguing that the settlement agreement did not "change the litigation landscape" to the extent that immediate and full disclosure would have been necessary. The court found, in this case, the settling defendants had always been adverse in interest to the remaining defendants, with or without the settlement agreement. As such, the agreement did not change the litigation landscape "entirely," and the strict disclosure obligations laid out in cases like *Handley* did not apply.

The motion was dismissed and the plaintiff's claim was allowed to continue.

2. The powers LAT be: A tribunal's jurisdiction to extend limitation periods

The powers available to tribunals are limited to those expressly provided by statute. Unless a tribunal is expressly granted the discretion to extend limitation periods, the discretion doesn't exist.

Accordingly, another repair matter handled by LAWPRO tasked the court with determining whether the Licence Appeal Tribunal (LAT) has jurisdiction under s.7 of the *Licence Appeal Tribunal Act* to extend the two-year limitation to file appeals set out in s.56 of the *Statutory Accidents Benefits Schedule* (SABS).

Conflicting decisions at the tribunal level had necessitated judicial clarification on this question. A denial of jurisdiction could have led to claims implications when additional matters before the LAT were tossed for reasons of missed limitation-periods.

The statutory language at issue read "despite any limitation of time fixed by or under any Act . . ." the tribunal could "extend the time for giving the notice either before or after the expiration of the limitation of time so limited" if there were reasonable grounds for doing so. The question to be resolved was whether this language granted jurisdiction to extend limitation periods enumerated in a regulation (specifically the SABS), in addition to limitations expressly set out in legislative "Acts."

LAWPRO successfully assisted the parties in arguing that the relevant language did, in fact, grant the LAT jurisdiction to extend limitation periods found within the SABS and other regulations. The Court agreed that regulations are drafted "under" an Act, and therefore the statutory language referring to limitations of time fixed "under any Act" included those limitation periods set out in regulations such as the SABS.

3. Delayed but not dismayed: Setting aside dismissal orders

Lawsuits are slow-moving beasts. They are rarely resolved expeditiously. But when progress slows so much as to seemingly cease entirely, the action may become at risk of being dismissed for delay.

In this repair matter, the plaintiff's personal injury claim had been dismissed by the Registrar for delay not once, but twice. The claim involved damages sustained after falling from a ladder in 2012 and the Statement of Claim had originally been issued in mid-2013.

A first dismissal order for delay was granted by the Registrar in 2018. While it was quickly set aside, the Master who did so also implemented a litigation timetable dictating that all examinations for discovery be completed by the end of 2018, and the trial be scheduled for summer 2019.

The plaintiff's lawyer then instructed their assistant to schedule the examinations. However, no steps were taken to canvas dates for the examination until January 2019. Additionally, the assistant in question left the plaintiff lawyer's firm in August 2019, and the plaintiff's lawyer did not become aware that the examinations and trial had still not been scheduled until late 2019.

In January 2020, the defendants sought and obtained an order to dismiss the action for delay.

LAWPRO assisted the plaintiff's lawyer in having this second order for dismissal set aside. While the lawyer admitted that the failure to comply with the litigation timetable set by the Master was due to inadvertence on their part, and a failure to properly supervise their assistant, the Court agreed that this did not, on its own, justify a dismissal order, as the inadvertence was not the fault of the plaintiff themselves and was a reasonable explanation for the delay.

The Court found that the application to set aside the dismissal order was sought in a timely manner, and there would be no prejudice to the defendant in permitting the claim to proceed.

The dismissal order was set aside, and counsel for the plaintiff avoided any possible claims implications flowing from any procedural errors on their part.

4. Missed signs: Adding defendants down the road

When plaintiffs are injured, it can sometimes be difficult to immediately determine who is to blame. The causative antecedents to an accident may not be determined until after a Statement of Claim is issued, additional examinations and discovery have occurred, or the entirety of the defendant's evidence is understood. In these circumstances, a new potential defendant may come to the plaintiff's attention outside of the presumptive two-year limitation period.

In this repair matter, the plaintiff had been injured in a motor vehicle accident. In addition to the driver and owner of the second vehicle involved in the accident, the plaintiff initially sued the City, alleging that it owned or occupied the intersection and allowed the growth of vegetation that obstructed the view of motorists and contributed causally to the accident.

In its defence, the City issued a third-party claim against various developers it claimed were responsible for construction projects that created the obstructive vegetation issues as well as visibility problems caused by large signage erected by the developers.

The plaintiff then sought to add these Developer Defendants as additional defendants in the original claim, despite the fact that the presumptive two-year limitation period had now passed. The proposed Developer Defendants opposed this on the grounds that their alleged involvement was known or should have been discovered by the plaintiff more than two-years prior.

LAWPRO assisted the plaintiff in successfully arguing that the involvement of the Developer Defendants was unknown by the plaintiff prior to receiving the City's defence. The evidence collected by plaintiff's counsel prior to issuing the claim did not clearly establish the involvement of the Developer Defendants, and it was not possible to determine in the motion whether the plaintiff's lawyer should have gone further than they did in investigating potential additional defendants, as doing so would involve issues of credibility or fact warranting a trial or summary judgment motion.

The motion to add the Developer Defendants was therefore allowed.

5. Troublesome trust typos: Rectification

Small typographical errors when drafting contracts or trusts can have big consequences.

In this repair matter, a father and son retained a lawyer to draft a trust instrument intended to effect a transfer of a farm while minimizing tax consequences. According to their lawyer, this was to be accomplished by transferring the property to the son as trustee, holding the property for his father as beneficiary, with a term enforcing the trustee to transfer the property to the beneficiary on request.

Unfortunately, the trust instrument was drafted to make the *father* the trustee holding the property for his *son* as beneficiary. This error was not discovered until after the son, tragically, pre-deceased his father.

The late son's wife sought to have the property transferred to the son's estate in accordance with the terms of the trust. The father resisted this transfer, claiming that the terms were reversed in error, and the intentions of the parties were that the property would revert wholly to the father should the son pre-decease him.

The father sought a court order rectifying the allegedly erroneously reversed names in the trust instrument.

LAWPRO assisted the father in successfully seeking trust rectification.

The lawyer that drafted the trust instrument testified in support of the father's position that the intentions of the parties were such that the father was to be the beneficiary of the property, not the son, and the instrument was not intended to allow the property to be transferred to the son's estate in these circumstances.

The lawyer testified that the instrument as drafted did not make sense, as making the son the beneficiary would not have avoided the tax consequences that were the impetus for the trust in the first place.

The court fully surveyed the evidence as to the parties' intentions at the time of signing the trust instrument and concluded that it was, in fact, the father that was intended to be the beneficiary, and the trust was rectified to reflect this conclusion.

Small fixes now prevent big problems later

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.



Defending lawyers in court

Despite any attempts to resolve claims without litigation, sometimes court is inevitable. Every year, LAWPRO steps in to defend licensees from unwarranted lawsuits and accusations.

Here are a few examples of defences successfully advanced by LAWPRO in 2021 on behalf of insureds

Construction liens and insolvency proceedings – Limitation period defences

There are various reasons why a client may refrain from pursuing a claim against their lawyer after a potential error has been made. The client may believe there is an alternate avenue for rectifying the situation. Or the client may want to protect the working relationship they have built with the lawyer. Regardless, if the client decides not to pursue the claim, their lawyer is entitled to the same assurances as anyone else once the limitation period expires on the alleged error.

In this case, the Plaintiff was a general contracting company that provided construction services for a condominium project. The Plaintiff wasn't fully paid for its work, so it retained the Defendant Lawyer to pursue payment. The Lawyer registered a lien for the amounts owing on title to nine condominiums on the project.

Unfortunately, the Lawyer mistakenly assumed that it was not necessary to file a Certificate of Action to perfect the lien and did not do so. The lien therefore expired 90 days later. By the time the lawyer learned of the expiration of the lien the following year, the owners of the construction project had already filed for bankruptcy.

Upon confirming that the lien had expired, the Lawyer informed both the Plaintiff and LAWPRO of the mistake and advised the Plaintiff to obtain outside counsel. However, after consulting with outside counsel, the Plaintiff came to believe that the amounts owing to them would be reclaimable through the bankruptcy process as an unsecured debtor, and there would therefore be no significant losses tied to the expiry of the lien. The Plaintiff informed the Lawyer that they did not intend to pursue a claim in negligence.

Unfortunately, the Plaintiff was not able to recover most of the amounts owing through the bankruptcy process. As such, almost five years later, the Plaintiff initiated a claim against the Defendant Lawyer for professional negligence.

LAWPRO successfully assisted the Defendant Lawyer in arguing that the limitation period on the potential claim against the Lawyer had expired. The Plaintiff was aware of facts giving rise to the claim five years prior and chose not to pursue the action. The fact that the Plaintiff mistakenly believed they would be able to recover the funds through an alternative legal process does not mean the potential claim was not yet "discovered," as the Plaintiff was only mistaken as to the potential quantum of damages flowing from the claim at that time, not the existence of the claim itself. The negligence claim was therefore dismissed.

Criminal law – Ineffective counsel accusations

Ineffective assistance of counsel claims, as an independent basis for appeal, can often arise against defence counsel after unsuccessful criminal trials, regardless of their possibly tenuous basis.

In one case, the criminal Defendant had been accused of defrauding the clients of his company, which claimed to invest client's funds in precious metals. The trial judge found that, despite misleading statements to clients suggesting that the company held an inventory of precious metals that clients would be investing in, the company in fact did not purchase or own any metals and clients were merely purchasing a notional "metal position" that only existed on the books.

The criminal Defendant claimed that they had received legal advice in the form of a memorandum that assured the Defendant of the legality of the business plan. This memorandum was entered in evidence. However, the author of the memorandum was not called by defence counsel to testify.

The trial judge found that the language of the memorandum suggested that the author had not been fully informed of the underlying facts as to the Defendant's business plan, and was not specifically aware that clients were told that the company had an inventory of metals when in fact no metals were ever purchased. As such, the trial judge concluded that the memorandum did not support the Defendant's position.

The criminal Defendant appealed, partially on the basis of ineffective assistance of counsel. The Defendant claimed that the author of the memorandum should have been called to testify.

LAWPRO successfully assisted the Lawyer in showing there was no ineffective counsel or negligence in the conduct of the criminal trial. The language of the memorandum suggested that its author was unaware of the misleading statements to clients. Calling the author to testify on the stand would most likely confirm that the author was also misled as to the business practices of the Defendant, which could undermine the defence strategy. It was reasonable for the Lawyer to not call the author to testify.

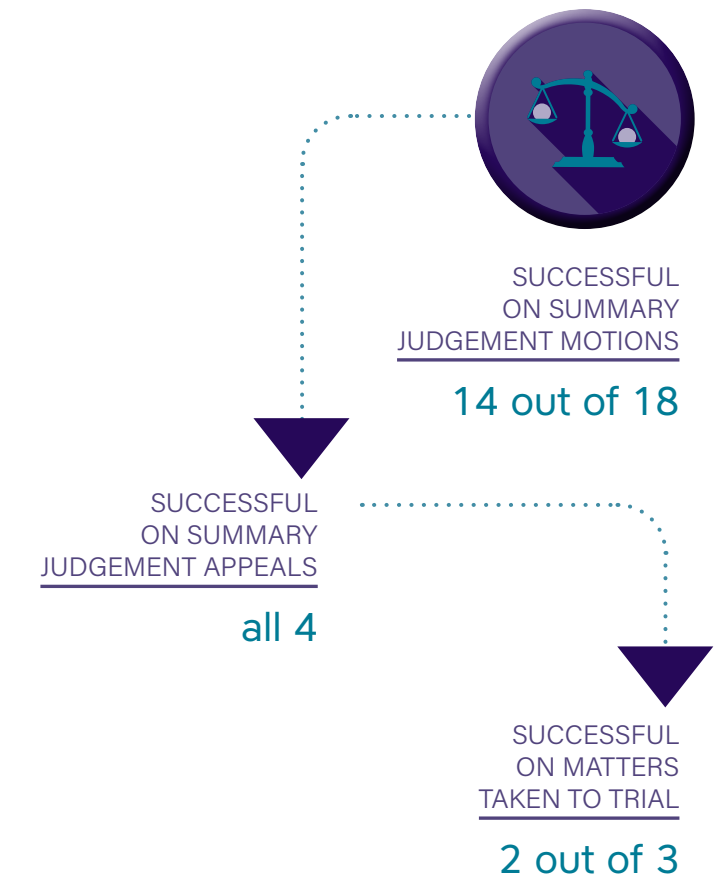
Real estate law – Fourth party claims

It is not entirely uncommon to see negligence claims filed against lawyers who never represented the plaintiff, and in fact represented the opposing side in a negotiation or dispute. Such claims are always unlikely to succeed, as lawyers generally do not have a duty of care toward non-clients. However, these claims must still be defended.

In this case, the Defendants in the underlying claim had entered into an agreement to sell vacant land to the Plaintiffs for approximately \$500,000. The Defendants had held the land for 27 years. Importantly, a mortgage on the land had been accruing interest for that entire period, and the Defendants had made no payments on that mortgage.

In order to provide clear title to the land, the Defendants contacted the mortgagee's Lawyer, looking to discharge the mortgage. According to the Lawyer, the full amount owing on the mortgage was approximately \$2 million, but the Lawyer would recommend a settlement of \$505,000. Since this was still more than the selling price of the property, the Defendants did not accept the settlement offer.

The Lawyer subsequently withdrew the settlement offer and demanded payment of the total amount owing on the mortgage. The Lawyer then served a notice of sale on the Defendant's land pursuant to the defaulted mortgage. The mortgagee sold the land to the Plaintiff buyer that the Defendants had originally entered into an agreement of sale with, but for \$687,000 instead of the original \$500,000 sale price.



The Plaintiffs subsequently sued the Defendants for the additional \$187,000 they had to pay as a result of the Defendant's inability to obtain clear title. The Defendants then brought the mortgagee into the claim as a third party, seeking indemnity for the amounts owing to the Plaintiffs and accusing the mortgagee of wrongly causing the failure of their original sale agreement. The mortgagee counter claimed for the full amounts owing on the mortgage (\$1.5 million), and the Defendants then commenced a fourth party claim against the mortgagee's Lawyer seeking indemnity for those outstanding mortgage amounts as well as damages for bad faith, negligence, and injury to reputation.

LAWPRO successfully assisted the Lawyer in defending the fourth party claims brought against it. The Court found that there was no basis in law for the Lawyer to be liable for the current value of the loan. As well, with regards to the negligence claim, the Lawyer's duty of care was owed to the mortgagee, not the Defendants. There was therefore no basis for any of the claims brought against the Lawyer.

Family law – Dissipation of assets

In this case, a woman was engaged in a lengthy divorce proceeding with her former husband. She believed that her husband was hiding assets from the court and was attempting to evade court orders.

In 2007, a motion judge had made a non-dissipation order with respect to the husband's assets. The following year, in June, the wife's lawyer became aware that the husband was attempting to obtain a bank line of credit for \$500,000, secured against family property in dispute in the divorce proceedings. By the time the wife's Lawyer could confirm the existence of the line of credit, it had been entirely depleted.

At the end of the divorce proceedings, the wife was left with very few assets, as the bulk of the family assets had been dissipated by the husband or taken up by legal and accounting fees.

The wife then sued her Lawyer for negligence, claiming that they should have either registered the non-dissipation order against the property, brought it to the attention of the bank, or obtained a new order prior to the husband securing a new line of credit secured against the family's real property.

LAWPRO successfully assisted the Lawyer in defending the claim. The Court found that the non-dissipation order was not registrable since it did not apply to a specific property. Further, it would have been inappropriate for the Lawyer to contact the bank to interfere in the husband's financial affairs without permission from the husband or the Court to do so. Finally, it would have been unlikely that the Lawyer could have obtained a new order, such as a Mareva injunction, based on the evidence available at the time.

As such, the Court found that the Lawyer did not breach the standard of care, and the claims in negligence were dismissed.

When "papering the transaction," the Defendant did not prepare a promissory note, which they had been instructed to do. The Defendant later admitted that they should have done so.

However, approximately two years later, the Plaintiffs concluded an agreement with the company to surrender their shares and acknowledge all of the outstanding debt. At that time, the Defendants received a promissory note for all outstanding amounts owing.

Nevertheless, the Plaintiffs later sued the Defendant for negligence, claiming that their failure to provide a promissory note when the transaction was originally "papered" reduced the Plaintiff's bargaining power with the company going forward.

LAWPRO successfully assisted the Lawyer in defending the claim. Although the Lawyer admitted to making an error in failing to draft the promissory note in accordance with the instructions, the Court found that no damages flowed from this error. The Plaintiffs received all amounts owing on the debt, and it was not clear what "bargaining power" was lost when the Plaintiffs subsequently negotiated a share surrender.

The Court stressed that there was no such thing as negligence in the abstract, and there was no cause of action if no damages flowed from the mistake. The claim in negligence was therefore dismissed.

Lawyers for lawyers

A malpractice claim doesn't necessarily mean a lawyer made a mistake, but a defence still needs to be raised. LAWPRO was successful on two of three claims taken to trial in 2021, as well as 14 of 18 summary judgment motions and four of four summary judgment appeals. LAWPRO provides effective assistance and prides itself on defending licensees.

Securities and finance – No such thing as negligence in the abstract

In this case, the Plaintiffs were shareholders of a company for which the Defendant acted as counsel. The Plaintiffs lent approximately \$3.7 million dollars to the company, without the involvement of the Defendant counsel. However, after the loans were completed, the Defendant was asked to prepare documents to secure the loans and "paper the transaction."



Outreach that overcame isolation

2021 was a banner year for LAWPRO outreach and CPD programs. LAWPRO engaged in approximately 110 presentations – setting a new record and increasing outreach efforts to solo and small firms and to foreign trained lawyers. Outreach efforts reached lawyers, law clerks and law students.



LAWPRO's practicePRO program is the well known risk management, claims prevention and law practice management initiative for Ontario lawyers. Its CPDs, precedents, checklists and other resources help insureds take proactive steps to avoid a claim and grow successful and thriving law practices.



Resources providing practical tips, reducing lawyer risks, and keeping the LAWPRO community connected

In 2021, practicePRO continued to provide timely resources to insureds. Popular articles included those summarizing [significant changes to the Rules of Civil Procedure](#), tips for [calculating the post COVID-suspension limitation periods](#), [adapting to Ontario's new contingency fee regime](#) and the top 10 changes to the *Planning Act*. The practicePRO program added to its Practice Tips Sheets with a [new cyber resource](#), as well as an article on [tips to prevent wire fraud](#). Recognizing the gaps created by lack of in-person meetings, and to encourage lawyers to seek guidance when in doubt, LAWPRO released an [Ontario mentoring programs guide](#), which quickly became a popular resource.



Free video CPD programming:

In 2021, LAWPRO released six [new videos](#). These programs can be viewed for both the LAWPRO Risk Management Credit and Law Society of Ontario professionalism hours. The programs address key pandemic issues facing lawyers and firms, including managing mental health through COVID-19, managing teams remotely, facilitating access to justice in practice, and preventing wire frauds from happening. Thousands of insureds and their staff viewed these programs in 2021.

Avoiding the wire fraud nightmare – what you need to know to protect yourself and your clients

Finding out that money you sent from trust has gone missing is a lawyer's worst nightmare. [Watch our program](#) to learn about the latest wire scams against law firms and their clients and how you can implement steps in your practice to help prevent these and other cyber dangers.



practicePRO claims prevention success stories:

practicePRO's claims prevention efforts brought peace of mind to insureds, diverted potential claims, and saved time and money.

1. **Call Before You Click:** In late 2021, LAWPRO's wire prevention initiative, "Call Before You Click" educated lawyers and law firm staff about new wire fraud efforts targeting law firms. This initiative immediately prevented a nearly \$500,000 wire fraud attempt, saving LAWPRO file investigation, defence and potential indemnity costs.
2. **Up front prevention saves downstream costs: practicePRO efforts saves potential claims costs and helps insureds avoid having to report a claim to LAWPRO in several instances:**
 - a) In one case, an insured called out of concern that a party in a litigation matter was going to bring a motion to strike the action for delay, which could add time, cost, and require LAWPRO to defend.
 - b) In another instance, our early intervention helped ensure that a real estate transaction could close safely without requiring claims to be opened or repair counsel retained.



Most used popular practicePRO resources are listed here for easy free download



- 1 Tips for calculating limitations deadlines accounting for the COVID-19 emergency suspension period
- 2 Non-resident Sale Holdback Flowchart
- 3 General Retainer Letter
- 4 Check Your Cheques: 5 Ways to Spot Fraudulent Cheques
- 5 Managing Conflict of Interest Situations
- 6 Business Plan Outline
- 7 Limited Scope Representation Resources
- 8 Limitations and Notice Periods Chart
- 9 Plaintiff Counsel Beware – It is Now Easier to Dismiss an Action for Delay
- 10 Criminal law retainer letter
- 11 Landmines for Lawyers When Drafting Wills
- 12 Real Estate Fraud Fact Sheet
- 13 Retainer Agreement Family Law
- 14 Real Property Limitations Chart
- 15 First Timer's Going to Court Cheat Sheet
- 16 Generic ILA Checklist
- 17 Tips to Avoid Wire Fraud Scams
- 18 "This is not a claim, but..."
- 19 Managing Practice Interruptions
- 20 Cybercrime and Bad Cheques Fraud Fact Sheet



from a simple
mission
to great
innovation

TitlePLUS provides lawyers – and their clients – with unmatched, comprehensive coverage

TitlePLUS may have evolved into a full-service, streamlined online title insurance offering, but some things haven't changed, says Daniel Pinnington, president and CEO of LAWPRO.

“On top of offering the same unparalleled coverage as always, our mission and our purpose remain the same,” says Pinnington. “TitlePLUS is built for lawyers, and our commitment to keeping them part of the transaction remains paramount in our new product design and portal.”

A strong foundation

From its launch in 1997 to its current revamp, the role of real estate lawyers has always been paramount at TitlePLUS. Developed on the premise that consumers' interests in a real estate deal are best protected by the independent legal advice provided by a lawyer, TitlePLUS' mission from inception was to help real estate lawyers succeed in the business of practising law by supporting them in providing services to their clients on real estate matters.

Members of the Canadian real estate bar have been a defining presence from the start, helping to create TitlePLUS from the lawyer's point of view, and that's been a differentiator, Pinnington notes. Everything we do starts with a premise of helping lawyers fully understand the risks the homebuyers and lenders face and to protect the lawyer from the risks they face as well. TitlePLUS was first in the marketplace to explicitly cover the legal services provided by the lawyer completing the real estate transaction, with a direct recourse through the insurer.

“That's been imbedded in the underwriting from the beginning – when people call in to TitlePLUS, they're often speaking to experienced real estate lawyers,” Pinnington says. “We have the insight, from lawyers to lawyers.”

With technology playing an increasingly vital role in real estate transactions – and with property prices increasing unbelievably across the country, making it even more important for clients to go into a deal fully understanding the implications of it – “it was time for us to upgrade,” says Pinnington.

What's new

TitlePLUS wanted to deliver an overall better user experience to lawyers and, from instant quotes to streamlined underwriting to simplified terms of use agreements, every enhancement was designed with lawyers at the forefront. TitlePLUS rolled out a

self-serve website that's intuitive and, most importantly, fast. Within 10 minutes on most deals, lawyers can complete an online application that gets them a client-friendly title insurance policy in plain language and automatically includes legal services coverage. TitlePLUS policies are now also available on Unity, the platform used by the majority of Ontario real estate lawyers. And, when facing a more complex real estate transaction, TitlePLUS has a team of specialists available to ensure lawyers are getting the solutions the client needs.

Overall, the improvements mean TitlePLUS is easier to access and leverages more automation to make getting a policy faster. This helps the lawyer complete their work as effectively and efficiently as possible.

“It's a one-stop shop to purchasing title insurance that busy legal professionals expect,” Pinnington says, adding the ongoing plan is to make the policies offered by Canadian-owned TitlePLUS more available across the country to lawyers in the other provinces and territories.

Moving faster than before

While TitlePLUS has always been trusted and had the knowledge lawyers rely on, resting on that reputation was no longer enough. In a world where technology and real estate practice had evolved, “we wanted to make sure we continue to be relevant in how transactions are conducted today,” Pinnington says.

“That includes supporting them with technology that's faster, more efficient and responsive to their general needs. We weren't moving as fast as we needed to and we rectified that.”

This was the impetus for the sweeping changes to TitlePLUS, building on its conservative and diligent approach to embrace a more agile and flexible model, with a focus on simplicity, automation and real attention to customer service. A leader at the start, Pinnington says they recognize that a spot in the marketplace is earned and they had to make changes to keep up with modern times and “ensure we continue to be a strong option.”

Backed by LAWPRO and built for lawyers, TitlePLUS puts real estate lawyers first with unmatched comprehensive coverage they don't have to think about – and that's the foundation of every move the title insurer makes.

“It's very much baked into our core drive, our mission, our purpose,” says Pinnington. “Supporting lawyers as they provide important advice to clients continues to be key – and we're hoping the improvements we made make more lawyers consider a TitlePLUS title insurance policy for their clients.”

Learn more about the new TitlePLUS [here](#).



The new TitlePLUS is
title insurance made easy

TRY US AND SEE

The NEW TitlePLUS® is the fast and easy way for lawyers and clerks to get the title insurance their clients need.

- ✓ We are now integrated with the Unity® practice management platform for increased ease of use
- ✓ We have introduced TitlePLUS Legal Counsel Fees and removed roadblocks
- ✓ We have a new streamlined underwriting process and separate owner and lender policies
- ✓ We provide the same unparalleled coverage, including legal services for most policies

Built for lawyers. Backed by LAWPRO.
We have your back. We know your business.
Give us a second look. titleplus.ca



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