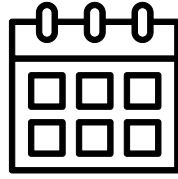
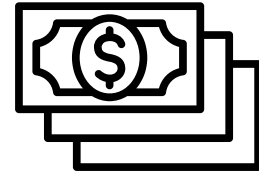




**Average total cost  
\$1.1 million per year**



**Average 62 claims per year**



**\$24,000 average cost  
per claim**

## RISK MANAGEMENT TIPS



### Ensure the client understands your recommendations

Failing to effectively communicate with the client is the biggest claims pitfall in the criminal law area. A lawyer may not realize that the client doesn't understand all the implications of choices proposed. A lawyer should provide detailed recommendations based on a full analysis of the case, including a reminder that the plea decision is the client's alone. Documenting these communications (using a checklist and taking notes provides a valuable record of your efforts in the event you are faced with a claim).



### Ensure you have all the facts

Lawyers should enquire about clients' circumstances - for instance, immigration status or Indigenous identity - to ensure that advice takes these details into account. Clients whose immigration status may be at risk should be advised to consult an immigration lawyer, and that advice should be documented.



### Discuss potential consequences

We frequently see claims involving a failure by the lawyer to communicate the potential ramifications of guilty pleas and custodial sentences on employment or immigration status. For instance, a truck driver convicted of a DWI may become unemployed as a result. A non-Canadian sentenced to six months or more may lose the right to apply for permanent residency. We have also seen claims alleging lack of communication about defence choices, such as a decision not to call the accused as a witness, or failure to apply for participation in an ignition interlock program.



### Promptly notify LAWPRO of potential claims

Early reporting of client complaints offers the best opportunity for claims repair. Lawyers are encouraged to report allegations immediately, even where they arise during trial, so that LAWPRO counsel can provide risk management advice. In an appeal alleging ineffective assistance of counsel, the Crown may ask the trial lawyer to sign an affidavit supporting this ground of appeal. If asked to do so, you should call LAWPRO right away so that we can advise whether preparing an affidavit is necessary, and if so, how it can be done so that privilege is maintained and there is no admission of negligence.

# COMMON MALPRACTICE ERRORS

## Errors of law - 43%

- Overlooking viable defences when advising a client to plead guilty
- Overlooking sentence consequences (for example, license suspension)
- Failing to understand consequences of advising a guilty plea in light of Immigration and Refugee Protection Act

## Communication - 33%

- Failing to ensure the client understands or agrees with the strategy to be taken in court, or the of potential consequences of pleading guilty often resulting in claims of “ineffective assistance of counsel”
- Dispute over whether client’s instructions were followed regarding a plea to a charge or reduced charge
- Failing to clarify court dates, with consequences for client if lawyer or client doesn’t show up

## Inadequate investigation - 6%

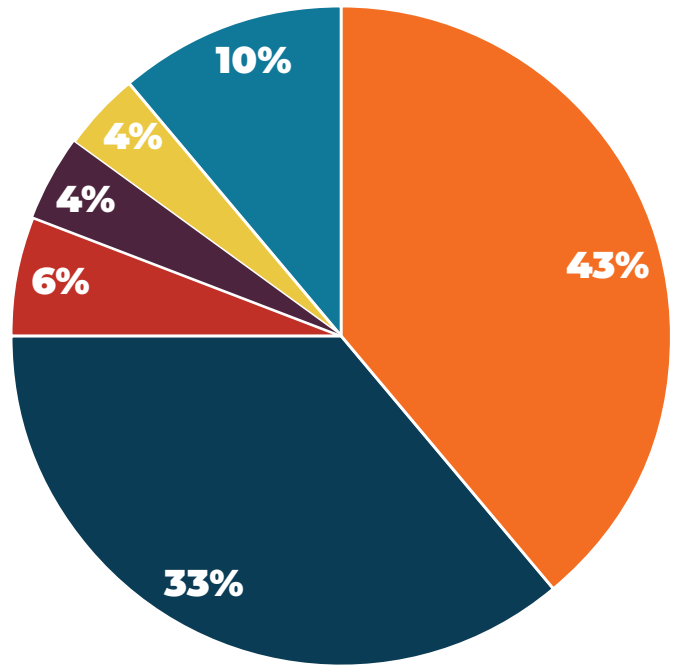
- Failing to obtain evidence or information that could assist the client at trial
- Failing to properly determine whether the client is required to attend at court
- Failing to consider whether client is fit to stand trial

## Time management - 4%

- Failing to properly calendar a court date
- Failing to proceed with an appeal in the allowed time
- Missed limitations for civil actions relating to the criminal matter, such as suing for malicious prosecution or appealing forfeiture of property

## Clerical and delegation - 4%

## Other - 10%



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

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

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

\*All claim figures from 2011-2021. All cost figures are incurred costs as of April 2022

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