

WHAT WE DO

2022 YEAR IN REVIEW



ABOUT LAWPRO

What we do:

LAWPRO provides primary errors and omissions coverage for Ontario lawyers, Excess insurance for law firms and title insurance across Canada. Through its practicePRO program, it offers risk and practice management information to help Ontario lawyers take proactive steps to avoid claims and grow successful practices. We are a professional liability powerhouse, committed to the values of professionalism, innovation, integrity, service and leadership.

Number of E&O claims reports to LAWPRO each year: approximately 3,000 or the equivalent of 12 per day

Who we serve

Number of insureds with primary coverage: 31,000 +

Number of exempt lawyers with automatic free lifetime Run-Off coverage: 21,000 +

Number of insureds who take advantage of a premium discount: 11,000 +

Percentage of all Ontario lawyers with LAWPRO coverage: 80% (in addition to the estates of over 6,200 deceased lawyers)

Why it matters:

By specializing in insurance for the legal profession, the company has a deeper understanding of claims trends and can identify and cope with emerging risks from the evolving nature of legal work.

LAWPRO coverage protects lawyers from the potentially catastrophic financial consequences of errors & omissions claims. When a potential claim arises, LAWPRO helps lawyers respond to the claim, defend the claim, and, if appropriate, settle the claim or pay damages. This insurance coverage also supports the interests of those who have a legitimate claim against a lawyer and ensures there will be funds available to compensate their losses.

Who we are

LAWPRO is a group of dedicated professionals working to help protect Ontario lawyers and the public.

Number of insureds' calls, emails and letters received by our customer service department: 28,500

Financial rating by AM Best, leading rating agency for insurance companies: "A (Excellent)"

Remarks

of the Chair

The report that follows shows how our insureds can count on LAWPRO for stability, knowledge, and support during challenging times.

One of the most stressful experiences in a lawyer's career is when they discover they've made a mistake. On an annual basis, more than 3,000 lawyers call us to report a real or potential claim. Providing a financially dependable insurance company with a claims department that understands the unique challenges of legal malpractice claims is what we do.

Litigation and real estate continue to be the areas of law with the most claims. Overall, miscommunications and inadequate investigation have been almost tied for the last two years as the most common errors causing claims. The claims summaries in this report will give you insights on how LAWPRO handles claims and when we went to court on behalf of our insureds.

The financial environment in 2022 was very different from anything we've experienced in recent years. Interest rates began their rapid increase with the Bank of Canada key rate growing to 4.25% from a low of 0.25%. This rate increase decreased the value of the Company's investments, but at the same time also reduced its claims liabilities.

LAWPRO and our insureds continue to deal with the ongoing impacts of the pandemic. For instance, litigation claims have decreased as a result of the courts slowly reopening after being closed during the early part of the pandemic. We don't know how this will impact us in coming years, but we are expecting an increase in claims when administrative dismissals recommence. Looking ahead, we are certain that the environment in which lawyers work will continue to change rapidly. This is one of the reasons it's important the Law Society has a properly funded E&O insurer. In times of change, a steady and dependable insurance program is imperative to providing an environment where insureds can thrive and continue to do what needs to be done to stay afloat while providing essential legal services to their clients. A.M Best, the well-known rating agency for insurance companies in North America rated LAWPRO A (Excellent) with a stable outlook again last year, as they have done for the last 22 consecutive years.

Insurance is built on underwriting risks and forecasting the cost of future errors. Although this is a complicated and difficult task, the desired outcome is clear: LAWPRO supports lawyers and protects the public they serve when claims occur. It is my honour to help lead the organization that continues to provide an excellent and stable insurance program for the legal profession in Ontario.

Remembering Malcolm Heins

Malcolm Heins was LAWPRO's first President and CEO and a driving force behind the creation of the Company and its growth for over 20 years. He was appointed CEO of the Law Society of Ontario in 2001, retiring in 2012. His impact on LAWPRO from its first days and through the years will not be forgotten. We are grateful for his contributions and leadership.



Andrew J. Spurgeon

Andrew J. Spurgeon
Chair



Remarks

of the CEO

2022 continued to be a year of adaptation and innovation at LAWPRO. With the growing impact of new technology, rapid inflation, and increased political divisions, the world in which we work appears to be in the midst of a reset. Serving our customers well in such times of turmoil is my goal each day.

Coming out of the pandemic, LAWPRO remains in a solid position to continue to protect insureds at the lowest possible premium. Ontario lawyers can sleep easy knowing that the financial rigour to which LAWPRO is held by the Financial Services Regulatory Authority of Ontario (FSRA) means they can depend on their insurer to protect them when a claim arises, even if that occurs years after they have switched firms or left practice.

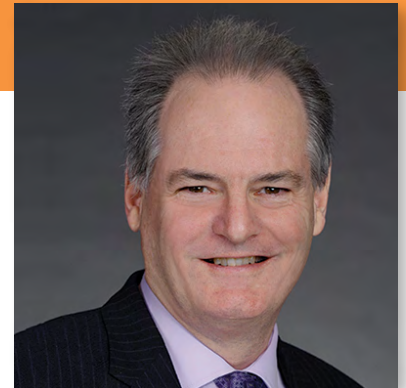
LAWPRO statistics indicate that over half of Ontario lawyers will have at least one claim brought against them during their career. Maintaining a financially stable insurer is therefore vital for the protection of the public and the continued viability of the profession.

LAWPRO is in the middle of a multi-year technology transformation. We are building a purpose-built system that integrates policy administration, underwriting, claims management and billing. It will result in increased efficiencies and give us advanced data analytics capabilities.

We continue to support real estate lawyers with TitlePLUS and are doing all we can to reduce the growing problem of real estate fraud. As we believe it helps with claims prevention, LAWPRO continued its financial support of the Member Assistance Program. In today's changing environment, our practicePRO program remains as relevant as ever as it continues to offer free resources to help lawyers avoid claims. Most importantly, LAWPRO continues to meet the mandate of providing protection for insureds while maintaining solvency and keeping premiums as low as possible. Over the past five years, the Company's combined operating ratio has averaged at 107%. This means that, on average, we lose seven cents on every dollar of premium before investment income. LAWPRO investments generally make up this loss and allow us to meet all regulatory requirements and remain a going concern. This ratio reflects our mandate to offer the best coverage possible at the lowest possible price.

I want to note new financial reporting requirements we must comply with. On January 1, 2023, the new International Financial Reporting Standards 17 (IFRS 17) were implemented for all insurance companies to standardize accounting globally to improve comparability and increase transparency. This new standard may have an effect on the capital requirements placed on the Company by our regulators in the next few years.

Economic uncertainty, the required implementation of IFRS 17, and changes resulting from the pandemic may give rise to increased challenges for LAWPRO going forward. Like other insurers, we will continue to explore how to adapt our operations to the changing demands of the environment in which we work.



Daniel E. Pinnington

Daniel E. Pinnington
President & CEO

What
we
did
in
2022

WE RETURNED

(to the office)

Yes, we physically returned to the office. While LAWPRO's offices remained open throughout the pandemic, it was only in 2022 that all staff returned to regular attendance in the office through a hybrid work model. The opportunity to once again work side-by-side strengthened our team, helping us provide insureds with the best protection and claims assistance possible.

Our own return to normality was mirrored in the broader legal profession and in our claims portfolio. Claims continued to rebound from the temporary reduction seen in 2020. The bumpy exit from the worldwide pandemic continued in 2022, with a spike in real estate and fund redirection frauds, an increase in litigation claims reflecting the re-opening of the courts, and the continued trend of more wills and estates claims.

Looking forward, there continues to be uncertainty due to rising inflation, increasing interest rates, and when administrative dismissals will resume. LAWPRO continues to monitor and respond to these matters as they arise.

WE PROTECTED

insureds from thousands of E&O claims

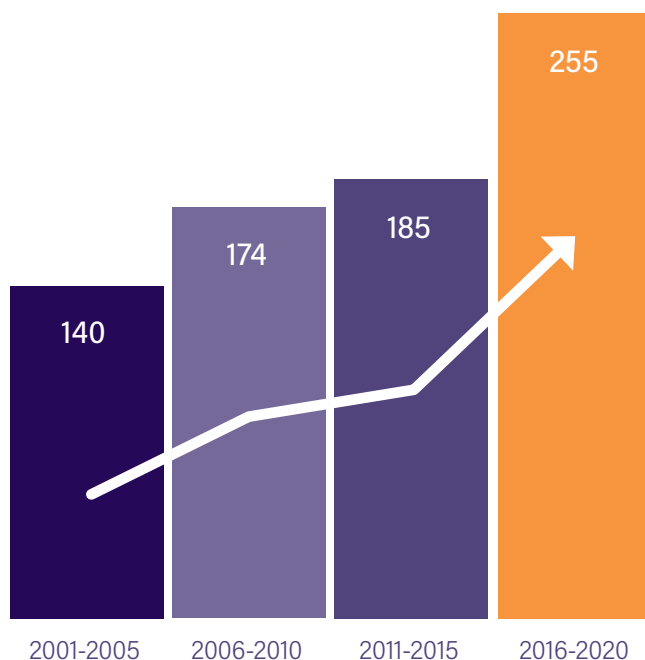
In 2022, we saw 2,910 new claims, a small reduction compared to the previous year. However, claims were still notably higher than the reduced number of 2,661 claims seen in 2020. It's possible that claims were inflated somewhat in 2021 due to a backlog of economic and legal activities that were on pause during the shutdowns of 2020. However, the long-term trend in claims count continues to show steady year-over-year growth as the legal profession expands and the complexities of legal matters continue to multiply.

Notably, the number of high-value claims continues to rise at a steady rate. The 5-year average number of high-value claims per year (claims over \$100,000) increased to 255 for the 2016-2020 period. Many factors contribute to the rising cost of claims, such as years of growing real estate values and an aging population with substantial estates and corresponding legal complications.

LAWPRO stands prepared to respond to this growth and continue to provide the same reliable protection to our insureds.

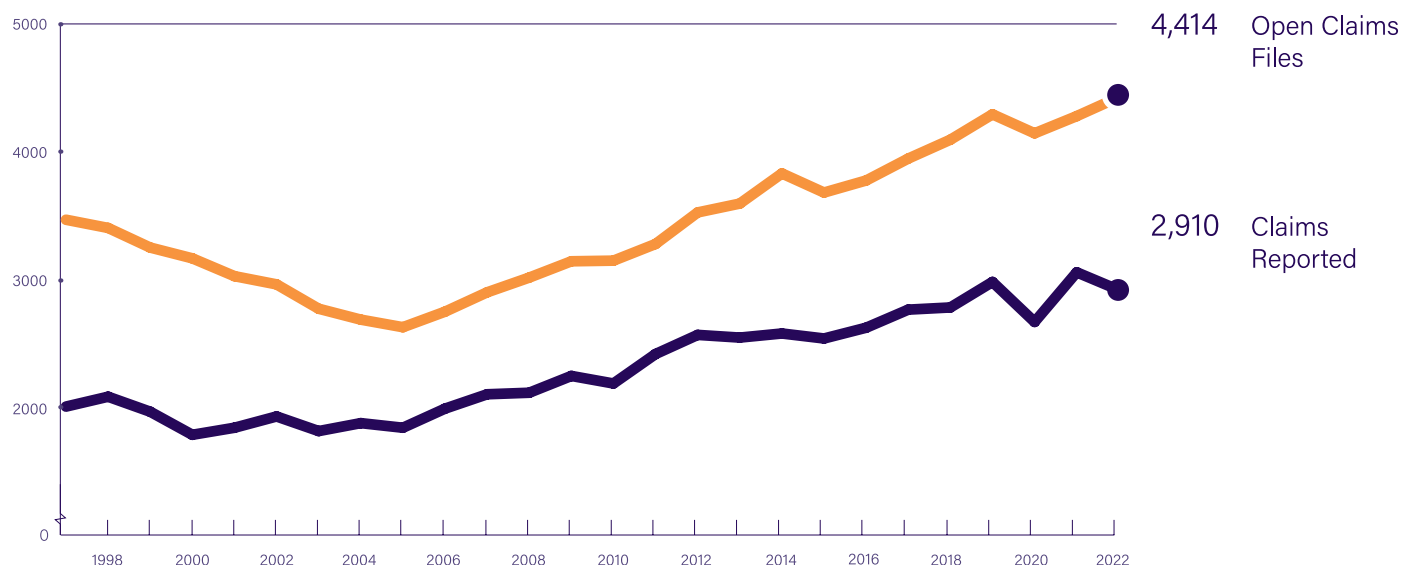
Average number of claims

with a value greater than \$100,000



Number of claims reported and open claims

Total number of open claims at Dec. 31, 2022



WE ANALYZED

claim trends

reported claims **30%**

RELATED TO REAL ESTATE

reported claims **25%**

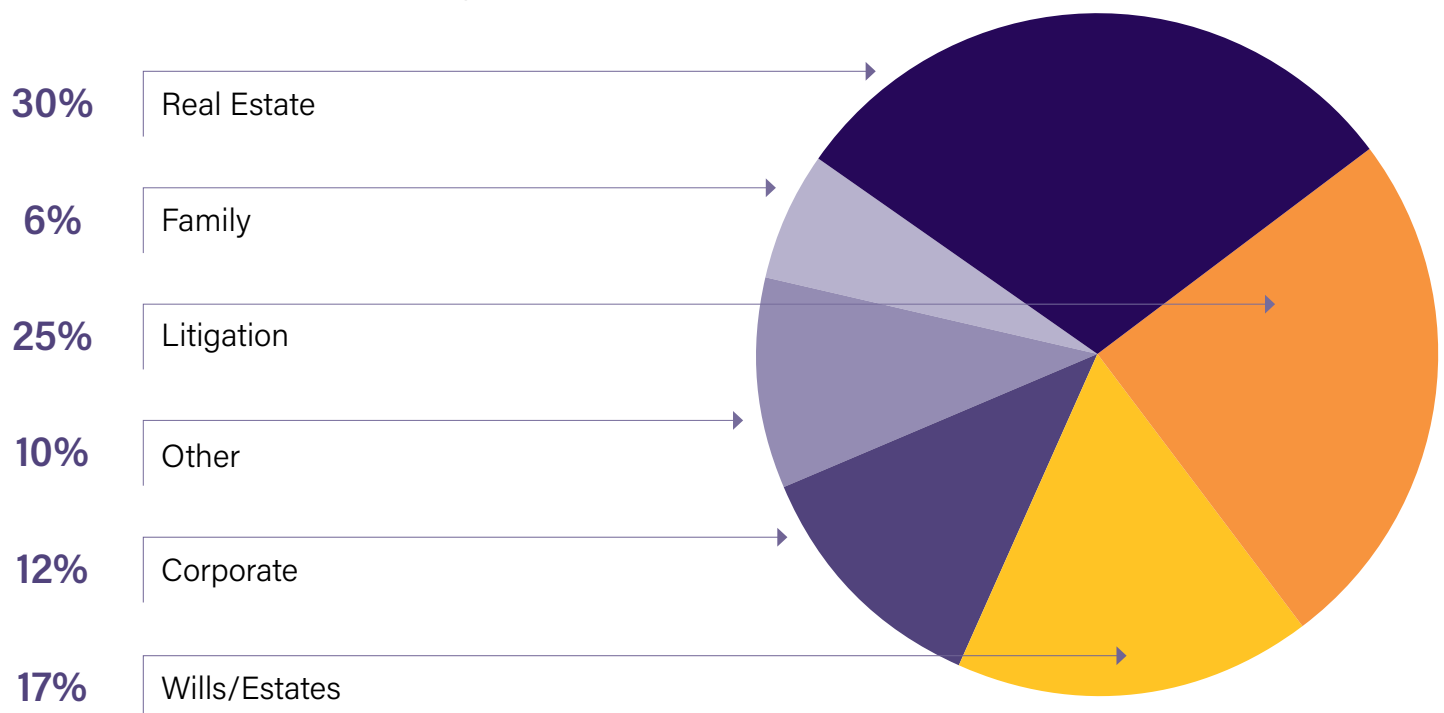
RELATED TO LITIGATION

LAWPRO is always keeping an eye on claims statistics. By tracking changes over time, LAWPRO can respond to macro-trends and provide relevant claims prevention assistance to the profession.

In 2022, the largest percentage of reported claims continued to be related to real estate (30%) and litigation (25%). However, the number of litigation claims is still fewer than that seen in

2019, which may reflect the continuing hold on administrative dismissals, a policy initiated in response to the pandemic. Once the hold is eventually lifted, we may see a corresponding additional increase in claims numbers.

Distribution of claims by area of practice



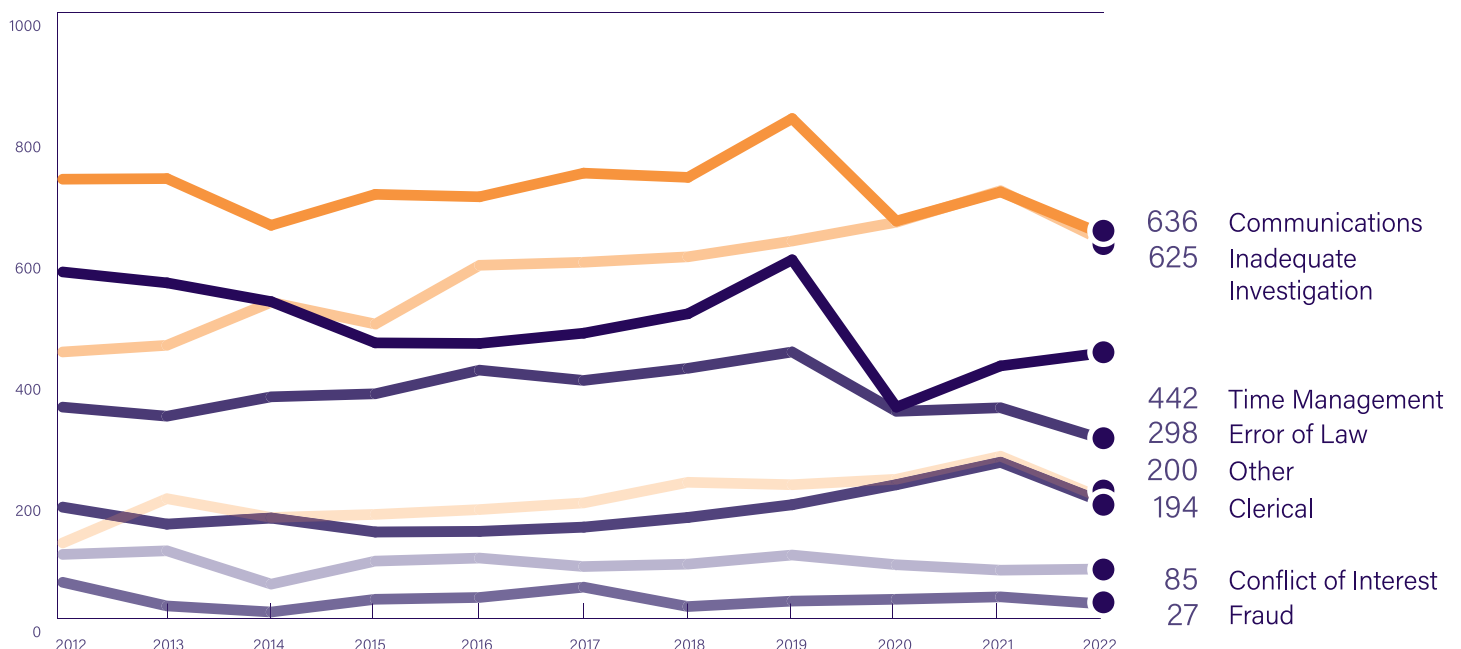
WE COLLECTED DATA

on causes of loss for insureds

The investigation of claims can take up to two or more years after an initial report. For this reason, LAWPRO is cautious when interpreting short term fluctuations in claims counts and the cause-of-loss data.

As in recent years, inadequate investigation, communication errors and time management mistakes caused the most claims. However, three years ago, in 2020, we saw a sharp decrease in the number of claims caused by time management and communication-related errors. This was largely due to changes brought on by the pandemic, such as the tolling of limitation periods and the closing of the courts. Reduced litigation activity translated to fewer litigation claims. The reduction in communication-related claims in 2022 was such that, for the first time in recent years, it was surpassed by “inadequate investigation” as the most common cause of claims. Last year, we started to see what appears to be a gradual return to the pre-pandemic distribution, with communication-related errors once again the number one cause of claims.

Reported claims count by cause of loss



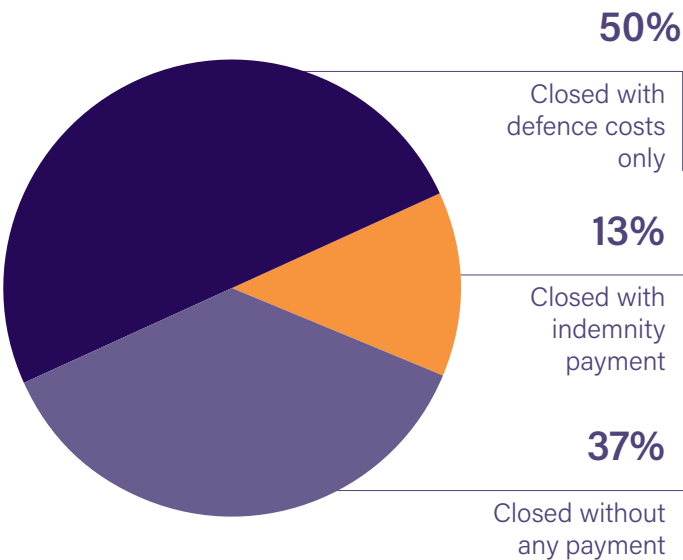
WE CLOSED CLAIMS

and gave insureds peace of mind

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 2022, 87% of claim files that came in were closed without any indemnity payments, whether by settlement or judgment. In fact, 37% of claims were closed without payment of any kind.

For claims that proceeded to litigation, LAWPRO was successful on five of seven claims taken to trial in 2022, as well as 20 of 22 summary judgment motions and five of eight summary judgment appeals.

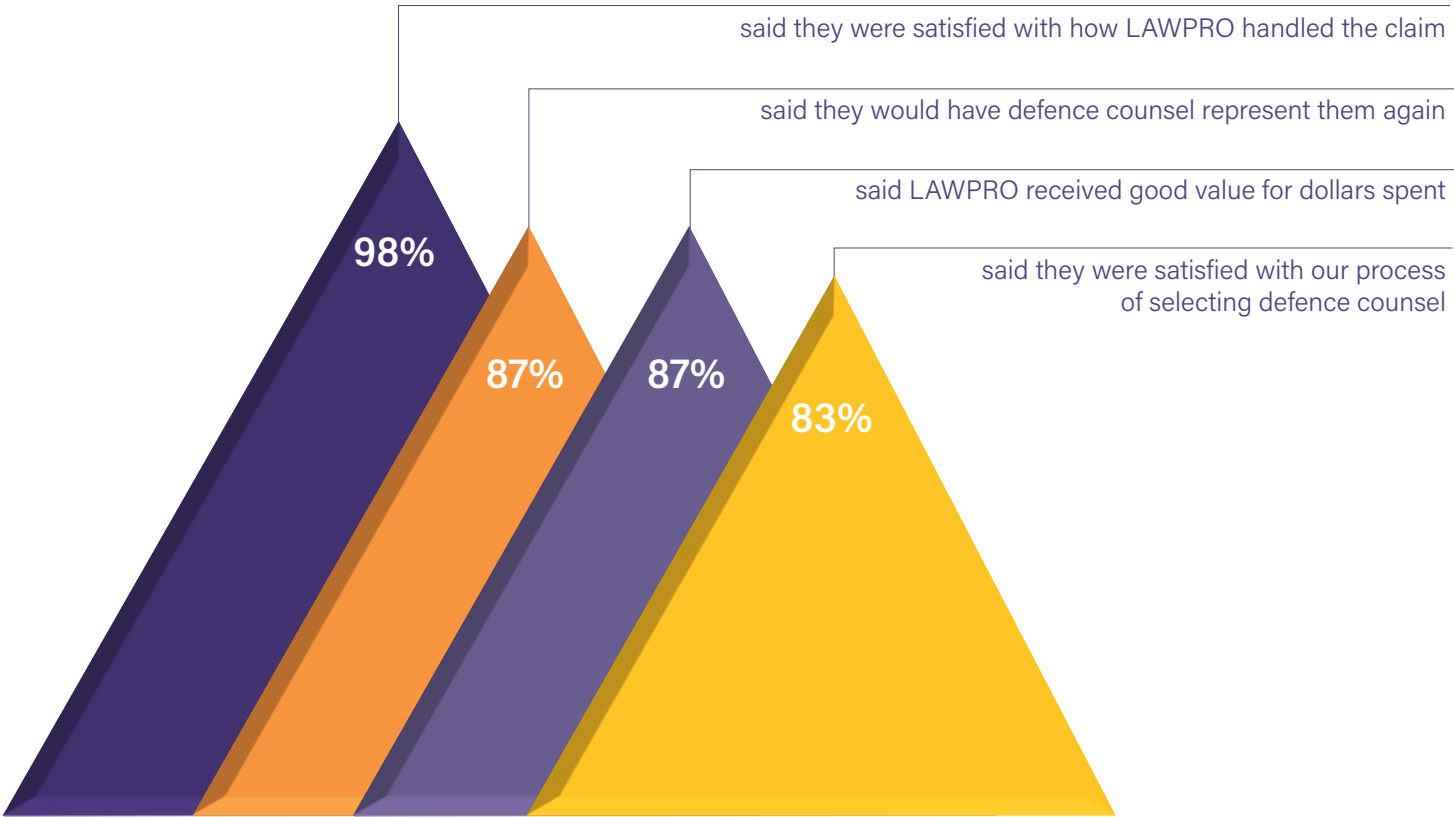
Claims by outcome



WE DELIVERED SERVICE

and value

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



WE PROVIDED PREMIUM STABILITY

to more lawyers than ever before

Under the primary E&O program, LAWPRO insured over 31,000 lawyers and paralegals.

Rapid inflation was a global phenomenon in 2022, and its impacts were felt by the Ontario legal profession and LAWPRO. To address increasing claims costs and meet minimum capital requirements set by our regulator, the Financial Services Regulatory Authority of Ontario, the base premium was increased

to \$3,250 for 2023. This will allow LAWPRO to continue to rely on the expertise of its external counsel and respond to the needs of our insureds. Despite this increase, the annual LAWPRO premium paid by most Ontario lawyers is lower today than it was in the past – something you won't find with just about any other type of insurance. In fact, as recently as 2016, the base LAWPRO premium was \$3,350 -- \$100 more than today.

KEEPING
COSTS
DOWN

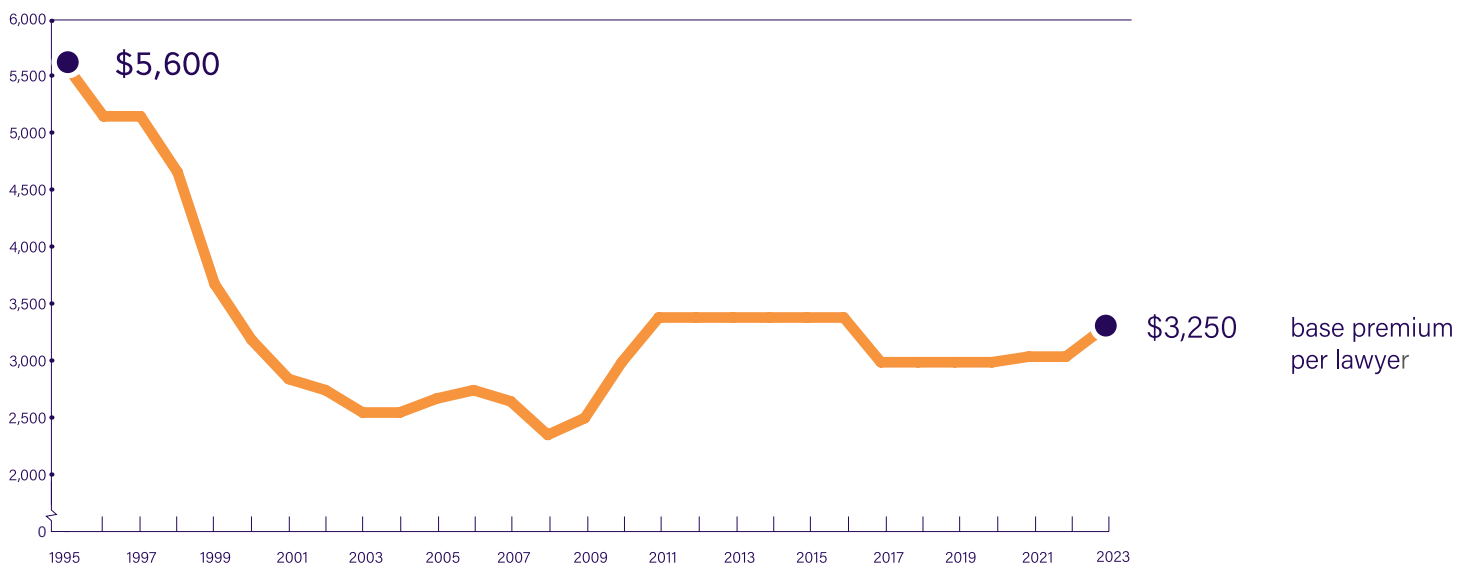
Did you know?

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 \$3,250 (adjusted for inflation) is approximately only 36% of what it was in 1995.

\$3,250
2023 BASE PREMIUM

\$3,350
7 YEARS AGO

Base premium since inception



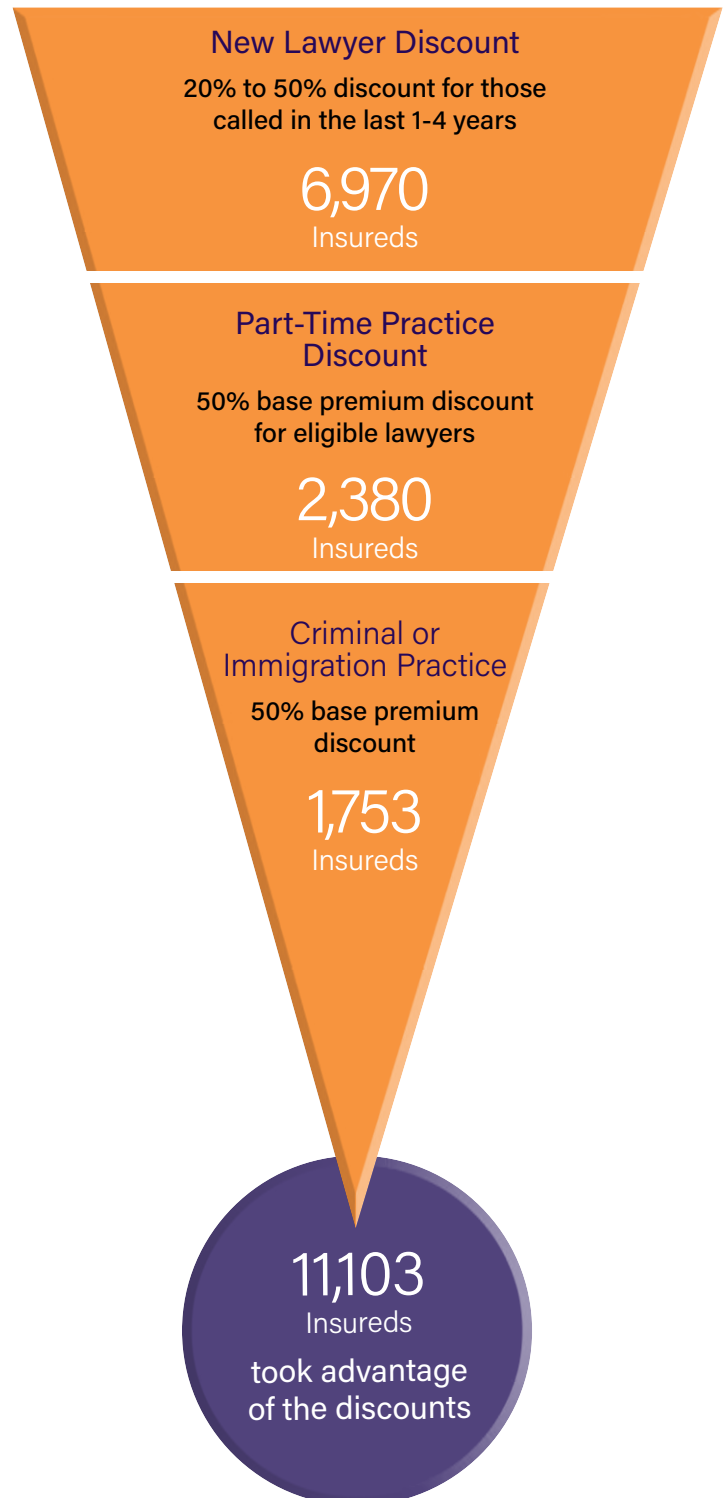
WE REDUCED THE COST

of insurance for many Ontario lawyers

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. The number of lawyers availing themselves of these options continues to increase.

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 retired or leave private practice, 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. A number of increased Run-Off buy up options are available should a lawyer wish to maintain the same limits they had in private practice.



WE OFFERED

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 1,689 firms, representing 3,925 lawyers received their excess insurance from LAWPRO as at the end of 2022.

With 118 new firms opting to buy excess coverage from LAWPRO, our client base saw approximately 8% growth from the previous year. The Company's retention rate on excess business of 91% 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 17% of 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.

Title Insurance



The TitlePLUS product and service was completely reengineered in 2021 with new features, policy wording, pricing structure, and website. Since then, TitlePLUS has continued to adapt to the changing real estate market in Ontario. Our policies also help address the growing risks associated with fraud for home owners.

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. It 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.

WE SPOKE TO YOU



Consisting of approximately 25 team members, the Underwriting & Customer Service department is responsible for maintaining accurate records for all insureds, policy drafting, underwriting optional coverages, processing filings, answering questions from licensees, and much more.

The 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.

For years, the annual volume of correspondence received by the Underwriting & Customer Service department has been in the range of 20,000 to 25,000 pieces. But in 2022, it was more than 28,000.

Correspondence received by the UCS department is more than just coverage questions. 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, refund requests, and many others.

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

What
we
did
in
2022

REPAIRS

When LAWPRO is quickly alerted to real or potential claims, we are often able to rectify the problem, thereby preventing harm to a client and a malpractice claim from arising. Our counsel know how to best fix issues such as dismissal orders due to inadvertent missed deadlines, allegations of improper will drafting, minor errors on a real estate transaction, and *Handley/Aecon* motions.

REPAIRS

Here are a few examples of cases where LAWPRO successfully repaired potential losses in 2022

Annuling accidental admissions: Setting aside deemed admissions

Failure to respond to a Request to Admit during pre-trial litigation procedures can result in deemed admissions. If unintentional deemed admissions effectively settle the core issues of the case, this can be a big problem.

In this case, the Plaintiff provided a Defendant with a Request to Admit containing 57 different statements of alleged fact. Among these 57 statements were five that went to the core of the case and effectively settled the dispute. The Defendant responded to the Request to Admit with a mixture of admissions and refusals to admit. Unfortunately, due to oversight on the part of the Defendant's lawyer, no response, neither admissions or refusals, was provided on the five "core" Requests.

A year passed. Until, on the eve of trial, the Plaintiff applied for summary judgment on the basis of the Defendant's deemed admissions. The Defendant, now aware of the inadvertent error, applied to have the admissions set aside.

Despite acknowledging that the deemed admissions were likely made in error, the Plaintiff refused to consent to setting aside the admissions and contested the motion.

LAWPRO assisted the Defendant in having the deemed admissions set aside. The motions judge agreed that the Rules of Court encourage expeditious and efficient hearing of cases on the merits, and it would not be in the interests of justice for the case to be resolved solely on the basis of a minor oversight by the Defendant's lawyer.

The judge observed that there would be no prejudice to the Plaintiff in having the deemed admissions set aside that could not be resolved through costs.

Mending missed mediation mishaps: Setting aside dismissal orders caused by inadvertence

Everyone makes mistakes. That's why insurance is so important. Thankfully, LAWPRO can sometimes step in and get litigation back on track after an innocent mistake.

In this case, the Plaintiff's lawyer served a trial record a few weeks prior to the five-year deadline. Unfortunately, this record was rejected by the court because mandatory mediation had not yet taken place. The lawyer had inadvertently missed this requirement.

The Plaintiff's lawyer wrote to counsel for the Defendants seeking mediation and a revised timetable for the action. The Defendants, however, refused any extension and the Plaintiff was forced to seek an order for an extension of time from an associate judge at a status hearing.

At the status hearing, the associate judge acknowledged that the Plaintiff had intended to file and serve the trial record prior to the court deadline, and had only failed to do so through the lawyer's inadvertence in missing the mediation requirement. The judge also found that the Defendants would not be prejudiced if the action were allowed to proceed.

However, the judge took issue with a two-year period of unexplained delay on the part of the Plaintiff prior to their filing of the trial record. Specifically, the judge noted that this long period of delay would have made the claim vulnerable to dismissal at a status hearing. The judge therefore refused to grant the requested extension of time and dismissed the action.

The Plaintiff appealed this decision.

LAWPRO assisted the Plaintiff in successfully arguing that the judge made a palpable and overriding error by considering whether the long period of delay would have made the claim vulnerable to dismissal at a status hearing. But for the Plaintiff's lawyer's inadvertent error in missing the mediation requirement, the action would have been properly set down for trial and no status hearing would have occurred.

The appeal judge agreed that the overall justice of the matter also required the action to continue, as the Plaintiff was ready to proceed, there would be no prejudice to the Defendants, and the missed deadline was solely due to lawyer inadvertence.

The appeal was granted and the Plaintiff's claim was allowed to continue.

The Owner Defendants subsequently sought to have the matter dismissed as an abuse of process, claiming this settlement and assignment should have been "immediately" disclosed under the rules stated in *Aecon* and *Handley*.

LAWPRO assisted the plaintiff in successfully arguing that the settlement agreement did not "alter the adversarial orientation of the parties in any material way." The court emphasized that the settlement and assignment occurred prior to the Management Defendants advancing any pleadings, and there was therefore no evidence that the Management Defendants ever disputed the Original Plaintiff's claims. As well, the court noted that the Management Defendants and Owner Defendants were already adverse in interest, as the Owner Defendants had taken the position in their pleadings that the Management Defendants had breached their property management agreement.

The Owner Defendants' motion was therefore dismissed.

Whose claim is it anyway? More problems with *Pierringers*

In a multi-party suit, settling claims against one defendant while the action proceeds against the remaining defendants will often result in a *Pierringer*-type agreement between the plaintiff and the settling defendant. In order to ensure that the settling defendant is relieved from potential liability flowing from cross-claims from the remaining defendants, these agreements will often limit the plaintiff's ability to seek damages from the remaining defendants to those defendants' several liability. That is to say, the proportion of damages attributable to the settling defendant cannot also be sought from the remaining defendants.

In this case, the Plaintiff's settlement with one defendant expressly limited the liability of the remaining defendants that could be pursued by the Plaintiff to the remaining defendants' several liability. However, the matter also involved various third-party claims brought by the remaining defendant.

The third parties to the claim took the position that the settlement agreement between the Plaintiff and the settling party effectively nullified the third-party claims. The remaining defendant took the position that the third parties were not party to the settlement agreement, were not intended to benefit from it, and the language should not be read to interpret it as such.

LAWPRO assisted the plaintiff's lawyer in having this motion dismissed. The motion judge agreed that the settlement agreement did not, in any way, impact the liability of the third parties or limit the remaining defendant's ability to seek damages from the third parties. This decision was upheld on appeal.

The unsettled state of settlement agreements: *Aecon/Handley* motions

In multi-party disputes, a settlement with one or more defendants that changes entirely the landscape of the litigation in a way that significantly alters the adversarial relationship among the parties, or the dynamics of the litigation, requires immediate disclosure to any remaining defendants, lest the action be stayed for abuse of process. But what does and does not fit this description can be an opaque question.

In this case, a claim perfecting a construction lien was advanced by a property management service (the "Original Plaintiff") against the owners of an apartment building (the "Owner Defendants") and the asset management company they contracted to manage the building (the "Management Defendants").

Soon after the claim was served, and prior to the Management Defendants advancing their own pleadings, the Original Plaintiff settled with the Management Defendants. Part of that settlement included an assignment of the claim against the Owner Defendants to the Management Defendants.

Troublesome testamentary typos: Rectifying drafting errors from the use of multiple wills

Complex estates often require complex estate planning for the purposes of, among other reasons, reducing probate taxes. However, the more complex the testamentary document or documents, the more likely an error may occur.

In this case, the deceased had created both a primary and limited will for the purpose of avoiding probate taxes on the shares of a closely held corporation. Both wills were intended to be read harmoniously. Unfortunately, the primary will contained a drafting error in that it expressly applied to “all property” of the deceased, rather than all property excepting the shares of the closely held corporation.

Because of this error, the two wills were contradictory, as both appeared to deal with the shares of the corporation. Not only would the estate be liable for a substantial additional probate tax if the shares were dealt with under the primary will, but the court would not even issue probate under the primary will because of the conflict in the two documents.

The executor of the estate therefore sought construction and, if necessary, rectification of the two wills to comport with the testator’s intent.

LAWPRO assisted the applicant in successfully arguing that rectification was not necessary, as the testator’s intent could be inferred from the context of both documents along with affidavit evidence provided by the lawyer that drafted the documents as to the testator’s intentions at the time of drafting. Therefore, probate was able to be granted excluding the corporate shares, in accordance with the original intentions.

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.

What
we
did
in
2022



DEFENDING LAWYERS IN COURT

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

DEFENDING LAWYERS

Here are a few examples of defences successfully advanced by LAWPRO in 2022 on behalf of insureds

Tax and contract litigation – Allegedly failing to follow explicit client instructions

Lawyers themselves can sometimes make for challenging clients. As backseat drivers, they may feel they know more or are better qualified to make strategic and procedural decisions than the lawyer they have retained.

In this case, a Lawyer-client (the “Plaintiff”) retained an Ontario law firm to handle a complex tax and contract dispute between the Plaintiff and the Plaintiff’s son. The dispute between the two parties was complex, with multiple mostly unrelated suits being pursued simultaneously in different jurisdictions.

The Ontario lawsuit involved a dispute over taxes owing to the CRA by the estate of the Plaintiff’s father. The Plaintiff had arranged for their son to be the beneficiary of the Plaintiff’s father’s estate, in name only, so as to avoid various creditors. The Plaintiff was also the executor and trustee of their father’s estate, and was responsible for paying taxes and other fees. The CRA, claiming the taxes were unpaid, demanded payment from both the Plaintiff and the Plaintiff’s son.

The Plaintiff’s son maintained that he did not, in fact, receive the proceeds of the estate, as he was beneficiary in name only, and sought indemnification from the Plaintiff. The Plaintiff maintained that the CRA was mistaken and all relevant taxes were paid.

Unfortunately, the dispute between the Plaintiff and the son came to litigation, and the Plaintiff retained the Defendant Lawyers to handle the case. After the conclusion of litigation between the Plaintiff and their son, the Plaintiff sued the Defendant lawyers for malpractice and breach of the terms of the retainer, seeking an order returning all legal fees paid as well as an order that the Defendant Lawyers pay all costs ordered and legal fees incurred pertaining to the legal dispute between the Plaintiff and their son.

The Plaintiff alleged that it was an implied term of their retainer with the Defendants that the more senior lawyer handling the file would attend all court appearances personally. As well, the Plaintiff alleged that they had explicitly instructed the Defendants to “immediately” proceed with a motion for security for costs, as it would pressure the Plaintiff’s son into dropping the case. Finally, the Plaintiff alleged that the Defendants were negligent by failing to advance a claim for subrogation, assignment, and/or carriage of the CRA tax proceeding.

LAWPRO successfully assisted the Defendant Lawyers in refuting the Plaintiff’s allegations. The court found that it was not an express or implied term of the retainer that the more senior lawyer would attend all court appearances personally--while the Plaintiff had expressed a desire for this, the more senior Defendant had never assured the Plaintiff it would occur. With regards to the alleged strategic failures, the court found that the Plaintiff had accepted the timing of the procedural matters brought forward by the Defendants during the course of the retainer, and had not expressly instructed the Defendants to pursue a motion for security for costs immediately. Finally, the Plaintiff conceded during testimony that they had not, in fact, instructed the Defendants to advance a claim for subrogation, assignment, and/or carriage of the tax proceeding “other than by implication.” Because the Defendant lawyers had reasonably followed the Plaintiff’s instructions, the court rejected the claim of negligence.

Real estate purchase and sale agreements – Allegedly bad legal advice

A client involved in litigation often has one question above all others: What are the chances they’ll win? Although lawyers will often use statistical language to describe potential outcomes (a “50/50 chance”, a “60% chance of success”, a “long shot 25% chance of winning”), giving a reasonable answer is more of an art than a science.

It's natural to want to express confidence against daunting odds, especially to a client that has put their faith in a lawyer's abilities, but expressing unreasonable confidence to a client can be dangerous if it encourages the client to proceed with a weak claim.

In this case, the Plaintiff had entered into two residential real estate purchase and sale agreements in the Greater Toronto Area. A subsequent drop in real estate prices, coupled with the identification of potential negatives regarding the properties after the agreements had already been signed, led the Plaintiff to seek advice from the Defendant Lawyer on extricating himself from one of the agreements.

According to the Plaintiff at trial, the Defendant Lawyer had initially informed the Plaintiff that there was a "100 to 120% chance" that they could extricate the Plaintiff from the unwanted deal. Unfortunately, although there were a few initial avenues of exploration for potential ways to vitiate the contract, it soon became clear that there was no viable way to walk away from the agreement.

For their part, the Defendant Lawyer denied expressing any such absolute confidence in success.

The Plaintiff failed to close the deal and was sued by the vendors for breach of contract. The Plaintiff eventually paid a settlement amount and sought damages from the Defendant lawyer for negligent legal advice.

LAWRO successfully assisted the Defendant Lawyer in rebutting the Defendant's accusations. Although a client's testimony and recollection of events is often given greater weight in determining what advice was or was not given, the trial judge found the Plaintiff's testimony to be unreliable due to the Plaintiff's admission that they had made various false statements, including as to whether or not they had the funds to close the disputed real estate transaction in the first place. Additionally, the Defendant's Lawyer's own notes and written correspondence with the Plaintiff supported the Defendant's position that they had warned the Plaintiff that the chances of success were low. The court rejected the allegation that the Defendant Lawyer fell below the standard of care.

Criminal law – Ineffective counsel accusations

Ineffective assistance of counsel claims, as an independent basis for appeal, can sometimes arise against defence counsel after unsuccessful criminal trials, regardless of their possibly tenuous basis. Criminal trials are complex beasts, and Defendants can sometimes be overwhelmed by the stakes involved and

confused by the procedural and strategic nuances. Nevertheless, it is incumbent on the lawyer to ensure that their client makes informed decisions about key elements of their case, to a reasonable standard of care.

In this case, the Defendant had been convicted of impaired driving and driving with a blood alcohol content over the legal limit. The driver was initially not present at the scene of the accident, and the damaged vehicle was discovered abandoned on a grassy median. Shortly after the police arrived at the scene of the accident, the criminal Defendant arrived on the scene by foot. During this period the Defendant also made a 9-1-1 call to report the accident. Officers at the scene described the Defendant as "walking very, very slowly", "stumbling", and "out of balance", and amphetamines and oxycodone were found in the vehicle.

The Defendant initially denied driving the car, although over the course of conversations at the scene of the accident the Defendant allegedly changed their position to saying they were driving the car, before correcting themselves to again say that they were not the driver.

The Defendant was arrested for impaired driving and retained a Lawyer to defend the case. The Defendant continued to claim that they were not driving the vehicle in question, and pressed their Lawyer to present evidence to that effect. The Defendant provided the Lawyer with the name of a potential witness that could corroborate this story.

The Lawyer, on reviewing the case, determined that this proposed witness would be unreliable and unhelpful. Further, the Lawyer advised the Defendant that they should not testify at their own trial, as their story had changed multiple times during not only their conversations with attending police officers, but during the recorded 9-1-1 call itself. The Defendant agreed with the Lawyer's assessments and declined to testify.

The Defendant was found guilty and appealed the case on the grounds of, among others, ineffective assistance of counsel. The Defendant alleged that they were not permitted to testify in their own defence, that the Lawyer did not follow their instructions, and that the Lawyer had failed to pursue strong arguments, including an allegation of excess force against an arresting officer when the officer took the Defendant's phone out of their hand at the scene of the accident.

LAWPRO successfully assisted the Lawyer in showing there was no ineffective counsel or negligence in the conduct of the trial. The judge found that the Defendant had been properly informed of the reasons against testifying and had agreed with the Lawyer's recommendation. Further, the court found that the Lawyer "provided clear and reasonable advice to [the Defendant] from the commencement of [their] retainer" and provided "reasonable and appropriate" recommendations.

Family law – Claims against adverse lawyers

It is difficult for a client to pursue a claim against the opposing party's lawyer. In this case, the Plaintiff was unhappy with her matrimonial settlement. She alleged that the opposing party's lawyers conspired with her adult children to commence and advance divorce proceedings when her former husband lacked capacity and allegedly "did not want to be divorced."

The Defendant lawyers argued that the correct venue to argue as to whether or not the divorce proceedings were a "sham", so to speak, was the divorce proceeding itself. Once that proceeding concluded by way of settlement, it was an abuse of process to attack it. Additionally, the Defendants maintained that they owed no duty of care to the Plaintiff.

LAWPRO successfully assisted the Lawyer in defending the claim. The court agreed that the matter was an abuse of process and an attempt to relitigate the divorce proceedings. The Plaintiff was aware of the questions regarding her husband's capacity, and could have advanced the conspiracy and tort claims against her children during the divorce proceedings. The court also agreed that the Defendant Lawyers owed no duty of care to the Plaintiff as the opposing party in the divorce proceedings.

Corporate law – Limitation periods, settlements, and abuse of process

Limitation periods exist to give peace of mind to would-be-defendants and avoid the dangers of deterioration of evidence and memories over time. This can sometimes be frustrating for plaintiffs who discover new evidence or information down the road that could have strengthened an abandoned case.

Those were the alleged facts in this matter. The dispute involved the finances of a closely held family business. The business was built by two brothers over many years. After one of the brothers passed away, the deceased brother's family (the "Plaintiffs") took issue with the way the remaining brother (the "Defendant Brother") was running the business and suspected potential misappropriation of funds. In 2006, the Plaintiffs initiated a lawsuit against the Defendant Brother.

However, primarily due to the costs of pursuing the lawsuit, the Plaintiffs eventually settled with the Defendant Brother, who was bought out of the company as part of the settlement. Many years later, in 2019, the Plaintiffs pursued a new action against the Defendant Brother along with other parties, including the Defendant Brother's lawyers (the "Lawyer Defendants"). This new claim advanced many of the same claims as the original 2006 lawsuit, with the addition of claims of conflict of interest and bad faith against the Defendant Lawyers.

One of the foundations of the new, 2019 claim was the apparent discovery of evidence suggesting that the Lawyer Defendants were acting in a conflict of interest during the 2006 period by representing both the Defendant Brother in his personal capacity as well as the family business.

The Defendants all alleged that this matter was barred by the settlement agreement concluding the 2006 action, which expressly waived all claims against the Defendant Brother and his representatives. The matter was also statute barred by the expiration of the 2-year limitation period, since the events at issue had all occurred prior to 2006. Finally, the Defendant Lawyers claimed that they owed no duty of care to the Plaintiffs, as the Plaintiffs were not and never had been their clients.

LAWPRO successfully assisted the Defendant Lawyers in having the claim dismissed on summary judgment. The court found that the Plaintiffs had discovered these claims prior to the 2006 action, and they were now statute barred. The discovery of new evidence that could potentially bolster the case does not extend the running of the limitation period, as it did not lead to the discovery of a new claim. Further, the settlement of the 2006 action barred any future suits on the same facts as an abuse of process. The court found that the Plaintiffs were also barred from pursuing the claim against the Defendant Lawyers, as the Plaintiffs could not evade the abuse of process claims by simply adding a new defendant.

Additionally, the court agreed that the Defendant Lawyers owed no duty of care to the Plaintiffs, as the Plaintiffs were not their clients.

Standing firm

A malpractice claim doesn't necessarily mean a lawyer made a mistake, but a defence still needs to be raised. LAWPRO was successful on five of seven claims taken to trial in 2022, as well as 20 of 22 summary judgment motions and five of eight summary judgment appeals. LAWPRO provides effective assistance and prides itself on defending licensees.

What we did in 2022

WE HELPED:

The practicePRO program

The practicePRO program provides risk management, claims prevention and law practice management information for free. Its resources, precedents and checklists are intended to help Ontario lawyers take proactive steps to avoid legal malpractice claims and grow successful and thriving law practices.

In 2022, practicePRO focused on continuing to help lawyers adapt to workplace and practice changes brought about by COVID-19, the ongoing and evolving varieties of fraud, and areas of law with increased claims risks.

practicePRO's multi-pronged fraud prevention approach continued to address wire fraud while also taking on the rapid emergence of ID frauds. Efforts included sending an Alert to educate lawyers about real estate frauds involving private mortgages, regularly speaking on fraud issues at continuing professional development programs, and holding a LAWPRO CPD in September 2022 focused on educating insureds about both wire fraud and ID frauds.

Click each resource to learn more about top programs offered by practicePRO in 2022:



Setting S.M.A.R.T. goals

This worksheet to help define goals that are Specific Measurable Achievable Relevant and Time-based.



CPD: Family Law Tips

Key risk areas in family law and how to effectively manage them are discussed in this CPD. The program materials include the family law claims tip sheet, the family law intake process and how to communicate better with clients over the phone.



CPD: Tips for corporate/commercial lawyers

This program with three LAWPRO speakers includes a number of practicePRO resources including the corporate/commercial claims fact sheet, conflict of interest tips, commercial transactions checklist and extensive coverage of fraud and cybercrime risks.



Free legal research resources for lawyers and law clerks

This article recommends free sources of legal research including CANLII, local law libraries, law blogs and Law Society resources.



CPD: Tips for Wills & Estates Lawyers

Leading wills and estates lawyers and LAWPRO counsel discuss practice trends and tips for success. Over 1,000 views since it was posted on YouTube.



Update about fund transfers

This article looks at how lawyers receive and deliver money from their trust accounts on behalf of their clients as part of a transaction. It discusses the current payment system and attempts to modernize it, the risks of fraud, and links to additional information from the Canadian Bar Association's lender-lawyer working group.



Series opener: Time Management Tips Tuesdays

Time and deadline errors account for 20% of LAWPRO claims. These weekly tips aimed at helping lawyers maximize their time and productivity, include topics like settings goals and fighting procrastination.



LAWPRO Magazine: After Covid-19

This issue features a discussion of how firms can adjust to the new reality of remote work and client expectations as the COVID pandemic receded. It includes articles on changes to the Planning Act and what to do if you have been duped by fraudsters into wiring funds to the wrong account. In addition to being emailed as a web version to all Ontario lawyers, it has been downloaded in full over 1,800 times.



CPD Survival Tips to Prevent Fraud

A follow-up to the Avoiding the Wire Fraud Nightmare CPD from December 2021, this program draws on actual frauds and close calls, reviews the most recent fraud efforts targeting lawyers, law firms and their clients, and provide practical tips to help manage these risks.



Getting started on investing in tech

This article addresses the key concerns that lawyers, paralegals and legal professionals should consider when investing in new technology. It provides tips to get started, and key questions to consider. A technology product assessment worksheet is included with the article.



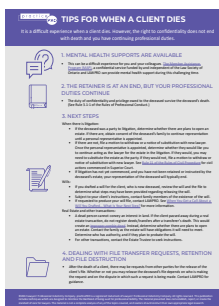
This AvoidAClaim.com post alerts real estate lawyers to the new federal Underused Housing Tax

Lawyers acting for non-resident non-Canadian purchasers were given notice to forewarn their clients of the tax and filing obligations that would come into effect January 1, 2023.



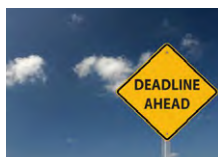
CPD: Tips for real estate lawyers

LAWPRO is seeing a range of real estate claims and new dangerous real estate frauds. Three LAWPRO speakers shared practical tips about key risk areas.



Tips when a client dies

This tip sheet explains the steps to take upon learning that a client has passed away, depending on whether the matter involved litigation, wills or real estate, as well what a lawyer should do if they receive a request to transfer their file.



Small Claims Court deadline change

Reminder lawyers of a change in deadline (3 days to 10 days) in Small Claims Court to email documents to staff.



Most downloaded resources in 2022

- 1 Check your cheques: Five ways to spot fraudulent cheques
- 2 Tips for calculating limitations deadlines accounting for the COVID-19 emergency suspension period
- 3 Non-resident Sale Holdback Flowchart
- 4 Subdivision Control under the Planning Act. What do you need to know?
- 5 General Retainer Letter
- 6 CPD: Tips for Advocates
- 7 CPD: Avoiding the wire fraud nightmare: What you need to know to protect yourself and your clients
- 8 CPD: Tips for Wills & Estates Lawyers
- 9 CPD: Diversity, Inclusion & Cultural Competence to Avoid Claims
- 10 Limitations and Notice Periods Chart
- 11 Tendering correctly: Preserve your client's rights (and avoid a claim!)
- 12 The Top 10 changes to the Planning Act you need to know about and why
- 13 CPD: Survival Tips to Prevent Fraud
- 14 CPD: Family Law Tips
- 15 Managing Conflict of Interest Situations

WHAT WE VALUE

is built into everything we do

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



Supporting our future legal community

LAWPRO's efforts and activities to support law students included 14 presentations at law schools, LPP programs and colleges and the sponsorship of the annual Caron Wishart Memorial Scholarship, which went to University of Toronto Faculty of Law student Ethan Lewis.

We published four issues of LAWPRO Magazine, including the New Lawyer edition featuring interviews with lawyers from across the province about what they love about being a lawyer. Outreach efforts included interacting with insured and exempt lawyers, law students, law associations, cultural and equity groups, and MPPs and government staff. LAWPRO employees gave almost 100 presentations to lawyers and associations.



Promoting health and wellness

In furtherance of LAWPRO's commitment to advancing mental health awareness, LAWPRO provided approximately one-half of the funding for the Law Society arm's-length Member Assistance Program (MAP).

Lawyers are exposed to high levels of stress on a daily basis. Stress and the problems it creates can be contributing factors in many LAWPRO claims.

In 2022, LAWPRO rolled out sessions of the Mental Health Commission of Canada's "The Working Mind for the Legal Sector" (TWM) program to reduce the stigma around mental health and create a culture that fosters greater awareness and support for mental health in the workplace. A paid day off ("Me Day") was also provided for employees to use to recharge anytime during the year.



Highlighting the importance of inclusion

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

In 2022, as a reminder of the need to pursue truth and reconciliation, LAWPRO installed an onsite land acknowledgment in the main lobby - an original, acrylic on canvas painting by Anishnaabe artist Roy Thomas entitled Air Land Water Fire, which depicts the Life Spirits in traditional teachings.



Giving back to the Canadian community

Over 90% of employees participated in LAWPRO's employee-led charitable giving program and the funds raised were matched by LAWPRO. LAWPRO continued to encourage employees to take a paid day to volunteer at an eligible charity of their choice. Other initiatives included running a food drive and participating in Partners for Life (Canadian Blood Services).

To strengthen our community, LAWPRO staff nominate and elect five charities to support each year through employee payroll deductions and special events. In 2022, \$31,230 was raised for the following five charities: Canadian Fanconi Anemia Research Fund, The Toronto Humane Society, The equality effect, Daily Bread Food Bank and Minwaashin Lodge - Aboriginal Women's Support Centre. LAWPRO employees are proud to support charities that are doing critical work to build a more just and equitable future.



Risk management
practicepro.ca



Additional professional
liability insurance
lawpro.ca/excess



Title insurance
titleplus.ca



AvoidAClaim.com



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LAWPRO insurance
TitlePLUS Home Buying Guide – Canada



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