

2023  
YEAR IN REVIEW

# TRANSFORMATION

## Our mission:

To be an innovative provider of insurance products and services that enhance the viability and competitive position of the legal profession.

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# ABOUT US

## Primary insurance coverage program

All lawyers in private practice in Ontario purchase primary professional liability insurance with a \$1 million per claim, \$2 million annual aggregate coverage from LAWPRO.

## Affordability

Price fairness is maintained by allocating premiums and levies based on practice area and apportioning higher costs to riskier activities.

## Protecting lawyers and the public

Mandatory insurance coverage for all lawyers from one provider means that every lawyer is guaranteed to be insured with minimum coverages and limits to protect lawyers and the public. In a competitive market environment, insurers would have the right to turn down lawyers resulting in some clients being at risk unfairly and unexpectedly.

## Accountable and regulated

Incorporated by the Law Society of Ontario, in response to the insurance crisis of 1994, LAWPRO operates independently with its own management and board of directors in a commercially viable and responsible manner in accordance with the regulations of the Ontario Insurance Act, the Ontario Corporations Act, and other applicable legislation and regulators.

## Discounts and special coverages

Lawyers have options to lower their insurance costs including:

- New lawyers: 20 – 50% discount
- Part-Time Practice: 50% discount
- Criminal or Immigration law: 50% discount
- Designated Agencies including Civil Society Organizations: 75% discount
- LAWPRO approved pro bono programs: lawyers can remain on Run-off coverage while providing legal services to the public
- Risk Management Credit: Up to \$100 credit applied for completion of approved educational programs



## Excess insurance program

LAWPRO's Excess Insurance offers limits up to \$9 million above the primary policy. Over 1,700 firms representing more than 4,000 lawyers are currently insured with LAWPRO's Excess program. It is designed to meet the needs of small and mediumsized firms of fewer than 50 lawyers.



## TitlePLUS title insurance

Title insurance provides coverage for title-related risks associated with real estate transactions. It is designed to cover issues that a lawyer could have uncovered doing searches (saving homeowners the cost of those searches) as well as the lawyer's own legal services on the transaction and future risks like fraud or encroachments. Title insurance moves the risk associated with title to the title insurer, away from the homebuyer, the lending institution, or the lawyer. This program is built around lawyers being central to real estate transactions and keeping prices and coverages competitive.



## practicePRO program

practicePRO is LAWPRO'S risk management program, developed to help lawyers practise successfully and minimize the risk of claims. Free resources include:

- LAWPRO Magazine: articles about the law, insurance and current hot topics in the legal profession
- Tips and insights into practice issues including real-time warnings on active frauds targeting lawyers
- Precedents, checklists, and videos to help lawyers succeed in their day-to-day business
- Claims fact sheets that describe common scenarios that lead to claims and practical steps that can be taken to lessen the risk of a claim



# MESSAGE

## from the Chair

LAWPRO takes its responsibility to every Ontario lawyer very seriously. It provides both defense to lawyers and pays claims to set clients right when they experience a loss caused by the negligence of their lawyer. Coverage must be available no matter the area of law, the region of the province or the lawyer's level of experience or expertise. It must be affordable and properly funded in compliance with provincial regulations.

Like any other insurance company, LAWPRO sets premiums without knowing exactly what its claims costs will be in the year ahead and beyond. Even after lawyers have left private practice, their coverage continues indefinitely as Run-off coverage.

Financial stability comes from prudent investing, reasonable forecasting of expenses, controlling operating costs, and carefully managing claims. To achieve these ends, LAWPRO relies on the expertise of its staff, its Board of Directors, professional investment managers, and advisors. In recognition of the Company's financial strength, LAWPRO has again earned an "A (Excellent)" rating by A.M. Best Co, a leading rating agency.

Why is this so important? LAWPRO provides confidence, enabling its insureds to work in an increasingly complicated and changing professional legal environment. Without a solid financial foundation to pay claims – especially a cluster of claims – there would be neither comfort nor certainty in the market. LAWPRO provides both.

In the charts on the following pages, you will see that in 2023 the Company saw 3,272 reported claims – the highest in its history. Beyond inflationary pressures, the number of claims valued at over \$100,000 continues to increase yet, at the same time, the base LAWPRO premium is lower than it was 8 years ago. This is a testament to LAWPRO's careful management.

LAWPRO investments did well in 2023, in large part because of the strong investment market and high interest rates. These results prepare the company to withstand market volatility going forward. As can be seen by the Company's year-end Minimum Capital Test (MCT) result of 240%, LAWPRO continued to meet insurance regulator expectations. The MCT is a tool used to ensure an insurance company's assets are sufficient to meet its present and future obligations. An insurance company's MCT ratio is impacted by the insurance risk, market risk, credit risk, and operational risk to which it is exposed.

I am proud to be a part of LAWPRO - its complexity and scope is larger than any other Canadian program - it has more insureds and responds to more claims than any other province. I want to thank the LAWPRO team for their continued hard work and excellent results.

*Andrew J. Spurgeon*

Andrew J. Spurgeon  
Chair



## MESSAGE from the CEO

**When is it time to take on a corporate transformation?** It is never convenient or easy to dismantle and rebuild a system that was carefully constructed to meet the needs of a past era. But, if left too long, processes can become less efficient and fail to meet the needs of changing times. When one can see that technology has become too old to fix, people no longer feel procedures are relevant and effective, and the concerns of the company don't fit the wants and needs of the customer, the time for change has arrived.

In July of 2023, you may have noticed the launch of our new online My LAWPRO portal. This portal is a façade to a huge number of changes behind the scenes – some of which are already in use and others are still being constructed. We have moved our policy administration and claims management systems to a modern cloud-based platform.

Our goal for this technological transformation is to improve the customer experience, increase efficiency for employees, and stay on top of security requirements. 2023 saw the beginning of these changes, and in 2024 we will continue this journey of transformation.

While much of our focus for 2023 was on implementing our new platform, LAWPRO continued to offer the insurance coverage and program we are known for to a growing number of lawyers in private practice in Ontario.

Mandatory insurance coverage for all lawyers from one provider means that every lawyer is guaranteed access to affordable coverage, thereby protecting both lawyers and the public. It's a system where no one is left out and lawyers can depend on a viable insurance program to support them when things go wrong. This is not the case in many other countries. In some instances, lawyers outside Ontario find they aren't eligible for coverage due to strict underwriting requirements, or it is simply too expensive for smaller firms to acquire the insurance they need. In some places, there is no protection for the public because E&O insurance is not required at all.

In the 29 years since LAWPRO's creation by The Law Society in 1995, LAWPRO has:

- Expended funds on claims against over 22,000 different individual lawyers.
- Paid for defense and/or indemnity on 61,992 different claims; and
- Spent approximately \$1.57 billion in defending and indemnifying those claims.

Claims Counsel at LAWPRO are empathetic and, where possible, make every effort to repair an issue before it becomes a claim. This means money saved, lower pressure on premiums, and less stress for the insured lawyer.

The team at LAWPRO is not only helpful after a potential claim arises, but they also work hard to help lawyers avoid and prevent mistakes in the first place. LAWPRO's practicePRO initiative offers free Continuing Professional Development sessions that provide practical skills to help lawyers avoid claims. Many of our virtual sessions have over 1,000 participants and we presented risk management content at events and law firms over 100 times last year. Our tools and checklists are another free resource offered to insureds to help them succeed. There were 114,000 downloads from the practicepro.ca website in 2023 and over 150 calls for help.

These are but a few examples of how LAWPRO provides value to Ontario lawyers – in private practice or not – as part of its mandate of insurance coverage for all.

*Daniel E. Pinnington*

Daniel E. Pinnington  
President & CEO



# TRANSFORMATION

## Evolving to meet tomorrow's challenges

The world has gone through many changes in the past few years. From COVID, to inflationary pressures; from remote workplaces, to the rise of generative AI; revolutionary change happens seemingly overnight. In 2023, LAWPRO took steps towards building the tools, systems, and data we will use to meet these revolutionary changes in our world.

Last year, our biggest step involved migrating to a new cloud-based policy administration and claims management platform, along with a refreshed My LAWPRO portal. This a new platform that will allow improved customer support, file management, and data analysis. This changeover was years in the making and its impact cannot be understated. While some elements of the changeover continue, we are pleased that the first stage of this substantial task was successfully completed in 2023—thanks not only to the superlative efforts of LAWPRO staff, but also the patience and understanding of our insureds during this changeover.

But software upgrades were far from the only evolutions we saw in 2023. From new threats of fraud, new trends in claims data, new Financial Reporting Standards (IFRS 17), and new court processes, LAWPRO was at the forefront of change with a view to the future.

## Protecting insureds from a growing number of E&O claims

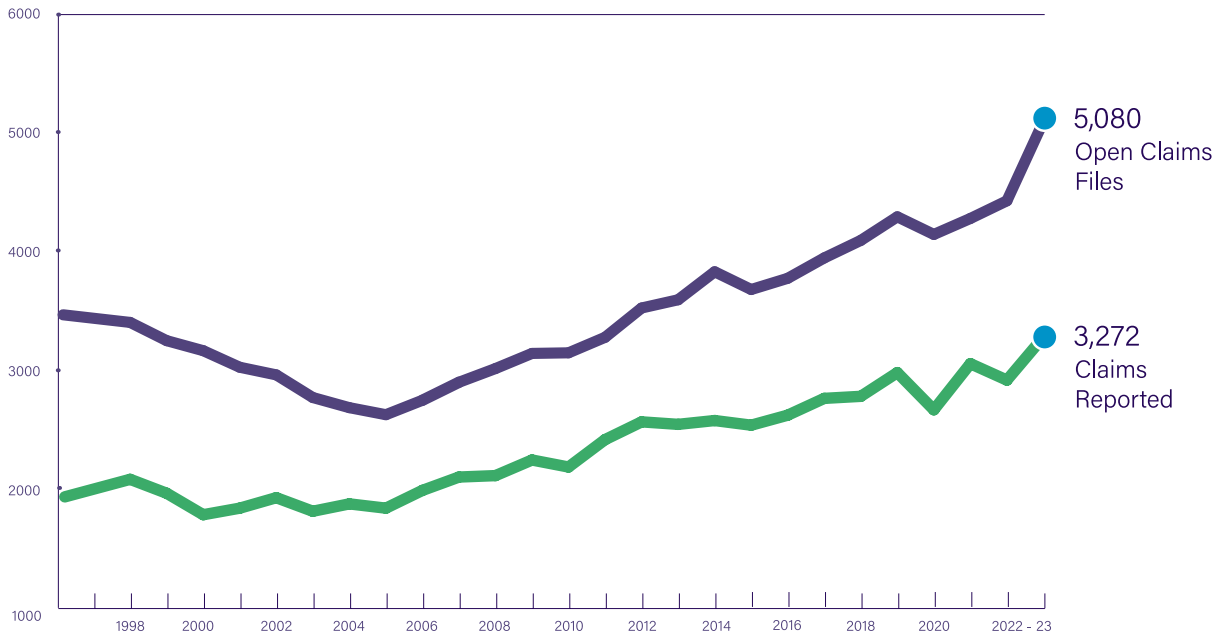
LAWPRO saw 3,272 claims in 2023, a dramatic increase from the 2,910 claims seen in 2022 and a new high, surpassing the 3,048 claims in 2021 and the pre-pandemic high of 2,973 claims we saw in 2019. It appears that the see-saw nature of claims numbers over the past three years has been in response to pandemic-related closures and consequent reopening of both businesses and courts. Regardless, it's clear that any short-term drop in claims last year was transitive, and we must prepare for a growing number of claims in the future.

To go with this increase in claims, the total cost of the 2023 professional liability program increased by approximately 10% in 2023. This was partially due to an increase in the rates paid to outside claims counsel to meet inflationary pressures. However, even accounting for these rate increases, indemnity payments are still on the rise.

Notably, the number of high-value claims (in the \$750,001 to \$1 million range) was substantially higher last year. There was a 92% increase in the cost of large file settlements in 2023 compared with 2022 (\$11.6 million in settlements compared to \$6.1 million in 2022), and an 86% increase in the *number* of settlements, with 13 large file settlements in 2023, compared with 7 in 2022.

# Number of claims reported and open claims

Total number of open claims at Dec. 31, 2023

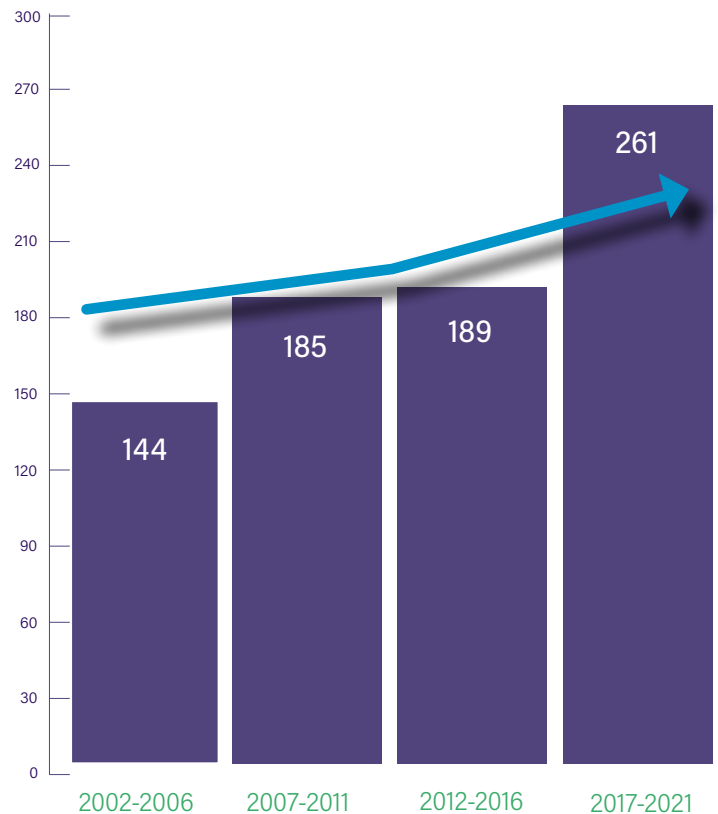


LAWPRO's response to this increase is threefold: First, LAWPRO has hired additional claims counsel to respond to these new claims in a timely and effective manner. Second, LAWPRO is taking steps to reduce the number of incoming claims. LAWPRO does this through coordinated strategies to educate the profession on current claims trends and threats such as fraud. Although fraud is not the highest frequency claim, it is one of the costliest areas of claims. The best defence is always avoiding a potential claim from the beginning.

Third, LAWPRO has updated the primary policy to respond to the increasing risk of fraud by way of social engineering. In general terms, social engineering is a fraud that is perpetrated by deceiving a target into revealing information or taking action for illegitimate reasons. It is often associated with phishing or email impersonation and can lead to incorrectly wiring funds or transferring property.

## Average number of claims

with a value greater than \$100,000





Beginning in 2024, Ontario lawyers must take steps to protect their firm and their clients from Social Engineering to maintain a \$1 million limit for these claims. These steps include establishing instructions for the transfer of funds at the outset of the retainer and confirming any changes to these instructions by telephone call or in-person. For more information, please see our [Social Engineering Toolkit](#).

These policy changes targeting Social Engineering are intended to both inform the profession of the risks they face, as well as encourage behaviour to help avoid these frauds from being perpetuated.

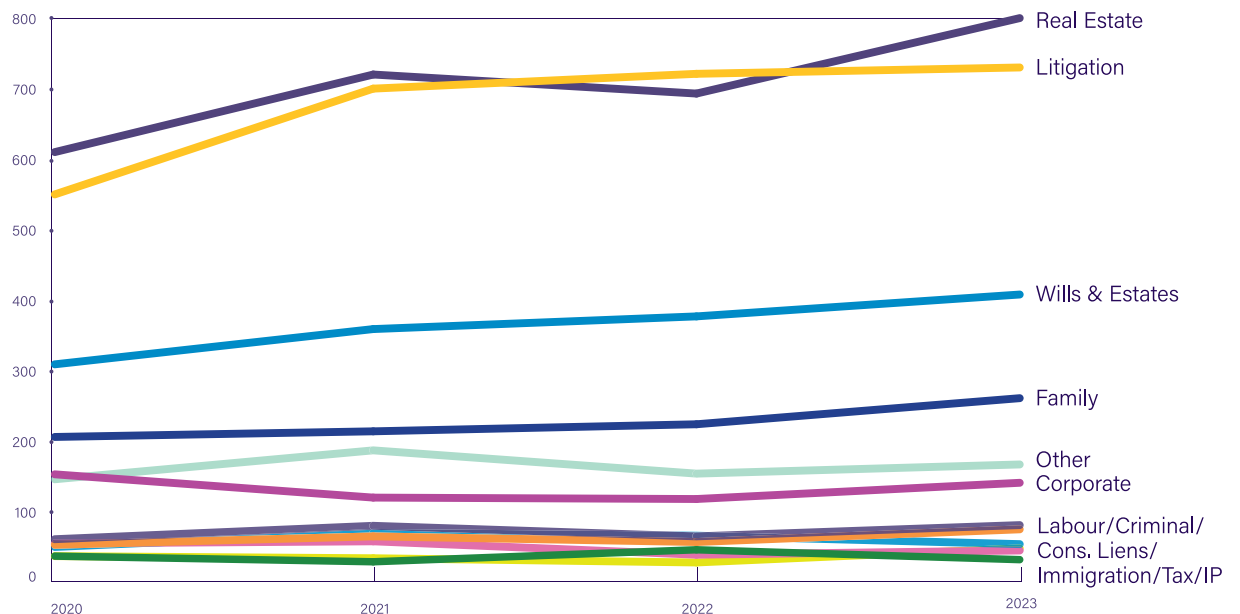
## Analyzing data on the causes of claims and where they occur

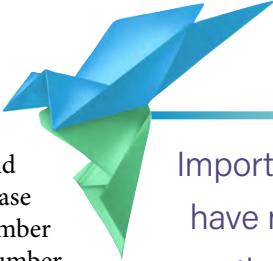
To stay abreast of current trends and to best inform the profession of malpractice threats, LAWPRO is always keeping an eye on claims statistics. By tracking changes over time, LAWPRO can respond to macro-trends and provide relevant claims prevention assistance to the profession.

In 2023, the largest percentage of reported claims continued to be related to real estate (28%) and litigation (26%). With respect to litigation, this reflects a decrease in the proportion of total claims (from 29% in 2022). However, this is due to the total number of litigation claims remaining stable year-over-year (to 729 from 719), while the total number of claims increased.

In contrast, real estate claims notably increased in 2023, to 799 from 693. While this increase in real estate claims was partially due to an increase in fraud—targeting lawyers and their clients—it is primarily a consequence of an increasingly active real estate market.

### Distribution of claims by area of law





We also continue to see an increasing number of claims in wills and estates claims. 407 such claims were reported in 2023, an 8% increase from 2022. With an aging population comes an increase in the number of large estates, and as the number of large estates increases, the number of potentially litigious beneficiaries also increases. LAWPRO will continue to keep an eye on this area of law in the years to come.

Importantly, the courts have now announced that administrative dismissals will resume in May 2024. As such, we expect time management related claims to increase over the coming months, potentially reverting to pre-pandemic trend levels.

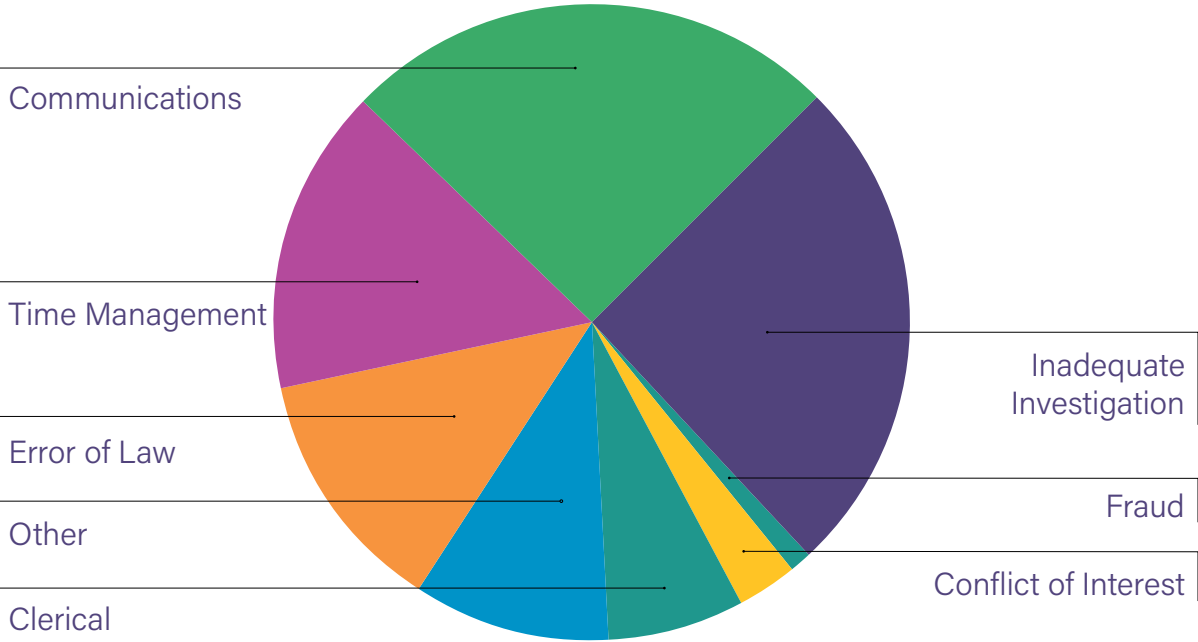
### Causes of loss

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.

As in recent years, inadequate investigation, communication errors and time management mistakes caused the most claims. However, four 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 reducing the quantity of claims brought on by missed limitation periods. The reduction in communication and time management claims in 2020 and 2021 was such that “inadequate investigation” briefly became the most common cause of claims. Inadequate investigation claims typically relate to lawyers who have not uncovered all the facts or developed a sufficient understanding of a client’s matter.

In 2023, time management claims continued to be depressed compared with pre-pandemic levels. One potential explanation for the reduced number of time management claims is the continuing pause on administrative dismissals the courts continued through 2023 (where courts will dismiss cases that haven’t been set down for trial 5 years after commencement). Importantly, the courts have now announced that administrative dismissals will resume in May 2024. As such, we expect time management related claims to increase over the coming year, potentially reverting to pre-pandemic trend levels.

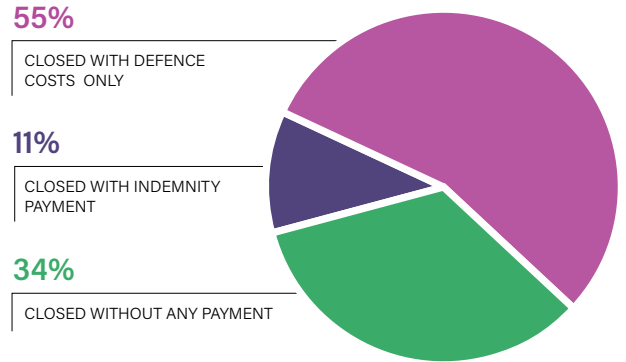
### Reported claims count by cause of loss



# Closing claims and giving insureds peace of mind

As a policy, LAWPRO does not pursue economic settlements and will defend insureds vigorously from false or frivolous claims. In 2023, 89% of claims files that came in were closed without any indemnity payments, whether by settlement or judgment. In fact, 34% of claims were closed without payment of any kind.

## Claims by outcome



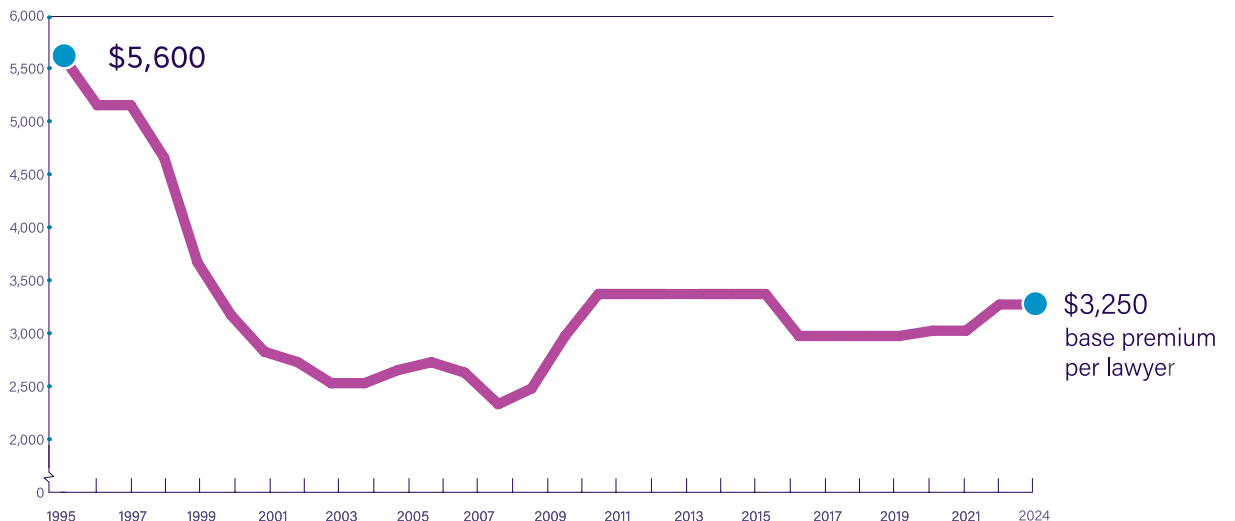
# Covering more lawyers than ever before

Under the primary E&O program, LAWPRO insured over 31,000 people in 2023. Every year, the number of Ontario lawyers grows. As the number of lawyers grows, the number of claims grows. As the number of claims grows, LAWPRO must evolve and adjust to meet this challenge.

For the 2023 year, the base premium was increased to \$3,250. This premium remains the same for 2024.

This premium level allowed LAWPRO to respond to inflationary pressures. 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.

## Base premium since inception





# Offering discounts to meet your needs

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 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.

## Did You Know?

If the base premium charged when LAWPRO was created were to be adjusted for inflation today, it would be \$10,157.40. In other words, today's premium of \$3,250 (adjusted for inflation) is approximately 68% less than what it was in 1995.

<p><b>New Lawyer Discount</b> 20% to 50% discount for those called in the last 1-4 years</p>	<p><b>7,000 insureds</b></p>	<p><b>Risk Management Credit</b></p> <p>To encourage participation in CPD programs that include risk management content, LAWPRO offers a \$50 premium credit (to a maximum of \$100) for each qualifying program taken</p> <p>6,673 insured and 12,000 credits</p>
<p><b>Part-Time Practice Discount</b> 50% base premium discount for eligible lawyers</p>	<p><b>2,400 insureds</b></p>	
<p><b>Criminal or Immigration Practice</b> 50% base premium discount</p>	<p><b>1,800 insureds</b></p>	



## 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. Over 1,700 firms receive their excess insurance from LAWPRO.

With consistent year-over-year growth, and a retention rate on excess business of over 90%, the program is shown to meet the needs of the small and medium-sized firms that it is designed to serve.

In fact, LAWPRO's Excess program insures almost 20% 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. Policies such as existing home coverage 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.





## Working for you – Our Customer Service department

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 the past two years this has increased to almost 30,000.

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.

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.

Correspondence received by the 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. All of this was done while migrating to a new cloud-based policy administration and claims management platform. As these new tools come into place, our Customer Service department looks forward to providing more timely responses to customer inquiries and needs.



# REPAIRS



When LAWPRO is quickly alerted to potential claims, we can often rectify the problem, and prevent loss and further lawsuits from arising. Our counsel know how to best address issues such as withdrawing admissions, rectification of trusts, extending the time to set a matter down for trial, and other repairable matters.

[HERE ARE A FEW EXAMPLES OF CASES WHERE LAWPRO SUCCESSFULLY REPAIRED POTENTIAL LOSSES IN 2023.](#)

## Withdrawing admissions and amendment of pleadings

When is an admission not an admission? Or rather, when is an alleged withdrawal of an admission merely a clarification of a position? The difference can mean success or failure in a motion to amend pleadings.

In this case, the Plaintiff sought payment of both short term and long term disability payments from the Defendant Insurance Company, pursuant to a group insurance policy.

The Defendant Insurance Company denied liability, alleging, first, that the short term disability payments were solely the responsibility of the Plaintiff's employer, and second, that the Plaintiff was not disabled to the extent required for payment of long term disability payments.

The Defendant Insurance Company further alleged that the Plaintiff had failed to submit an application for benefits and proof of claim within the time period for doing so under the policy. Since that period had expired, the Plaintiff could no longer assert their claim.

A key point at issue was a line in the Plaintiff's pleadings that read "[the Plaintiff] did not submit an application for LTD benefits... pending resolutions of [their] STD benefit with [their] employer."

In February 2022, the Plaintiff moved to amend their Pleadings to clarify that the Defendant Insurance company was put on notice that the Plaintiff was seeking both short term and long term benefits, and this notice was provided within the required time period.

Unfortunately, the motion judge dismissed the Plaintiff's motion on the grounds that the Plaintiff was seeking to withdraw an admission and assert a new cause of action that was statute barred. The Plaintiff appealed this decision.

LAWPRO assisted the Plaintiff in successfully arguing on appeal that the motion judge erred in concluding the amendments sought to withdraw an admission.

The appeal court agreed that the Plaintiff's original pleadings admitted the Defendant Insurance Company's factual allegation that the Plaintiff did not submit an application for long term benefits. However, the original pleadings did not admit the Defendant's position that this fact had fatal consequences to the Plaintiff's claim. The proposed amendments merely confirmed and clarified the Plaintiff's original position that notice was given despite a formal application for benefits.

Therefore, the proposed amendments did not attempt to withdraw an admission, the motion judge should have allowed them to occur, and the appeal was allowed.

## Drafting errors and rectification of trust deeds

Despite lawyers' best efforts, drafting errors will inevitably occur. Sometimes, these errors don't just create ambiguity in a contract or trust, but may seem to undermine the entire purpose of the trust.

In this case, the Applicants had formulated a family trust for the purpose of receiving dividends from a family operating company and distributing said proceeds to a Corporate Beneficiary holding company. In order to avoid application of the "Attribution Rule" (s. 75(2) of the Income Tax Act), the trust was drafted with the intention that the Corporate Beneficiary would not be entitled to any income or capital that was derived from itself.

Unfortunately, the trust deed contained a drafting error, whereby the Corporate Beneficiary was, in fact, barred from receiving any income or capital derived from itself as well as the family operating company. This was in direct contravention to the purpose of the trust.

This error was not discovered until many years later, when the CRA reassessed the trust on the basis that the trust deeds prohibited distribution of dividends received from the family operating company to the Corporate Beneficiary.

Although the CRA did not oppose rectification of the trust documents to comply with their original intent, the CRA required a court order to avoid negative tax consequences.

The Applicants therefore sought a rectification order from the courts, correcting the drafting error.

LAWPRO successfully assisted the Applicants in obtaining a court order for rectification. The court agreed that, while rectification will not be granted to implement retroactive tax planning or to avoid unintended negative tax consequences, rectification is appropriate when correcting documents that erroneously fail to accurately record the original agreement.

In this case, the evidence was clear that the parties originally agreed to allow the Corporate Beneficiary to receive dividends from the family operating company. As such, rectification was an appropriate remedy.

## A series of unfortunate errors: Avoiding administrative dismissals

Bad things come in threes—including, it seems, inadvertent errors by a lawyer.

In this case, a negligence action regarding the assessment and remediation of property contamination was issued in February 2017, with the statement of defence and a crossclaim delivered in September 2017.

After the delivery of pleadings, Plaintiff's counsel proceeded to retain an environmental consultant to review and discuss materials necessary to proceed with the claim and prepare documents. Plaintiff's counsel also began retaining and preparing experts with respect to the claim in early 2018. Document collection and preparation of experts continued through 2020, when the COVID pandemic delayed preparation for some time.

As the claim was originally filed in 2017 the deadline for setting a trial date, and thereby avoiding an administrative dismissal, was mid-September 2022 (incorporating the tolling of limitation periods in 2020 due to the pandemic). Unfortunately, Plaintiff's counsel inadvertently set their calendar reminder for the 5-year administrative dismissal deadline for September 2023—one year late.

Plaintiff's counsel realized this error on March 7, 2022. At that time, Plaintiff's counsel attempted to email opposing counsel to discuss a timeline to proceed expeditiously, compile affidavits, and finalize expert reports. Unfortunately, Plaintiff's counsel erroneously sent these communications to the wrong email address.

On July 20, Plaintiff's counsel discovered and rectified the erroneous email address and sought Defence counsel's consent to a timetable order. A few weeks later, on August 7, Plaintiff's counsel served the Plaintiff's motion record seeking a timetable order by motion hearing. Shortly after that, on August 12, Defence counsel informed Plaintiff's counsel that the Defence would oppose the Plaintiff's motion for a timetable to continue the action.

Unfortunately, an inadvertent error struck again as Plaintiff's counsel was informed on September 6 that the Plaintiff's motion record was not filed due to a technical issue with the forms. At that time, Plaintiff's counsel reported the matter to LAWPRO, which assumed carriage of the motion.

LAWPRO's counsel then requisitioned a motion date before an associate justice to extend the time to set the action down for trial and set a timetable for completion of the remaining steps.

LAWPRO assisted the Plaintiff's counsel in extending the deadline for setting a trial date. The court agreed that the Plaintiff provided an acceptable explanation for the delay. Steps had been taken throughout the previous five years to advance the claim, and Plaintiff's failure to set a date for trial, or schedule a hearing to extend the time period before the deadline, was due to inadvertent errors on the part of counsel.

Since the Defendant would not suffer any non-compensable prejudice by extending the time, the motion was granted.

## The continuing story of the rule in Handley and Aecon

In this case, the Plaintiff construction company was retained to do work on four properties owned by three related Defendants. With one of the Defendants ("Defendant One"), the Plaintiff held a joint venture agreement granting the Plaintiff an interest in one of the properties in exchange for financing.

The Plaintiff later alleged non-payment and breach of trust for work done on the various properties. The Plaintiff then registered liens and had statements of claim issued for three of the properties in 2020.

In late 2021, the Plaintiff was paid the full amounts owing on one of the projects by Defendant One. Shortly thereafter, the Plaintiff agreed to discharge the lien on one of the properties so that Defendant One could sell it to an arm's-length purchaser.

The Remaining Defendants (other than Defendant One) then brought a motion to dismiss the action as an abuse of process. The Remaining Defendants alleged that the Plaintiff and Defendant One had entered into at least six agreements that entirely altered the litigation landscape and were not immediately disclosed. This was alleged to be in breach of the rule in Handley and other similar cases.

The Plaintiff took the position that the alleged "agreements" between the Plaintiff and Defendant One did not "entirely alter the litigation landscape" as contemplated by the rule, and therefore were not grounds for dismissal regardless of any lack of disclosure.

LAWPRO assisted the Plaintiff in successfully opposing the motion for dismissal. Of the "six agreements" that allegedly should have been immediately disclosed, one (the joint venture agreement) pre-dated the litigation and therefore could not be seen as altering the landscape.

Of the remaining agreements, the court accepted that the "landscape of the litigation" was not entirely altered and was instead only minimally altered. A portion of the claim was resolved as between the Plaintiff and Defendant One; however, there was no evidence that Defendant One had otherwise altered its position and was now co-operating with the Plaintiff.

The motion was therefore dismissed.

## Where to sign? Obtaining declarations that a will is valid

This matter involved an unopposed application for a declaration and order that a will met the formalities of execution set out in the Succession Law Form Act.

The testator signed their will in May 2020. The testator's lawyer arranged to have the will delivered to the testator along with written instructions on how it should be signed and witnessed.

The will was then signed by the testator in the presence of two neighbours. The neighbours then initialed or signed every page of the will themselves, except the last page. The will was then returned to the testator's lawyer.

After the testator's death, their lawyer realized that the neighbours failed to sign the final page of the will. The estate then sought a declaration that the will was valid, despite this lack of witness signatures on the final page.

LAWPRO assisted the estate in obtaining an order that the will was formally valid. The court agreed that the provisions of the Succession Law Reform Act do not require the witnesses to sign or initial every page and does not specifically require a signature on the final page of the will, so long as the witnesses otherwise "subscribe" the will in the presence of the testator.

The signatures and initials of the witnesses on all but the final page met this requirement, and the order was therefore granted.



### 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.

BELOW ARE A FEW EXAMPLES OF DEFENCES SUCCESSFULLY ADVANCED BY LAWPRO IN 2023 ON BEHALF OF INSUREDS.

### Sale of business and contract dispute – Alleged failure to flag contractual ambiguity

When selling a business, the negotiation of key terms will often be done with the direct involvement of lawyers on both sides of the transaction. However, some business owners take it upon themselves to not only lead, review, and approve key elements in principle, but propose and negotiate the language used in documents. When those key elements include language that will govern the valuation of the business, the lawyer may be left out of the loop.

In this case, the Plaintiff was a successful business owner that was also qualified as a chartered professional accountant and had substantial experience in the business world. The Plaintiff was selling the business to retire and had found a willing purchaser.

While the Plaintiff's lawyer had been made aware of the plan to sell the business, the Plaintiff had taken it upon themselves to conduct the negotiations themselves. These negotiations took place over many weeks and multiple draft agreements. A key point of contention was the method of valuation of the business.

Only near the end of negotiations did the Plaintiff send draft language to their lawyer for review. The lawyer suggested that the Plaintiff should ensure they understood the definitions used throughout the contract, particularly with respect to the valuation provisions. The lawyer advised the Plaintiff to consult an accountant to ensure there was no misunderstanding.

The Plaintiff did not, in fact, consult an accountant, and did not inform their lawyer that they were not planning to do so. The agreement was signed, and subsequently a dispute arose over the interpretation of the valuation provisions. Specifically, two provisions of the contract appeared to be in conflict.

The parties took the dispute to arbitration, and the arbitrator found in favor of the purchaser's interpretation of the agreement, a conclusion that reduced the purchase price by approximately \$1 million. The Plaintiff thereafter sued their lawyer for negligent legal advice with respect to the contract.

LAWRO successfully assisted the Lawyer in rebutting the Plaintiff's allegations of negligent legal advice. The Lawyer had not negotiated the agreement, and when presented with the draft agreement for review, had advised the Plaintiff to consult an accountant regarding the very provisions that were later disputed. The lawyer had reasonably satisfied their duties to their client and the Plaintiff's misunderstanding with respect to the valuation provisions was of their own doing.

## Employment law – Alleged failure to advise client about tax implications of termination provisions

Tax advice should be left to the experts. Unfortunately, most complex transactions have even more complex tax implications, requiring the application of such expertise. Generally, if a lawyer is not retained to give tax advice, and the lawyer is not confident in their abilities to give such advice, the client should be advised to speak with a tax lawyer or accountant regarding the tax implications of any course of action. This advice should be properly documented and retained in the lawyer's file.

In this case, the Plaintiff had previously obtained a demand loan from their employer in 2012 in the amount of \$125,000. In 2016, the Plaintiff was terminated from their position with the employer. As part of the termination, the employer agreed to forgive the loan in exchange for the Plaintiff's acceptance of a Release and Indemnity Agreement regarding the termination.

The Plaintiff met with their lawyer ("Defendant Lawyer") regarding the termination and Release and Indemnity Agreement. The Defendant Lawyer practiced in multiple areas, including some wrongful dismissals, but did not practice tax law.

Unfortunately, no written retainer was created, and the Defendant Lawyer did not take contemporaneous notes regarding the meeting with the Plaintiff. The Defendant Lawyer recalled that they informed the Plaintiff that the forgiveness of the Demand Loan was a taxable benefit. The Plaintiff acknowledged this and, according to the Defendant Lawyer, was primarily concerned with whether they could be obligated to repay the demand loan in the future.

In 2017, the Plaintiff was assessed by the CRA for approximately \$70,000 in unpaid taxes flowing from the debt forgiveness. The Plaintiff then sued the Defendant Lawyer for negligent tax advice, claiming that they would not have accepted the Release and Indemnity Agreement if they had known of the tax consequences.

According to the Plaintiff, they had met with the Defendant Lawyer to seek advice specifically pertaining to the agreement's tax implications, and the Defendant Lawyer had failed to properly explain those implications to the Plaintiff.

LAWPRO successfully assisted the Defendant Lawyer in contesting the Plaintiff's account of their meeting. While documentary evidence is always of benefit when defending malpractice claims, in this case, the Plaintiff's evasive responses to questions and illogical narrative led the court to accept the Defendant Lawyer's version of events. The court consequently found that the Defendant Lawyer met their duties by properly answering the client's questions regarding the enforceability of the debt forgiveness and alerting the client to the potential tax implications.

## Real estate law – Alleged improper registration of caution on property

It is well established that lawyers have a duty of care toward their client. Their professional obligations towards third parties, or the opposing side in a dispute, are less obvious. Nevertheless, LAWPRO invariably sees claims brought by non-clients alleging that a lawyer's professional actions wronged them in some way.

In this case, the Plaintiff was the mortgagee of a property. The mortgagee obtained judgment against the owner and took possession of the mortgaged property. The Plaintiff then attempted to sell the property.



Before the Plaintiff's sale could close, the lawyer of another interested part ("Defendant Lawyer") registered a caution on the property on behalf of their client. The Plaintiff's sale of the property then failed to close, which the Plaintiff attributed to the registration of the caution.

The Plaintiff then sued the Defendant Lawyer for losses arising out of the registration of the caution and subsequent failure of the Agreement of Purchase and Sale to close. The Plaintiff alleged that the Defendant Lawyer's actions constituted professional negligence, and, further, that they were liable under section 132 of the *Land Titles Act*, which reads:

"A person who registers a caution without reasonable cause is liable to make to any person who may sustain damage by its registration such compensation as is just, and the compensation shall be deemed to be a debt due from the person who has registered the caution to the person who has sustained damage."

The Plaintiff alleged that the Defendant Lawyer constituted a "person" as described under s. 132, notwithstanding the fact that the sought legal advice from their lawyer ("Defendant Lawyer") was registering a caution on behalf of their client.

LAWPRO successfully assisted the Defendant Lawyer in defending the claim as pleaded. The court found that "person," as used in s. 132, could only refer to the person who asserts for themselves a right or interest in land. Since the Defendant Lawyer was not asserting any right or interest for themselves, but was instead acting on behalf of their client, it was plain and obvious that they could not be held liable under s. 132 of the LTA.

With respect to the claim in negligence, the court agreed with the Defendant Lawyer that the claim as drafted disclosed no cause of action, as the Defendant Lawyer was not acting as the Plaintiff's lawyer at any time. The court granted leave to amend the pleadings to clarify the claim in tort, but otherwise dismissed the claim as disclosing no cause of action.

## Criminal law – allegations of ineffective assistance of counsel

In this case, the Criminal Defendant pleaded guilty to possession of a controlled substance and the proceeds of crime. They were sentenced to two years in custody in addition to the 228 days they had already spent in pre-trial custody.

After serving two months of their sentence, the Criminal Defendant obtained new counsel and appealed the conviction on the grounds that their guilty plea was involuntary, and they received ineffective assistance from their Trial Lawyer.

Specifically, the Criminal Defendant asserted that they were under the erroneous understanding that their guilty plea was dependent on a sentencing agreement with the Crown that provided for a sentence of two years including the time already spent in pre-trial custody. The Criminal Defendant's sentence, in fact, provided for two years in addition to time spent in pre-trial custody.

The Trial Lawyer informed LAWPRO of the potential malpractice claim flowing from the appeal and assertion of ineffective assistance of counsel.

LAWPRO successfully assisted the Trial Lawyer through the Criminal Defendant's appeal. The Trial Lawyer had maintained records of their interactions with the Criminal Defendant, which noted that the Criminal Defendant had been informed of the Crown's position of two years in addition to time served. Furthermore, the sentencing judge had conducted a plea inquiry, where the Criminal Defendant had confirmed their voluntary guilty plea and their understanding of the consequences of such.

The appeal court therefore dismissed the Criminal Defendant's appeal, and there was no remaining potential claim against the Trial Lawyer.

# Civil procedure and contempt of court - Negligence claims dismissed as collateral attacks

When things go wrong, it's often easy to blame the lawyer—even when the client is themselves a lawyer. But asserting malpractice by a lawyer generally cannot be used as a vehicle to attack an underlying judgment or order that didn't go the client's way.

In this case, the Plaintiff Lawyer was representing a client in a separate cause of action, wherein the Plaintiff Lawyer had received a production order for documentary evidence. Specifically, 14 boxes of documentary evidence allegedly relevant to the ongoing dispute. After receiving this court order for production of documents, the Plaintiff Lawyer contacted their client and offered to return the 14 boxes of documents so long as their outstanding fees were immediately paid.

The Plaintiff Lawyer's bill was paid, and the 14 boxes were delivered to the client rather than the opposing side in the underlying dispute. Subsequently, the client delivered only 5 of said 14 boxes pursuant to the production order.

The opposing side asserted that the conduct of the Plaintiff Lawyer and the Plaintiff Lawyer's client amounted to contempt of court and an attempt to hide prejudicial evidence from the opposing party. The Plaintiff Lawyer sought legal advice from their lawyer ("Defendant Lawyer") with respect to the resulting contempt hearing.

Following the contempt hearing, the Plaintiff Lawyer discovered that an Exhibit was missing from the materials provided in their defence. The Defendant Lawyer wrote to the opposing counsel to inform them of this oversight and bring it to the court's attention. However, at the same time, the court rendered its decision against the Plaintiff Lawyer, finding them in contempt.

The Plaintiff Lawyer unsuccessfully attempted to appeal the contempt finding with the Defendant Lawyer continuing to represent the Plaintiff Lawyer on appeal. After said appeals also failed, the Plaintiff Lawyer surrendered to serve a custodial sentence as punishment for the contempt.

After serving this sentence, the Plaintiff Lawyer sued the Defendant Lawyer for negligent legal representation, asserting that the Defendant Lawyer's failure to notice the missing exhibit during the contempt hearing led to the finding of contempt.

LAWPRO successfully assisted the Defendant Lawyer in showing that the Plaintiff Lawyer's claim of negligence was, in fact, a collateral attack on the original finding of contempt. Since the Plaintiff Lawyer had not raised ineffective assistance of counsel as grounds for the appeals of the contempt finding, a subsequent malpractice lawsuit on those grounds constituted an abuse of process. The Plaintiff Lawyer was, in fact, attempting to relitigate the contempt finding with additional evidence. The action 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 provides effective assistance and prides itself on defending licensees.

# Building our community

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 lawyers in Ontario.

## Supporting our future legal community

LAWPRO's efforts and activities to support law students included 12 presentations at law schools, LPP programs and colleges.

In its twelfth year, LAWPRO's sponsorship of the annual award of the Caron Wishart Memorial Scholarship went to University of Toronto Faculty of Law student Alexander Jia-Hao Tj Macfarlane. The Caron Wishart Memorial Scholarship was created in memory of Caron Wishart, LAWPRO's first Vice President, Claims who passed away in 2010.

The fully endowed scholarship, managed by the University of Toronto, was funded by donations from LAWPRO, Caron's family members, and members and organizations of the legal profession.

In 2023, LAWPRO held a Women's Networking event and an Early Career Mentorship event to develop relationships and build community with new and established counsel. Both events received great feedback from attendees who enjoyed connecting in person.

## Providing a healthy and rewarding workplace



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).

LAWPRO achieved the Ontario Living Wage Employer Certification. This certification looks at living wage, market competitiveness and total compensation with the goal to ensure a competitive program to attract, retain and reward employees.

LAWPRO continued its Equity, Diversity and Inclusion journey and partnership with the Canadian Centre for Diversity and Inclusion ("CCDI"). Various free CCDI webinars were made available to employees. The EDI Advisory Group regularly posted awareness days/months and provided additional resources.

## 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 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 2023, \$28,710 was raised for the following five charities: Canadian Fanconi Anemia Research Fund, The Toronto Humane Society, Canada-Ukraine Foundation, 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.

# practicePRO

helping lawyers succeed

“Where claims happen, why claims happen, and the steps that can be taken to avoid them”

The practicePRO program provides risk management, claims prevention and law practice management information to Ontario lawyers. 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.

Our best practicePRO resources from 2023 to help your practice grow are available free at [practicepro.ca](https://practicepro.ca). Here are a few highlights:

[Wiring funds checklist](#): This checklist will help you address the risk presented by the sharp increase in cyber attacks that divert wire payments to fraudsters’ accounts. We encourage lawyers to use this checklist for every transaction that involves wiring funds from their trust account.

[Protecting your firm against fraud CPD](#): This program provides information on actual fraud attempts, the types of fraud claims LAWPRO counsel are seeing right now, and how best to avoid these scams. As well, legal and law enforcement experts provide tips and advice. The replay has been viewed nearly 2,000 times on YouTube. It is eligible for LAWPRO Risk Management and LSO professionalism credits.

[Virtual identity verification \(IDV\) provider chart](#): As of January 1st, 2024, the Law Society of Ontario requires lawyers who only meet with clients virtually to verify their clients’ identity online by authenticating their identification documents, or using an alternate, approved verification method. LAWPRO invited companies to provide information about their service including costs, onboarding, turnaround time, process, and privacy. The vendors completed a survey and provided self-asserted information.

[Insurance 101 for lawyers: Tips for insuring your practice CPD](#): This panel offers an understanding on obtaining different types of insurance to protect your firm from risk. Experts explain the how-to of putting the insurance puzzle together—from Errors & Omissions coverage to Executor and Trustee coverage to Commercial General Liability coverage to Cybercrime and Data Loss coverage. The replay on YouTube has nearly 900 views.

[Excess insurance booklet](#): This booklet outlines the LAWPRO optional Excess insurance program. Additional coverage is available to lawyers in private practice or on exemption in case defence and indemnity payments exceed the limits of the primary LAWPRO insurance program.

[Top tips for advocates CPD:](#) This program, full of practical advice and tips in all areas of practice features leading advocates and LAWPRO counsel discussing recent developments in limitation periods, ineffective assistance of counsel, and establishing the legal status of clients. The replay on YouTube has been viewed more than 1,800 times.

[Building resilience and maintaining mental health in the legal profession CPD:](#) This program provides practical advice from those on the frontlines of improving mental health for lawyers; a clinician at the Member Assistance Program, a Peer-Support Ambassador that works with lawyers experiencing mental health concerns, a LAWPRO Unit Director on managing when things go wrong, and an expert in mindfulness within the legal profession. The replay has been viewed more than 900 time on YouTube.

[Client management and effective client relations CPD:](#) Leading advocates give advice on well-drafted retainer agreements, setting fee expectations, what to do when the client does not pay, understanding how diversity and culture can impact communication with clients and managing communication and relationship breakdowns when they occur. The replay has over 800 views on YouTube.

[Social engineering toolkit:](#) Social engineering is a fraud that is perpetrated by deceiving a target into revealing information or taking action for illegitimate reasons. It is often associated with phishing or email impersonation and leads to incorrectly wiring funds or transferring property. This toolkit is designed to help lawyers meet LAWPRO's new mandatory requirements to increase social engineering coverage from the minimum \$250,000 to the full \$1 million per claim. It lists the Policy requirements, provides sample retainer letter wording (and wording for existing clients), and answers frequently asked questions about the new coverage.

[Risk management alert:](#) This notice to the profession helps lawyers know what to do as administrative dismissals resume for Small Claims Court, Divisional Court, and family matters. Direction for cases at risk of administrative dismissal that have not previously been set down and struck from the trial list as well as what to do if you cannot file a consent timetable and draft order are outlined.







TitlePLUS was completely reengineered in 2021 with new features, policy wording, pricing structure, and website. Since the launch of the “new” TitlePLUS, it continues to evolve, add integrations, and process improvements while providing unmatched comprehensive coverage that is fast and easy to use.

2023 saw some big developments for TitlePLUS including a new leader who is eager to grow TitlePLUS to its full potential and new technology integrations that improve the TitlePLUS client experience and help our clients meet new requirements with ease.

## New Leadership

In August, LAWPRO welcomed Mark Huttram as the new Vice President of TitlePLUS. Mark joined TitlePLUS with a wealth of knowledge and experience in the legal, banking, real estate, and insurance fields.

“I see a lot of opportunity for growth within the TitlePLUS product,” said Mark. “The recent redesign of the online ordering platform, coupled with Legal Counsel Fees and clearer policy wording has set it up at the starting line of success. When combined with its unique affiliation with the E&O insurer for Ontario lawyers, TitlePLUS offers a package of coverages that I think has been underestimated in the market.”

## Technology Integration

TitlePLUS continued to transform and adapt to lawyers’ needs, the changing real estate market, and technological advances. One focus has been on technology integration. In addition to integrations with RealiWeb and Unity, we are integrated with Treefort IDV. These integrations made the goal of providing a simple one-stop process to obtaining a TitlePLUS title insurance policy a reality for busy legal professionals.

visit [titleplus.ca](https://titleplus.ca) to learn more

# Moving forward with TitlePLUS

## A smooth claims experience – for the lawyer and the client

**FOR LAWYERS:** TitlePLUS Legal Service Coverage is automatically included in most policies – no missed coverage, no extra input, and no extra charge.

There is no need for the lawyer to remember to purchase, register for coverage, add to each policy, or decide on which legal service coverage you may need. It has no limitations on payouts other than the policy amount, and the industry standard inflation protection limit on the original policy amount.

With a TitlePLUS policy, a client simply submits a claim directly to TitlePLUS. This means, the lawyer’s primary E&O policy will not be engaged and will not trigger a deductible or claims history levy surcharge in respect of the claim.

**FOR CLIENTS:** A few examples of real life stories of TitlePLUS claims:

### Power play

Homeowners lived next door to a vacant lot for years. Eventually, the neighbouring lot was sold to develop the land. The developers informed the homeowners that the hydro line serving their property ran across the vacant lot and would have to be moved.

The homeowners were not aware of the encroachment and it was not shown on any survey available at the time of purchase.

Luckily, the homeowner’s lawyer had recommended a TitlePLUS policy so the hydro pole was moved and TitlePLUS covered the cost.

### Effluent overflow

A homeowner’s septic system was unable to “accept and filter effluent effectively” because it wasn’t big enough to handle the size of the house.

The septic system had been built for a three-bedroom house, but when the house was sold it had five bedrooms and four bathrooms!

Luckily the homeowner’s lawyer had recommended a TitlePLUS policy with a rural property endorsement that covered the issue and paid for a new septic system.

### Unchecked deck

Homeowners discovered the wraparound decks on the main and second floors were in poor repair. Upon investigation, the city confirmed that the decks were built without a permit.

TitlePLUS covered the cost to remove the decks and paid the diminution in value to the property caused by the loss of the decks. When the decks were removed the contractor discovered there was water damage inside the siding of the house caused by the fact that the siding was never intended to have decks attached.

Fortunately, the homeowners had a TitlePLUS policy that covered not just the removal of the decks but also the exterior repairs caused by the unpermitted deck.





Risk management  
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Additional professional  
liability insurance  
lawpro.ca/excess



Title insurance  
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AvoidAClaim.com



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