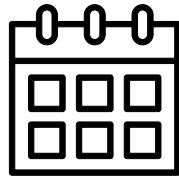
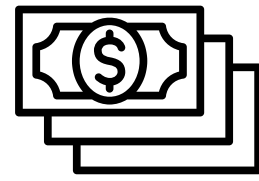




Longest time before reported claim: 16 years



Average 66 claims per year



\$17,000 average cost per claim

RISK MANAGEMENT TIPS



Maintain written confirmation of instructions and advice

As in all areas of law, documentation is crucial to helping LAWPRO defend you in the event of a claim where you may have no recollection of the details years later. Take notes on your conversations with the client and the details of settlement offers, the scope of your retainer (especially in limited retainer cases), your advice on accepting offers, the likelihood of winning or losing a case and the costs involved.



Create detailed docket notes

Like the tip above, detailed docket notes offer the benefit of helping protect you in the event of a claim. "Conference with client re risks and costs of litigation" is much better than just "conference with client re lawsuit."



Do not dabble in employment law

A lawyer should either be an expert in employment law or refer his or her client to an employment law specialist. We see a number of claims in this area resulting from a lawyer not being aware of the correct forum to bring a client's matter (Superior Court, Federal Court, Ontario Labour Relations Board, etc.) or not being aware of the related deadlines and limitations periods.



Be prepared for nuisance claims

The emotional toll of a job loss and resulting legal fight can leave lawyers in this area more likely to have claims made against them for 'civil rights violations' or 'malicious prosecution', alleging wrongdoing, bias or colluding against the client. These often coincide with Law Society complaints or Human Rights Tribunal claims against a former employer (and the insured who represented them), and in several cases are brought by self-represented or vexatious litigants. LAWPRO has yet to pay an indemnity on this type of claim, but they cost on average \$20,000 to resolve. While they may be difficult to guard against, taking the above advice to keep detailed notes documenting instructions, as well as maintaining high standards of professionalism in heated disputes will help ward off these accusations.

COMMON MALPRACTICE ERRORS

Communication - 26%

- Failing to adequately explain or advise clients on settlement offers
- Accepting or failing to accept settlement offers against the instructions of a client
- Unclear retainer agreements resulting in claims that lawyer failed to perform certain services

Errors of law - 21%

- Not being aware of the correct procedural forum in which to pursue the client's case
- Drafting an employment contract that does not comply with the *Employment Standards Act*

Time management - 20%

- Missing the limitations period to file a wrongful dismissal suit
- Failing to be aware of deadlines for WSIB appeals, arbitration under collective agreements, judicial reviews, and other time sensitive actions
- Administrative dismissal of client's actions

Inadequate investigation - 9%

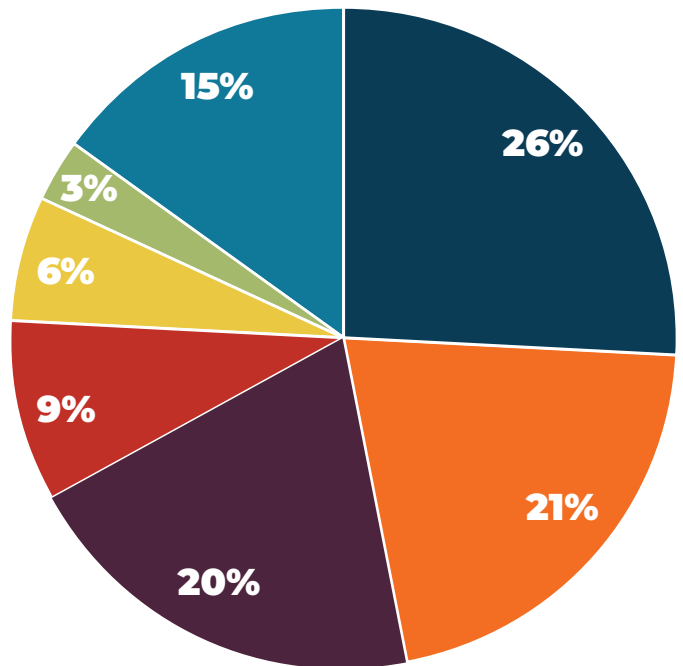
- Failing to consider pension loss, long term disability benefits, vacation pay or other financial issues when advising on a settlement offer
- Misidentifying the end date of employment, leading to missed limitations period

Clerical and delegation - 6%

- Typos in settlement agreement (e.g. incorrect termination pay amount), that prove detrimental to employee or employer
- Emails or faxes containing privileged information accidentally sent to opposing side

Conflict of interest - 3%

Other - 15%



Visit practicepro.ca for resources including LAWPRO Magazine articles, checklists, precedents, practice aids and more

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

Email practicepro@lawpro.ca

*All claim figures from 2013-2023. All cost figures are incurred costs as of June 2024

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