REPORT TO CONVOCATION

SEPTEMBER 2017

LAWPRO®
Lawyers' Professional Indemnity Company
Assurance LAWPRO®

TO: The Treasurer and Benchers of The Law Society of Upper Canada

RE: 2018 Insurance Program: Transmittal of Report to Convocation

When contemplating an insurance program for Ontario licensees, especially one that has been in existence for over twenty years, incremental changes can produce ***meaningful results.***

Constant review, analysis, and forecasting guides our path to continuous improvement just like a rough stone is polished by water to smooth the surface. Our enhancements benefit Ontario licensees, are in the best interest of the public, and offer the flexibility expected by legal professionals in our modern society.

This year's offer includes a few refinements intended to meet those goals.

Base Premium pricing for 2018

First, the base premium will remain at $2,950 per insured licensee for 2018. This is the same base premium charged in 2017. We carefully monitor and analyze claims trends and external forces to predict, as best we can, how the financial drivers of the program will evolve. This work, in conjunction with careful claims management and cost containment efforts, helps us continue to offer an affordable insurance program to our insureds.

Reflecting the changing financial reality

Working flexible hours is a choice made by many Ontario lawyers and paralegals. The Part Time Practice discount is an example of our efforts to risk-rate the program while meeting the needs of a variety of working arrangements. The Part Time Practice option is a 50 per cent discount from the base premium, available to those practising less than 20 hours per week and not exceeding a specific annual billing limit. This limit has been the same – $75,000 – for over ten years. To adjust for inflation and to ensure that the part-time criteria continue to reflect its original intent, the gross billing limit for lawyers in 2018 will be increased by 20 per cent, to $90,000.

Innocent party coverage adjustment

Innocent party coverage protects members of the public and lawyers against the dishonest, fraudulent, criminal or malicious acts or omissions of present or former partners, associates, and employed lawyers of the firm. Lawyers practicing in association, partnership, or in a law corporation (with one or more lawyer(s)), and sole practitioners practicing with employed lawyers, all partners and shareholders (including paralegals) in a combined licensee firm, must purchase at least the basic innocent party coverage, with options to buy up additional levels of coverage (subject to an underwriting review).

LAWPRO's commitment to risk-rating means that we are constantly reassessing the elements of the Program that make up the total premium that an individual lawyer will pay. For 2018, the Innocent Party/Partner levy will be reduced by half, to $125 for the basic $250,000 per claim/in the aggregate sublimit coverage.

Costs are relatively low for family law litigation

Family law is responsible for less than 15 per cent of our gross incurred claims costs and less than 18 per cent of claims by count. Using data from recent years in addition to our actuarial projection, LAWPRO's analysis of risk-rating results has shown that total premiums attributable to the Family Law bar meet the expected loss and related costs in an acceptable fashion to consider the goal of risk-rating to be achieved.

Furthermore, within the category of family law-based claims, analysis resulting from enhanced claims coding practices has shown that family litigation-related errors are responsible for fewer claims than other types of family law errors.

In other words, while civil litigation broadly defined is a high-risk practice area from a claims point of view, family law litigation, as a subcategory of litigation, is not. In recognition of our new appreciation of this lower claims exposure, lawyers who initiate family law proceedings will no longer be required to pay civil litigation transaction levies.

Civil Litigation claims costs are higher than ever

In terms of gross claims costs, civil litigation claims have been on an upward trend for a number of years and have even exceeded real estate claims since 2011.

For example, from 2006 through 2010 LAWPRO received an average of 708 civil litigation claims each year; between 2011 and 2015, the average increased to 948 each year. This growth of 34 per cent vastly exceeds the 7 per cent total growth of claims for all other areas of law over the same time period.

During 2007 through 2014, the average annual cost of these claims was $5,935 per civil litigation practitioner, an amount in excess of what was collected in premiums including civil litigation transaction levies. Consequently, the transaction levy on civil litigation matters will be increased from $50 as charged in 2017 to $100 for files opened on or after January 1, 2018.

Conclusions

LAWPRO Board Members and Management always strive to use improved data and detailed analysis to refine the program while being cognizant of the day-to-day challenges facing our insureds and the public they serve. The more detailed we become in our analysis, the more flexibility we hope to include in our insurance offering and the more solid our financial bedrock. Then our licensee-insureds are better protected from uncertainty and unpredicted risks over the long term.

Susan T. McGrath	Kathleen A. Waters
Chair	President & CEO

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LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")

REPORT TO CONVOCATION – SEPTEMBER 2017

BACKGROUND

1. The Law Society of Upper Canada ("Law Society") governs the legal profession in the public interest. One of the ways it discharges its responsibilities is through the mandatory requirement it places on practising lawyers to obtain professional liability insurance coverage for legal malpractice claims. This coverage is provided by LAWPRO, a provincially licensed insurer that is owned by the Law Society.

2. The coverage that the Law Society's mandatory insurance program ("Program") provides is considered to be both in the best interests of the public and in the best interests of Ontario lawyers – in that the public has reasonable assurance that an insurance policy backstops errors committed by lawyers in practice, and lawyers have assurance that they have a degree of financial protection for their professional liability that is well-suited to most lawyers' practice needs.

3. In recent years, we have seen an upward trend in the number of open claims files, with approximately 3,727 open files as at December 31, 2016, estimated to have a gross value of $472.2 million. At over $720 million in assets, the Program manages about 83 per cent of the Law Society's over $865 million in combined assets.

4. Each September since 1995, LAWPRO's Board of Directors has reported to Convocation on changes to the Program for the following calendar year. The timing of this Report is necessitated by the logistics of renewing over 26,000 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.

5. This Report is also an opportunity for LAWPRO's Board to review with Convocation issues of importance to its insurance operations and receive policy

direction where necessary. Financial information on LAWPRO and the Program is provided to Convocation throughout the year.

6. Convocation established LAWPRO's mandate in 1994 with the adoption of the Insurance Committee Task Force Report ("Task Force Report"). The mandate and principles of operation derived from the Task Force Report are as follows:

- that LAWPRO be operated separate and apart from the Law Society by an independent board of directors;
- that LAWPRO be operated in commercially reasonable manner;
- that LAWPRO move to a system where the cost of insurance reflects the risk of claims; and
- that claims be resolved fairly and expeditiously; however, this was not to be a system of "no-fault" compensation and there would be certain circumstances where coverage was denied or coverage was limited.

For 2018, we have conducted our annual review of the Program to revalidate the approach and rating structure in light of these Task Force recommendations.

7. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO's operations, and that the proposed Program for 2018 continues to fulfill these principles. This Report deals solely with the Program for the Law Society. The LAWPRO optional insurance segment, composed of TitlePLUS® title insurance and the Excess Professional Liability Insurance program, is planned to operate on an expected break-even or better basis.

2018 PROGRAM SUMMARY

8. The following summarizes the 2018 Program, as provided for in this Report.

Premium Pricing for 2018

(i) The base premium is $2,950 per lawyer for 2018, the same base premium charged in 2017 (paragraph 102(a)).

(ii) The levy on civil litigation transactions will be increased from $50 charged in 2017 to $100 for files opened on or after January 1, 2018. Revenues from real estate and civil litigation transaction levies collected by the Errors & Omissions Fund during the year are budgeted at $29.3 million for the purposes of establishing the base premium for 2018 and other budgetary purposes (paragraph 102(b)).

(iii) The Innocent Party/Partner levy will be reduced to $125 for the basic $250,000 per claim/in the aggregate sublimit coverage, $75 to buy up the coverage to $500,000, and $50 to further buy up the coverage to $1 million (subject to management underwriting of individual risks for the "buy up" categories of risk) (paragraph 102(c)).

(iv) 100 per cent of the premiums and losses for the Program will again be retained by LAWPRO in 2018, subject to limited capital backstop protection provided by the Errors & Omissions Fund, and reinsurance protecting the Program from multiple losses arising out of a common event or nexus (paragraph 77).

Changes to the Part-Time Practice Option Criteria

(v) The gross billing criteria for lawyers in respect of the Part-Time Practice Option is increased by 20 per cent to $90,000 from $75,000 per year (paragraph 24).

Modification to Application of Civil Litigation Transaction Levy Surcharge

(vi) Commencing in 2018 the Civil Litigation Transaction Levy Surcharge will be modified so that it will no longer apply to proceedings that entirely pertain to family law issues (paragraph 31).

Other Program Features (or Adjustments)

(vii) Subject to the changes identified earlier in the Report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2017 will remain unchanged for the 2018 Program (paragraph 107).

The Errors & Omissions Insurance Fund

(viii) The investment income of the Errors & Omissions Fund which is surplus to the obligations of the Fund will be made available to the Law Society during 2018 (paragraph 12).

Conclusion

The LAWPRO Board considers the Program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this Program of Insurance for 2018 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2018 Program can be implemented by January 1, 2018 (paragraph 108).

PART 1 – THE ERRORS & OMISSIONS INSURANCE FUND

9. LAWPRO provides services to the Law Society with respect to the Errors & Omissions Fund of the Law Society, which is currently in run-off mode. (The Errors & Omissions Fund was responsible for the Program prior to 1990, and for a group deductible of up to $250,000 per claim prior to 1995.)

10. In recent years the Errors & Omissions Fund resources have been utilized to settle outstanding claims (for Program policies in place between July 1, 1989 and December 31, 1994), maintain its investment in LAWPRO share capital, and make available $15 million of funds to backstop the potential of significant deterioration in the loss experience under recent years' Program policies. Where the investment income has been considered surplus to the Errors & Omissions Fund's commitments, it has typically been aggregated for use to the benefit of the Law Society for general purposes.

11. As of June 30, 2017, the Errors & Omissions Fund had no outstanding claims liabilities, as all files for 1994 and prior years are closed. Since there are sufficient assets in the Errors & Omissions Fund to fully meet its other outstanding liabilities, the LAWPRO Board is again satisfied that the investment income generated by the Errors & Omissions Fund is surplus to the needs of the Errors & Omissions Fund and can be used by the Law Society for its general purposes.

12. Accordingly, the investment income of the Errors & Omissions Fund which is surplus to the obligations of the Fund will be made available to the Law Society during 2018.

PART 2 – CHANGES TO THE PROGRAM FOR 2018

13. In developing the details of the 2018 Program, LAWPRO has considered the changing environment in which lawyers practise and any comments received from the profession during the previous year. The general structure of the current Program appears in most ways to meet the needs and practice realities of the profession for 2018.

14. However, for the 2018 Program, two modifications in the structure of the Program, or in the form and substance of the policy, are contemplated.

Changes to the Part-Time Practice Option Criteria

15. In the LAWPRO (then called "LPIC") Report to Convocation for the 1997 Program a reduction in premium for part-time practitioners was first introduced, after consultation with representatives of many Ontario law associations:

> ***147.*** *LPIC's Board of Directors recommends that a reduction in premium equal to 40% of the standard base premium be provided to those members qualifying as part-time practitioners. This adjustment in premium would be available to all members, whether practicing as sole practitioners in association or in partnership. For the purposes of this adjustment, a member would only be considered to be a part-time practitioner when he or she files a completed application form with LPIC, including a signed declaration indicating that the member will restrict his or her practice to 20 hours per week and 750 hours per year of professional time (including time for undocketed work), and that total gross billings in private practice of the member will be less than $60,000.*[1]

16. As part of the eligibility rules, which remain in force to this day, the gross billings for a lawyer could not exceed the maximum billing amount for either the current year or the year prior to applying for the discount. As well, the lawyer could not have a claim

[1] LPIC Report to Convocation, September 1996, page 54.

reported under the Program with an indemnity payment within the previous five years. Lawyers are required to make a declaration confirming compliance with each of the practice restrictions on the application.

17. Ten years later, the Report for the 2007 Program recognized that the part-time practice option had not been changed since it was first introduced on January 1, 1997. To address the impact of inflation on the Part-Time Practice Option criteria, the gross billings per year cap for lawyers was increased to $75,000 from $60,000 commencing January 1, 2007. In all other respects the criteria for eligibility remained the same.

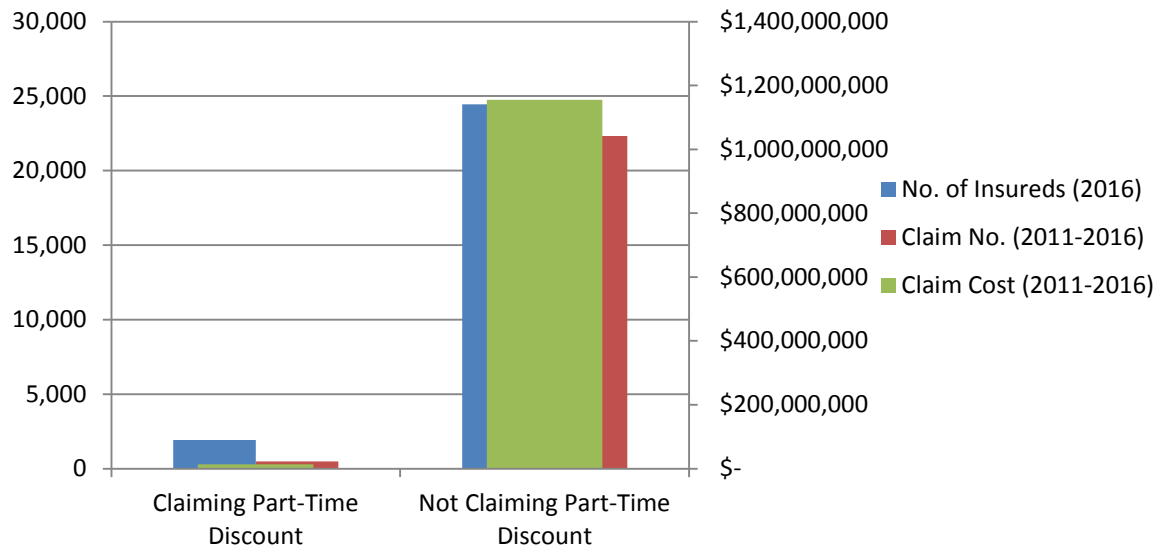
18. As a result of the September 2011 Report, beginning January 1, 2012 the part-time premium discount increased from 40 per cent to 50 per cent of the base premium as part of a larger exercise in refining the premiums and discounts then available.

19. The Part-Time Practice Option remains a risk-rated premium discount which reflects the reduced risk of claims found to be associated with the part-time practice of law by lawyers in Ontario.

20. To adjust for inflation and to ensure that the part-time criteria continues to reflect a similar size of practice today as when it was last reviewed for the 2007 Program, the gross billing criteria for lawyers in 2018 will be increased by 20 per cent to $90,000 from $75,000 per year.

21. This adjustment is consistent with the impact of inflation on lawyers' practices during this period. The Consumer Price Index, for example, increased more than 16 per cent over the same period.

22. From a risk-rating perspective, an analysis of the loss experience of lawyers electing this option indicates that the 7.3 per cent of lawyers who claimed the part-time discount in 2016 incurred only 2.1 per cent of all claims reported between 2011-2016 and 1.1 per cent of claims costs.



23. With the adjustment proposed, LAWPRO is satisfied that risk-rating for this option will continue to be achieved, and in fact is likely to be enhanced, as associated claim costs better reflect premiums.

24. Accordingly, the gross billing criteria for lawyers in respect of the Part-Time Practice Option is increased by 20 per cent to $90,000 from $75,000 per year.

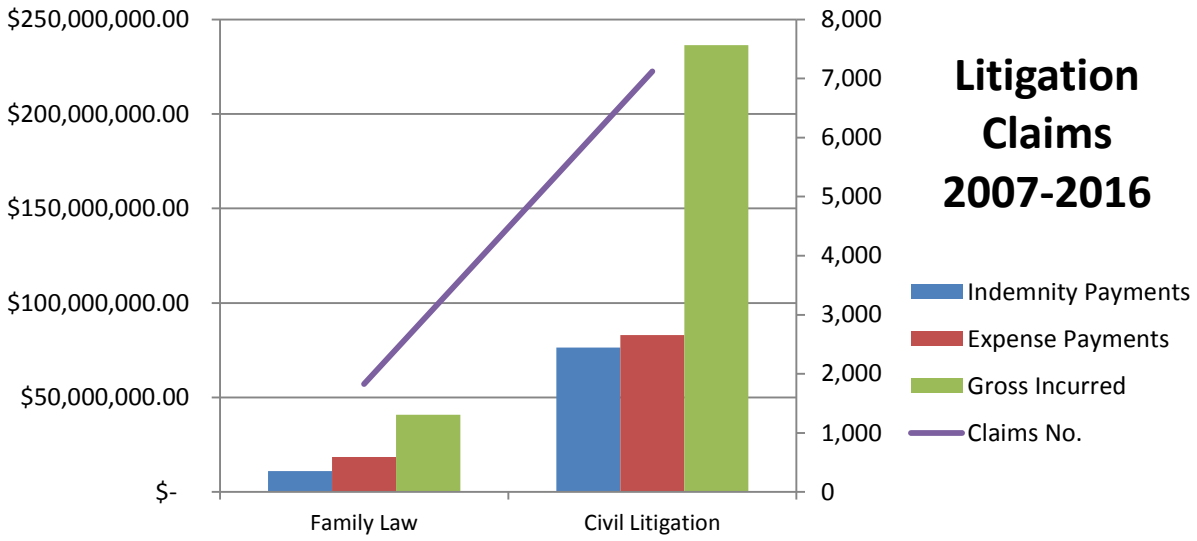
Modifications to Application of Civil Litigation Transaction Levy Surcharge

25. As discussed below in greater detail (see *Revalidating Risk Rating* at paragraphs 53-68), the use of transaction levies ensures an element of risk-rating under the Program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. This aspect of risk-rating is regularly re-evaluated by LAWPRO.

26. The Civil Litigation Transaction Levy currently applies to many types of litigation files, including family litigation, commercial disputes, real estate claims, construction liens, wills and estate actions, and personal injury.

27. While the transaction levy may apply to all such areas of litigation, not all types of litigation carry the same risk of claims against lawyers, or the same expected severity (size) if claims do arise. In recent years, LAWPRO has enhanced its claims coding, to gain even greater statistical insights as to the causes of claims within certain areas of law.

28. Family law is responsible for less than 15 per cent of claims by gross incurred and less than 18 per cent by count, under the Program in recent years. Also, as the graph below indicates, the family law loss experience is much more modest than the civil litigation loss experience.



29. LAWPRO's actuarial analysis of risk-rating results, with the benefit of updated coding, indicates that total premiums attributable to the family law bar appreciably exceed the expected loss costs. Furthermore, within the "family law" area of claims, those attributable to errors relating to lawyer handling of litigation are less significant than other causes of loss.

30. By eliminating the Civil Litigation Transaction Levy for family law matters, it is expected that the costs for family law litigants will be reduced, which may encourage more bespoke or unbundled legal services being provided by lawyers, particularly with respect to initial drafting, filing and service of materials in family law proceedings.

31. Accordingly, commencing in 2018 the Civil Litigation Transaction Levy Surcharge will be modified so that it will no longer apply to proceedings that entirely pertain to family law issues.

PART 3 – THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

32. Rapid increases in the number and cost of claims during the mid to late 2000s, combined with severe volatility in the world investment markets in the late 2000s, placed significant pressure on the Program. While the Program is still subject to ongoing uncertainty regarding claims costs and investment income, the gentler growth rate of claims and solid experience in the investment markets over the last five or so years have been key contributors to the Program returning to firmer footing. The proposals outlined in the following pages are designed to address the present challenges in a prudent fashion and maintain LAWPRO's ability to meet the needs of the Program in the years to come.

33. To establish the recommended Program for 2018, the LAWPRO Board considered several factors, such as:

- the cumulative effect of the recent underwriting and investment results, and the economic environment, on the Program;
- the expected future loss cost;
- the revenue sources which are expected to supplement the base levies; and
- the inherent uncertainties in predicting the results of the Program each year.

34. To ensure the Program's long-term viability, LAWPRO and the Board took a prudent approach to projections of revenue, as well as claims frequency and severity, taking into account factors such as emerging claims trends, general economic conditions and inflationary pressures on the claims portfolio.

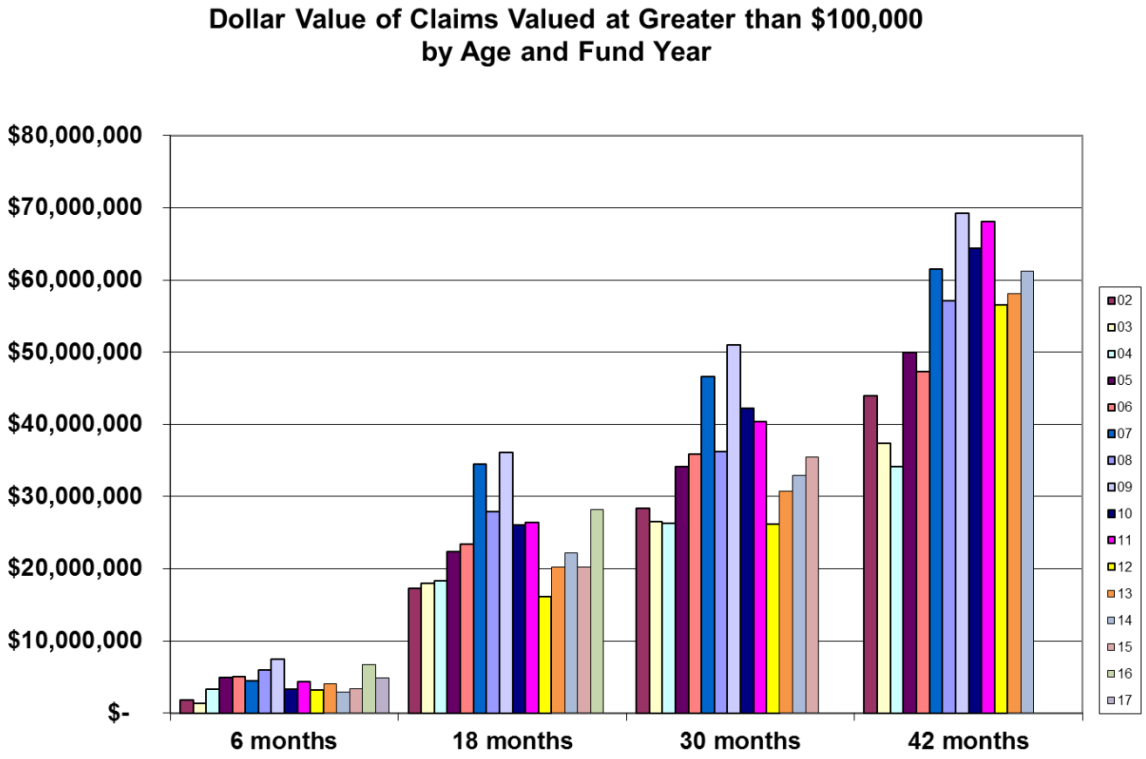
35. As part of its ongoing planning process, LAWPRO looked at a five-year time horizon. Any LAWPRO forecast is reviewed and revised periodically based on new information as it emerges. The subject forecast reflects the trends detailed in this Report, and takes a conservative approach to projecting the frequency and cost of claims under the Program. This prudent approach is dictated by uncertainties

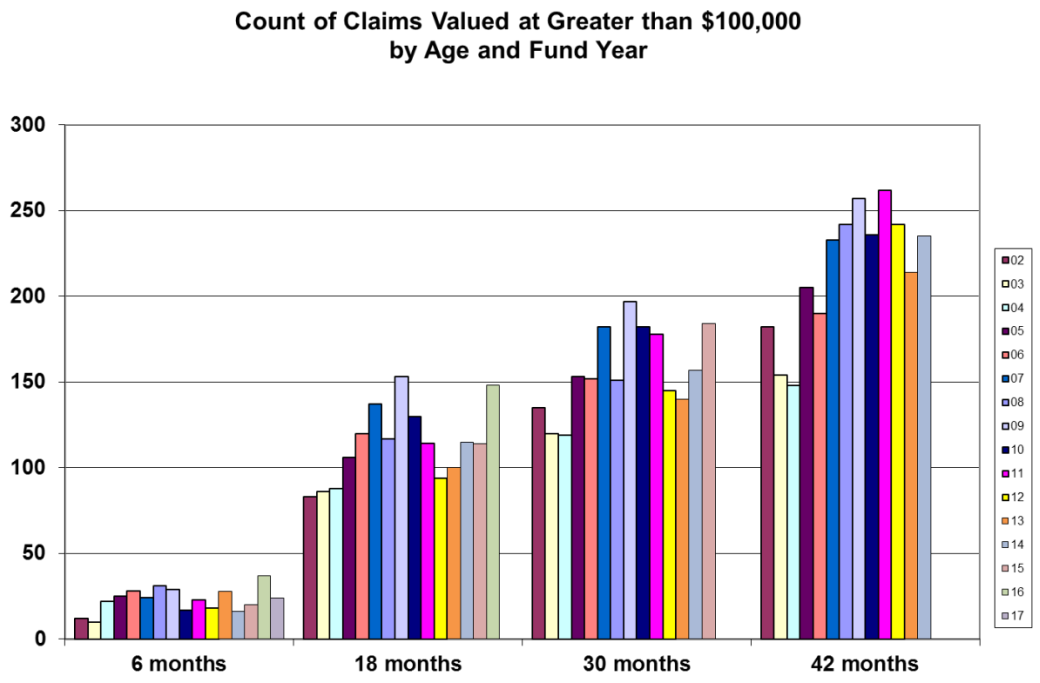
associated with predicting (a) general economic and inflationary trends, and (b) claims associated with recommended or recent Program changes, as applicable.

Program Costs

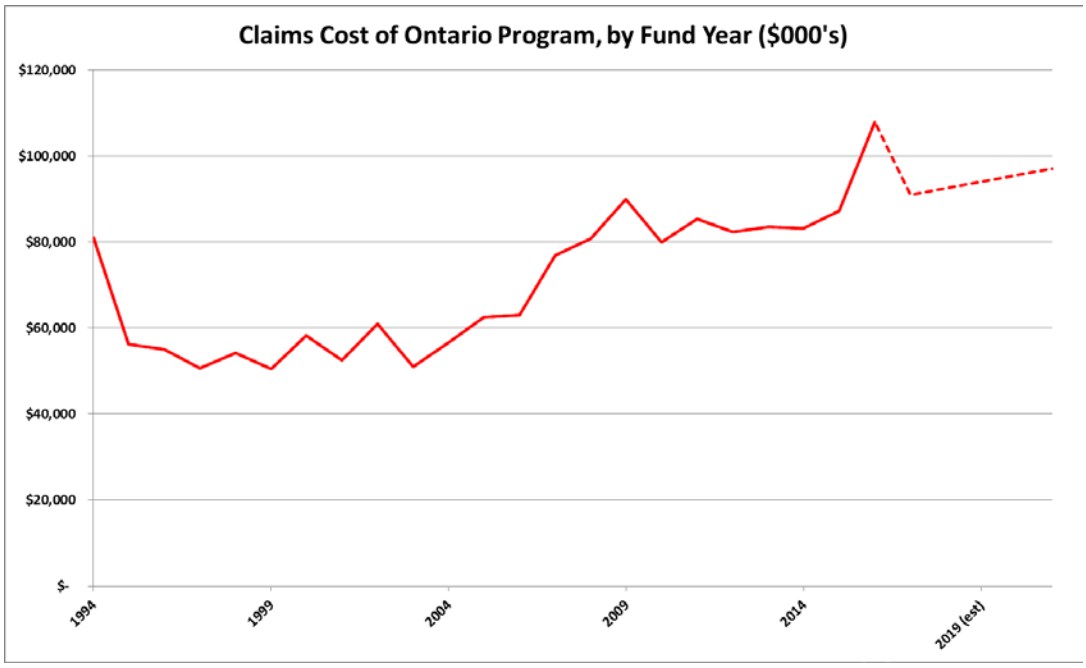
36. LAWPRO's revenue requirements for the 2018 Program are based on the anticipated cost of claims for the year, as well as the cost of applicable taxes and Program administration.

37. Loss experience has trended up noticeably in terms of frequency since 2004, with more claims reported than in the earlier part of that decade. It is too early to form a final view on the development of the most recent fund years' claims, such as 2015 through 2017, but there is a noticeable recent stabilization in the number of claims involving $100,000 or more (as seen in the following charts).





38. For 2018, LAWPRO expects direct claims costs alone to be $92.5 million, a level which has also stabilized somewhat in recent years (see chart following). LAWPRO estimates total Program funds (that is, claims costs plus general expenses) required for 2018 to be $123.3 million. This estimate is slightly above the current forecast of total Program funds needed for 2017, which is approximately $120.6 million.



Risk Rating

(a) Background

39. As already discussed in this Report, the Task Force Report concluded that the cost of insurance under the Program should generally reflect the risks.

40. Specifically, the Task Force Report indicated that "…as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."[2]

41. In keeping with this approach, LAWPRO regularly conducts detailed analyses of the risks associated with the Program. The earlier results of these analyses are summarized in previous Reports to Convocation. These analyses concluded that the practice of real estate and civil litigation represented a disproportionate risk when compared to other areas of practice, and that lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

42. The objective of risk rating was finally achieved in 1999 by applying various discounts and additional levies (such as the real estate and civil litigation transaction levies and claims history levy) to the Program.

43. Risk rating, however, is not static. Because the relationship between the cost of claims and different areas of practice may change, LAWPRO must continue to monitor the Program to ensure that risk rating continues to be achieved. The results of these earlier risk analyses are re-evaluated each year, and the factors used to assess risk and determine premium under the Program are re-evaluated for degree of relevance. The factors currently used to match risk to premium include area of practice, years in practice, claims history, liability for partners and associates, and size of practice.

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[2] 1994 Task Force Report, page 17.

44. As in the past, LAWPRO's risk analysis also examined the degree of specialization, size of firm, and geographic location of practice as possible factors to be used in assessing risk and setting premiums. The potential factors were examined individually and on a combined basis to determine any correlation or dependencies.

45. The result of this analysis is summarized in the graphs contained in **Appendix "B"** of this Report.

46. In 2017, this review has reaffirmed the overall validity of the rating structure currently in place, subject to certain adjustments in magnitude. The results of the customary re-evaluation of the earlier risk analyses are addressed in this Report at paragraphs 53 to 68.

(b) Practice Trends

47. LAWPRO's present risk analysis reaffirms the results of its last Report indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice. These two areas of practice represent 70 per cent of the claims reported and 65 per cent of the claims costs under the Program in 2016.

48. In particular,

a) Real estate claims costs have trended upwards since 2001, with real estate accounting for nearly 30 per cent of costs in many of those years. Since 2004, claims costs in this area of practice have increased almost 84 per cent;

b) In 2016, the exposure relating to the practice of civil litigation again was substantially more than that traditionally seen, with civil litigation accounting for 32 per cent of the claims reported and 37 per cent of the claims costs under the Program;

c) In 2016, the nature of claims against civil litigators was also reaffirmed, with missed limitation period claims (including administrative dismissals) accounting for almost 30 per cent of litigation claims, whereas general conduct or handling of the matter accounted for about 70 per cent of these claims; and

d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior 10 years were about five times more likely to report a claim during the past year than those with no claims in the prior 10 years.

49. LAWPRO has been watching the civil litigation area of law carefully for the past several years. Despite steps taken by LAWPRO such as the "Rule 48 Toolkit" and the mandatory increased deductible for certain administrative dismissal claims, the reality remains that in recent years the growth in civil litigation claims has outstripped the overall growth in claims. For example, from 2006 through 2010 LAWPRO received an average of 708 civil litigation claims each year, and during 2011 through 2015, the average increased to 948 each year. This growth of 34 per cent vastly exceeds the 7 per cent total growth of claims for all other areas of law over the same time period. In addition, costs of civil litigation claims have remained resiliently high. During 2007 through 2014, the average cost of these claims was $5,935 per civil litigation practitioner, an amount far in excess of what was collected in premiums (including civil litigation transaction levies).

50. At this point, the $50 transaction levy is unable to perform its risk-rating function, as the costs associated with civil litigation, as compared to other areas of practice, now substantially outweigh the revenue generated by the transaction levy and base levy premiums of these lawyers.

51. Although the number and cost of litigation-related claims is likely to recede somewhat as the latest Rule 48 changes take full effect, it is clear that additional transaction levy revenues will still need to be raised from the litigation bar to ensure effective risk-rating under the Program.

(c) Risk Management Initiatives

52. A principal mandate of LAWPRO is to help the legal profession manage the risk associated with practice. This is accomplished by providing lawyers with information, tools and resources that help them manage risk and practice in a more risk-averse fashion. Among LAWPRO's major risk management initiatives are:

- **TitlePLUS® Program:** TitlePLUS insurance is a competitive title insurance product that has made a positive difference in the Ontario real estate market. It expands the choice offered to consumers and lawyers. It influences the behaviour of other title insurers. It educates consumers and has expanded policy coverages available to them. It also educates lawyers on title insurance and real estate trends. The TitlePLUS program promotes real estate lawyers and recommends that consumers seek the advice of lawyers when closing their real estate transactions.

  "TitlePLUS Today", the department's news bulletin, is sent regularly to subscribing lawyers across Canada, providing legal and underwriting updates on current national real estate issues. Also, in recognition of the role support staff play in real estate transactions, the department publishes "TitlePLUS Tips", a bulletin written especially for support staff in the offices of subscribing lawyers. To increase lawyer and clerk understanding of the products and risk management techniques, links to how-to videos and risk management videos were distributed via these newsletters.

  LAWPRO has continued with its consumer education program, involving a media campaign highlighting the role of lawyers in real estate transactions and TitlePLUS insurance. In 2016 the campaign included articles, videos and radio clips resulting in over 13.3 million impressions in over 550 publications, websites and radio stations across Canada. Topics such as wills, home buying and home ownership risks highlighted ways in which lawyers can be of service to the public.

- **practicePRO® Program:** Now in its 19th year, LAWPRO's successful risk management and claims prevention initiative is a recognized source of high-quality risk management tools and resources, both inside and outside of Ontario. This year, practicePRO staff helped lawyers avoid malpractice claims through articles in *LAWPRO Magazine* and other law-related publications, information on the practicePRO website and AvoidAClaim blog, social media, live presentations, and an exhibitor presence at CPD programs and other law-related events. The September 2016 issue of *LAWPRO Magazine*, titled *Finding Your Blue Sky* focused on the stresses and challenges of practicing law, and how lawyers can protect their physical and mental well-being. In January 2017, insights from Ontario Indigenous lawyers were the focus of the magazine. How to serve Indigenous clients effectively and respectfully, and the claims risks associated with getting it wrong, were outlined.

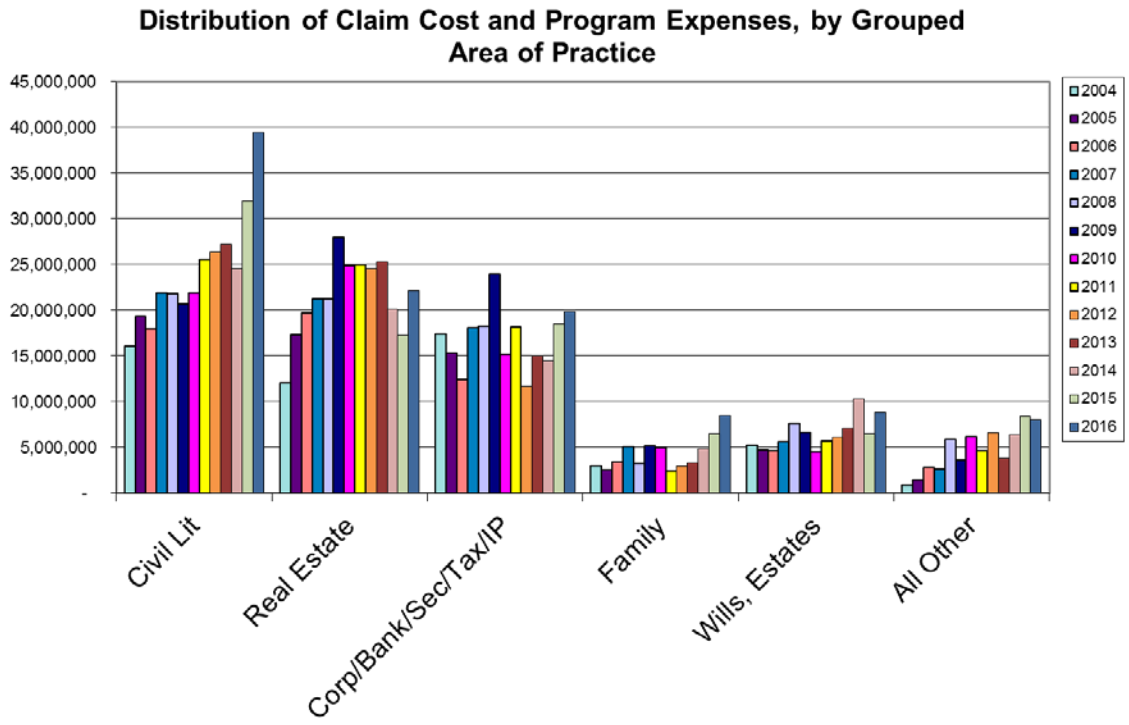
  The practicePRO program has significant presence in the legal community by maintaining relationships and actively working with its various constituents, including the Law Society, the Ontario and Canadian Bar Associations, local law associations, legal goods and service providers, the legal and mainstream press and others. To help lawyers improve their practices, the practicePRO lending library makes 150 of the best books on law practice, technology and risk management topics available on loan for free to all Ontario lawyers.

- **Fraud:** In terms of the potential risk they present to the Program, fraud-related claims are an ongoing and significant concern for LAWPRO. The Fraud Fact Sheet was updated in early 2016 with information on new trends and scams. This resource was downloaded 5,500 times from the practicePRO website and handed out at numerous CPD programs and events sponsored by the practicePRO and TitlePLUS programs in 2016. The AvoidAClaim blog, having reached the 1 million visitor milestone in 2017, continues to be an important tool for alerting lawyers to the latest email and online fraud scams as they happen. It averages almost 555 visitors a day and LAWPRO made 168 fraud-related posts in 2016.

- **The LAWPRO Risk Management Credit:** This premium credit offered under the Program is another significant LAWPRO risk management initiative. In 2001, a premium credit of $50 was first offered to lawyers using the practicePRO Online Coaching Centre, an Internet-based, self-coaching tool that helps lawyers enhance their business and people skills. The premium credit was broadened in the following year to provide a $50 credit (to a maximum of $100 per lawyer per year) for designated law-related CPD programs completed by the lawyer. For a credit on premiums for 2018, lawyers (and paralegal insureds in combined licensee firms) must have participated in LAWPRO-approved CPD programs between September 16, 2016 and September 15, 2017. In addition to the Online Coaching Centre and Homewood Health e-Courses, 260 programs qualified for the credit during this period. These programs together had approximately 50,000-55,000 attendees.

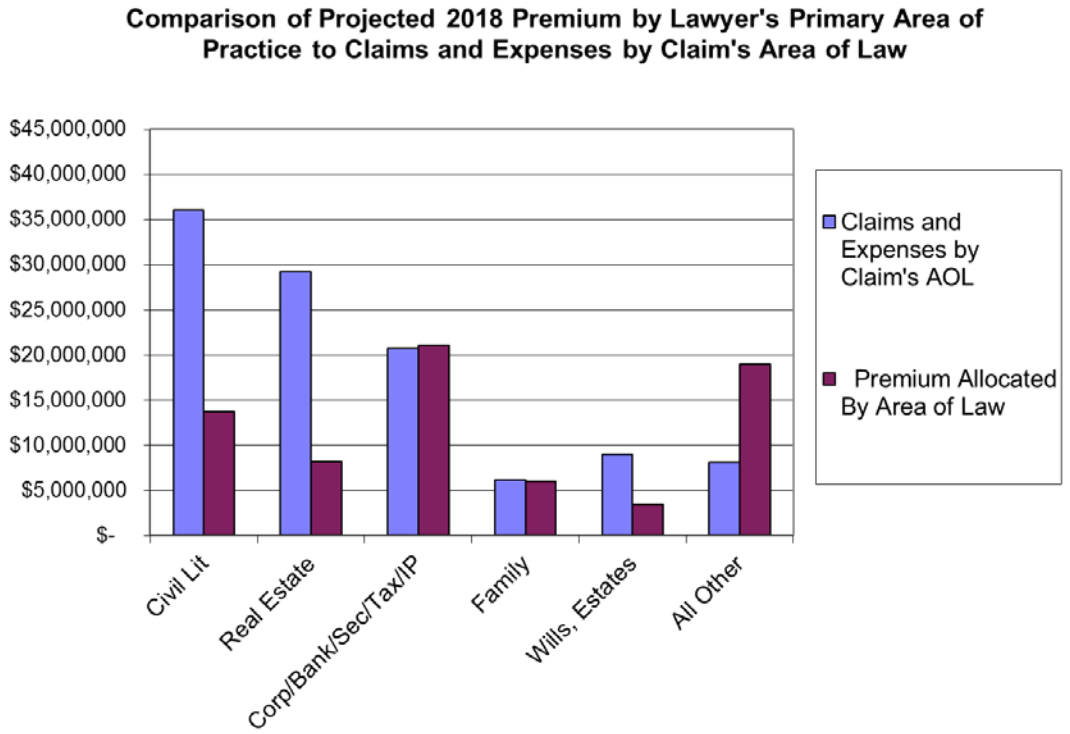
(d) Revalidating Risk Rating

53. It is important to periodically re-evaluate the Program by area of practice to ensure that it continues to be effective in its risk rating. The following chart shows the distribution of ultimate expected claims costs by detailed area of practice.



54. Apparent from this chart are the significant claims costs in certain practice areas and the fact that real estate and litigation continue to be higher risk on a consistent basis over a multi-year period. At the same time, the fact that few lawyers practice exclusively in one area provides a compelling reason to group together common or related areas of practice.

55. To ensure that risk rating is being achieved, the Program's anticipated losses and related costs must be compared to the premiums. Based on the most recent loss experience under the Program (including that seen under the Program up to December 31, 2016), the following chart compares the anticipated losses and costs distributed by area of law to the proposed base premiums by primary area of practice. The premiums in this chart include the proposed base premiums with real estate practice coverage, innocent party and base premium adjustments, but exclude transaction levies and claims history surcharges.



56. The shortfall between the anticipated claims costs and expenses to base premiums is particularly significant for the areas of real estate law and civil litigation.

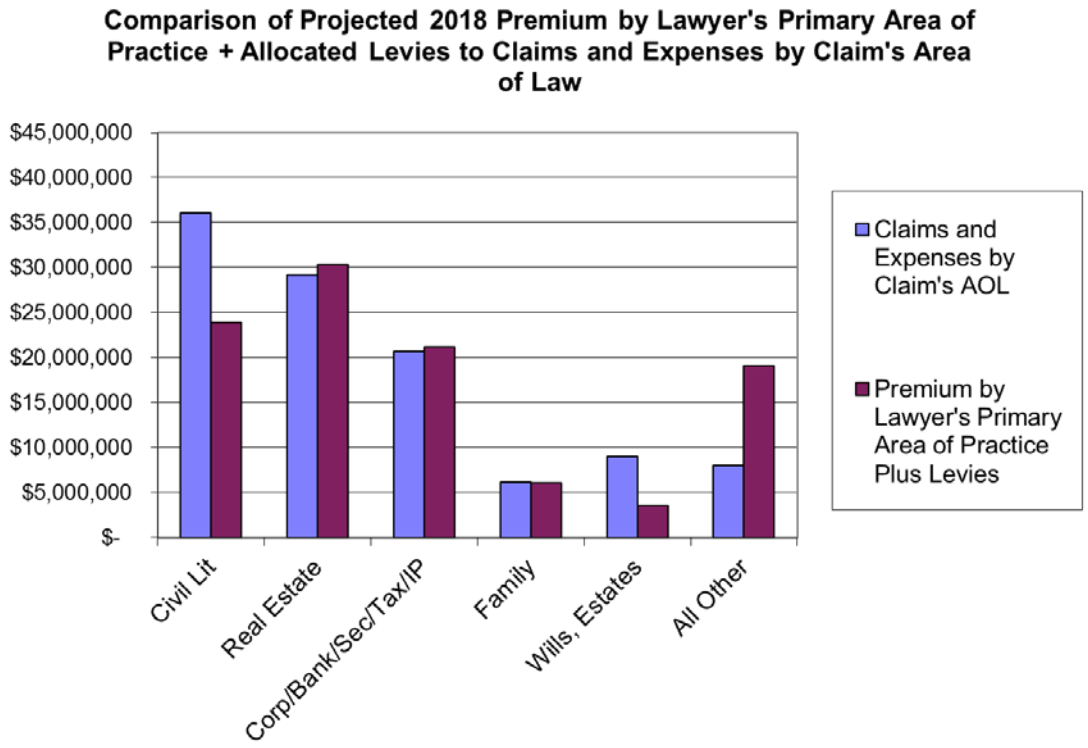
57. The latest Program statistics indicate that without the benefit of the transaction and claims history levy revenues, the 2018 base premium would be about $8,200 for those whose primary area of practice is real estate. For those whose primary area of practice is civil litigation, it would be about $5,400 calculated on the same basis (once again, higher than base premium).

58. Past Reports to Convocation have discussed the importance of using the transaction and claims history surcharge levies as premiums, to avoid any substantial dislocation among the bar in the higher areas of practice which would otherwise occur with risk rating.[3]

[3] 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 37-37; and 1996 LAWPRO Report to Convocation, pp.32-36.

59. By including the transaction and claims history surcharge levies in most recent years, a shortfall for real estate and civil litigation claims costs is typically overcome. While this trend is still applicable to real estate, the same cannot be said for civil litigation. After factoring in transaction levies, the premiums relating to this area of law fall significantly short of the related loss costs. An increase from $50 to $100 is needed to begin to close this gap.

60. The following chart compares the anticipated premiums sorted by the lawyer's primary area of practice (plus the claims history surcharge, Real Estate Practice Coverage Option ("REPCO") premium and transaction levies) to the anticipated claims costs and expenses for each area of law.



61. This comparison indicates that, with the benefit of the transaction and claims history surcharge levies, and including the REPCO premium, there is a more acceptable (if not perfect) correlation between revenues and claims for the major practice areas. Although some moderation in civil litigation claims costs can be expected over time with the recent changes in Rule 48, the relationship between civil litigation costs and

premium revenue by lawyers' primary area of practice will need to be monitored to determine whether any further action should be taken on this category in future years.

62. The graph does indicate some subsidy by area of practice, especially by the practitioners in the "All Other" category. This subsidy changes somewhat over time and may vary considerably from year to year for the smaller practice areas, if they were broken down in greater detail.

63. The area of wills and estates has experienced an increase in claim costs over the past decade. Given the relatively small number of practitioners in this area, a few large claims often skew the results. LAWPRO will continue to monitor these results and propose any action, if appropriate, at a future date.

64. Appreciating the foregoing variables and possibilities of comparison by area of practice, it appears that the Program with the proposed changes will substantially meet its objectives of risk rating. Although some subsidy may exist for certain areas of practice, when taking into account operating costs and commercial realities, the cost of insurance under the Program is considered to be generally reflective of the risk. Notably, the Task Force Report acknowledged that "…no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."[4]

65. Other aspects reviewed in the analysis included the exposure based on the size of the firm, year of call, geographic location and prior claims history. The overall results of this analysis reaffirm the premium discounts already in place, including the surcharge applied to practitioners with a prior claims history. The results of this analysis are reproduced in select graphs in **Appendix "B"**.

66. Although the volume (size) of practice may not be wholly determinative of risk, the transaction levies do reflect the volume of business transacted in a practice, as well as the higher risk associated with real estate conveyancing and civil litigation.

[4] 1994 Insurance Committee Task Force Report, at page 17.

67. Accordingly, the LAWPRO Board is satisfied with the continued use of transaction and claims history levy revenues as premium, with the result that the cost of insurance under the Program continues to generally reflect the risk.

68. Various examples of premiums which would be charged to members depending on the nature of their practice are summarized in **Appendix "C"** of this Report.

(e) Innocent Party Coverage

69. LAWPRO notes that it has observed more favourable loss conditions within its innocent party coverage, a "peace of mind" coverage that protects members of the public and lawyers against the dishonest, fraudulent, criminal or malicious acts or omissions of present or former partners, associates, and employed lawyers of the firm. Lawyers practicing in association, partnership, or in a law corporation (with one or more lawyer(s)), and sole practitioners practicing with employed lawyers, all partners and shareholders (including paralegals) in a combined licensee firm, must purchase at least the basic innocent party coverage, with options to buy up additional levels of coverage

70. LAWPRO's historical loss experience for innocent party coverage has been volatile, some Fund Years experiencing few to no claims while other years experiencing a series of large dollar claims. Despite the challenges in assessing this coverage, LAWPRO's actuary is now confident that recent favourable experience supports an appreciable reduction to the premium charged for all levels of innocent party coverage (although the availability and pricing of the optional coverages would still be subject to individual underwriting review).

Reinsurance and Capital Preservation

71. LAWPRO annually assesses its need for reinsurance based on its capital position and its claims results and volatility.

72. In its early years, LAWPRO purchased Program-wide quota share reinsurance. A stronger financial position and more stable claims experience enabled LAWPRO to cease reinsuring the Program with quota share reinsurance starting in 2003. In addition

to relying on LAWPRO's own capital, the resources of the Errors & Omissions Fund up to a $15 million cap were effectively relied on starting in 2003.

73. For 2018, it is proposed that there continue to be a $15 million dollar cap on the Errors & Omissions Fund's exposure to provide additional premium to LAWPRO. As in 2010 through 2017, to the extent that the net loss ratio exceeds the anticipated loss ratio for the year by an absolute 10 per cent, the Errors & Omissions Fund would cover the losses. The 2010 through 2018 backstop provisions will be evaluated separately, with the $15 million limit shared by the eight fund years. The lower likelihood of a payout by the Errors & Omissions Fund in this regime, as it commenced on January 1, 2010, makes the protection more akin to a catastrophic coverage, providing payout only in the unlikely scenario that an insurance fund year experienced significant deterioration from its initial expectations.

74. By relying on its own resources and the $15 million backstop from the Errors & Omissions Fund as described above, LAWPRO will not need to pursue the expensive course of purchasing reinsurance on a Program-wide basis.

75. For 2018, LAWPRO will again look to purchase reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005 (the "Clash Excess of Loss Reinsurance"). This protection against aggregated losses extends across both the Program and TitlePLUS initiative, and offers some measure of protection against a series of claims, such as fraud-related claims where the fraudster targets more than one lawyer, or a single defect in the title affecting an entire condominium project.

76. For 2018, LAWPRO will again look to purchase a possible total limit of $30 million in Clash Excess of Loss Reinsurance coverage above LAWPRO's retained exposure.

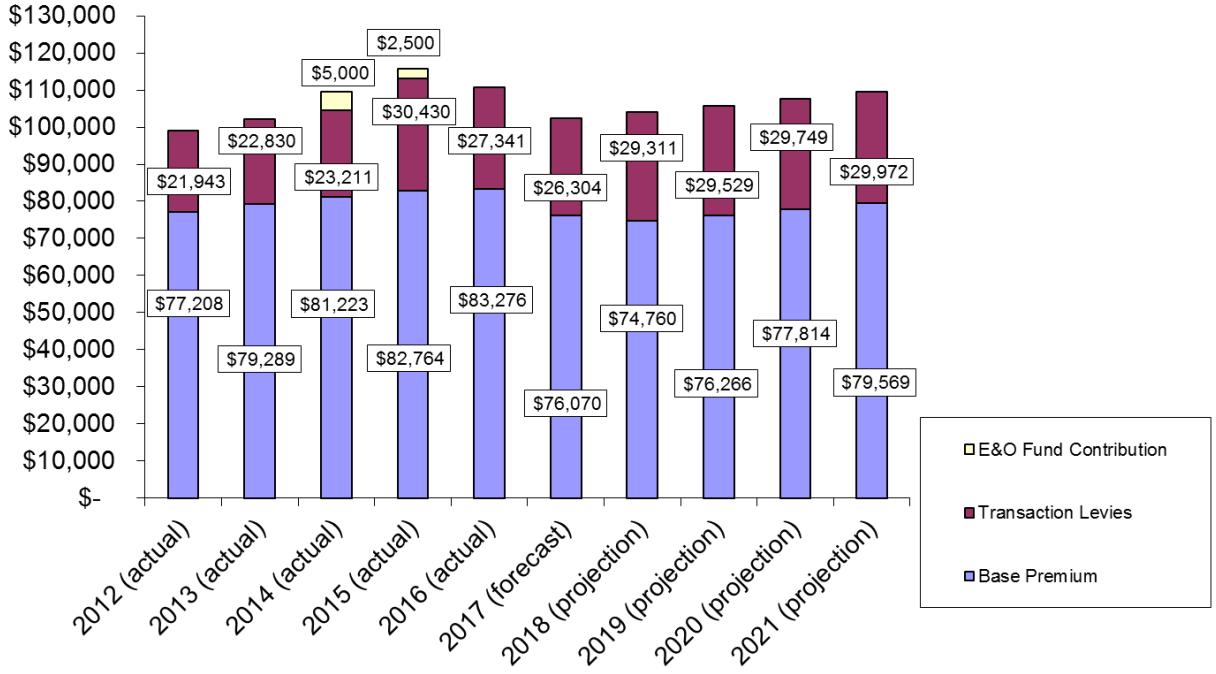
77. **Accordingly, 100 per cent of the premiums and losses for the Program will again be retained by LAWPRO in 2018, subject to limited capital backstop protection provided by the Errors & Omissions Fund, and reinsurance protecting the Program from multiple losses arising out of a common event or nexus.**

Revenues

78. To meet the total expected Program obligations for 2018, LAWPRO first evaluates its likely investment income, and then considers premium sources. By way of contrast with many earlier years in LAWPRO's operation of the Program, there will be no contribution from the Errors & Omissions Fund to minimize the base premium; instead premium revenues to meet fiscal requirements for 2018 will come only from two principal sources: the base premium[5] and levy surcharges.

79. The projected premium revenues from these two sources are as follows:

Premium Revenues, by Source ($000s)



(a) Investment Income

[5] "Base premiums" includes base premiums with applied discount or charges, as well as innocent party and REPCO premiums.

80. LAWPRO takes full advantage of the time between the collection of premiums and the payment of claim costs by investing any available funds into a well-diversified portfolio of fixed income and equity securities. LAWPRO uses the resulting investment income to help pay operating and claims expenses, thereby reducing the amount of funds that must come from premium sources.

81. LAWPRO provides further stability to the Program by segregating into a separate portfolio (the liability-matched portfolio) sufficient money to pay anticipated future claims costs, with any surplus capital held in a different portfolio. The securities in the liability-matched portfolio consist of high-quality government and corporate fixed income securities, with the future cash inflows to LAWPRO arranged to coincide with the expected payout patterns of the future claim costs. The surplus portfolio consists of a prudent mix of fixed income and equity securities.

82. Since 2008, investment returns have weakened due to fallout from the worldwide credit crunch. In particular, with central banks such as the Bank of Canada lowering their overnight interest rates to rock-bottom levels, the rates of return on fixed income securities have also dropped significantly. For LAWPRO, the downward pressure on returns is exacerbated as fixed income securities mature and need to be reinvested at these low rates. A prolonged “low for long” environment would place continued pressure on fixed income yields, while the eventual rise in central bank rates could result in a shock to fixed income security prices. As a result of these risks, LAWPRO has maintained a prudent investing philosophy to protect this portfolio, with its expected return set at a modest 3.0 per cent.

83. LAWPRO’s prudent investing philosophy includes a conservative, well-diversified equity portfolio. Of note, this portfolio’s annualized return from before the 2008 market crash up until June 30, 2017 has been very respectable, at about five per cent. Overall, LAWPRO’s portfolio is well-positioned for both capital preservation and steady growth.

(b) Levy Surcharge

84. The Ontario real estate market has been quite resilient in the last few years, but there are indications that the market will be varied in the near term. The Third Quarter 2017 Housing Market Assessment (Canada Edition) published by Canada Mortgage and Housing Corporation[6] indicates that a combination of moderate over-valuation and price acceleration has led to overall strong evidence of problematic real estate conditions. The real estate market is likely to continue facing pressure in the near to medium term.

85. At present, the levy surcharges include a $50 civil litigation transaction levy and a $65 real estate transaction levy, as well as a claims history levy surcharge.[7] Revenues from these levy surcharges are applied as premiums, to supplement the base levy.

86. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while the revenue from real estate transaction levies declined by approximately 50 per cent between 1999 and 2009 (prior to the increase in the real estate transaction levy for the 2010 Program).[8]

87. More recently, the number of transaction levies stabilized as a result of the solid Ontario real estate sales. As of June 2017, transaction levy revenues are above expectations, at $1.7 million over budget.

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[6] https://www.cmhc-schl.gc.ca/odpub/esub/68456/68456_2017_Q03.pdf?fr=1501178912030

[7] The claims history levy surcharge ranges from $2,500 for a lawyer with one claim paid in the last five years in practice, to $25,000 for a lawyer with five claims paid in the last five years in practice (an additional $10,000 is levied for each additional claim paid in excess of five).

[8] The increased use of title insurance is considered to be largely responsible for a reduction in the count of real estate transaction levies since 1999. Lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer, based on a standard form agreement entered into between the title insurer and the Law Society on behalf of Ontario lawyers. It is estimated that more than 90 per cent of residential real estate transactions in Ontario are title-insured (LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy fillings). In recent years, the number of real estate transaction levies collected has moved in tandem with residential real estate sales. This indicates a maturity or saturation of this market for title insurance.

88. To account for ongoing uncertainties in the real estate market and the prospect of a shortfall, a conservative approach has been taken in estimating revenues from levy surcharges for 2018.

89. As described above in this Report, the use of transaction levies ensures an element of risk rating in the Program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which likely would occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when introduced in 1995.

90. For 2018, LAWPRO estimates transaction levy revenues at $29.3 million (including the increased civil litigation transaction levy as described above).

(c) Errors & Omissions Fund

91. The insurance related transactions between the Law Society, insured lawyers and LAWPRO flow through the Errors & Omissions Fund. Through the Fund, insurance premiums and levies are collected from lawyers (and related insureds) on behalf of the Law Society. From this Fund, LAWPRO, as the insurer, is paid. While in recent years the Errors & Omissions Fund had a balance held well over $60 million, after payment of current year's premium and calculating the reserve needed for pre-1995 claims which remain the responsibility of the Errors & Omissions Fund, the vast majority of those funds have already been committed for specific purposes, such as the $15 million Program backstop (see paragraphs 71 through 77) and the Errors & Omissions Fund's investment in LAWPRO shares.

92. The current LAWPRO five-year projection does not assume further contributions from the Errors & Omissions Fund to support the base rate premium.

(d) Capital Requirements

93. As LAWPRO has worked through some quite challenging times, its prudent and conservative approach to the issues of the day has stood it in good stead. LAWPRO has maintained a solid capital base, as well as a robust asset-liability matching program to ensure that the funds are available to satisfy the claims obligations undertaken to date. Also, LAWPRO has received a consistent "A" (Excellent) rating from A.M. Best Co. each year since 2000, and since 2012 has retained its "stable" outlook based on its commanding market profile and recent improvement in operating and underwriting results. (An "outlook", which looks more to the future, is different from a "rating".)

94. As a final consideration before determining the base premium, LAWPRO must consider its capital needs. Canadian regulators use the Minimum Capital Test ("MCT") in order to assess capital adequacy of a property and casualty insurer. The MCT is a risk-based ratio calculation which compares the insurer's capital or net assets available to the "capital required". Through the capital required component of the test, regulators prescribe certain additional capital or margins that must be held based on the various types of assets and liabilities on the insurer's balance sheet.

95. A significant margin requirement relates to the approximate 25 per cent additional capital that must be held for all the net claims liabilities on the books that relate to commercial liability (which includes professional liability coverage). Given the steady historical growth of LAWPRO's net claims liabilities over the last decade or so, even a positive net income result can often be accompanied by a decline in LAWPRO's MCT ratio. As a very general rule of thumb, LAWPRO requires approximately $5 million of either net income or increased after-tax net unrealized gains on its surplus portfolio[9] to maintain a flat to slightly increasing MCT ratio.

96. The determination of a specific insurer's "ideal" MCT ratio is no easy task, as historic industry approaches were primarily designed simply to identify levels that are too low. Canadian regulators require that insurers do not fall below various MCT levels,

[9] Increases in net unrealized gains relating to the liability-matched portfolio, as well as realized gains, are included in net income.

such as the 100 per cent minimum and 150 per cent supervisory levels. In 2016, LAWPRO completed its first capital assessment pursuant to the Autorité des Marchés Financiers' *Guidance on Capital Adequacy Requirements*, and the Office of the Superintendent of Financial Institutions' *Guideline E-19 Own Risk and Solvency Assessment*, resulting in LAWPRO's internal target ratio being lowered from 180 per cent to 170 per cent.

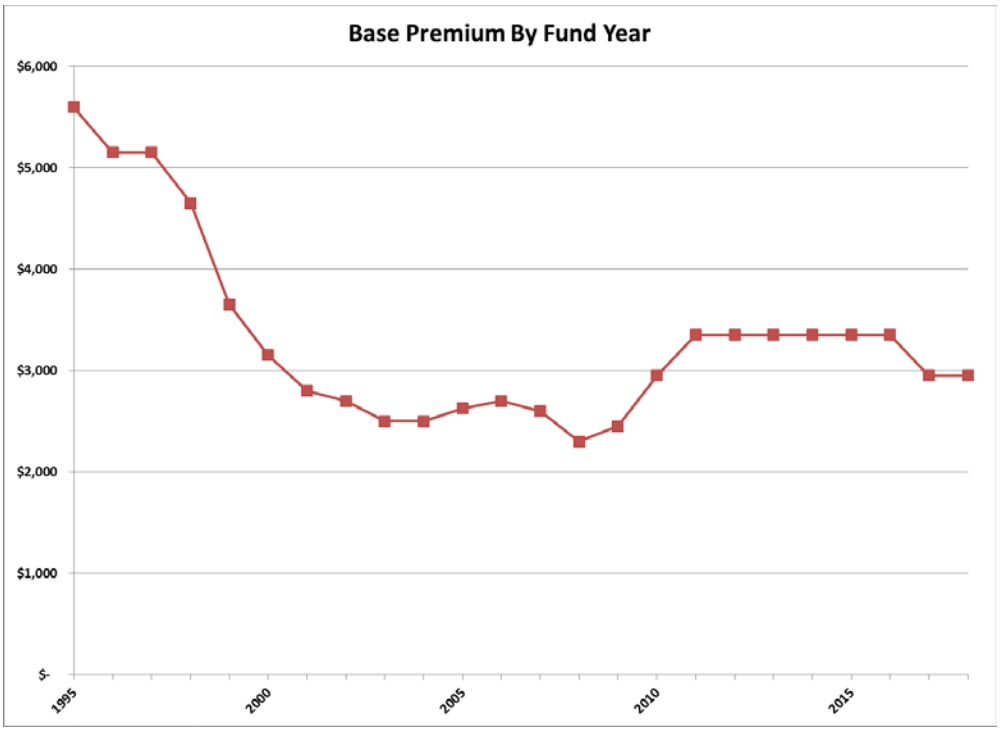
97. In addition, as part of the above exercise and reconfirmed this year, the Board set LAWPRO's long term preferred operating range at 215 to 240 per cent based on LAWPRO's risk profile and its unique ability to set premiums and raise capital, which differs significantly from those of other commercial insurers in Canada. An MCT result in this range would allow LAWPRO some capacity to absorb unexpected losses or changes in market conditions, and have time to implement a strategy to restore capital levels to the desired range.

98. LAWPRO's MCT of 236 per cent as of June 2017 is within the Board's preferred operating range, indicating that a phase of capital replenishment is not currently required.

(e) Base Premiums

99. Based on the previous discussion of Program costs, sources of revenue and capital needs, the base premium can again be set at $2,950 per member to account for LAWPRO's recent levelling of claims costs, as well as its overall solid fiscal performance during the last couple of years. In summary, the 2018 proposed base premium is based on the following key assumptions:

- 27,301 practising insured lawyers (full-time equivalents);
- $123.3 million in anticipated total Program costs (paragraph 38);
- $29.3 million in budgeted transaction levy revenues (paragraph 90); and
- 3.0 per cent return on investment (paragraph 82).



100. At this time, the Board is satisfied that this base premium rate appropriately recognizes the inherent uncertainties in emerging claims experience and economic conditions, and allows the Program to continue to operate on a self-sustaining basis while protecting LAWPRO's overall financial position. The approach taken is consistent with information provided in the Report to Convocation in recent years. It should be noted that a base premium of $2,950 per lawyer in 2018 is significantly lower than premiums charged at some points in the past. In fact, if inflation were removed, this premium would be the equivalent to about $1,950 in 1995 dollars.

101. In setting a base premium rate for 2018, LAWPRO tested its five-year planning horizon under various scenarios. Overall LAWPRO results are projected to exceed break-even, while allowing LAWPRO to gradually reposition its MCT result to a more moderate position within its preferred operating range. Many factors influence this forecast, most significantly interest rates and claims experience. The results of this forecast cannot be considered definitive in nature and further base premium rate increases may be required in future years.

102. Accordingly:

a) **The base premium is $2,950 per lawyer for 2018, the same base premium charged in 2017;**

b) **The levy on civil litigation transactions will be increased from $50 charged in 2017 to $100 for files opened on or after January 1, 2018. Revenues from real estate and civil litigation transaction levies collected by the Errors & Omissions Fund during the year are budgeted at $29.3 million for the purposes of establishing the base premium for 2018 and other budgetary purposes; and**

c) **The Innocent Party/Partner levy will be reduced to $125 for the basic $250,000 per claim/in the aggregate sublimit coverage, $75 to buy up the coverage to $500,000, and $50 to further buy up the coverage to $1 million (subject to management underwriting of individual risks for the "buy up" categories of risk).**

(f) Other Program Features (or Adjustments)

103. With the exception of the changes specifically described in this Report, all aspects of the Program for 2018 will remain unchanged from the Program now in place.

104. As detailed in **Appendix "A"**, subject to the noted changes, the current Program for lawyers in private practice encompasses the following:

- Standard practice coverage, including Mandatory Innocent Party Coverage; and
- coverage options, including Innocent Party Buy-Up, Part-Time Practice, Restricted Area of Practice, and REPCO.

105. The current Program also provides for premium discount and surcharges. Discount and surcharges as a percentage of premium include:

- New Lawyer discount;
- Part-Time Practice discount;
- Restricted Area of Practice Option discount;
- Designated Agency Employee discount;
- adjustments for deductible options and minimum premiums; and
- a surcharge in the event that no completed application form is filed.

106. Discounts and surcharges as stated dollar amounts include:

- the Mandatory Innocent Party premium;
- optional Innocent Party Buy-Up premium;
- the REPCO premium;
- premium discount for early lump sum payment;
- e-filing discount; and

- Continuing Professional Development discount.

107. Subject to the changes identified earlier in this Report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2017 will remain unchanged for the 2018 Program.

CONCLUSION

108. The LAWPRO Board considers the Program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this Program of insurance for 2018 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2018 Program can be implemented by January 1, 2018.

ALL OF WHICH LAWPRO'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION.

September 2017

Susan T. McGrath

Chair of the Board

Lawyers' Professional Indemnity Company

Ian D. Croft

Vice-Chair of the Board

Lawyers' Professional Indemnity Company

Appendix "A"

The Standard Program Coverage for 2018[10]

Eligibility

- Required of all lawyer sole practitioners, lawyers practising in association or partnership, paralegals acting in partnership with lawyer(s), paralegals holding shares in professional corporations with lawyer(s) and lawyers practising in a LAW CORPORATION, who are providing services in private practices.
- Required of all other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who do not fully meet the Program exemption criteria.
- Available to lawyers who do meet the exemption criteria but opt to purchase the insurance coverage.

Coverage Limit

- $1 million per CLAIM/$2 million aggregate (i.e. for all claims made in 2018), applicable to CLAIM expenses, indemnity payments and/or cost of repairs together.

Standard DEDUCTIBLE

- $5,000 per CLAIM applicable to CLAIM expenses, indemnity payments and/or costs of repairs together.

Standard base premium

- $2,950 per insured lawyer.

Transaction Premium Levy

- $65 per real estate transaction and $100 per civil litigation transaction;

[10] Terms entirely capitalized are as defined in the Program policy.

- No real estate transaction levy generally payable by transferee's lawyer if title-insured.

Premium reductions for new lawyers

- Premium for lawyers with less than 4 full years of practice (private and public):
  - ◊ less than 1 full year in practice: premium discount equal to 50 per cent of base premium;
  - ◊ less than 2 years in practice: premium discount equal to 40 per cent of base premium;
  - ◊ less than 3 years in practice: premium discount equal to 30 per cent of base premium;
  - ◊ less than 4 years in practice: premium discount equal to 20 per cent of base premium.

Mandatory Innocent Party Coverage

Eligibility

The minimum coverage of $250,000 per CLAIM/in the aggregate must be purchased by paralegals in partnership with lawyer(s), paralegals who own shares in LAW CORPORATIONS with lawyer(s) and all lawyers practising in association or partnership (including general, CLP, MDP and LLP partnerships), or in the employ of other lawyers.

The minimum coverage must also be purchased by all lawyers practising in a LAW CORPORATION, where two or more lawyers practise in the LAW CORPORATION.

Premium

$125 per insured lawyer.

2018 Program Options

1. Deductible option

$Nil deductible

- Increase in premium equal to 15 per cent of base premium ($442.50 increase).

$2,500 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together

- Increase in premium equal to 7.5 per cent of base premium ($221.25 increase).

$2,500 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 12.5 per cent of base premium ($368.75 increase).

Standard Program: $5,000 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together

- Base premium of $2,950 per insured lawyer.

$10,000 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together

- Decrease in premium equal to 7.5 per cent of base premium ($221.25 decrease).

$10,000 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 7.5 per cent of base premium ($221.25 increase).

$25,000 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together

- Decrease in premium equal to 12.5 per cent of base premium ($368.75 decrease).

2. Innocent Party Sublimit Coverage Options

Innocent Party Coverage Sublimit Buy-Up: For lawyers practising in associations, partnerships and LAW CORPORATIONS

Lawyers practising in association or partnership (including general, combined licensee partnerships with both lawyer and paralegal partners, multidiscipline partnerships and LLP partnerships) or a LAW CORPORATION (with more than one practising lawyer, including professional corporations with both lawyer and paralegal shareholders), can apply to increase their Innocent Party Coverage in two ways, subject to management underwriting of individual risks for these "buy up" categories of risk:

Increase coverage sublimit to:	Additional annual premium:
$500,000 per claim/aggregate	$75 per insured lawyer
$1 million per claim/aggregate	$125 per insured lawyer

Optional Innocent Party Coverage Sublimit: For sole practitioners and lawyers practising alone in a LAW CORPORATION

Coverage sublimits

- $250,000 per claim/in the aggregate;
- $500,000 per claim/in the aggregate;
- $1 million per claim/in the aggregate.

3. Practice Options

Restricted Area of Practice Option

Eligibility

Available only to lawyers who agree to restrict their practice to criminal[11] and/or immigration law[12] throughout 2018.

Premium

Eligible for discount equal to 50 per cent of base premium, to a maximum of $1,475.[13]

Part-Time Practice Option

Eligibility

Available only to part-time practitioners who meet the part-time practice criteria.

Premium

Eligible for discount equal to 50 per cent of base premium, to a maximum of $1,475.

Designated Agency Employee Option

Eligibility

Available only to lawyers who are employed by and agree to restrict their practice to PROFESSIONAL SERVICES provided on behalf of their DESIGNATED AGENCY(IES) employers throughout 2018. Lawyers electing this option must not elect a deductible option of more than $5,000 per claim. This discount cannot be combined with the Restricted Area of

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[11] Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

[12] Immigration law is considered to be practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and regulations, and procedures and policies pertaining in this Report, including admissions, removals, enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights*.

[13] The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Lawyers' discount combined cannot exceed 50 per cent of the base premium.

Practice, Part-Time Practice, New Lawyers' or early lump sum premium payment discounts. Lawyers claiming the Designated Agency Employee option are not required to maintain Innocent Party coverage and are eligible for the e-filing and LAWPRO Risk Management Credit discounts.

Premium

Eligible for discount equal to 75 per cent of base premium, to a maximum of $2,212.50.

Real Estate Practice Coverage Option

Eligibility

All lawyers who intend to practice real estate law in Ontario in 2018 must be eligible for and apply for this coverage option.

"ELIGIBLE" means eligible to practice real estate law in Ontario, as permitted by the Law Society. Categories of lawyers who would not be eligible to practice real estate law in Ontario, include:

- those who are in bankruptcy;
- those who have been convicted or disciplined in connection with a real estate fraud;
- those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practicing real estate, or an undertaking not to practise real estate.

Premium

$100 per insured lawyer.

4. Premium Payment Options

Instalment Options

- Lump sum payment by cheque or pre-authorized bank account debit: eligible for $50 discount;

- Lump sum payment by credit card;
- Quarterly instalments;
- Monthly instalments.

5. E-filing Discount

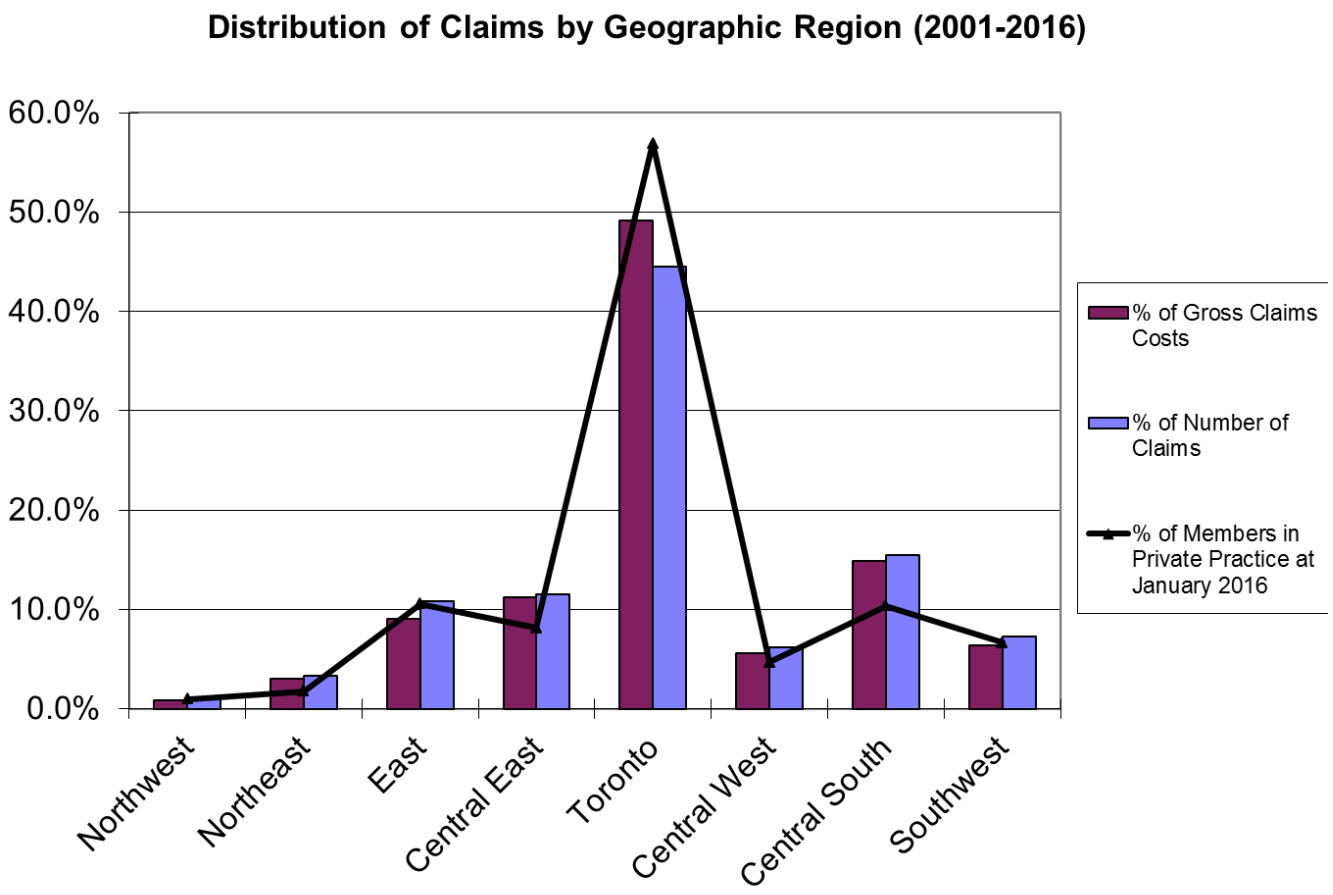
- $25 per insured lawyer (for renewal applications filed online on or before November 3, 2017).

6. LAWPRO Risk Management Credit

- $50 per course, subject to a $100 per insured lawyer maximum discount, will be applied under the 2018 insurance Program.
- Under the expectation that this will continue under the 2019 Program, LAWPRO will continue to collect data for pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2017 and September 15, 2018, where the lawyer completes and files the required LAWPRO Risk Management Credit online declarations by September 15, 2018.
- LAWPRO's Online Coaching Centre is included as a pre-approved course, where the insured lawyer or paralegal completes at least three modules between September 16, 2017 and September 15, 2018 towards the 2019 Program insurance.
- The premium credit includes credit for select programs offered by the Law Society's Member Assistance Program (MAP) (to a $100 per insured maximum amount).
- The premium credit is also available to paralegal partners or shareholders in combined licensee firms insured under the Program.

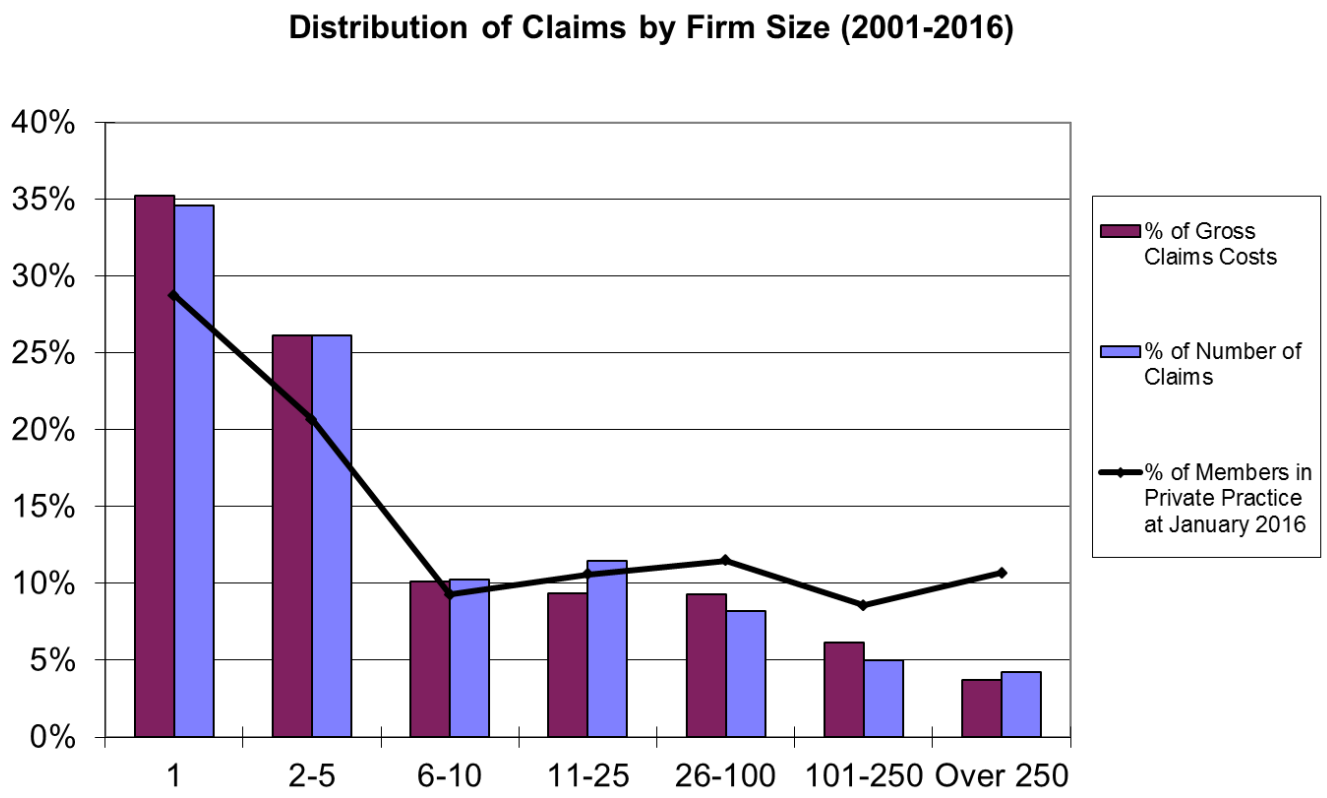
Appendix "B"

Distribution of Claims by Geographic Region



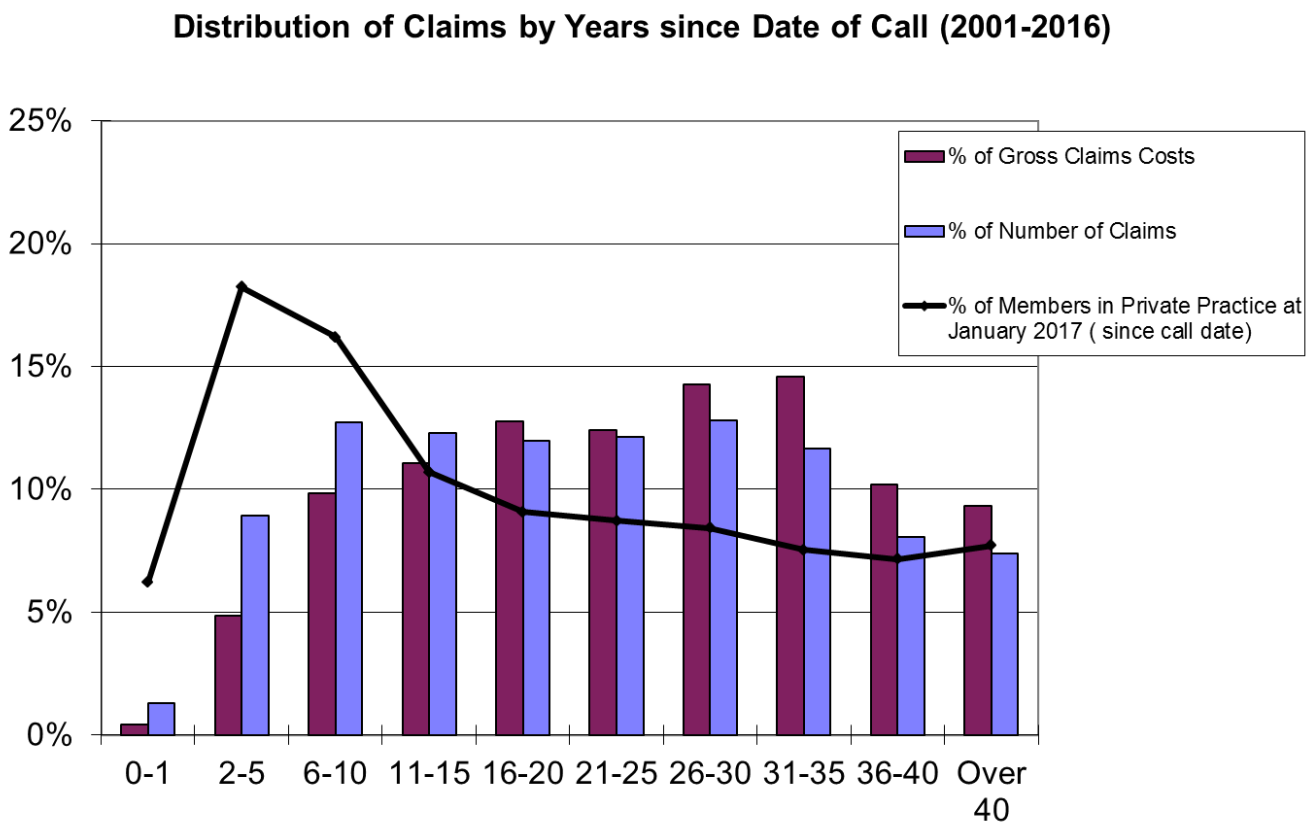
Appendix "B"

Distribution of Claims by Firm Size



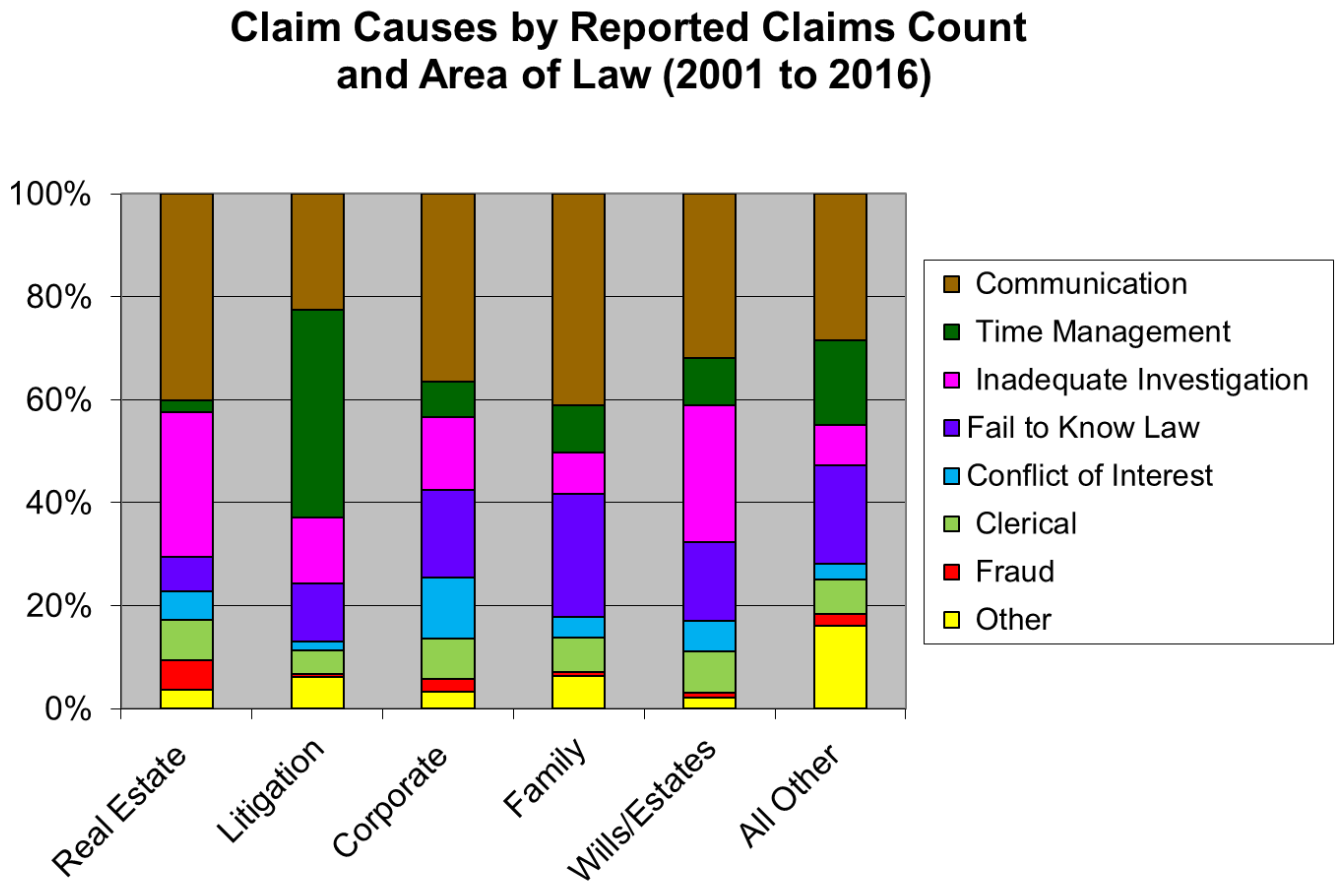
Appendix "B"

Distribution of Claims by Years since Date of Call



Appendix "B"

Distribution of Claims by Reported Claims Count and Area of Law



Communications: Communication-related errors (including poor communication, not keeping clients informed or failing to obtain client consent) are the biggest causes of claims in all areas of law (except litigation, where it is the #2 cause) and in firms of all sizes. While the most numerous claims, they are at the same time the most easily prevented. Lawyers can reduce their exposure to these types of claims by controlling client expectations, actively communicating with the client at all stages of a matter, documenting advice and instructions, and confirming in writing what work was done on a matter at each step along the way.

Time management: These kinds of claims including failing to ascertain a deadline, failing to calendar the deadline, and failing to react to the deadline even when it was known. These lapses often become claims when a limitation period ends up being missed or an action is administratively dismissed due to failing to move the litigation forward appropriately. There are also claims resulting from procrastination when a lawyer lets files that require work languish for extended periods of time. Time management claims are heavily concentrated in the litigation field, as it is so reliant on deadlines. They are also high in the intellectual property area. Practice management software and tickler systems can help prevent these claims, as can lawyers building in more time cushions so that they are not adversely affected by unexpected delays.

Inadequate investigation: Modern technology and busy practices may be behind the tendency of lawyers to give quick legal advice without taking extra time to dig deeper or ask appropriate questions on a client's matter. LAWPRO has seen a big increase in these types of claims in real estate, litigation and will/estates areas of law. High-volume real estate practice often means lawyers do not have enough time to ask the clients about their plans for the property, and as a result don't do the necessary searches or obtain the proper title insurance.

Failure to know/apply the law: These claims result from a lawyer not having sufficient or current knowledge of the relevant law on a matter in which he or she is working. Extensive federal and provincial legislation, as well as voluminous case law, help make this the second-most-common type of claim in family law. This category also includes failing to know or appreciate the consequences of tax law in corporate/commercial matters. Lawyers can best avoid this type of claim by sticking to the law they know best and not "dabbling" in other areas.

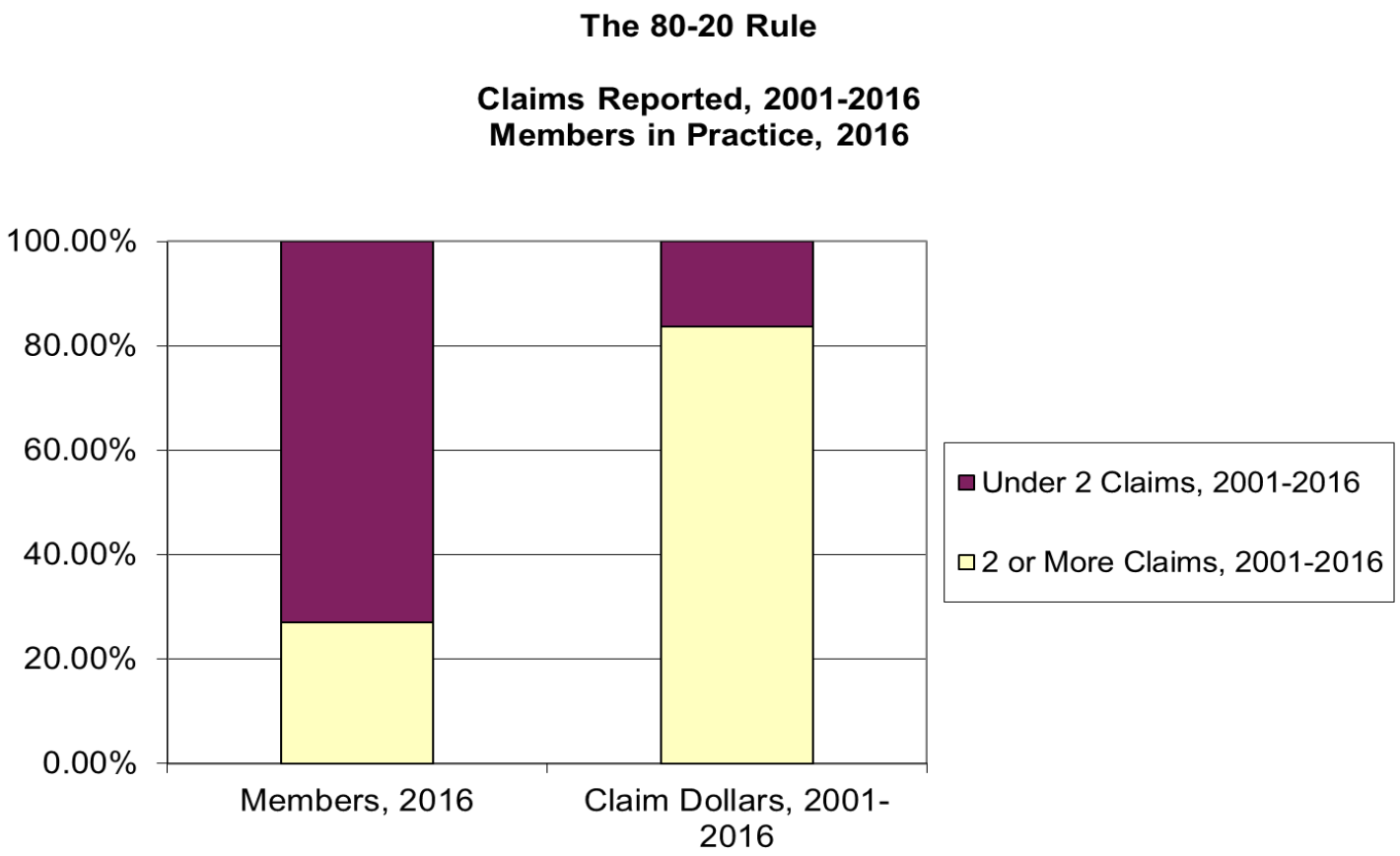
Conflict of interest: There are two types of conflict claims: the first arises when conflicts occur between multiple current or past clients represented by the same lawyer or firm. The second is a conflict that arises when a lawyer has a personal interest in the matter. As they regularly act for multiple clients/entities, real estate and corporate commercial lawyers experience proportionately more conflicts claims than other areas of law, while litigators have a relatively low rate of conflicts claims.

Clerical errors: These types of errors include things such as simple clerical mistakes, errors in mathematical calculation, work delegated to an employee or outsider that is not checked and failure to file documents. As important as delegation is to the efficient functioning of a law firm, lawyers need to take the time to review the work as they are ultimately responsible for it.

Fraud: Fraud continues to be a significant risk for LAWPRO, one which could cost the Program significant claims dollars if not prevented. Lawyers are reporting attempted frauds to LAWPRO on a daily basis. Fraudsters on occasion still successfully dupe lawyers and law clerks, and it is not just real estate lawyers who are targeted. Litigation, business and family law lawyers are regular targets of bad cheque scams involving debt collections, spousal support payments and business loans. Through our efforts, Ontario lawyers are clearly more aware of frauds, but ever more sophisticated frauds mean lawyers must continue to be vigilant.

Appendix "B"

The 80-20 Rule



Appendix "C"

Premium Rating Examples

Premium Rating Examples (In Dollars)

	1995♦	2005♦♦	2015♦♦♦	2018♦♦♦♦
Base premium	$5,600	$2,625	$3,350	**$2,950**
Examples:				
1. Sole Practitioner Practising Real Estate Law - $10,000 defence & indemnity deductible - early lump sum payment discount - early e-filing of application	$5,600*	$2,228	$3,274	**$2,754**
2. Firm Practitioner Practising Real Estate Law - $25,000 defence & indemnity deductible - $250,000 Mandatory Innocent Party cover - early e-filing of application	$6,000*	$2,497	$3,406	**$2,781**
3. New Lawyer Practising in Association - first year in practice discount - $250,000 Mandatory Innocent Party cover - $10,000 defence & indemnity deductible - early lump sum payment discount - early e-filing of application	$3,900*	$1,428	$1,599	**$1,304**
4. Criminal Lawyer (sole practitioner) - Restricted Areas of Practice discount	$5,600*	$1,178	$1,349	**$1,179**

	1995♦	2005♦♦	2015♦♦♦	2018♦♦♦♦
- $10,000 defence & indemnity deductible - early lump sum payment discount - early e-filing of application				
5. Part-time Lawyer (in association) - Part-time Practitioner discount - $1,000,000 Optional Innocent Party cover - $10,000 defence & indemnity deductible	$6,000*►	$1,877	$1,923	**$1,504**
6. Firm Practitioner with 1 Claim - claims history levy surcharge - $5,000 defence & indemnity deductible - $250,000 Mandatory Innocent Party cover	$8,500*	$5,375	$6,100	**$5,575**
7. Sole Practitioner with 2 Claims - claims history levy surcharge - $5,000 defence & indemnity deductible	$10,600*	$7,625	$8,350	**$7,950**
8. Designated Agency Lawyer - $5,000 defence & indemnity deductible - early e-filing application - Risk Management Credit (x 2)	$5,600	$2,500	$3,225	**$613¥**

***** Subject to a $6,000 defence and indemnity deductible (adjusted to $7,500 in the case of an insured with one previous claim, or $8,500 in the case of two previous claims).

► Subject to $250,000 Innocent Party cover only, additional limits not available.

♦ Members are also required to pay a $25 levy for each civil litigation or real estate transaction not otherwise excluded.

♦♦ Members are also required to pay a $50 levy for each civil litigation or real estate transaction not otherwise excluded.

♦♦♦ $65 per real estate transaction and $50 per civil litigation transaction. Premium for the Real Estate Practice Coverage Option was also applied.

♦♦♦♦ $65 per real estate transaction, $100 per civil litigation transaction, and $100 Real Estate Practice Coverage Option applied.

¥ If a lawyer is employed exclusively be one or more Designated Agencies and any civil litigation transaction is performed in the course of such employment, the Lawyer is not required to pay a civil litigation transaction levy surcharge.

Appendix "D"

LAWPRO Vision, Mission & Values

LAWPRO®

Our vision

To be regarded as the preferred insurer in all markets and product lines in which we do business.

Our mission

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

Our values

Professionalism

Individually and as a team, we hold ourselves to the highest professional standards.

We deliver programs and services known for quality and cost-effectiveness, and for being practical, helpful and relevant.

We demand the best of ourselves every day and in everything we do.

Innovation

We foster a climate in which creativity, innovation and change can flourish.

We share ideas, skills and knowledge and encourage continual learning.

We value teamwork and collaboration, and the diverse strengths and perspectives of others.

Integrity

We act with the highest levels of integrity in all of our interactions and decisions.

We aim to always be consistent, fair, ethical and accountable.

Service

We strive for excellence in customer service.

We share our knowledge, experience and expertise with our customers and with each other, so that together we can identify, prevent and solve problems.

We take the time to listen and understand, so we can respond effectively and empathetically to our customers and to each other.

We demonstrate courtesy and genuine respect for all.

Leadership

We try to make the world a better place, and to that end lend our energy and expertise to many communities.

Appendix "E"

LAWPRO Statement on Corporate Social Responsibility

LAWPRO®

Statement on Corporate Social Responsibility

LAWPRO's vision is to be regarded as the preferred insurer in all product lines and markets in which it does business.

Implicit in this vision – and in the values that support our vision – is a commitment to being a responsible, involved and accountable citizen of the many communities in which we hold membership: the employer community, the insurance community, the legal community, and of course the larger community in which we all live.

The LAWPRO Corporate Social Responsibility Statement is informed by this spirit of community and accountability, while acknowledging that 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. Our social responsibility commitment as a corporate body is focused on four principal areas:

Providing a healthy and rewarding workplace

We respect and value our employees and the vital role they play in enabling the company to fulfill its mandate. To that end we adopt policies and practices that not only comply with applicable law and fair labour practices, but also respect diversity, promote inclusion and fellowship, cultivate professional growth through education and service, and promote health, safety and wellness, in the workplace and in personal life.

Respecting the environment

We believe that individually and as a company we have a role to play as stewards of our environment and its resources. To that end we support and promote initiatives in our company that help advance the goal of a sustainable environment.

The company supports the work of its employee-led Green Committee, which aims to educate LAWPRO employees about the role individuals and organizations can play in protecting and improving the environment. LAWPRO also has spearheaded a company-wide campaign to reduce reliance on paper and related products, and facilitate use of technology in all aspects of the company's operations. The company actively encourages initiatives such as these that meet a dual mandate of being stewards of the environment and the bar's resources.

Fostering the legal community

We view a committed, healthy and diverse bar as essential to the functioning of a democracy and to the protection of individual rights in society.

We have over the years provided financial and in-kind support to organizations that promote and deliver lawyer wellness programs. As well, we make available wellness information and resources electronically at no cost.

We support and sponsor a range of legal-related charitable and non-profit causes that advance the role and reputation of lawyers in our community and, by implication, foster access to justice in Canada. We also work to support charitable initiatives which have captured the interest and imagination of the bar and their clients. We promote the enrichment of the bar through our promotion of legal education, both internally and externally, and by fostering the building of relationships within the legal community.

Supporting the broader Canadian community

We acknowledge that, as highly skilled and employed individuals, we are among the fortunate in our community. LAWPRO employees give back by selecting five registered charities annually and partner with the company to fundraise for their benefit. In addition, each LAWPRO employee may request one "charity day" per year to undertake work for the registered charity of the employee's choice.

We actively contribute to the advancement of the Canadian insurance industry, and engage in a dialogue with government in the interests of the bar and the Canadian consumer.

We promote inclusion by working to expand the range of our materials available in both official languages and by providing materials in other languages based on level of demand.

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