TAB 5

REPORT TO CONVOCATION

SEPTEMBER 2020

TO: The Treasurer and Benchers of the Law Society of Ontario

RE: 2021 Insurance Program: Transmittal of Report to Convocation

The LAWPRO primary errors and omissions policy and program is updated each year to address the current environment and the changing risks faced by the Ontario bar. LAWPRO is successfully adapting to and transitioning through the changing circumstances and challenges of theCOVID-19 pandemic.

The financial viability of an independent malpractice insurer, particularly in a hardening market when insurance can be more difficult to obtain at an affordable rate, is paramount to meeting the Law Society's public protection mandate and to helping the profession through a situation like we are currently experiencing. If LAWPRO's financial health is compromised, we run the chance of another insurance crisis, less protection for the public, and no backstop for Ontario lawyers.

Economic downturns typically mean an increase of malpractice claims as clients seek recompense from their lawyers for the losses they have suffered. There are predictions that Ontario may be headed into a deeper and longer downturn than we have seen in many years. LAWPRO expects there will be premium increases in future years as a result of pandemic-related claims costs and capital requirements.

As of the end of August, 2020, year-to-date, LAWPRO has opened 10% fewer new claims from the same period last year but for the same period, claims costs are only down 2%. We expect to see claims counts and costs to rebound through the end of this year and into next as courts reopen and economic activity increases.

With careful management, LAWPRO remains fiscally stable. The company was able to offer premium, levy, and deductible payment deferrals during the height of the pandemic while continuing to meet required financial and regulatory obligations. That being said, capital-on-hand has been pushed below the company's preferred range and much closer to the minimums required by our regulator. These minimums set by the provincial regulator exist to ensure the Company withstands adverse scenarios such as a sudden influx of large claims, higher than expected inflation, or investment deterioration.

As part of its mandate, LAWPRO sets its premiums to reflect the risk and kind of work that lawyers do (i.e., those with greater risks pay higher premiums). Those with a lower risk – 35% of the lawyers we insure – receive discounts from the base premium. The following LAWPRO discounts are available in 2021:

For those who take approved risk management courses

$50 discount per approved course, subject to a $100 maximum

For new lawyers

- less than 1 full year in practice: 50 per cent discount
- less than 2 years in practice: 40 per cent discount
- less than 3 years in practice 30 per cent discount
- less than 4 years in practice: 20 per cent discount

For those who limit their practice to criminal[1] and/or immigration law

- 50 per cent discount

For those who work part-time

- 50 per cent discount is available to practitioners restrict their law practice to 20 hours per week up to 750 hours per year and have gross billings of $90,000 per year or less

For those employed at a Designated Agency[2]

- 75 per cent discount in recognition of low risk and enhanced access to justice

What is new for 2021?

The 2021 E&O insurance proposal includes adjustments to address the need for broader vicarious liability risks as affordably as possible and to improve administrative processes for efficiency and cost savings.

Innocent Party coverage for all

For the 2021 policy year, Innocent Party coverage will be included in the base coverage and required for all insureds. The base premium will be raised by $50. The cost of Innocent Party coverage was previously an additional $125 dollars.

This change will reduce the total premiums paid by more than 70% of Ontario lawyers by $75. Roughly 30% of Ontario lawyers will see their annual premium increase by $25 or $50 because of this change.

This change addresses increasingly fluid practice structures, marketing and office arrangements, as well as possible increases in fraudulent activity as we likely head into a recession.

Consolidated deadlines and discounts

The following changes will increase fairness, simplify deadlines and late charges for insureds, make the renewal process clearer and easier for lawyers, and lower costs through reduced administrative work.

Renewal deadlines will be reduced and the late filing surcharge will be decreased by $285.

- A single filing deadline of November 9 will be applied to all renewals instead of multiple staged deadlines.

The surcharge will be reduced from $885 to $600 with an option to have insureds reduce this to $350 by filing renewal applications by a late filing deadline. To ensure fairness for all, this surcharge will be strictly enforced.

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[1] 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.

[2] A "Designated Agency" can include a Civil Society Organization that has been approved for the general premium discount.

One-Click Renewal

To improve the renewal process for lawyers, LAWPRO has developed a one-click renewal process to increase speed and ease for insureds. If a lawyer has no changes from the previous year, they can quickly file online by clicking one button instead of completing the previous form. This saves insureds time, reduces the likelihood of error, and decreases administrative costs for LAWPRO.

LAWPRO was one of the first malpractice insurance companies to offer online renewal over two decades ago. We encourage insureds to file and pay levies online in the My LAWPRO portal. If an insured will not be practising in real estate or civil litigation, they can save time by requesting an exemption from the transaction levy filing requirements during the renewal process.

Continued financial stability provides security for the profession

A properly funded insurance program provides the foundation for Ontario lawyers to confidently offer services to the public in our increasingly complex society. The full impact of the COVID-19 pandemic on LAWPRO remains to be seen. To meet capital requirements, the LAWPRO Board expects that premium increases will be necessary in future years due to decreasing premium revenue and lower investment income coupled with an expected increase in claims costs. To allow LAWPRO to meet minimum capital requirements set by our regulator in 2021 and future years, some consideration was given to further increasing premiums for the 2021 year, but the Board recognized the financial challenges that many members of the profession currently face.

Conclusions

The circumstances of the profession and the state of the economy remain fluid. LAWPRO Board members and Management continue to monitor and analyze changes to the claims portfolio and capital requirements. Continuous review and clarification make the insurance program as effective as possible while financial acuity, effective claims handling, and responsive customer service have guided the Company since its inception over 25 years ago. The LAWPRO Board of Directors recommends that Convocation accept the proposed changes to the Primary Program of Insurance for 2021 outlined in the attached report.

Andrew J. Spurgeon
Chair
LAWPRO

Daniel E. Pinnington
President & CEO
LAWPRO

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LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")

REPORT TO CONVOCATION – SEPTEMBER 2020

INTRODUCTION

1. LAWPRO provides the mandatory professional liability insurance coverage for the more than 29,000 Ontario lawyers in private practice. Each September, LAWPRO's Board of Directors reports to Convocation on changes to the insurance program for the following calendar year. The timing of this Report is necessitated by the logistics of renewing all policies effective January 1, and the need to negotiate and place related or corollary reinsurance treaties prior to the renewal date.

2. For 2021, LAWPRO Management has conducted its annual review of the Primary Errors and Omissions Program (the "Primary Program") and offers an insurance program for 2021 with the changes outlined in this Report.

3. Based on LAWPRO's mandate from Convocation, careful consideration of claims trends, affordability, coverage needs and potential risks, the LAWPRO Board of Directors recommends that Convocation accept this Primary Program of Insurance for 2021 so that it can be implemented by January 1, 2021.

BACKGROUND

4. LAWPRO was created in response to the "insurance crisis" of the early 1990s. At that time, it was common practice for lawyers to engage in mortgage brokering when acting on real estate matters. In the aftermath of a real estate crash, many clients sued their lawyers for the financial losses they suffered. Largely as a result, in 1994, the Law Society of Ontario's ("Law Society" or "LSO") insurance program was underfunded by more than $200 million.

5. The resulting crisis presented the Ontario Bar with one of the most serious challenges in its history: finding $200 million to cover the claims the Law Society's insurance program faced, and deciding whether to continue to provide Errors and Omissions ("E&O") coverage for Ontario lawyers or to withdraw from the insurance market entirely. Withdrawing completely would have meant that replacement insurance would be unavailable at the previous price

point and may not have been available at all.[1] Either way, the Law Society determined that "Convocation can no longer attempt to deliver a Rolls Royce insurance policy at the cost of a Ford."[2]

6. To address the crisis, Convocation formed a Task Force which ultimately recommended the creation of a specialised, regulated insurance company with financial accountability. Convocation accepted this recommendation and the mandate given requires that the Law Society's insurance program:

- Operate independently from the Law Society;
- Operate in a commercially-reasonable manner (i.e., revenues must cover expenses);
- Offer premiums that generally reflect risk (i.e., those with greater risk pay higher premiums); and
- Settle claims fairly and quickly, though not on a "no-fault" basis.

7. LAWPRO was created further to this recommendation and, for the last 25 years, it has operated based on the mandate and principles laid out in the 1994 Task Force Report.

8. How is this relevant to today? LAWPRO was created in response to a crisis – in some ways like what we are experiencing right now. The financial viability of an independent malpractice insurer, particularly in a hardening market when insurance can be more difficult to obtain at an affordable rate, is paramount to meeting the Law Society's public protection mandate and to helping the profession through a situation like we are currently experiencing. If LAWPRO's financial health is compromised, we run the chance of another insurance crisis, less protection for the public and no backstop for Ontario lawyers.

2021 PROGRAM FEATURES

9. As a matter of public protection, E&O insurance is required of all lawyers in private practice, including sole practitioners, lawyers practising in association or partnership, paralegals acting in partnership with lawyers, paralegals holding shares in professional corporations with lawyers, and lawyers practising in a law corporation who are providing services in private practices. Lawyers can be exempt from the insurance requirement and

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[1] This is the situation the Law Society of England and Wales has struggled to deal with for the last several years. See "*Aon unit in shock professional indemnity insurance exit*", Insurance Business UK, 23 Aug 2019.

[2] *Report to Convocation of the Insurance Task Force and the Insurance Committee*, October 28, 1994 (Amended November 15, 1994), paragraph 51 on page 15.

exemption eligibility criteria is available at lawpro.ca. Exemption scenarios include when lawyers engage in the practice of law only for and on behalf of a corporate or government employer, lawyers who only engage in the practice of law as an employee or volunteer in a clinic that is funded by Legal Aid Ontario and that meets certain criteria, lawyers on a temporary leave of absence, or lawyers otherwise not practising law.

10. The following is a brief summary of the 2021 Primary Program:

Coverage Limits

- $1 million per claim/$2 million aggregate limit applicable to claim expenses, indemnity payments and/or cost of repairs together

Innocent Party Coverage

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, employed lawyers and firm employees.

Beginning in 2021, this coverage will be included in the base premium for all insureds in private practice in Ontario. The base premium will increase $50 as a result of this change. Prior to 2021, the additional premium for this coverage was $125 per insured lawyer. This means over 20,000 lawyers in Ontario will see a net **$75 premium decrease.**

- $250,000 sublimit for innocent party claims per claim/in the aggregate included in base coverage
- Additional coverage can be purchased to increase limits as follows:

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

Standard base premium

- $3,000 per insured lawyer

Transaction Premium Levy

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

Deductible

- Standard deductible is $5,000 per claim

- LAWPRO offers deductible options from $0 to $25,000. Insureds can choose to have the deductible apply to both claim expenses and indemnity payments, or to indemnity payments only. Premiums will increase or decrease depending on the deductible option. Each lawyer practicing in a law partnership or law corporation must elect the same amount and type of deductible as all other lawyers in the firm.

Premium Discounts

For those who take approved risk management courses

- $50 discount per approved course, subject to a $100 maximum

For new lawyers

- less than 1 full year in practice: 50% discount
- less than 2 years in practice: 40% discount
- less than 3 years in practice 30% discount
- less than 4 years in practice: 20% discount

For those who limit their practice to criminal[3] and/or immigration law

- 50% discount

For those who work part-time

- 50% discount is available to practitioners who in both their current and prior fiscal year, restrict their law practice to 20 hours per week on average for each week worked, up to 750 hours per year (including time for undocketed work), and have gross billings of $90,000 per year or less

For those employed at a Designated Agency[4]

- 75% discount in recognition of low risk and enhanced access to justice

11. The following table contains examples of premiums which would be charged to members depending on the nature of their practice, along with historical premiums.

[3] 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.

[4] A "Designated Agency" can include a Civil Society Organization that has been approved for the general premium discount.

Premium Rating Examples (In Dollars)

	1995[5]	2005[6]	2015[7]	2019[8]	2021[9]
Base premium	$5,600	$2,625	$3,350	$2,950	**$3,000**
Examples:					
1. Sole Practitioner Practising Real Estate Law - $10,000 defence & indemnity deductible - early lump sum payment discount - $250,000 Optional Innocent Party cover	$6,000[10]	$2,528	$3,549	$2,854	**$2,825**
2. Firm Practitioner Practising Real Estate Law - $25,000 defence & indemnity deductible - $250,000 Mandatory Innocent Party cover	$6,000[11]	$2,547	$3,431	$2,806	**$2,725**
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	$3,900[12]	$1,478	$1,624	$1,329	**$1,225**

[5] Members are also required to pay a $25 levy for each civil litigation or real estate transaction not otherwise excluded.
[6] Members are also required to pay a $50 levy for each civil litigation or real estate transaction not otherwise excluded.
[7] $65 per real estate transaction and $50 per civil litigation transaction. Premium for the Real Estate Practice Coverage Option was also applied.
[8] $65 per real estate transaction, $100 per civil litigation transaction, and $100 Real Estate Practice Coverage Option applied.
[9] $250,000 Innocent Party cover now provided free for all insureds.
[10] 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).
[11] Ibid
[12] Ibid

4. Criminal Lawyer (sole practitioner) - Restricted Areas of Practice discount - $10,000 defence & indemnity deductible - early lump sum payment discount	$5,600[13]	$1,228	$1,374	$1,204	**$1,225**
5. Part-time Lawyer (in association) - Part-time Practitioner discount - $1,000,000 Optional Innocent Party cover - $10,000 defence & indemnity deductible	$6,000[14] [15]	$1,877	$1,923	$1,504	**$1,400**
6. Firm Practitioner with 1 Claim - claims history levy surcharge - $5,000 defence & indemnity deductible - $250,000 Mandatory Innocent Party cover	$8,500[16]	$5,375	$6,100	$5,575	**$5,500**
7. Sole Practitioner with 2 Claims - claims history levy surcharge - $5,000 defence & indemnity deductible	$10,600[17]	$7,625	$8,350	$7,950	**$8,000**
8. Designated Agency Lawyer - $5,000 defence & indemnity deductible - Risk Management Credit (x 2)	$5,600	$2,550	$3,250	$638	**$650**[18]

[13] Ibid
[14] Ibid
[15] Subject to $250,000 Innocent Party cover only, additional limits not available.
[16] Supra, note 11
[17] Supra, note 11
[18] 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.

SUMMARY OF KEY CHANGES:

Innocent Party coverage for all

12. A $250,000 sub-limit for innocent party coverage was previously required for all lawyers working in association or partnership and was available on an optional basis for others. Even though more than 70% of LAWPRO insureds typically purchase Innocent Party coverage in a given year, our data and claims experience indicate that not all insureds who require this coverage actually purchase it. As a result, insureds without the coverage were not protected as they should have been and, in essence, those that paid for the coverage subsidized claims costs for those that did not opt for it.

13. Further to our goal to have premiums reflect, as closely as possible, actual risk and to meet our public protection objectives, innocent party coverage will now be built into all Primary Program policies. This change will address increasingly fluid practice structures, marketing and office arrangements as well as possible increases in fraudulent activity as we likely head into a recession.

For the 2021 policy year, Innocent Party coverage will be required for all insureds and the base premium will be raised by $50. The cost of Innocent Party coverage was previously an additional $125 dollars. This change will lower the premium for over 20,000 Ontario lawyers by $75 and increase it by $25-$50 for the remaining lawyers, depending on whether they are paying the full or discounted base premium.

Consolidated Deadlines and Discounts

14. The following administrative changes are meant to increase fairness, simplify deadlines and late charges for insureds, make the renewal process clearer and easier for lawyers, and lower costs through reduced administrative work.

Renewal deadlines will be simplified, and the late filing surcharge will be decreased by $285.

- A single filing deadline of November 9 will be applied to all renewals instead of multiple staged deadlines.
- There is a premium surcharge for filing renewals after the deadline because our data indicates that lawyers who file late or do not file at all are more than twice as likely to report a claim than those that meet filing deadlines. In 2021, the surcharge will be reduced from $885 to $600 with an option to have insureds reduce this to $350 by filing renewal applications by a late filing deadline. To ensure fairness for all, this surcharge will be strictly enforced.
- The $25 e-filing discount will be discontinued. This discount was introduced to encourage lawyers to try filing online instead of through the mail. This incentive is no longer needed since filing online is overwhelmingly preferred, less expensive and a more efficient filing option for LAWPRO and its insureds.

Introduction of One-Click Renewal

15. To improve the renewal process for lawyers, LAWPRO has developed a One-Click renewal to increase speed and ease for insureds. If a lawyer has no changes from the previous year, they can quickly renew their coverage on the website by clicking one button instead of completing the previous form. This saves insureds time, reduces the likelihood of error, and decreases administrative costs for LAWPRO.

HELPING TO MANAGE RISK DURING PANDEMIC

16. The disruptions resulting from the COVID-19 pandemic are causing uncertainty for many lawyers as they attempt to run their practices remotely while continuing to provide professional services to their clients. LAWPRO is working to update lawyers on the latest developments, to make them aware of changes to legislation and court

procedures, and to provide resources to make remote practice easier and minimize the risk of malpractice claims.

A number of resources have been prepared by practicePRO, LAWPRO's risk management initiative, to help lawyers transfer work online, manage legal technology, understand new rules, and develop business continuity plans. For example, in April 2020, the most frequently downloaded resources were:

- Technology Products for Lawyers and Law Firms
- Video Conferencing Checklist
- Work from Home Technology Tips
- Wills and Estates Claims Fact Sheet

All resources developed by the practicePRO program to help lawyers manage during the COVID pandemic are available on the practicePRO website and they focus on the areas of: effective use of technology, fraud and cyber security, health and wellness, and rule changes for the litigation, real estate and wills and estate bars.

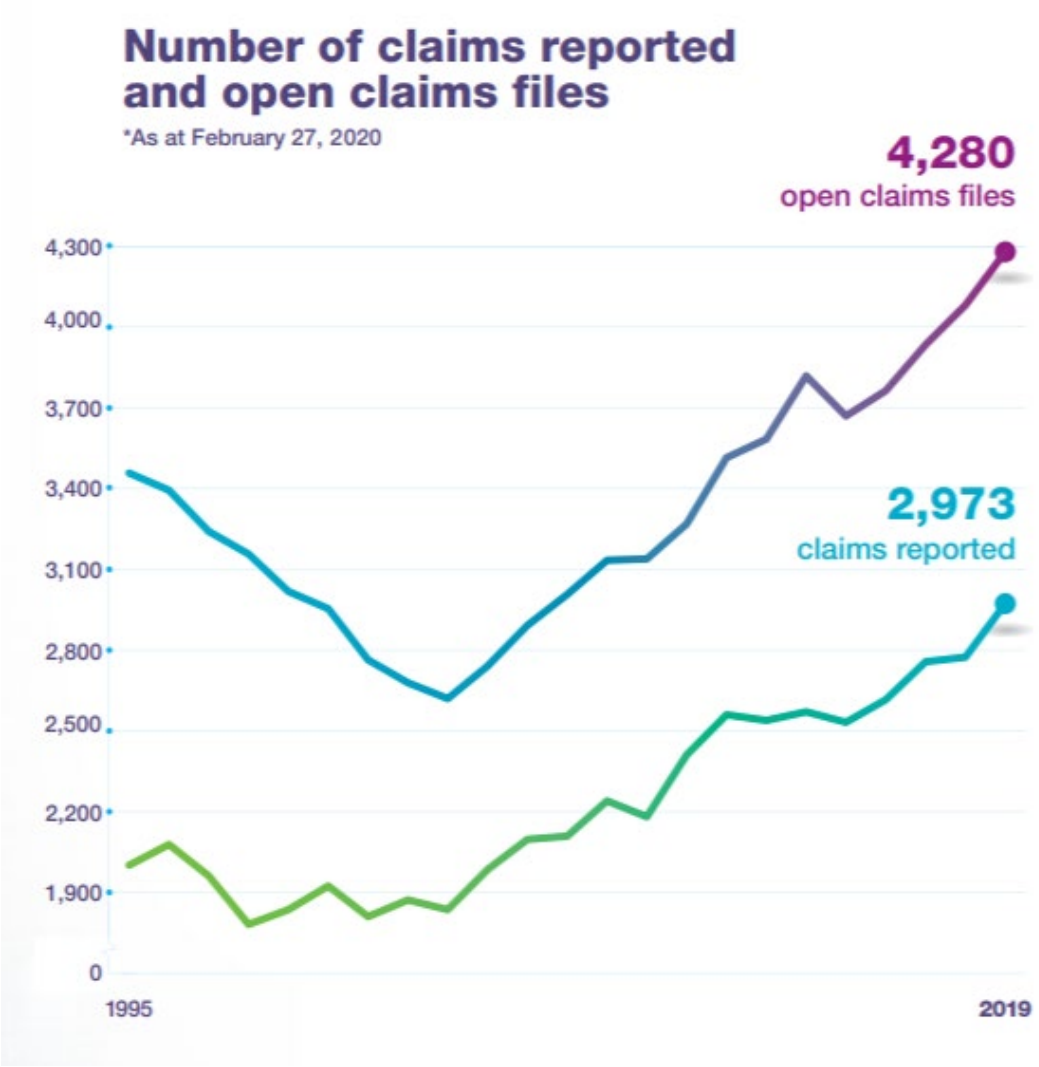
CLAIMS TRENDS

17. Economic downturns typically mean an increase of malpractice claims as clients seek recompense from their lawyers for the losses they have suffered. There are predictions that Ontario may be headed into a deeper and longer downturn than we have seen in many years. LAWPRO expects there will be premium increases in future years as a result of pandemic-related claims costs and capital requirements.

18. LAWPRO's long term experience is that claims come to light on average 2-3 years after the work on a matter was done. In the real estate, family, and wills and estates matters claims can arise decades after a file was closed.[19]

[19] "Don't let claims follow you into retirement", LAWPRO Magazine Vol. 16.3 (February 2017).

19. The 2019 claim figures reflect steadily increasing claims counts[20]. The number of new claims reported to LAWPRO during 2019 reached 2,973, continuing an upward trend that started in 2006.



20. In addition to the increasing number of claims, each claim is costing LAWPRO more, on average. The average cost per claim in recent years continues to grow, reaching $36,946 from $30,000 we saw at the beginning of the millennium. In a typical year we would expect to see approximately 275 claims costing more than $100,000, and 5-15 claims that will hit the $1 million dollar per claim policy limit.

[20] The high number of open claims in 1997 reflects the Primary Program's recovery following the insurance crisis of the mid-1990s.

21. As of the end of August, 2020, year-to-date LAWPRO has opened 1,680 new claims, a count that is down 10% from the same period last year. For the same period, claims costs were $48.3 million, down 2% relative to last year. We expect to see the claims count and costs rebound through the end of this year and into next year as courts reopen and economic activity increases.

22. We can't know exactly how the changes brought on by COVID-19 will affect claims in the coming years, but there is consensus that we are entering into a recession which we know historically will negatively impact claims. Our current estimate for 2020 claim costs is $105 million, and for 2021 is approximately$115 million.

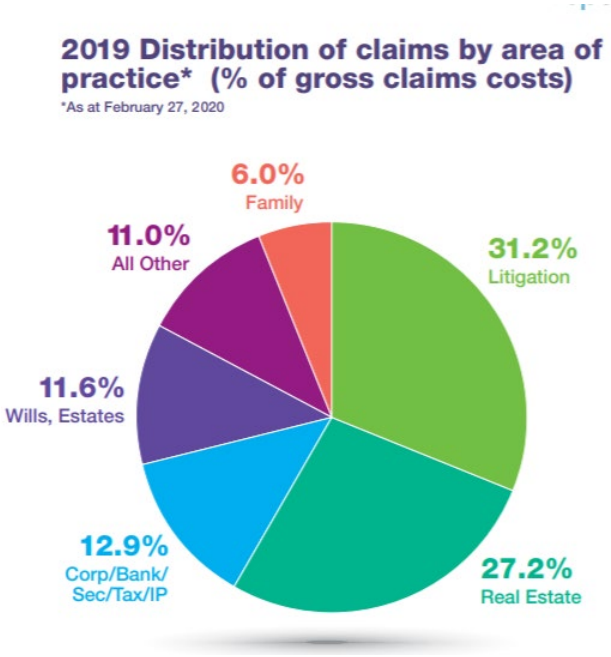
Where are claims happening?

23. LAWPRO has prepared fact sheets to highlight the most common causes of malpractice claims for major areas of practice. They can be viewed at: practicepro.ca/factsheets.

24. LAWPRO's present risk analysis reaffirms the results of previous Reports to Convocation 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 55% of the claims reported and 58% of the claims costs under the Primary Program in 2019. In particular,

a) Real estate claims costs have trended upwards since 2001, with real estate accounting for an average of 27% of costs in those years. Since 2004, claims costs in this area of practice have increased almost 96%;

b) Since 2011, the exposure relating to the practice of civil litigation has been substantially more than that traditionally seen, with civil litigation accounting for 31% of both the cost and number of claims reported under the Primary Program in 2019.



c) In 2019, the nature of claims against civil litigators was also reaffirmed, with time management claims (which includes missed limitation periods, administrative dismissals, and procrastination) accounting for almost 42% of litigation claims, whereas lawyer/client communications issues, inadequate investigation,

failures to know or apply the law, clerical errors and conflicts of interest accounted for about 51% 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 over three times more likely to report a claim during the past year than those with no claims in the prior 10 years.

25. LAWPRO has been watching the civil litigation area of law carefully for the past several years. Despite steps taken by LAWPRO such as articles, presentations, the "Rule 48 Toolkit" and the mandatory increased deductible for certain administrative dismissal claims, the reality is that in recent years the growth in civil litigation claims has outstripped the overall growth in claims. For example, from 2006 through 2012 LAWPRO received an average of 785 civil litigation claims each year, and during 2013 through 2019, the average increased to 925 each year. This growth of 18% exceeded the 9% 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 2008 through 2017, the average claims incurred was $6,000 per full-time equivalent civil litigation practitioner, an amount that exceeds what was collected in premiums (including civil litigation transaction levies) from this demographic.

26. Across the whole claims portfolio, communication errors between lawyer and client continue to be the most common cause of loss, with inadequate investigation, time management, and errors of law following in sequence. A more detailed description of the common claims scenarios for each of these broad error types is available in **Appendix "D"**.

RISK MANAGEMENT INITIATIVES

27. A principal mandate of LAWPRO is to help the legal profession reduce claims by helping them manage the risks associated with practice. As Professor Richard Susskind

said: "*We like to build a fence around the top of a cliff, rather than station an ambulance at the bottom."* This is accomplished through the practicePRO program; the TitlePLUS title insurance program, and support of the Member Assistance Plan ("MAP") from Homewood Health. LAWPRO contributes almost one-half the cost of operating the MAP.

- **practicePRO® Program:** LAWPRO's successful risk management and claims prevention initiative is a recognized source of high-quality risk management tools and resources that help lawyers avoid malpractice claims. All practicePRO resources are made available to all Ontario lawyers and paralegals at no charge. These include articles in *LAWPRO Magazine* and other law-related publications, information on the practicePRO website and AvoidAClaim blog, social media, and live presentations. The practicePRO website features LAWPRO's claims prevention resources that are particularly valuable to solos and small firms.
- **Helping lawyers avoid fraud:** Thanks to LAWPRO's efforts, fraud-related claims are down, but lawyers are still being victimized and fraud-related claims continue to be an ongoing and significant concern for LAWPRO. Currently, wire frauds are the most common with a handful of lawyers being victimized in a typical year (i.e., lawyers wiring funds from trust account after being duped with a fake cheque). Insureds can call LAWPRO in the event they are targeted by a suspected fraudster. Working within confidentiality obligations imposed by the *Rules of Professional Conduct*, one of our Fraud Team members will go through the common fraud scenarios to help spot red flags that may indicate the lawyer is being duped and help determine if the matter is legitimate or not. In the event the matter is a fraud and there is a potential claim, we will work with the lawyer to try to prevent the fraud and minimize potential claims costs. By visiting the AvoidAClaim.com blog and typing in names or scenarios, lawyers can see confirmed frauds reported to us. Our Cyber Fraud Fact Sheet and Real Estate Fraud Fact Sheet, available at practicepro.ca/fraud, are a good reminder on key ways to identify possible dangerous situations. It is clear that LAWPRO's efforts to help insureds avoid frauds have reduced the number of fraud-related claims.

- **The LAWPRO Risk Management Credit:** This premium credit, available since 2001, is a significant LAWPRO risk management initiative. To be eligible for a credit ($50 each up to a maximum of $100) on premiums for 2021, lawyers (and paralegal insureds in combined licensee firms) must have participated in LAWPRO-approved CPD programs or Homewood Health e-Learning courses between September 16, 2019 and September 15, 2020. Tens of thousands of lawyers attended the over 300 programs that qualified for the credit during this period. The approval process is handled by LAWPRO (we look for programs that include content on where claims happen, why they happen, and the steps that can be taken to lessen the likelihood of a claim) and is distinct from the Law Society's CPD accreditation process.
- **TitlePLUS® Program:** TitlePLUS insurance is a competitive title insurance product that makes a positive difference in the Ontario real estate market. It expands the title insurance choices offered to consumers and lawyers and has helped broaden coverage while keeping title insurance premiums down. In addition, the TitlePLUS program regularly catches fraud due to automated, proprietary, and secret flags built into its underwriting that contributes to saving money – for consumers and the mandatory insurance program.
- **Member Assistance Program:** Lawyers are exposed to high levels of stress on a daily basis and long term stress can drive people to use, misuse or even become addicted to alcohol or legal/illegal drugs, or to experience challenges to physical or mental health. While it can be difficult to identify the reasons underlying why errors occur and claims develop, stress, addictions, and other untreated wellness issues are often found or suspected to be contributing factors in many LAWPRO claims. To help support lawyers in private practice, LAWPRO contributes approximately one-half the annual cost of the Member Assistance Plan ("MAP"). The MAP provides confidential assistance to Ontario lawyers, paralegals, judges, students at Ontario law schools and accredited paralegal colleges, licensing-process candidates, and their families.

CHANGES TO THE PRIMARY PROGRAM FOR 2021

28. The LAWPRO Board has determined that the general structure of the current Primary Program appears to meet the needs and practice realities of the profession. In developing the details of the 2021 Primary Program, LAWPRO has considered claims trends and costs, including pandemic-related claims; the changing environment in which lawyers practise; the greater vicarious liability exposure lawyers face due to increasingly fluid practice structures, marketing and office arrangements; and comments received from the profession during the previous year, particularly with respect to simplifying the renewal process. For the 2021 Primary Program, LAWPRO has focused on expanding the availability of coverage for claims involving vicarious liability, simplifying the renewal process, and continuing its commitment to pursuing comprehensive data from insureds in order to ensure that lawyers are paying premiums that are appropriate for their level of risk.

Expanding Innocent Party Coverage to All Insureds

29. Professional liability insurance is intended to cover errors, omissions and negligent acts that can unfortunately and unexpectedly arise when carrying out one's profession. If someone steals from a client, or causes intentional harm to that person, this is not normally covered under malpractice insurance (it would be a claim to the Law Society's Compensation Fund). The reality, though, is that lawyers do not practice in a vacuum. If a client's trust account is plundered, the client will sue the thief, the firm at which the lawyer worked, and individual lawyers who worked with the wrongdoer.

30. Innocent party coverage was introduced to protect these other lawyers who may find themselves associated with someone that did dishonest, fraudulent, criminal or malicious things while purporting to serve clients as a lawyer.

31. While required for lawyers in a firm setting, until now, sole practitioners have been able to buy this coverage on an optional basis. In total, about 21,000 of LAWPRO's 29,000 insured lawyers currently carry this coverage, paying $125 for the base $250,000

coverage. If lawyers want to increase their limits to $500,000 or $1 million, they can do so for an additional $75 and $125 respectively.

32. But practice structures have evolved. The traditional firm and partnership models now sit alongside loose associations where lawyers appear under one name for marketing reasons, or work in a “chambers” setting where lawyers pool office resources and staff without sufficient clarification that each lawyer is practising completely independently of each other. There is also the specter that the malfeasance of a former partner will come to light years later. This exposure is often overlooked by sole practitioners who previously worked with others in a firm setting. It may also provide coverage in the event of malfeasance by a staff person.

33. Increasingly, LAWPRO has seen claims and litigation that test the boundaries of what a “sole practitioner” is when using shared resources with others. This leaves lawyers without innocent party coverage personally exposed.

34. To facilitate the availability of this coverage to all lawyers in Ontario, LAWPRO will be providing the current Innocent Party base sublimit ($250,000) as part of the Primary Program . This will now be included as standard in the coverage for all Ontario lawyers. This will provide better protection to lawyers who had not carried it before, thereby providing better protection for members of the public. The base premium will increase $50 as a result of this change. Prior to 2021, the additional premium for this coverage was $125 per insured lawyer. This change will reduce the total premiums paid by more than 70% of Ontario lawyers by $75. Roughly 30% of Ontario lawyers will see their annual premium increase by $25-$50 because of this change.

35. **Accordingly, the standard Innocent Party Coverage base sublimit ($250,000) will be included as part of the Primary Program for all Ontario lawyers.**

Late Applications and Failure to File

36. LAWPRO insures more than 29,000 lawyers under a single master policy that is issued to the Law Society. The annual renewal cycle commences in early October when applications become available and each lawyer’s coverage is renewed January 1.

Premium payments are not due at the time of renewal. While the majority of LAWPRO's insureds respect renewal deadlines, each year LAWPRO must follow-up with thousands of lawyers who ignore renewal deadlines. These follow-up efforts are very time consuming and costly.

37. LAWPRO goes to extraordinary and time-consuming efforts to remind and encourage lawyers to file a renewal application on time. This includes reminders on its website, in its magazines, and sending out up to six rounds of correspondence to those who have not yet filed. As the final deadline approaches efforts include several hundred personal phone calls to remind people to file.

38. A very large proportion of the lawyers that miss renewal deadlines do so year after year. Claims data shows that lawyers who do not file a renewal application and have the $885 surcharge applied to them are more than twice as likely to report claims than lawyers who do file their renewal applications in a timely way.

39. LAWPRO needs the information in renewal application forms to properly risk-rate the program. In addition, LAWPRO has no choice but to issue "default" (or stripped down) policies to lawyers who have not filed renewal applications. Many of these lawyers will then apply to vary the coverage provided to them by the default policy. By not requesting appropriate coverages at renewal, they are at risk of not being covered and the subsequent changes they request create additional administrative burdens and costs for LAWPRO.

40. To reverse the growing trend that has seen lawyers not adhering to renewal deadlines, LAWPRO will impose a "hard" filing deadline. For the 2021 program renewal, that date is November 9. Immediately following the deadline, those lawyers who have not filed their applications will be notified that a $600 surcharge is being imposed. However, if the lawyer files the renewal application by December 1, that surcharge will be reduced to $350.

41. Why is LAWPRO reducing the late surcharge from $885 to $350 or $600 when lawyers who do not meet filing deadlines are at much higher risk of claims? To the

greatest extent possible, LAWPRO wants to encourage lawyers to reduce their premiums, provide application information, and exhibit positive practice management skills. An incentive is being given to correct missing the deadline, by reducing the $600 surcharge to $350. In this way, LAWPRO will now also be able to better track the claims data for "late filers" who have not met the original deadline but do file soon after.

42. LAWPRO will analyse the data to ensure that these amounts achieve the goal of reflecting the risk of claims and motivating lawyers to file in a timely way. Perhaps the data will support increasing the $600 surcharge or reducing the $350 surcharge. But it will take time for this analysis to be done. In the meantime, LAWPRO is confident these measures will advance awareness of the importance of submitting renewal applications in a timely way and will go some way towards having lawyers at higher risk of claims pay a higher premium to reflect that.

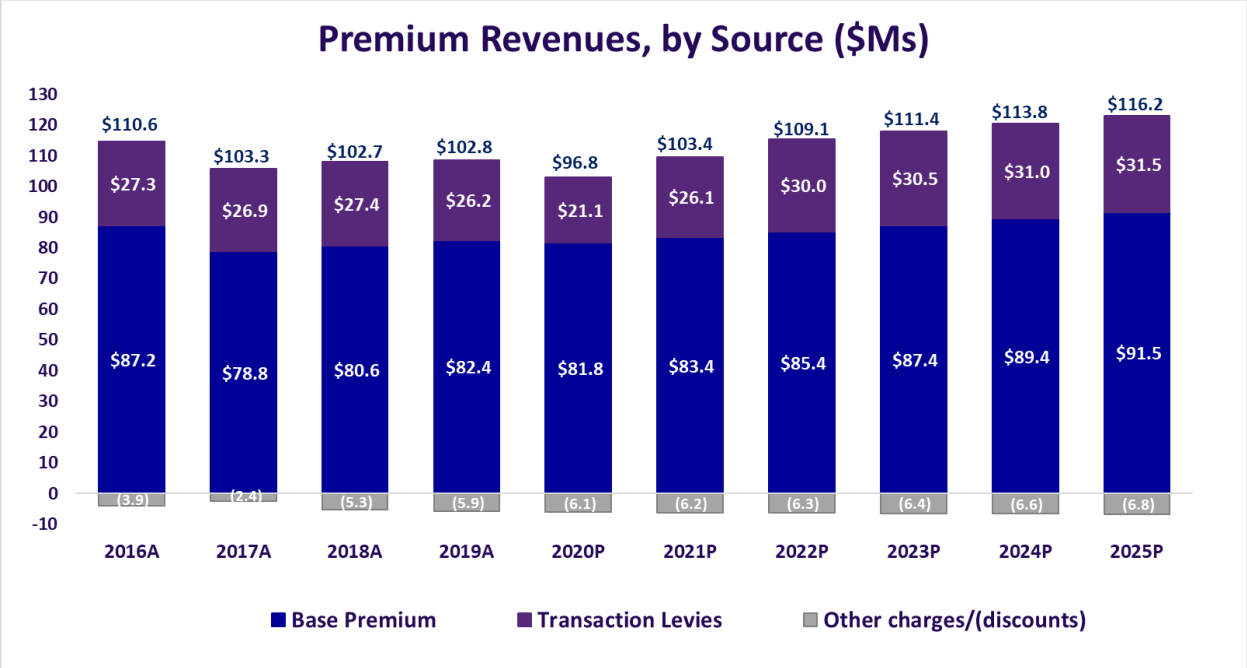
43. **Accordingly, the system for surcharging lawyers for failing to file renewal applications in a timely way will be amended. The surcharge will be reduced from $885 to $600 with an option to have insureds reduce this to $350 by filing renewal applications by a late filing deadline. To ensure fairness for all, this surcharge will be strictly enforced.**

REVENUES

44. To meet the total expected Primary Program claims costs and operating expenses for 2021, LAWPRO evaluates its likely investment income, and then considers premiums[21] and levy surcharges.

45. The projected revenues from premiums and levies are as follows:

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



Investment Income

46. 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. In a typical year investment income provides a per policy subsidy for the base premium of a few to several hundred dollars.

47. LAWPRO's prudent investing philosophy includes a conservative, well-diversified equity portfolio. LAWPRO works to position its portfolio for capital preservation and steady growth. LAWPRO provides further stability to the Primary Program, with the assistance of two professional fund managers, by segregating sufficient money into a separate portfolio (the asset liability matched portfolio or "ALM portfolio") to pay anticipated future claims costs, and any surplus capital is held in a different portfolio ("Surplus portfolio"). The securities in the ALM 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.

48. The ALM Portfolio and the fixed income portion of the Surplus portfolio are impacted by interest rate changes, and together represent around 80% of the total investment portfolio. The Bank of Canada's overnight interest rates have been decreasing for some time, with sudden drops in 2020 due to the pandemic. The rate was 1.75% at the start of the year but was lowered by 1.5% to 0.25% during the month of March. As such, 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. The rates are expected to remain low into 2023.This prolonged "low for long" environment has placed continued pressure on fixed income yields, while the eventual rise in central bank rates could result in a shock to fixed income security prices.

49. As a result of these risks, LAWPRO has maintained a prudent investing philosophy to protect this portfolio, and has revised the estimated return in 2021 to 1.68%, down from the pre-pandemic estimate of 2.58%. Including unrealized gains and losses from the ALM portfolio, LAWPRO had $20 million of investment income in 2018, and $23 million of investment income in 2019. Due to significantly lower investment returns than it has seen in recent years, LAWPRO expects to receive significantly less investment income over the next 2-3 years as a result of the pandemic.

Levy Surcharges

50. As part of its commitment to operating the Primary Program in a commercially-reasonable manner and better ensuring that premiums reflect the general practice risks of insureds (i.e., those that are a higher risk pay a higher premium), LAWPRO utilizes levy surcharges. The use of transaction levies ensures an element of risk rating in the Primary 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 would likely 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 first introduced in 1995. For more information on risk rating, see the discussion beginning at paragraph 64 of this Report.

51. At present, the levy surcharges include a claims history levy surcharge, a $100 civil litigation transaction levy and a $65 real estate transaction levy. Revenues from these levy surcharges are applied as premium revenue, to supplement base premium revenue.

52. The claims history levy surcharge ranges from $2,500 for a lawyer with one claim paid in the last five years in practice (i.e., pay an extra $2,500 per year for the five years following a claims payment), 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.

53. 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% between 1999 and 2009 (prior to the increase in the real estate transaction levy for the 2010 Primary Program).

54. With respect to the real estate transaction levy, the increased use of title insurance is considered to be largely responsible for a reduction in the count of these 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% 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.

55. The Ontario real estate market has been quite resilient in the last few years, but there are indications that the market will be down and varied in the near term. The Teranet-National Bank House Price Index[22] notes a housing market slow down due to COVID-19, which suggests that the real estate market is likely to continue to face pressure in the near to medium term. As of June 2020, real estate transaction levy revenues are below expectations, at 17% under budget, and 5% less than 2019. We estimate the real estate transaction levies will be $16.1 million in 2020, and $19.1 million in 2021.

56. It is estimated that the shutdown of the courts will result in civil litigation transaction levies coming in at $5 million for 2020, 29% under budget. With the reopening of the courts LAWPRO is estimating 2021 civil litigation transaction levies will be $7 million.

57. 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 beyond 2021.

Real Estate Practice Coverage Option (REPCO)

58. In 2006, title fraud had begun to spiral in Ontario. Organized crime was involved in the theft of titles from innocent homeowners in increasing numbers and a Court of Appeal decision in late 2005 affirmed that a fraudulently signed mortgage was valid and enforceable against an innocent homeowner[23]. The government took action with a series of fraud-prevention reforms. These included new eligibility criteria for those registering documents through the electronic land registry system. The new criteria included a prescribed form of insurance coverage that would respond in the event of fraud relating to the registration of fraudulent documents.

59. Now, all lawyers who practise real estate law in Ontario must purchase the Primary Program's Real Estate Practice Coverage Option. This coverage provides insurance protection to ensure that members of the public, and Land Titles Assurance Fund, are

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[22] https://housepriceindex.ca/2020/07/june2020/

[23] For more on this, see Bob Aaron's Toronto Star article of December 30, 2006: "In 2006, title fraud top real estate story".

protected against the registration of fraudulent instruments under the Land Titles Act. The coverage limit is $250,000 per claim/$1 million in the aggregate per policy period, applicable to claim expenses, indemnity payments and/or costs of repairs together. The premium is $100 annually per insured lawyer.

Base Premium

60. The full impact of the COVID-19 pandemic on LAWPRO remains to be seen. To meet capital requirements, the LAWPRO Board expects that premium increases will be necessary in futures years due to decreasing premium revenue and lower investment income coupled with an expected increase in claims costs. To allow LAWPRO to meet minimum capital requirements set by our regulator in 2021 and future years, some consideration was given to raising premiums for the 2021, but the Board recognized the financial challenges that many members of the profession currently face. At this time, the Board is satisfied that the inclusion of innocent party coverage for all insureds and the increased base premium rate of $50 will meet necessary fiscal requirements and minimize the administrative burden on insureds and LAWPRO. This change increases the base premium to $3,000 per insured while providing innocent party coverage to all and allows the Primary Program to continue to operate on a self-sustaining basis. This is the first time LAWPRO has raised the premium since 2011, and with the $50 increase, the premium is $350 less then it was from 2011-2016. It should be noted that a base premium of $3,000 per lawyer in 2021 is still significantly lower than premiums charged at some points in the past (e.g., $5,600 per year just after the insurance crisis).

61. Professional lines insurance in Ontario, such as professional liability, were already facing a hardening insurance market, with premiums increasing and capacity being restricted. COVID-19 has exacerbated this. Ontarians heading into their insurance renewals, whether personal or commercial insurance, are seeing substantial rate increases and many will find it more difficult to obtain insurance at an affordable price.

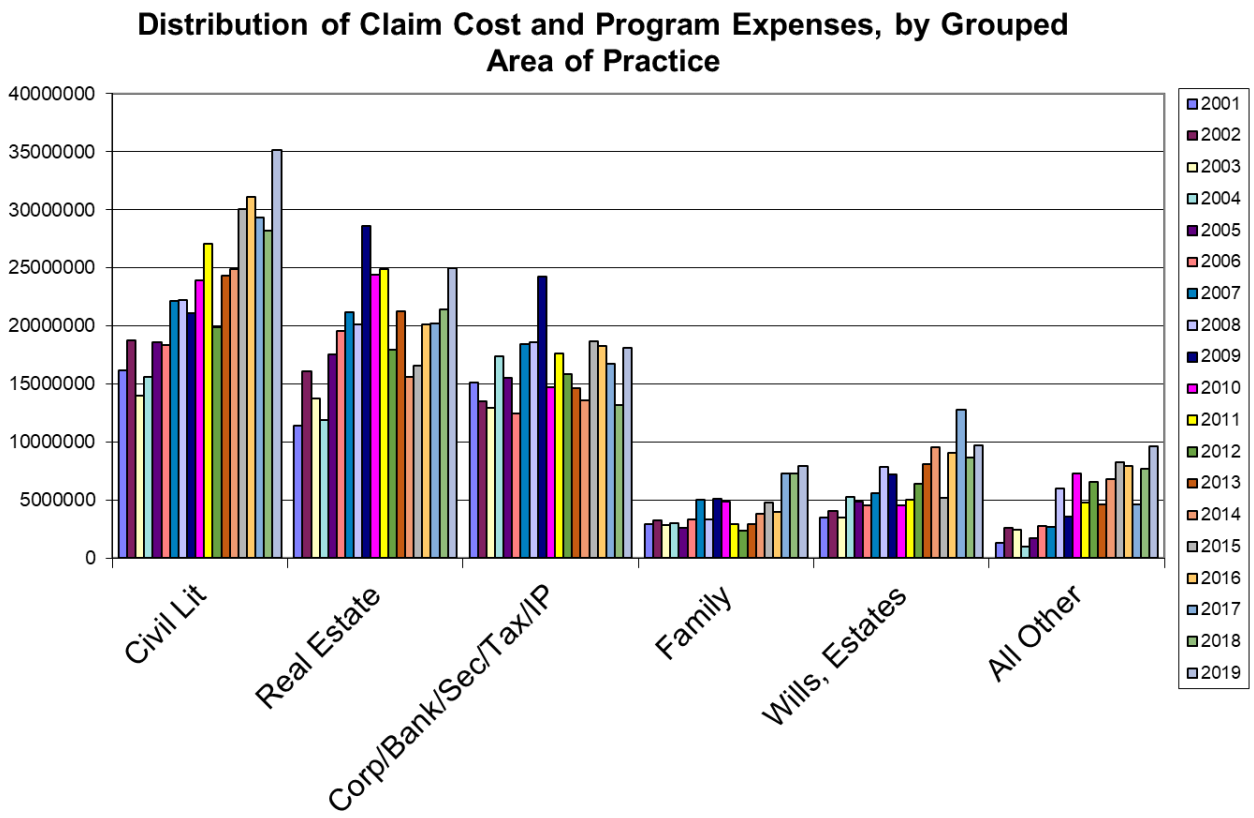
THE ERRORS & OMISSIONS INSURANCE FUND

62. 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 Law Society's insurance program prior to 1990, and for a group deductible of up to $250,000 per claim prior to 1995.

63. In recent years the Errors & Omissions Fund has been in run-off mode as its resources have been utilized to settle outstanding claims (for policies it had in place between July 1, 1989 and December 31, 1994). As of June 30, 2019, the Errors & Omissions Fund had no outstanding claims liabilities, as all files for 1994 and prior years are closed. With Convocation's approval of the LAWPRO Insurance Program, prior to 2020 the Law Society agreed to restrict $15 million of its Errors & Omissions Fund balance to backstop the potential of significant deterioration in the loss experience in the Primary Program. The $15 million backstop was discontinued effective the 2020 Program.

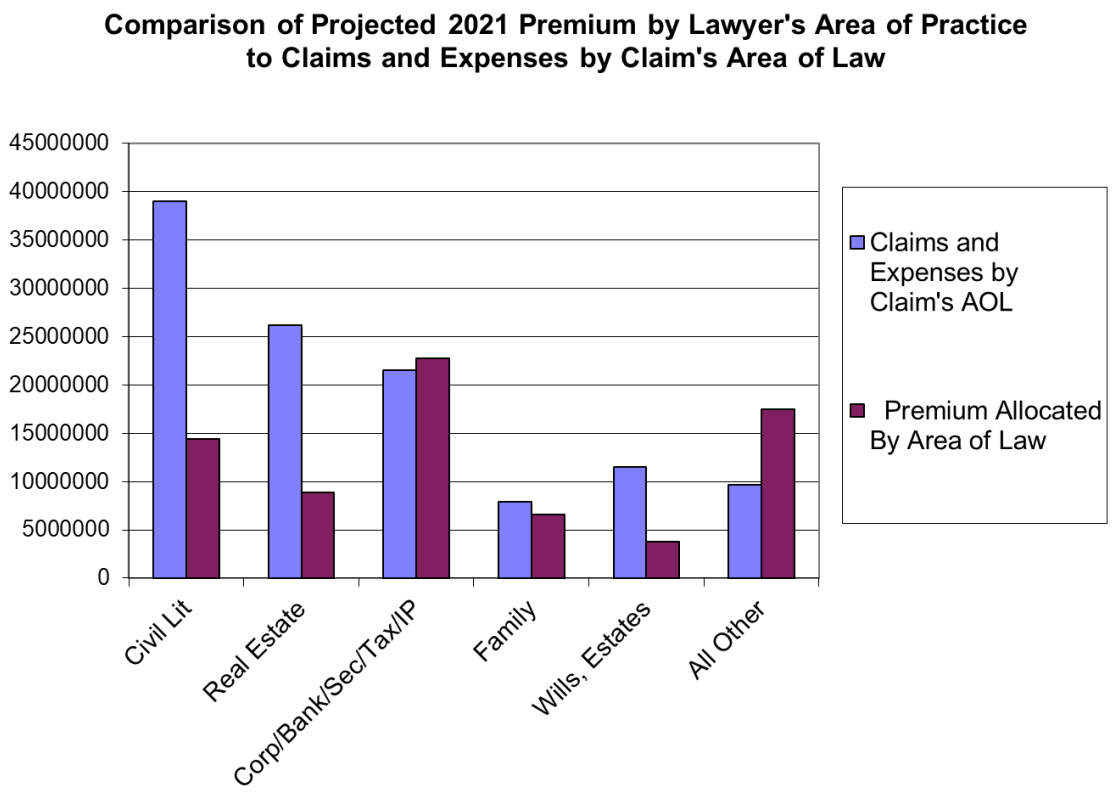
RISK RATING

64. Risk rating, a concept raised throughout this Report, promotes fairness by allocating premium responsibility based on risk and deters claims by apportioning higher costs to riskier practitioners. The following chart shows the distribution of ultimate expected claims costs by detailed area of practice.



65. 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.

66. To ensure that risk rating is being achieved, the Primary Program's anticipated losses and related costs must be compared to the premiums. Based on the most recent loss experience under the Primary Program (including that seen under the Primary Program up to December 31, 2019), the following chart compares the anticipated losses and costs distributed by area of law to the proposed base premiums.. 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.



67. 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.

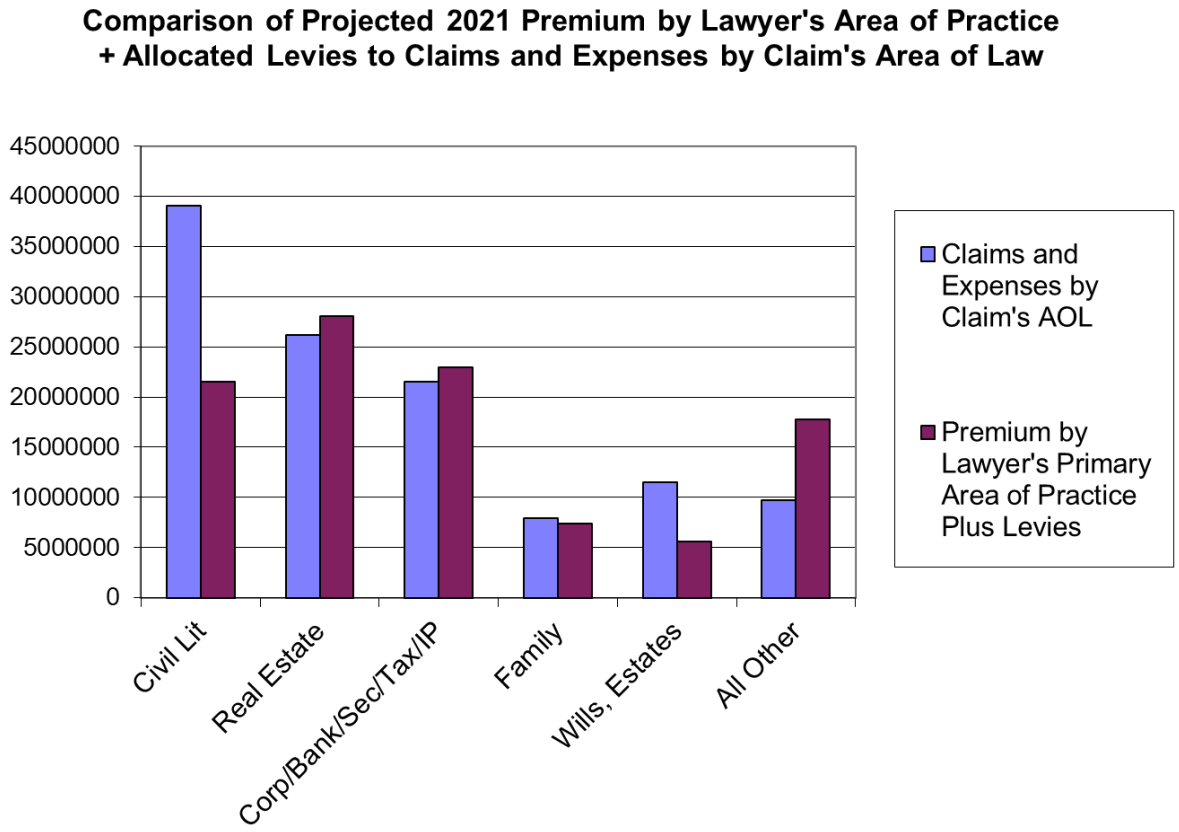
68. The latest Primary Program statistics indicate that without the benefit of the transaction and claims history levy revenues, the 2021 base premium would be about $7,700 per real estate practitioner, and around $6,000 per civil litigation practitioner.

69. 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.[24] 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

[24] 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.

civil litigation. After factoring in transaction levies, the premiums relating to this area of law fall short of the related loss costs.

70. 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.



71. 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 correlation between revenues and claims for the major practice areas. Although we are seeing some moderation in civil litigation claims costs 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.

72. 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.

73. 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.

74. Despite family law claims trending upwards over time, the revenues collected from family law practitioners continue to both cover the associated losses and support the exemption of this work from civil litigation levies.

75. Appreciating the foregoing variables and possibilities of comparison by area of practice, it appears that the Primary 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 Primary 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."[25]

76. 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 **Appendices "A", "B", and "C"**.

77. 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.

[25] 1994 Insurance Committee Task Force Report, at page 17.

78. 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 Primary Program continues to generally reflect the risk.

79. Various examples of premiums which would be charged to members depending on the nature of their practice are summarized at page 7 of this Report.

80. The number of Ontario lawyers that qualify for the various premium discounts is summarized in the following table:

Description of sample discounts	**Number of lawyers who claim these sample discounts as of Aug 15, 2020**
New Lawyer Discount	6,122 lawyers (21% of all insureds)
Restricted Area of Practice Discount	1,762 lawyers (6% of all insureds)
Part Time Practice Discount	2,277 lawyers (8% of all insureds)
TOTAL	10,161 lawyers (35% of all insureds)

REINSURANCE AND CAPITAL PRESERVATION

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

82. In its early years, LAWPRO purchased Primary Program-wide quota share reinsurance[26]. A stronger financial position and more stable claims experience enabled LAWPRO to cease reinsuring the Primary 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. The $15 million backstop was discontinued effective the 2020 Program.

83. For 2021, 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

[26] "Quota share" reinsurance is an arrangement where an insurer (like LAWPRO) will cede or give a portion of its premiums and claims risk to another insurer (a "reinsurer") at a fixed percentage. This allows the insurer to retain such risks and premiums as it is comfortable with, while passing on the rest to the reinsurer(s).

(the "Clash Excess of Loss Reinsurance"[27]). This protection against aggregated losses extends across both the Primary 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. In light of a hardening reinsurance market (i.e., a situation where insurance coverage is harder to come by and premiums increase), LAWPRO is braced for rate increases for this type of protection for 2021.

84. **Accordingly, 100% of the premiums and losses for the Primary Program will again be retained by LAWPRO in 2021, subject to reinsurance protecting the Primary Program from multiple losses arising out of a common event or nexus.**

CAPITAL REQUIREMENTS

85. 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".)

86. 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

[27] "Excess of loss" reinsurance is an arrangement where a reinsurer will indemnify an insurer for losses that exceed a specified limit. The insurer and reinsurer can negotiate the amount of risk the insurer retains before the reinsurance responds, the upper limit of the reinsurance coverage, and the premium (which is typically calculated based on the insurer's annual premiums, subject to a minimum premium amount).

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.

87. A significant amount of the margin requirement relates to the 25% 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. The second most impactful factor on the margin requirement is the equity risk on the equity portfolio which attracts a 30% additional capital requirement.

88. The determination of a specific insurer's "ideal" MCT ratio is difficult, 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, such as the 100% minimum and 150% supervisory levels (meaning the regulator could come in to take over management and operation if an insurer falls below this level). In 2016, LAWPRO completed its first capital assessment pursuant to the Office of the Superintendent of Financial Institutions' *Guideline E-19 Own Risk and Solvency Assessment ("ORSA")* and the Autorité des Marchés Financiers' *Guidance on Capital Adequacy Requirements*, resulting in LAWPRO's internal target ratio being lowered from 180% to 170% . This result has been reaffirmed in all subsequent years.

89. In addition, as part of the above exercise and reconfirmed this year, the Board set LAWPRO's long-term preferred operating range at 210 to 240% 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.

90. LAWPRO's preferred operating range for the MCT is 210-240%. The MCT was 242% as of December 2019, but due to the impact of the pandemic it decreased to 207% at June 30, 2020, as compared to 220% at the same point in 2019. The MCT

preferred range is set to provide an appropriate buffer, to allow the Company to withstand adverse scenarios such as a sudden influx of large claims, higher than expected inflation, or investment deterioration, and still remain above the various regulatory thresholds.

CONCLUSION

91. The LAWPRO Board considers the Primary Program changes outlined above to be appropriate and consistent with LAWPRO's mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this Primary Program of Insurance for 2021 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2021 Primary Program can be implemented by January 1, 2021.

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

September 2020

Andrew Spurgeon

Chairperson of the Board

Lawyers' Professional Indemnity Company

Susan M. Armstrong

Vice-Chairperson of the Board

Lawyers' Professional Indemnity Company

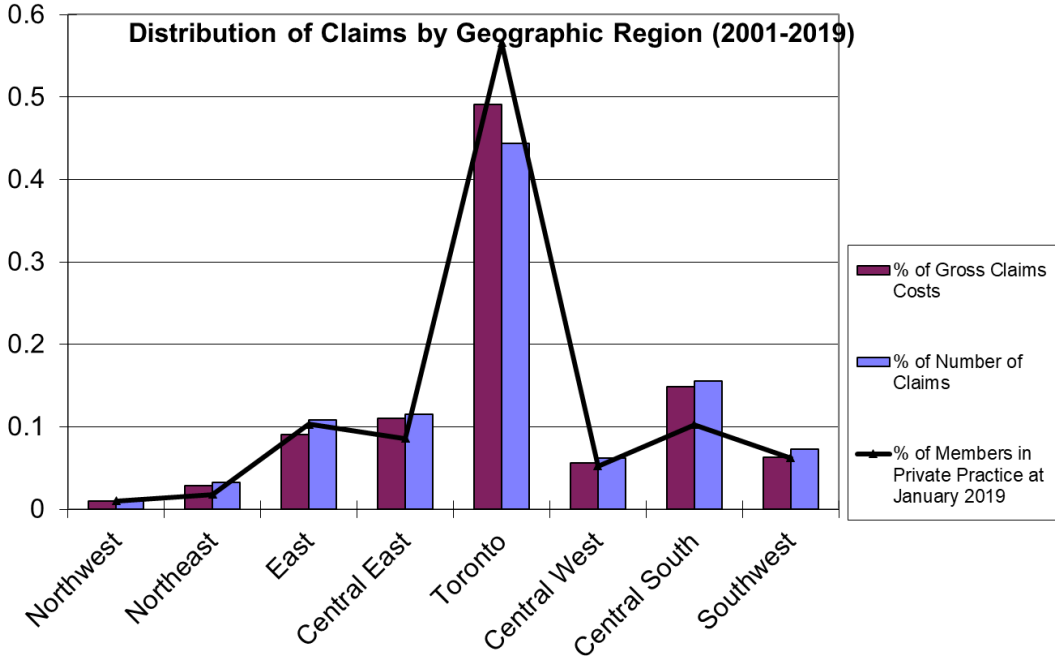
Daniel E. Pinnington

President & CEO

Lawyers' Professional Indemnity Company

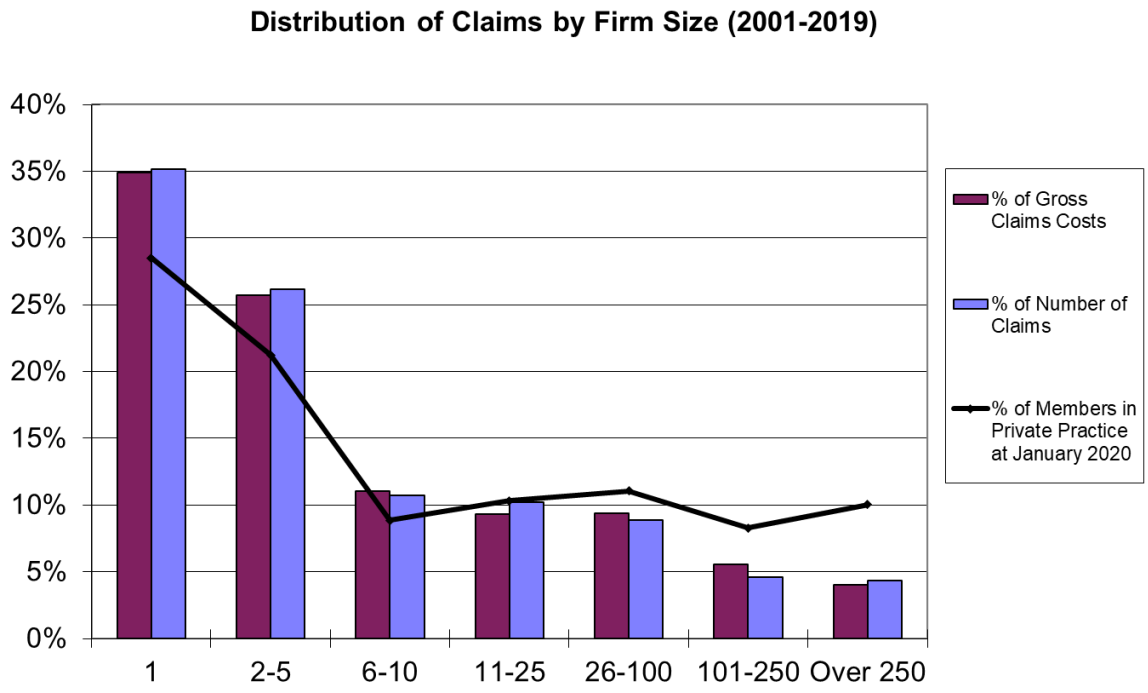
Appendix "A"

Distribution of Claims by Geographic Region

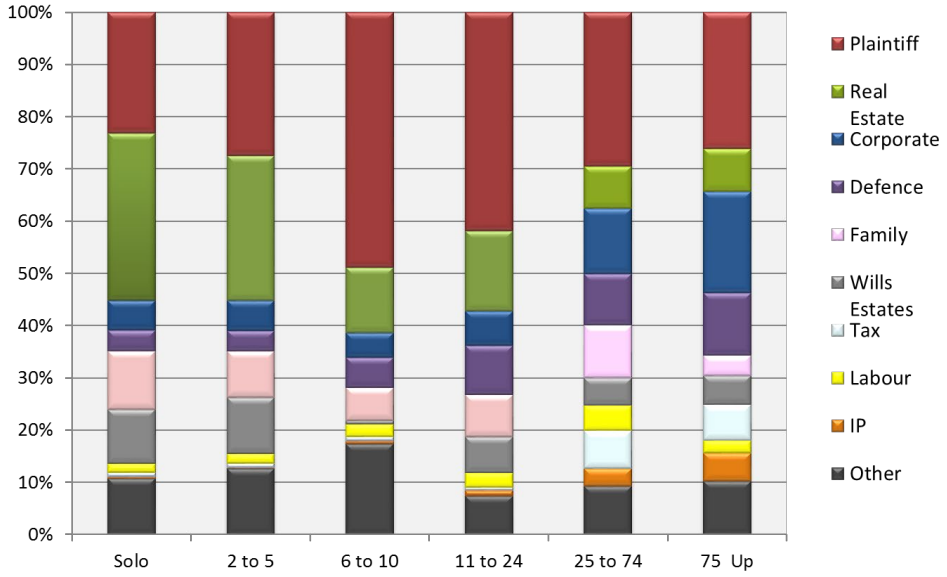


Appendix "B"

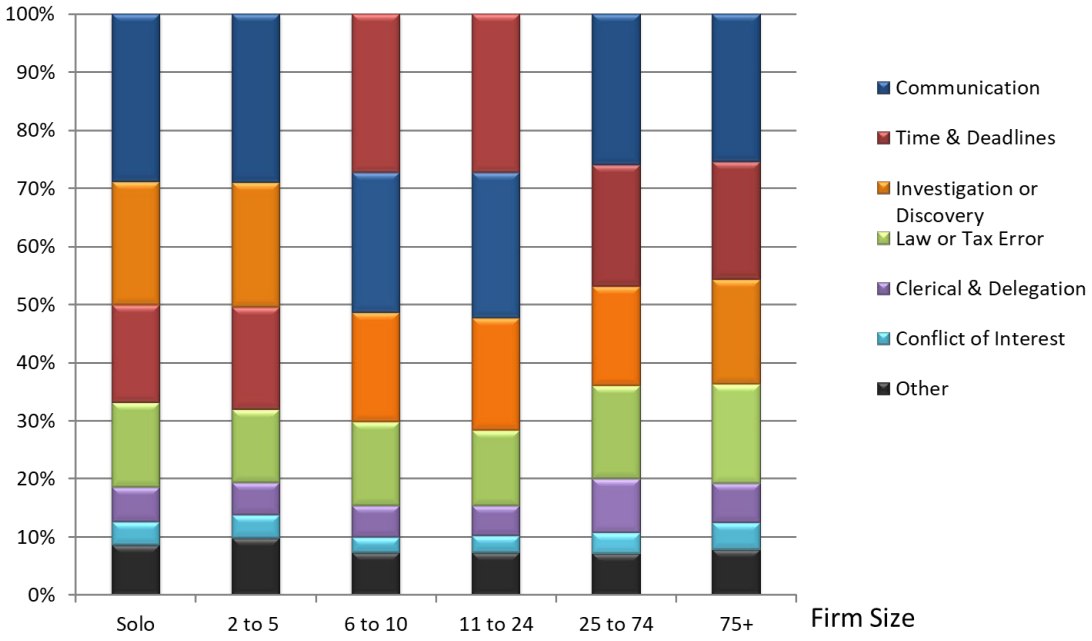
Distribution of Claims by Firm Size



LAWPRO claims count by area of law and firm size (2009-19)

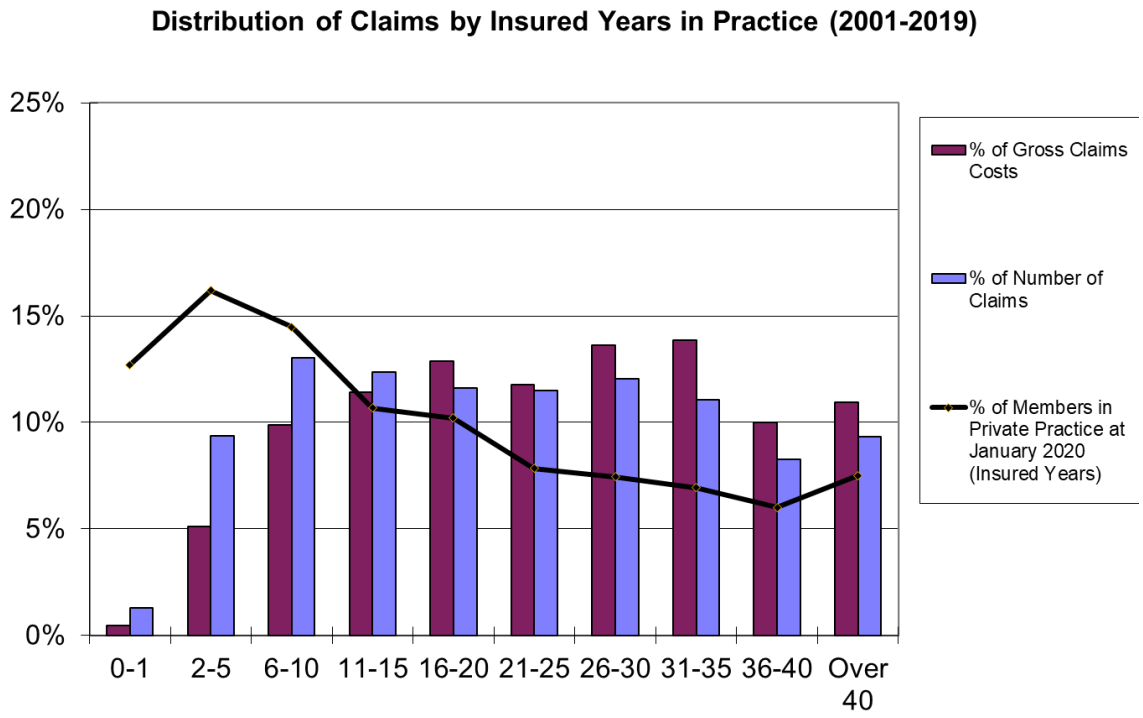


LAWPRO claims count by error type and firm size (2009-19)



Appendix "C"

Distribution of Claims by Years in Practice



Appendix "D"

Detailed Descriptions of Causes of Loss

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. 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. In recent years, 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.

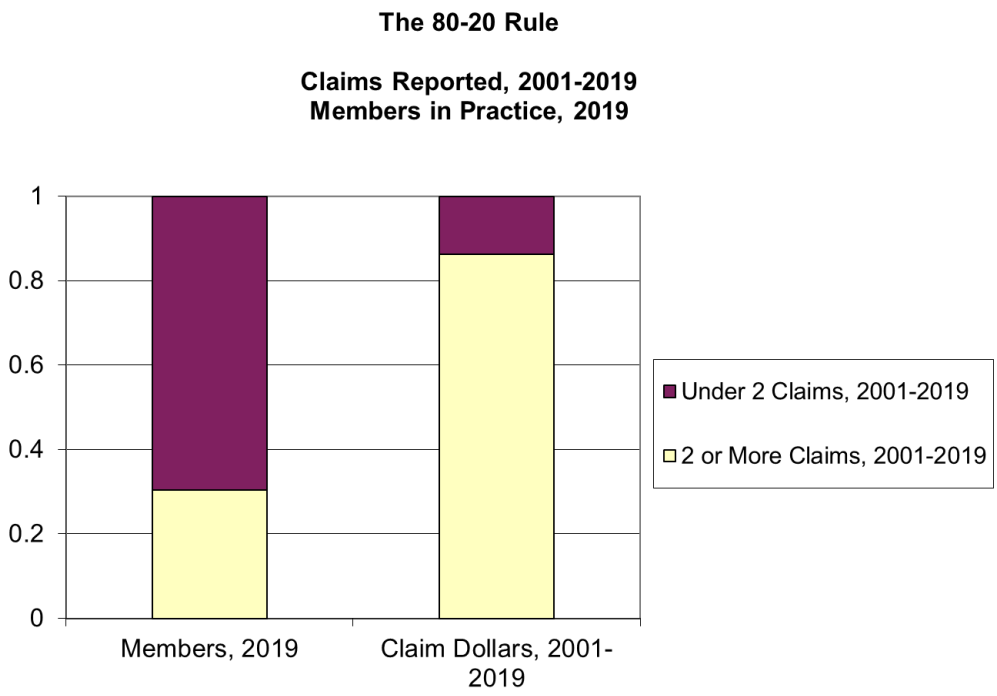
Conflict of interest: There are two types of conflict claims: the first arises when conflicts occur between multiple current or past clients represented by the same lawyer or firm. The second is a conflict that arises when a lawyer has a personal interest in the matter. As they regularly act for multiple 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 Primary 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. "Phishing" attempts and other cyber hacking methods are targeting lawyer trust accounts. Through our efforts, including publication of Fraud Fact sheets which are available at practicepro.ca/fraud, Ontario lawyers are clearly more aware of frauds, but ever more sophisticated frauds mean lawyers must continue to be vigilant.

Appendix "E"

The 80-20 Rule



Appendix "F"

LAWPRO Mission

LAWPRO Vision, Mission & Values and Corporate Social Responsibility are available for download at: https://www.lawpro.ca/about/vision-values/