REPORT TO CONVOCATION

(2022 Insurance Program Proposal)

OCTOBER 2021

Contents

LAWYERS’ PROFESSIONAL INDEMNITY COMPANY (“LAWPRO”)

REPORT TO CONVOCATION OCTOBER 2021

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 starting the application process in early November so that all policies can be renewed effective January 1, and the need to negotiate and place related or corollary reinsurance treaties prior to the renewal date.

2. For 2022, LAWPRO’s Board and Management conducted their annual review of the Primary Errors and Omissions Program (the “Primary Program”) and offers an insurance program for 2022 with the changes outlined in this Report.

3. Based on LAWPRO’s mandate from Convocation, careful consideration of coverage needs, claims trends, potential risks, regulatory requirements, and affordability, the LAWPRO Board of Directors recommends that Convocation accept this Primary Program of Insurance for 2022 so that it can be implemented by January 1, 2022.

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 if commercial carriers chose not enter the market, or not offer insurance to some lawyers because of their individual circumstances. 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."[1]

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 26 years, it has operated based on the mandate and principles laid out in the 1994 Task Force Report.

8. LAWPRO has been remarkably successful in achieving the mandate the Law Society gave it in 1994. It is a success the Benchers who made the decision to set up LAWPRO in the early 1990's can justifiably be proud of. Today, because of their foresight, and skilled management, LAWPRO offers many advantages to the bar including:

a. Guaranteed availability of affordable insurance to all lawyer licensees;

b. Consistent coverage, terms, and conditions for all lawyer licensees;

c. Proactive assistance to help prevent claims from crystallizing and repairs on potential claims that may not trigger a deductible or premium increase;

d. Proactive claims prevention efforts and practical resources to help reduce claims risks (practicePRO);

e. A coordinated and principled approach to handling claims that sees us shape legal standards of care by making reasonable settlements where a lawyer truly made a mistake and defending lawyers where no clear error was made or damages suffered;

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

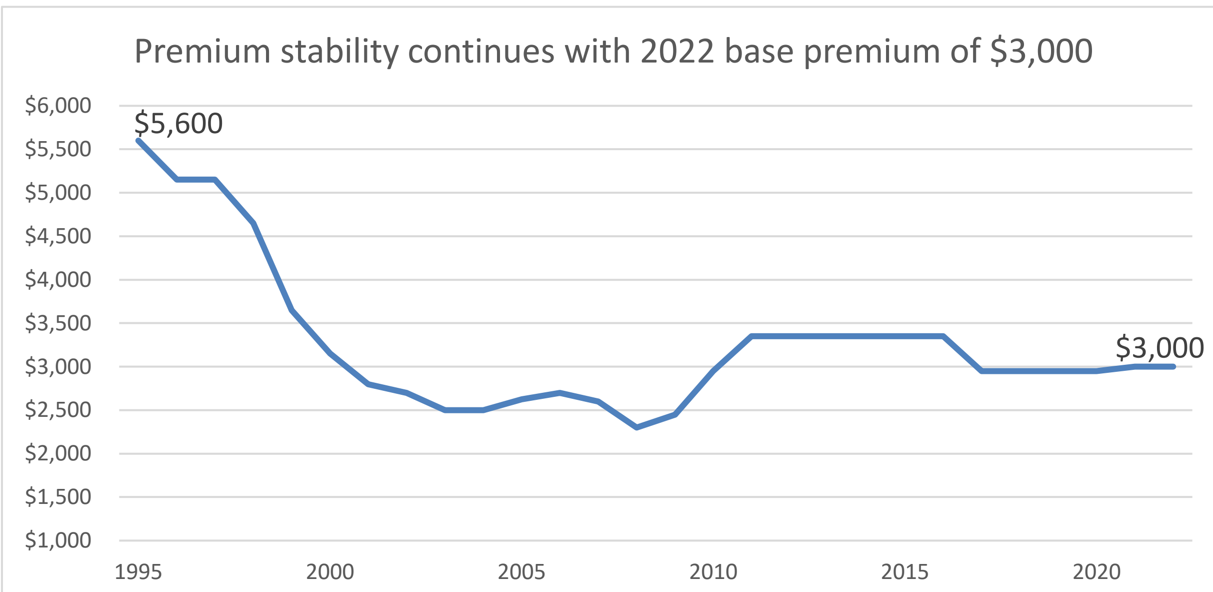
f. Automatic, free Run-off coverage of $250,000;

g. A built-to-purpose Excess insurance program with a competitive premium for solo and small firm lawyers;

h. Coverage for lawyers doing *pro bono* work in a wide variety of circumstances; and

i. An insurance provider that is financially stable and can therefore be relied upon to pay claims.

9. One of the strongest testimonies to LAWPRO's success as a professionally run insurance company is a stable base premium that is lower today than it was 10 years ago and far lower than it was after the 1994 insurance crisis. The 2022 base premium is $3,000, the same as it was last year. And it is worth noting many members of the profession pay much less than the base premium by taking advantage of the various discounts LAWPRO offers (see Paragraph 63).



10. Contrast the benefits that LAWPRO offers with the circumstances Ontario lawyers would likely face if one or more commercial insurers were providing insurance to the profession:

a. Premiums would vary widely by firm size and area of practice, and for individuals with a history of reported claims;

b. Carriers could simply refuse to insure individual lawyers they felt were too great a claims risk, making it impossible for some lawyers to maintain their practice status;

c. Coverage terms and conditions would vary widely;

d. The public would be at risk as it would be more difficult to know if a lawyer's coverage had been cancelled;

e. A premium would likely be charged for Run-off coverage, and there would likely be separate premiums if the lawyer was at different firms;

f. There would be the potential for gaps in coverage as a new policy would be required if a lawyer changed firms, and the lawyer would have to obtain a separate policy to cover claims from work done at a previous firm; and

g. Lawyers would have to pay insurance broker fees, adding 15% or more to the cost of insurance.

11. 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. 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. This is the nightmare scenario the Law Society of England and Wales continues to struggle with almost a decade after several commercial insurers pulled out of its mandatory program.[2]

2022 PROGRAM FEATURES

12. 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 exemption eligibility criteria are 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, 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.

13. The following is a brief summary of the 2022 Primary Program:

Standard base premium

- $3,000 per insured lawyer (unchanged from 2021)

[2] See *"Mandatory professional indemnity insurance & a mandatory insurer: A global perspective"* LAWPRO Magazine, November 2011; "*Aon unit in shock professional indemnity insurance exit*", Insurance Business UK, 23 Aug 2019)' and *"Retired solicitors fear ruin when insurance safety net closes"* The Law Society Gazette, 19 April, 2021.

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
- $250,000 sublimit for innocent party claims per claim/in the aggregate is included in base coverage
- Additional Innocent Party coverage can be purchased to increase limits to $500,000 per claim/aggregate for $75 per insured lawyer or $1 million per claim/aggregate for $125 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 (restricted areas of practice)

- 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

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

Premium Rating Examples (In Dollars)

	1995[5]	**2005[6]**	**2015[7]**	**2022[8]**
Base premium	$5,600	$2,625	$3,350	**$3,000**
1. Sole Practitioner - Real Estate Law - $10,000 defence & indemnity deductible - early lump sum payment discount - $250,000 Optional Innocent Party cover	$6,000[9]	$2,528	$3,549	**$2,825**
2. Firm Practitioner - Real Estate Law - $25,000 defence & indemnity deductible - $250,000 Mandatory Innocent Party cover	$6,000[10]	$2,547	$3,431	**$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[11]	$1,478	$1,624	**$1,225**

[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.

[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] $250,000 Innocent Party cover now provided free for all insureds.

[9] 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).

[10] Ibid

[11] Ibid

4. Criminal Lawyer (sole practitioner) - Restricted Areas of Practice discount - $10,000 defence & indemnity deductible - early lump sum payment discount	$5,600[12]	$1,228	$1,374	**$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[13][14]	$1,877	$1,923	**$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[15]	$5,375	$6,100	**$5,500**
7. Sole Practitioner with 2 Claims - claims history levy surcharge - $5,000 defence & indemnity deductible	$10,600[16]	$7,625	$8,350	**$8,000**
8. Designated Agency Lawyer - $5,000 defence & indemnity deductible - Risk Management Credit (x 2)	$5,600	$2,550	$3,250	**$650**[17]

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

CONTINUING TO HELP LOWER RISK DURING THE PANDEMIC

15. The disruptions resulting from the COVID-19 pandemic are continuing to cause uncertainty for many lawyers. A number of resources prepared by practicePRO, LAWPRO's risk management initiative, have helped lawyers work remotely, manage changing legal technologies, understand new rules, and take steps to improve their health and wellness. Through the pandemic the most frequently accessed practicePRO resources were as follows (click on the links to see the individual resources):

- Precedents and Retainers
- A Discussion: Continuing to Manage; Mental Health, Resilience and Resources
- Managing the Second Wave: Mental Health, Resilience and Resources
- Working Together, Remotely – Managing and Leading Through COVID and Beyond
- Tips for calculating limitations deadlines accounting for the COVID-19 emergency suspension period
- New Lawyer Resources

A full listing of all practicePRO COVID-related resources is available here. Visit the practicePRO website to access other LAWPRO risk management and claims prevention resources.

PROMOTING ACCESS TO JUSTICE

16. In 2021, LAWPRO approved three new organizations that provide free legal services to the public for the "Designated Agencies" discount. Lawyers working in these organizations receive a discount equal to 75% off the base premium. Lawyers working in these agencies are also exempt from payment of the civil litigation levy for the services they provide through these agencies. Typically, these agencies promote human rights, justice initiatives, and otherwise enhance access to justice. There are a total of nine organizations with LAWPRO Designated Agency status.[18]

17. LAWPRO continues to support *pro bono* and initiatives intended to bolster legal services. Lawyers who do not maintain their practice coverage can still provide legal services to LAWPRO-approved Pro Bono Ontario programs and, if there is a claim, it will be covered as part of the run-off coverage that is usually not available for services provided after a lawyer ceases the practice coverage. Likewise, if a practising

[18] See the LAWPRO website for more details and a list of LAWPRO approved Designated Agencies.

lawyer takes part in these activities and a claim arises, that lawyer will not have to pay a claims history levy surcharge or deductible. To encourage lawyers to support each other and bolster skills within the profession, LAWPRO also treats claims associated with risk-approved mentoring activities in a similar fashion[19].

CLAIMS TRENDS

18. As the paragraphs below highlight in more detail, as a result of the pandemic, the count, cost and types of claims in the LAWPRO claims portfolio was different in 2020 and 2021 from prior years. At this point we can't fully know exactly how all the changes brought on by COVID-19 will affect claims in the coming years.

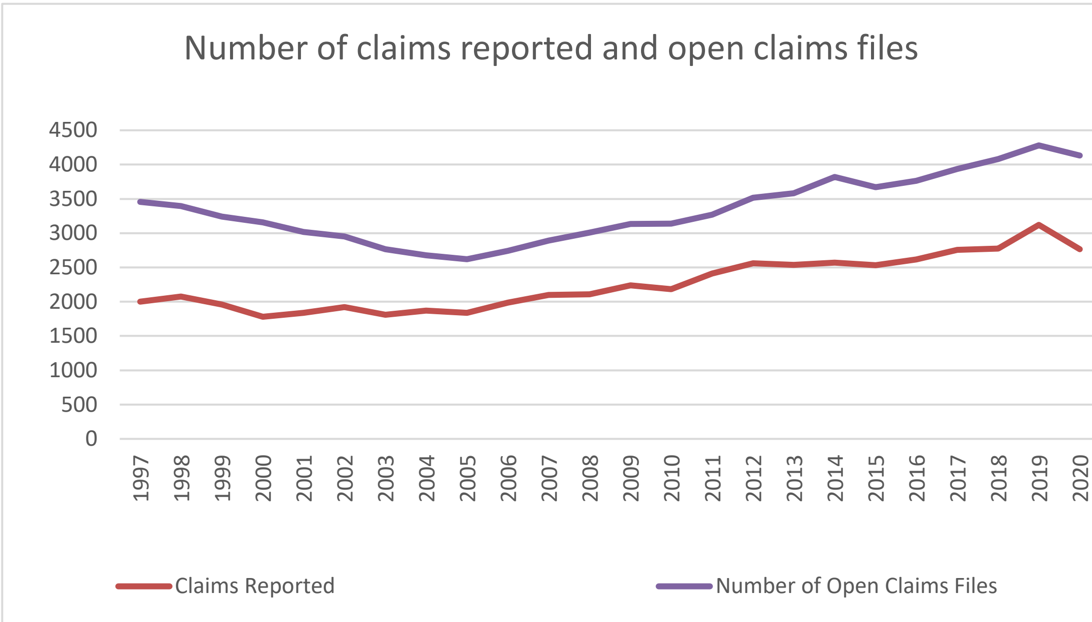
19. LAWPRO's long term experience is that claims come to light on average 2-3 years after the work on a matter was done. In real estate, family, and wills and estates matters, claims can arise decades after a file was closed.[20] In a typical year we would expect to see approximately 275 claims costing more than $100,000, and 5-15 claims that will hit the $1 million dollar per claim policy limit. 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. The 30% of LAWPRO insureds with 2 or more claims are responsible for 85% of LAWPRO's claims costs (See Appendix E).

20. Economic downturns typically mean an increase of malpractice claims as clients seek recompense from their lawyers for the losses they have suffered. While some parts of the economy have seen devastating impacts because of the pandemic, other parts have not been impacted and some are thriving. LAWPRO has not seen, at least at this point, an increase in claims related to economic losses as a result of the pandemic, likely due to increasing real estate prices and rising financial markets. If we see inflation, a real estate correction, and/or financial markets correction, we may see additional pandemic-related claims.

21. As the following graph illustrates, relative to the trend we have seen in recent years there was a significant decline in the number of claims reported to LAWPRO in 2020. There were 2,768 reported claims

[19] For more on this, see the LAWPRO Pro Bono Coverage Chart.
[20] "Don't let claims follow you into retirement", LAWPRO Magazine Vol. 16.3 (February 2017).

in 2020, down from 3,121 in 2019. However, all indications are that claims are increasing as business gets back to normal. In the first half of 2021, LAWPRO has had 1,718 reported claims, a count that is up 26% from the same period last year and up 12% from the same period in 2019.



22. Beyond claims counts, LAWPRO monitors claims costs, which also show every indication that business is returning to normal. Claims costs for the first half of 2021 were $41.7 million, up 12% relative to the same period last year and up 8% relative to the same period in 2019. Our current estimate for 2021 claim costs is $102 million, and for 2022 is approximately $100 million.

23. We also monitor the average cost of a claim over the long term. Claim costs have increased steadily over time, at an average annual rate of 3.6%. Total costs were $59 million for 2000 and crossed the $100 million threshold in 2016. Claims count has also increased over time, but at a lower on average annual rate of 2.1% over the period of 2010 to 2018. The net effect has been an increase in average cost per claim from $33,600 in 2000 up to $36,600 in 2018.[21]

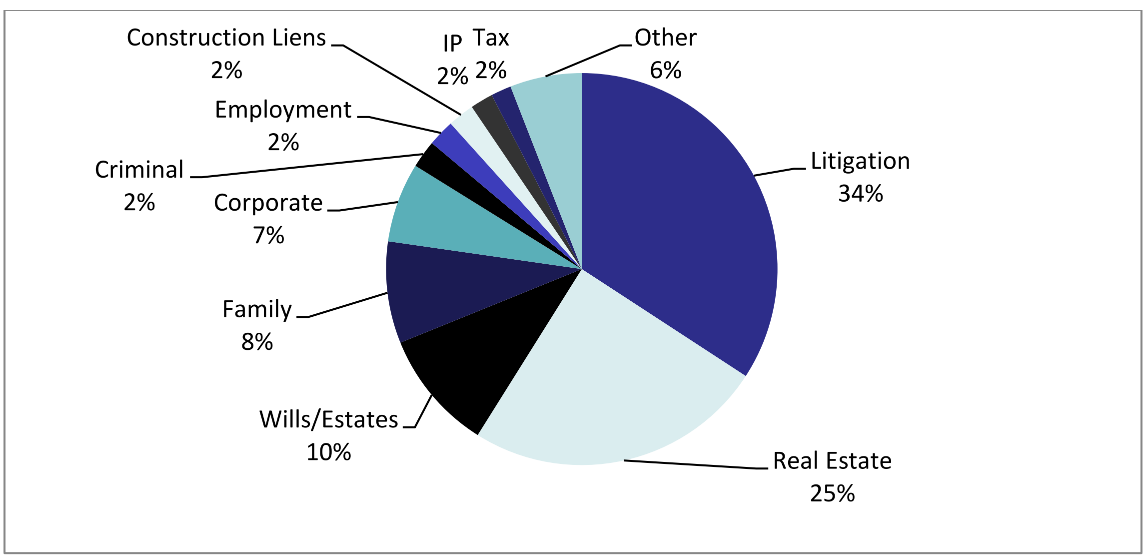
What types of claims are happening?

[21] Average cost per claim figures quoted here do not include claims after 2018 as it typically takes 2-3 years for LAWPRO investigate and set a *reserve* on a claim file i.e., the amount we expect a claim will ultimately cost us.

24. Over the years, LAWPRO has seen fairly consistent claims trends by area of law and type of malpractice error, which are illustrated in the pie charts and discussed in more detail in the next two paragraphs.

25. When claims by area of law are considered, 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, as is illustrated in the pie chart below.[22] In 2020, the number of claims in these two areas of practice dropped but they still represented 51% of the claims reported under the Primary Program. The number of real estate-related claims decreased to 609 in 2020, from 648 the previous year. Litigation-related claims had an even larger decrease to 549 in 2020 from 822 the previous year, largely as a result of reduced litigation work due to the closure of the courts. This reduction in litigation and real estate-related claims (two areas particularly affected by closures due to the pandemic) account for most of the decline in new claims for 2020. Given the hot real estate market in the first half of 2021, real estate-related claims were higher than the same period in 2020 (287 vs. 243 claims), but not as high as the first half of 2019 (341 claims). Whereas, in the first half of 2021, litigation-related claims were significantly higher than 2020 (353 vs. 243) and higher than 2019 (340 claims).

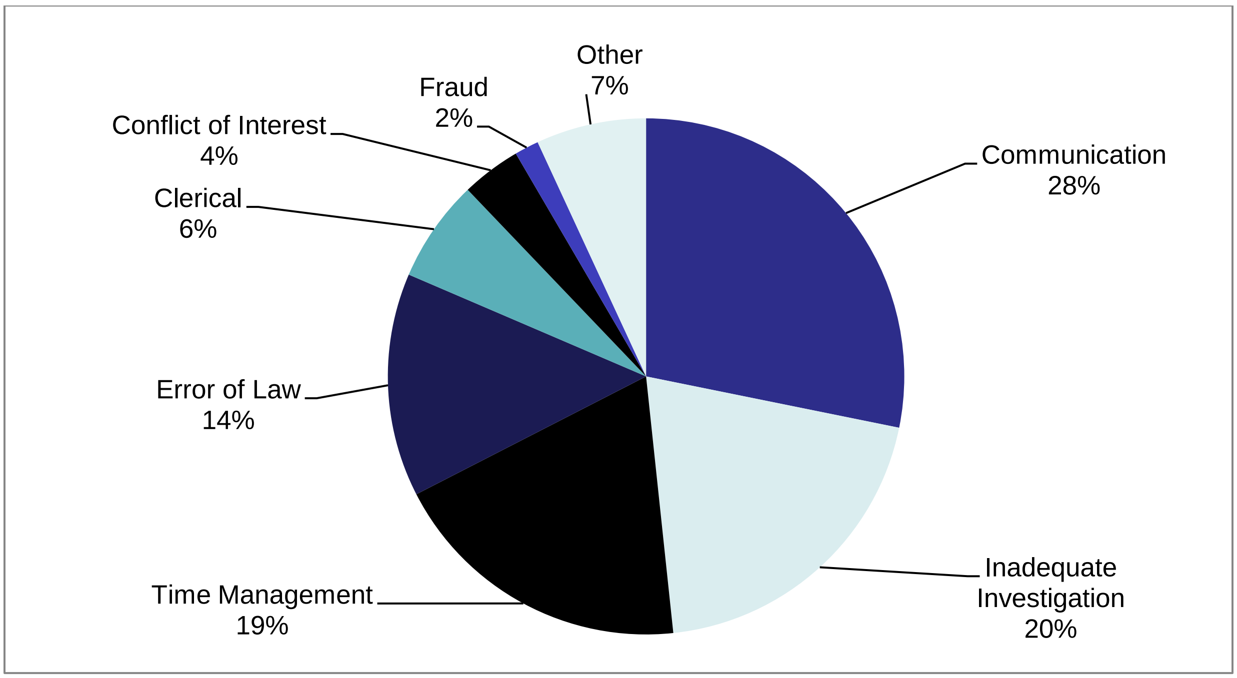
Claims Count by Area of Law (2010-2020)



[22] A more detailed description of the common claims scenarios for each of these broad error types in the second pie chart is available in Appendix "D".

26. In 2020, inadequate investigation and communications errors tied – at 609 each – for the cause of the highest number of claims followed by time management and errors of law. There were 609 communication-related claims in 2020, a decrease from 724 the previous year. Similarly, there were 309 time management related claims in 2020 compared with 494 the previous year. The reduction in time management related claims was a direct result of less litigation activity due to the closing of the courts. As litigation activity picked up in late 2020 and early 2021 we saw a growing number of claims arise due to confusion around the tolling of limitations that occurred in mid-2020.

Claims Count by Description of Loss (2010-2020):



27. While there are variations across different areas of practice by type or error and proportion, they generally follow those illustrated in the above pie chart (i.e., communications, inadequate investigation and time management/deadline related errors are the most common errors in most areas of practice). Fact sheets that highlight the most common causes of malpractice claims for the major areas of practice can be viewed at practicepro.ca/factsheets.

RISK MANAGEMENT INITIATIVES

28. A principal mandate of LAWPRO is to help the legal profession reduce claims by helping 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 of 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 2022, 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, 2020 and September 15, 2021. Tens of thousands of lawyers attended the over 241 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.

CONTINUING STABILITY AND ONLY MINOR CHANGES IN THE PRIMARY PROGRAM FOR 2022

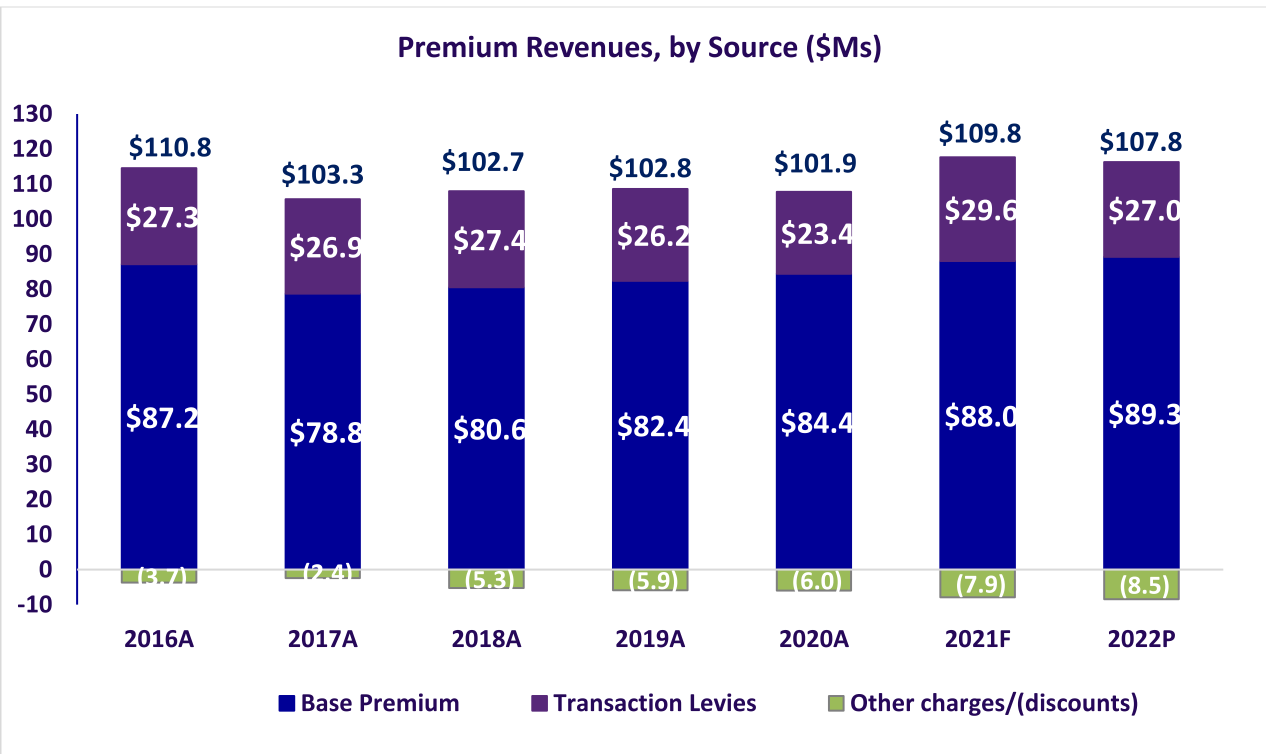
29. The LAWPRO Board has determined that the general structure of the current Primary Program continues to meet the needs and practice realities of the profession. In developing the details of the 2022 Primary Program, LAWPRO has considered claims trends and costs, including pandemic-related claims; and the pressure on our insured professionals to control costs, especially in the current environment. For the 2022 Primary Program, LAWPRO has focused on keeping the premium at the same levels as in 2021,

despite the increasing claims volatility. We will be making minor changes to the policy wording for underwriting clarity in conditions and definitions[23].

REVENUES

30. To meet the total expected Primary Program claims costs and operating expenses for 2022, LAWPRO evaluates its likely investment income, and then considers premiums, transaction levies, and other discounts and surcharges. LAWPRO does not operate to make an underwriting profit and loses approximately 10 cents on every dollar due to the high loss ratio and a lower than market premium. The Company is able to break even with its return on investments.

31. Premium revenues for recent years are illustrated in the following graph. The primary errors and omissions premium revenues projected for 2022 is $107.8 million.



[23] These changes include clarifying the information required when providing notice of a claim, preventing "rolling" limitation periods when it comes to coverage disputes, and reinforcing the exclusion that applies when claims relate to enterprises owned by insureds (or their law partners or their spouses).

Investment Income

32. 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.

33. 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 as they become due, 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.

34. The ALM Portfolio and the fixed income portion of the Surplus portfolio are impacted by interest rate changes, and together represent around 78.8% 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 dropped to 0.25% in March 2020 and has remained at that level. As such, the rates of return on fixed income securities have also remained low since that time. 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.

35. As a result of these risks, LAWPRO maintains a prudent investing philosophy to protect its investments. The portfolios had investment income, including unrealized gains, of $16 million in 2020 as compared to $41 million in 2019. The Company expects this downward trend on returns to continue. LAWPRO expects to receive significantly less investment income over the next 2-3 years due to the knock-on effects of the pandemic.

Levy Surcharges

36. 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 49 of this Report.

37. 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.

38. 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.

39. 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).

40. 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.

41. The Ontario real estate market has been resilient in the last few years, with home prices hitting record highs in 2021, but there are indications that the market will be down and varied in the near term. The Teranet-National Bank House Price Index[24] notes that in June 2021 Canada saw a record 12-month rise of home prices. More recent statistics show a decline in the number of home sales, which could mean that an end is in sight to the rapid rise in home prices. For the first half of 2021 real estate transaction levy revenue was $10.8 million which is 29% greater than for the same period in 2020, and 17% greater than for the same period in 2019. We estimate the real estate transaction levies will be $18.0 million in 2021 and $19.1 million in 2022.

42. The shutdown of the courts in 2020 had a significant impact on civil litigation transaction levy revenue. Levies dropped from $7.6 million in 2019 to $5.8 million in 2020. For the first half of 2021, civil litigation transaction levy revenue was $4.6 million which is higher than comparable periods for prior years (i.e., $2.7 million for 2020 and $3.1 million 2019.) We estimate civil litigation transaction levies will be $7.7 million in 2021 and $7.9 million in 2022.

Real Estate Practice Coverage Option (REPCO)

43. 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[25]. 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.

44. 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 protected against the registration of

[24] https://housepriceindex.ca/2021/07/june2021/
[25] For more on this, see Bob Aaron's Toronto Star article of December 30, 2006: "In 2006, title fraud top real estate story".

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

45. 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 lower investment income coupled with an expected increase in claims costs. To allow LAWPRO to meet minimum capital requirements set by our regulator, the Financial Services Regulatory Authority of Ontario, some consideration was given to raising premiums for the 2022 Primary Program, but the Board recognized the financial challenges that many members of the profession currently face. The base premium has been set at $3,000, the same as last year. It should be noted that a base premium of $3,000 per lawyer is still significantly lower than premiums charged at some points in the past (e.g., $3,350 during the years 2011 through 2016, and $5,600 per year just after the insurance crisis).

46. 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 exacerbated this situation. Ontarians heading into their insurance renewals, whether personal or commercial insurance, continue to see substantial rate increases and many will find it more difficult to obtain insurance at an affordable price.

THE ERRORS & OMISSIONS INSURANCE FUND

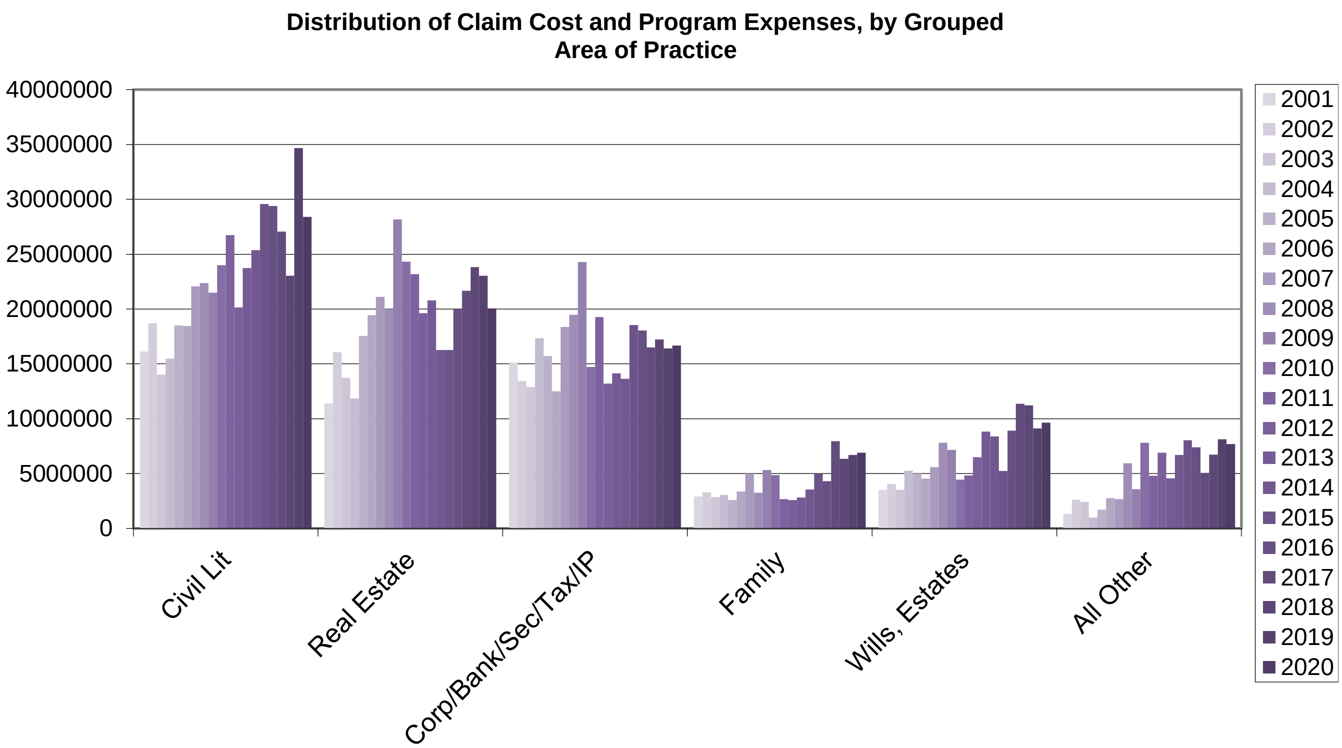
47. LAWPRO continues to manage the Law Society's Errors & Omissions Insurance Fund (the "E&O Fund"), the pool of funds relating to the insurance program the Law Society operated before LAWPRO was created. In recent years the E&O Fund has been in run-off mode as it has been used to settle outstanding claims for policies the Law Society's insurance program had in place between July 1, 1989, and December 31, 1994. Although it is possible that a claim from a policy from this time period could still be reported to LAWRPO, at June 30, 2021, the E&O Fund had no outstanding claims liabilities as all files for 1994 and prior years were closed.

48. With Convocation's annual approval of the LAWPRO Insurance Program, prior to 2020 the Law Society agreed to restrict $15 million of the Errors & Omissions Fund balance to backstop the potential of

significant deterioration in the loss experience in the Primary Program. By mutual agreement between the Law Society and LAWPRO, the $15 million backstop was discontinued effective January 1, 2020 as part of the 2020 Program and these funds were released and available to the Law Society as of that date.

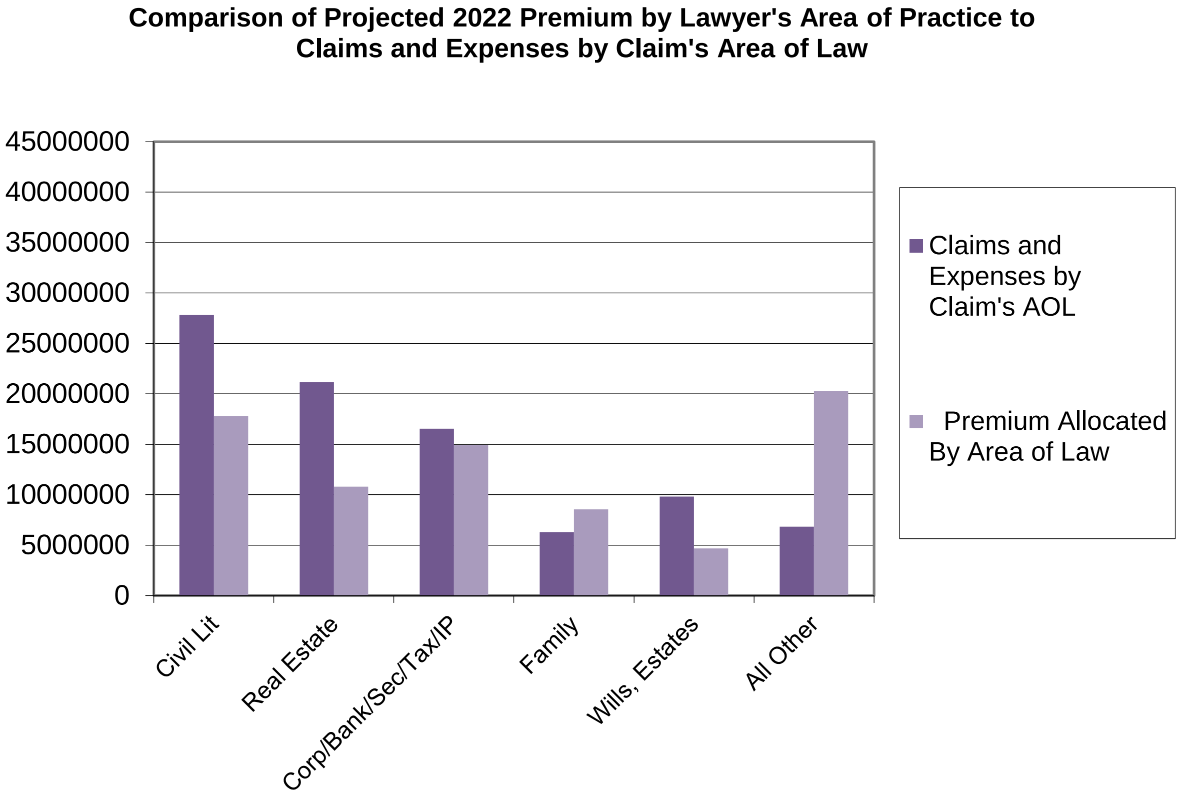
RISK RATING

49. 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 area of practice.



50. 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.

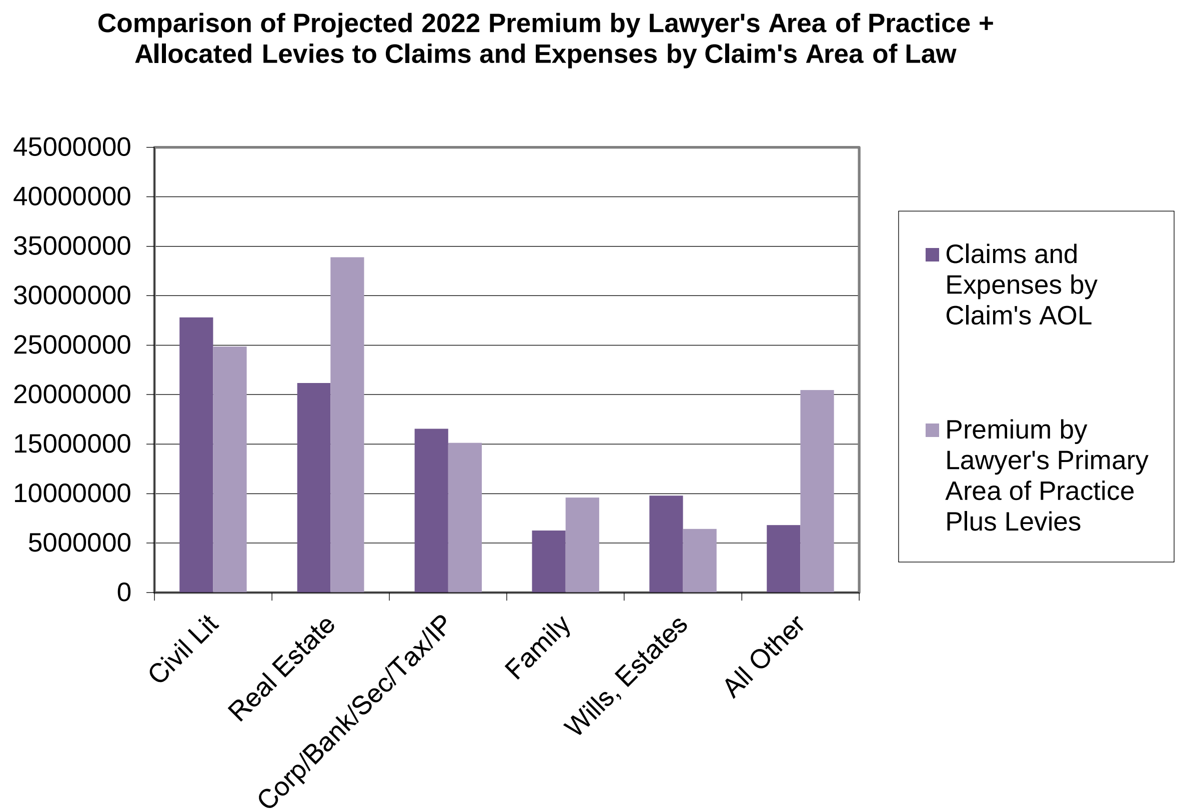
51. For the purpose of risk rating, the Primary Program's anticipated losses and related costs must be compared to the premiums. Based on the most recent loss experience under the Primary Program (including that seen under the Primary Program up to December 31, 2020), the following chart compares the 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.



52. 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. 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.[26] Without transaction levies, real estate and litigation lawyers would be paying a base premium two to three time higher than the current LAWPRO base premium.

[26] 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.

53. By including the transaction and claims history surcharge levies in the calculation, a shortfall for real estate and civil litigation claims costs is typically reduced.



54. The above 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. 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 civil litigation. The pandemic caused a significant reduction in both real estate and litigation transaction levies in 2020 and has bounced back given the increase in work in these areas in 2021. With these changes, the relationship between real estate and civil litigation costs and premium revenue by lawyers in these two primary areas of practice will need to be monitored to determine whether any further action should be taken on this category in future years. It is worth noting that LAWPRO obtains area of practice information from lawyer's self reporting on insurance applications and from the Law Society. The data from the latter is retrospective and may reflect a lawyer's area of practice one or more years in the past. Lawyers' areas of practice may vary over time – as they did in 2020 – which also impacts this analysis.

55. The chart above 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, and especially if there is a larger claim.

56. 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.

57. 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.

58. Appreciating the foregoing variables and possibilities of comparison by area of practice, and notwithstanding the atypical variations caused by the pandemic in 2020 and 2021, it appears that the Primary Program 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.”[27]

59. 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”.

60. 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.

[27] 1994 Insurance Committee Task Force Report, at page 17.

61. 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.

62. Various examples of premiums which would be charged to members depending on the nature of their practice are summarized in the Premium Rating Examples section at page 8 of this Report.

63. LAWPRO offers many different risk-rated discounts. The number of Ontario lawyers that qualify for the most significant premium discounts is summarized in the following table:

Description of sample discounts	Number of lawyers who claim these sample discounts as of Aug 1, 2021
New Lawyer Discount (20%-50% discount)	6,284 lawyers (21% of all insureds)
Restricted Area of Practice Discount (50% discount)	1,769 lawyers (6% of all insureds)
Part Time Practice Discount (50% discount)	2,398 lawyers (8% of all insureds)
TOTAL	10,451 lawyers (35% of all insureds)

REINSURANCE AND CAPITAL PRESERVATION

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

65. In its early years, LAWPRO purchased Primary Program-wide quota share reinsurance[28]. 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.

66. For 2022, 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

[28] "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).

Reinsurance”[29]). This protection against aggregated losses extends across both the Primary Program and TitlePLUS business, 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 the continuing harder 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 2022.

67. Accordingly, 100% of the premiums and losses for the Primary Program will again be retained by LAWPRO in 2022, subject to reinsurance protecting the Primary Program from multiple losses arising out of a common event or nexus.

CAPITAL REQUIREMENTS

68. 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. 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. (An “outlook”, which looks more to the future, is different from a “rating”.)

69. 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.

70. 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

[29] “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).

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.

71. 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 operations 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.

72. 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.

73. The MCT was within the preferred range at December 31, 2020 (229%) and at June 30, 2021 (219%). It fell below the preferred range at June 30, 2020 (205%) due to the impacts of the pandemic. The 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.

74. The insurance industry is undergoing a complete financial statement overhaul from the move to International Financial Reporting Standards 17 (IFRS 17) effective January 1, 2023. The Office of the Superintendent of Financial Institutions (OSFI) has indicated that they expect IFRS 17 to be capital neutral for the industry as a whole, but not necessarily for individual companies. LAWPRO expects IFRS 17 to have a negative impact on the company's MCT. We do not yet know the magnitude of this impact, but note that, all other things being equal, this change may require an increase to annual base premiums in one or more future years.

CONCLUSION

75. LAWPRO has successfully navigated the operational and financial challenges of the pandemic and is adapting to move into the new realities of a post-pandemic world. While a premium increase is not warranted at this time, LAWPRO expects there will be premium increases in future years as a result of pandemic-related claims costs, increased operational expenses, and changing capital requirements.

76. The LAWPRO Board considers the Primary Program 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 2022 and asks for Convocation's acceptance of this Report at the October Convocation, so that the 2022 Primary Program can be implemented by January 1, 2022.

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

October 2021

Andrew Spurgeon

Chairperson of the Board

Lawyers' Professional Indemnity Company

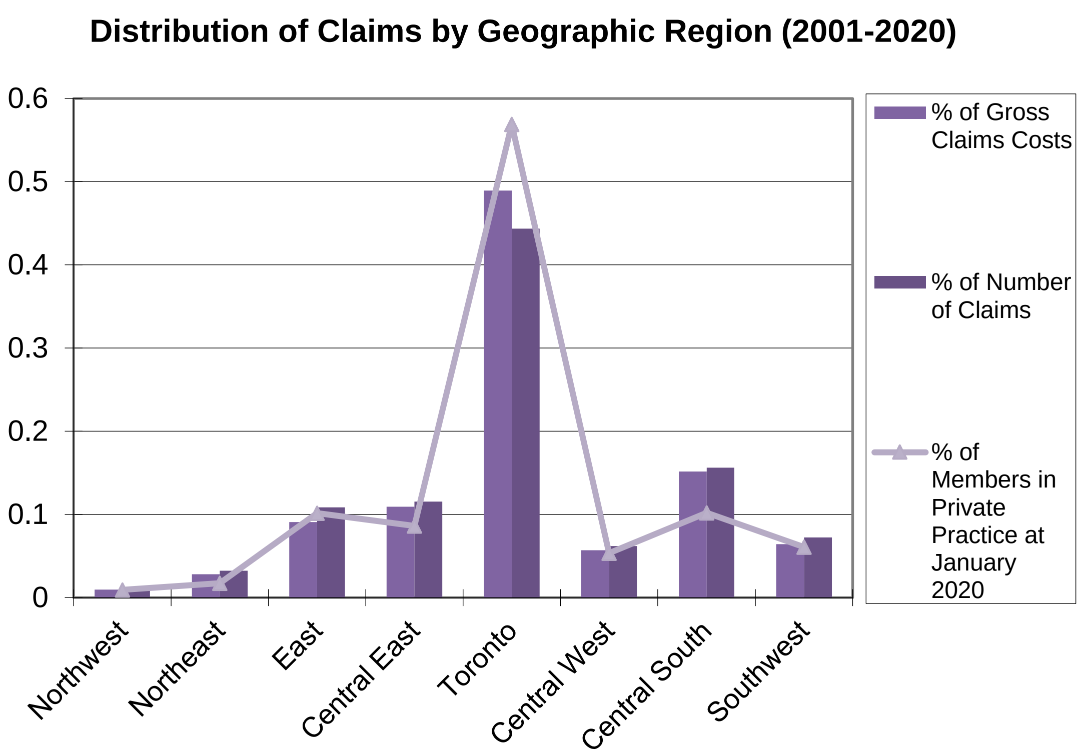
Daniel E. Pinnington

President & CEO

Lawyers' Professional Indemnity Company

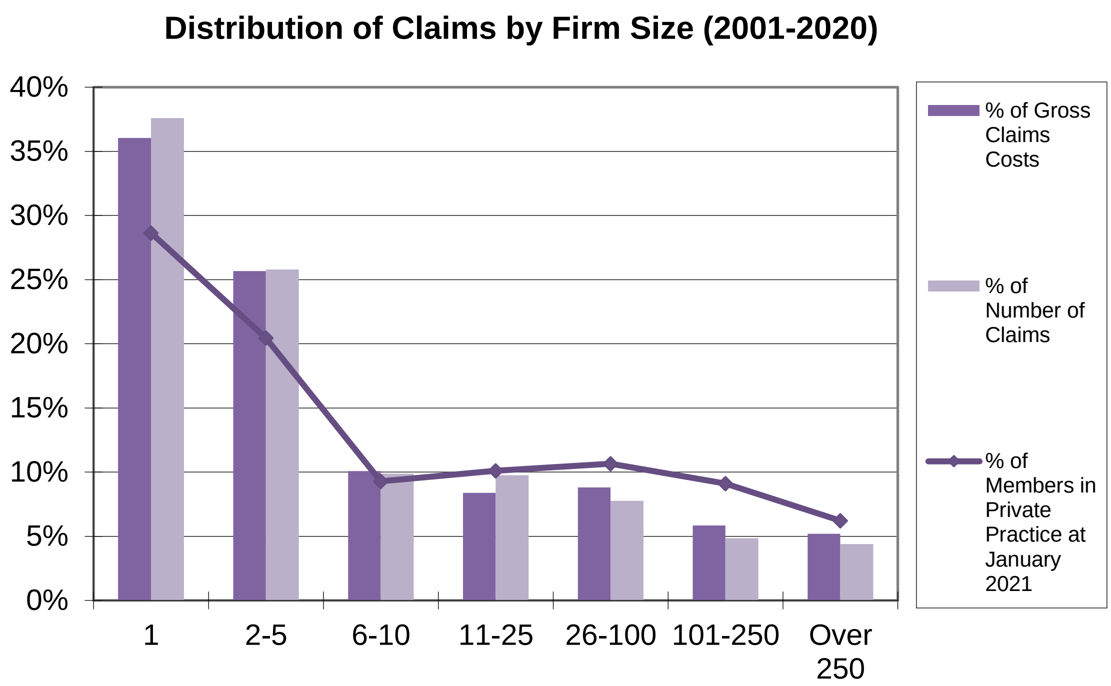
Appendix “A”

Distribution of Claims by Geographic Region

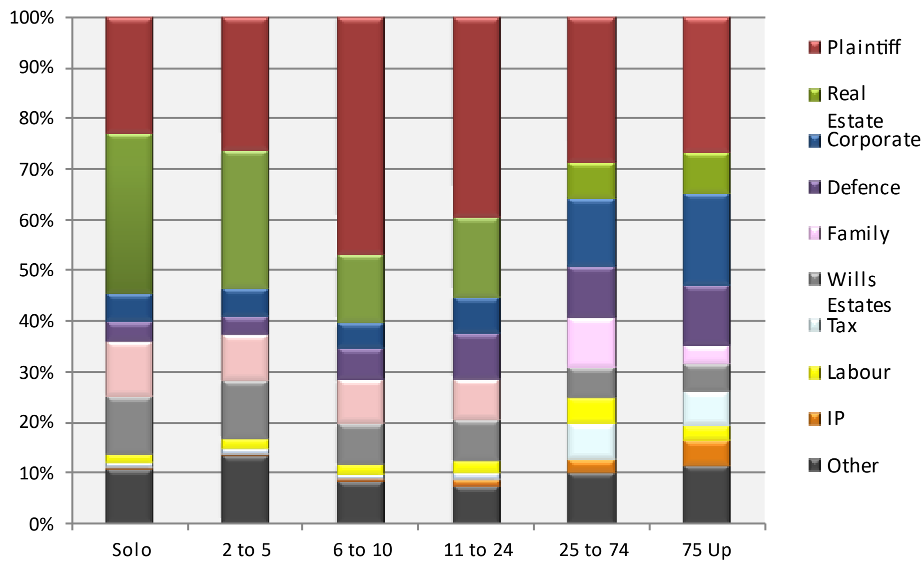


Appendix "B"

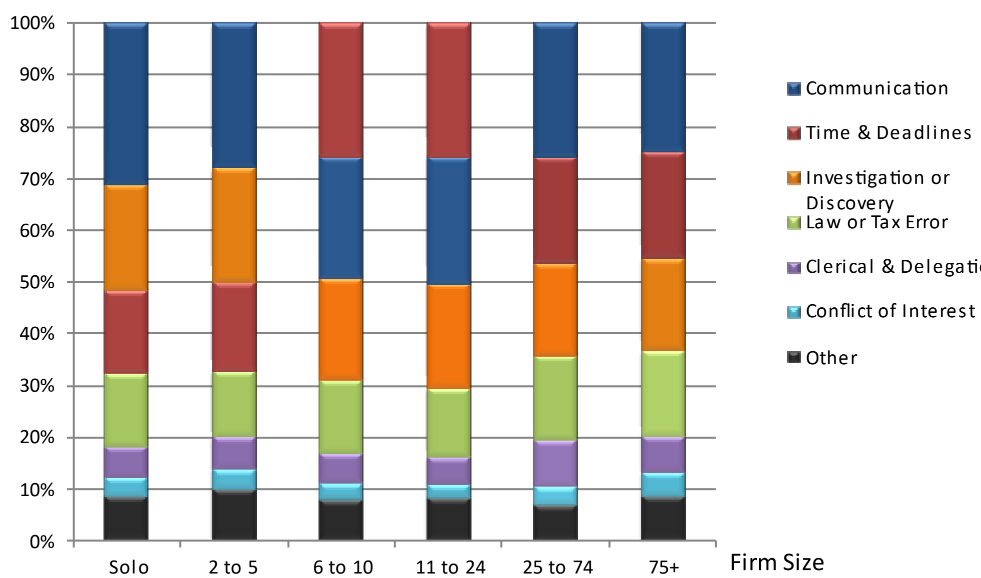
Distribution of Claims by Firm Size



LAWPRO claims count by area of law and firm size (2010-20)

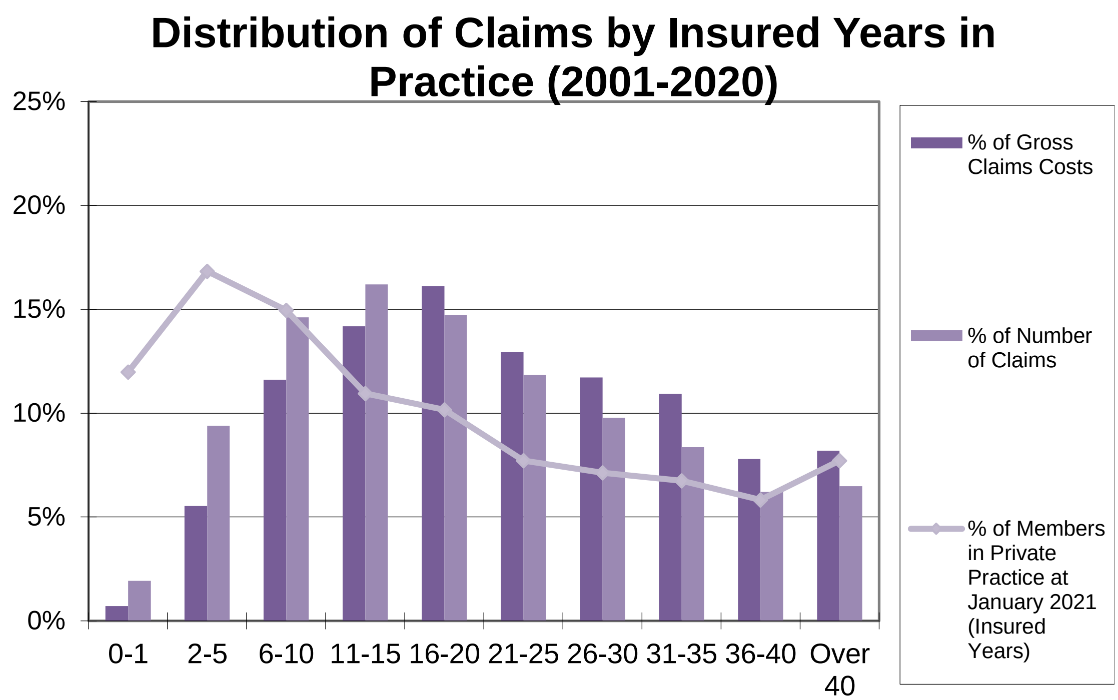


LAWPRO claims count by error type and firm size (2010-20)



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.

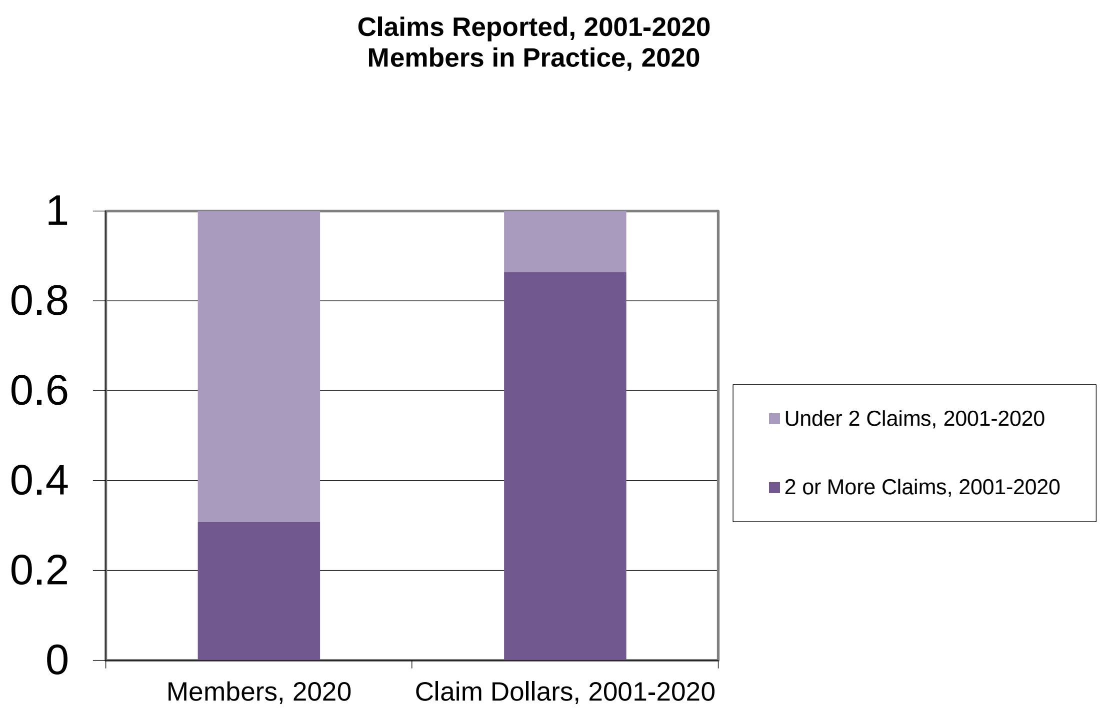
Conflict of interest: There are two types of conflict claims: the first arises when conflicts occur between multiple current or past clients represented by the same lawyer or firm. The second is a conflict that arises when a lawyer has a personal interest in the matter. As they regularly act for multiple 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 30% of LAWPRO insureds with 2 or more claims are responsible for 85% of LAWPRO's claims costs



Appendix “F”

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

LAWPRO developed a vision, mission and values statement as a high-level road map to help us identify priorities, guide our activities, and provide a benchmark against which we measure ourselves. It also provides an ideal framework for how LAWPRO meets its mandate to be efficient, effective and accountable.

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

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

Values: These statements inform our customers and employees of our core beliefs, fundamental goals and priorities that we pursue in our everyday work.

- *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 energies and expertise to many communities.