

## Transmittal Memo

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

FROM: LAWPRO Board of Directors

DATE: September 20, 2023

### **RE: 2024 LAWPRO Insurance Program Proposal**

LAWPRO provides the mandatory professional liability insurance coverage for the more than 30,000 Ontario lawyers in private practice. For 2024, LAWPRO's Board and Management conducted their annual review of the Primary Program and offers an insurance program with the changes outlined in the attached Report to address the current environment and risks faced by the Ontario bar. The timing of this Report is necessitated by the logistics of starting the renewal process in early October so that all policies can be renewed to be effective January 1, and the need to negotiate and place reinsurance treaties prior to the renewal date.

#### **2024 Policy key points**

1. Base premium remains \$3,250 and all other discounts and charges are unchanged.
2. Maximum billings threshold for part-time practice discount is increased to \$100,000 from \$90,000.
3. Social engineering sublimit of \$250,000 with increase to \$1 million if basic risk mitigation conditions are met is introduced.
4. Other minor changes to policy wording and program administration that are housekeeping in nature or intended to clarify underwriting intention.

#### **Context**

In alignment with its mandate from Convocation, LAWPRO's Board and Management have considered coverage needs, claims trends, capital requirements due to regulatory obligations, the changing environment in which lawyers practice, and comments from the profession when developing the 2024 Policy.

Two noteworthy changes in the policy are an increase in the maximum billings to qualify for the part-time practice discount and the introduction of a social engineering sublimit.

The inflationary environment our province is currently experiencing led to the recognition that an increase to the part-time threshold was a reasonable change at this time.

The second change is in response to the increase in fraud related activities. Chances are that you have received an email suggesting you need to respond on an urgent basis as your bank account or credit card has been compromised. You are asked to click on a link to update your login information. Many people, including Ontario lawyers and law firm staff, fall for this trick and by clicking on the link and trying to login, they have provided their login credentials. LAWPRO has seen a significant increase in fraud

attempts, and in particular these social engineering techniques, over the past few years. To address this growing problem and to help lawyers take steps to minimize their risk, LAWPRO is introducing a sublimit of \$250,000 with an increase to \$1 million if basic risk mitigation steps are taken.

### **LAWPRO background and financial responsibilities**

LAWPRO was created in response to the “insurance crisis” of the early 1990s when the Law Society of Ontario’s insurance program was underfunded by more than \$154 million.

To address the crisis, LAWPRO was mandated to run as a regulated insurance company with financial accountability. The mandate given to LAWPRO requires that it:

- 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.

As a regulated insurance company, LAWPRO must act in compliance with requirements of its regulator, the Financial Services Regulatory Authority of Ontario (“FSRA”). FSRA and other Canadian regulators use the Minimum Capital Test (“MCT”) to assess capital adequacy of a property and casualty insurer. The LAWPRO MCT is currently in the preferred range indicating that it is properly capitalised to withstand adverse scenarios such as a sudden influx of large claims, higher than expected inflation, or investment deterioration. While LAWPRO saw a dip in claims activity during the pandemic, the annual count and cost of claims have more or less returned to pre-pandemic trends.

The fact that LAWPRO is managed as a regulated insurance company should give comfort to Ontario lawyers in that they can be assured to have the coverage they need when they face a claim. Errors and omissions insurance is only useful if the insurer has the funds to cover a claim when needed. That assurance of financial stability, combined with the deep knowledge of the challenges faced by the Ontario bar is what makes LAWPRO unique and most appropriate to serve the Law Society of Ontario.

LAWPRO offers the following advantages over insurance carriers on the open market:

- Guaranteed availability of affordable insurance to all lawyer licensees
- Consistent coverage, terms, and conditions for all lawyer licensees
- Proactive assistance to help prevent claims from crystallizing and repairs on potential claims that may not trigger a deductible or premium increase
- Proactive claims prevention efforts and practical resources to help reduce claims risks (practicePRO)
- 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
- Automatic, free Run-off coverage of \$250,000

- A built-to-purpose Excess insurance program with a competitive premium for solo and small firm lawyers
- Coverage for lawyers doing pro bono work in a wide variety of circumstances
- An insurance provider that is financially stable and can therefore be relied upon to pay claims

It should be noted that a base premium of \$3,250 per lawyer is 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). Further, many members of the profession pay much less than the base premium by taking advantage of the various discounts LAWPRO offers.

LAWPRO is integral to the Law Society's public protection mandate as it stands behind lawyers and sets clients right in the event they suffer a loss due to the negligence of their lawyer. It operates as a captive insurance company that is not profit-driven. In fact, for each \$1.00 LAWPRO gets by way of premiums, it pays out \$1.08 in costs. The decision to keep premiums this low compared to the amounts paid for claims and expenses is not typical for a commercial insurance company. Although LAWPRO does not price its product for profit, it maintains its solvency through return-on-investment income. Operating in this manner provides a substantial benefit to the profession.

### **Conclusion**

The LAWPRO Board offers this Primary Program of Insurance for 2024 to Convocation and asks for Convocation's acceptance of this Report. The Motion to be moved at the meeting of Convocation on September 28, 2023:

### **LAW SOCIETY OF ONTARIO**

RE: LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LAWPRO) 2024 PROGRAM OF INSURANCE

MOVED BY: Andrew Spurgeon

SECONDED BY: Robert Adourian

THAT Convocation approve the Primary Program of Insurance for 2024 as offered and recommended by the Lawyers' Professional Indemnity Company (LAWPRO) Board in the Report at Tab 2.

Andrew Spurgeon

Chairperson

Daniel E. Pinnington

President & CEO



REPORT TO CONVOCATION  
(2024 Insurance Program Proposal)

SEPTEMBER 2023

## Contents

INTRODUCTION .....	3
BACKGROUND .....	4
2024 PROGRAM FEATURES .....	7
CONTINUING TO HELP LOWER RISK .....	10
PROMOTING ACCESS TO JUSTICE .....	11
CLAIMS TRENDS .....	11
RISK MANAGEMENT INITIATIVES.....	15
CONTINUING STABILITY AND EVOLUTION OF THE PRIMARY PROGRAM FOR 2024 .....	17
REVENUES .....	19
THE ERRORS & OMISSIONS INSURANCE FUND.....	24
RISK RATING .....	25
REINSURANCE AND CAPITAL PRESERVATION .....	29
CAPITAL REQUIREMENTS .....	30
CONCLUSION .....	32
Appendix A – Distribution of Claims by Geographic Region.....	33
Appendix B – Distribution of Claims by Firm Size .....	34
Appendix C - Distribution of Claims by Years in Practice.....	36
Appendix D - Detailed Descriptions of Causes of Loss.....	37
Appendix E - Lawyers with multiple claims responsible for bulk of claims costs .....	39
Appendix F - LAWPRO Vision, Mission & Values and Corporate Social Responsibility .....	40

# LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")

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## REPORT TO CONVOCATION SEPTEMBER 2023

### INTRODUCTION

1. LAWPRO provides the mandatory professional liability insurance coverage for the more than 30,000<sup>1</sup> Ontario lawyers and paralegals 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 required reinsurance treaties prior to the renewal date.
2. Over the last eight months LAWPRO's Board and Management conducted their annual review of the Primary Errors and Omissions Program (the "Primary Program") and offer an insurance program for 2024 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 recommends that Convocation approve this Primary Program of Insurance for 2024 as offered so that it can be implemented by January 1, 2024.

#### Summary of changes to the 2024-001 Policy:

1. **Increase maximum billings threshold for part-time practice discount from \$90,000 to \$100,000.**
2. **Introduce social engineering sublimit and conditions. Sublimit of \$250,000 with increase to \$1 million if basic risk mitigation conditions are met.**
3. **Other minor changes to policy wording and program administration that are housekeeping in nature or intended to clarify underwriting intention.**
4. **Base premium remains \$3,250 and all other discounts and charges remain unchanged.**

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<sup>1</sup> As at 30 June 2023, there were 28,172 full-time lawyer insureds, 2,470 part-time lawyer insureds, and 59 paralegal insureds. As well, there were 70 non-licensees who are in Multi-Discipline Partnerships (MDPs) with lawyers and are also insured with LAWPRO. The number of insureds fluctuates month-to-month as some lawyers leave private practice and new lawyers begin practicing.

## 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 the 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 \$154 million.<sup>2</sup>
5. The resulting crisis presented the Ontario Bar with one of the most serious challenges in its history: finding millions of dollars 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 to enter the market, or if commercial carriers would not offer insurance to some lawyers because of their individual circumstances (e.g., a history of previous claims). 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.”<sup>3</sup>
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 28 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 the manner in which LAWPRO operates, it offers many advantages to the bar including:

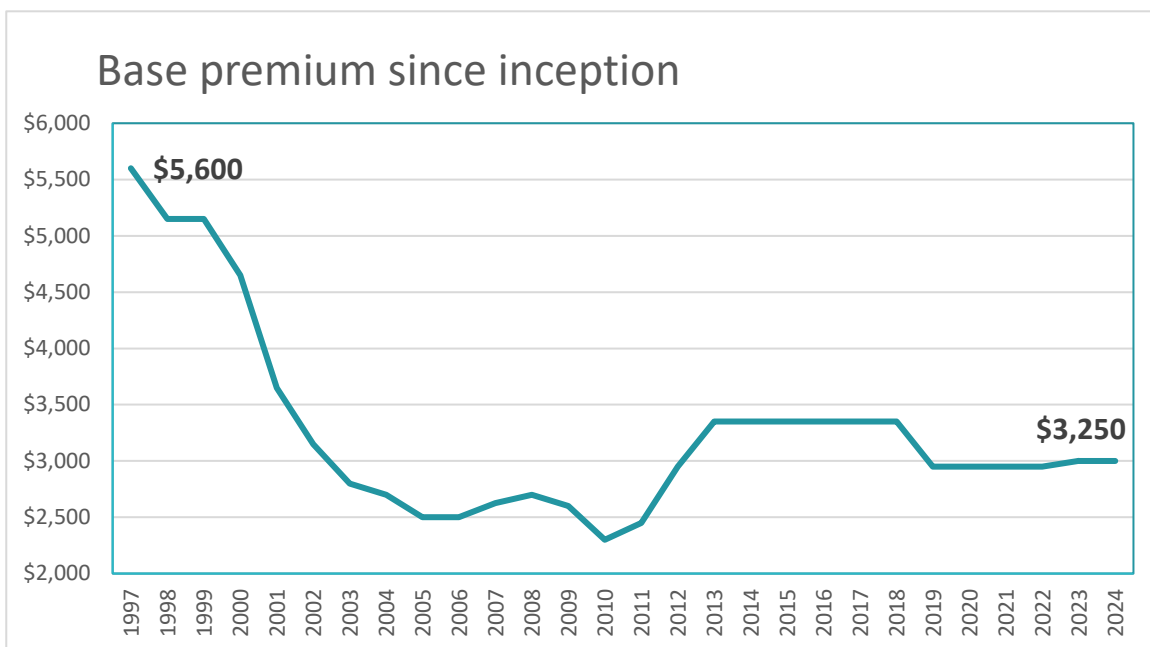
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<sup>2</sup> The equivalent of \$318 million in today’s dollars.

<sup>3</sup> *Report to Convocation of the Insurance Task Force and the Insurance Committee*, October 28, 1994 (November 15, 1994), paragraph 50 on page 25.

- Guaranteed availability of affordable insurance to all lawyer licensees;
- Consistent coverage, terms, and conditions for all lawyer licensees;
- Proactive assistance to help prevent claims from crystallizing and repairs on potential claims that may not trigger a deductible or premium increase;
- Proactive claims prevention efforts and practical resources to help reduce claims risks ([practicePRO](#));
- 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;
- Automatic, free Run-off coverage of \$250,000 (a lifetime limit that covers lawyers after they leave private practice for any reason), and options to increase run-off coverage for lawyers that desire a higher limit;
- A built-to-purpose Excess insurance program with a competitive premium for small and medium sized firms of up to 50 lawyers;
- Coverage for lawyers doing *pro bono* work in a wide variety of circumstances; and
- 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 11 years ago and far lower than it was after the 1994 insurance crisis. The 2024 base premium will remain the same as last year, despite rising claims costs and changes being made by LAWPRO’s regulator that are impacting solvency requirements and operational costs. It is worth noting that about a third of the members of the profession pay much less than the base premium by taking advantage of the various discounts LAWPRO offers (see Paragraph 72).





10. LAWPRO is integral to the Law Society's public protection mandate as it stands behind lawyers and sets clients right in the event they suffer a loss due to the negligence of their lawyer. It operates as a captive insurance company that is not profit-driven. In fact, for each \$1.00 LAWPRO gets by way of premiums, it pays out \$1.08 in costs. The decision to keep premiums this low compared to the amounts paid for claims and expenses is not typical for a commercial insurance company. Although LAWPRO does not price its product for profit, it maintains its solvency through return-on-investment income. Operating in this manner provides a substantial benefit to the profession. This is discussed further in paragraphs 45 to 48 below.

11. 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:

- To continue to offer as comprehensive coverage as is currently provided, the high loss ratio would require higher premiums as commercial insurers would underwrite to make a profit;
- Lawyers would have to pay insurance broker fees, adding 15% or more to the cost of insurance;
- Premiums would vary widely by firm size and area of practice, and for individuals with a history of reported claims;
- 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;
- Coverage terms and conditions would vary widely;
- The public would be at risk as it would be more difficult to know if a lawyer's coverage had been cancelled;
- A premium would likely be charged for Run-off coverage, and there would likely be premiums for separate policies if the lawyer worked at different firms; and
- 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.

12. 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 more than a decade after several commercial insurers pulled out of its mandatory program.<sup>4</sup>

## 2024 PROGRAM FEATURES

13. 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 (see a full list of [exemption eligibility criteria 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.

14. The following is a brief summary of the 2024 Primary Program:

*Standard base premium (unchanged)*

\$3,250 per insured lawyer

*Coverage Limits (unchanged)*

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

*Innocent Party Coverage (unchanged)*

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 (unchanged)*

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

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<sup>4</sup> 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.

### *Deductible (unchanged)*

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: (unchanged)*

#### *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<sup>5</sup> 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 \$100,000 per year or less (*in 2023 the gross billings threshold was \$90,000*)

#### *For those employed at a Designated Agency<sup>6</sup>*

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

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

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<sup>5</sup> 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.

<sup>6</sup> A "Designated Agency" can include a Civil Society Organization that has been approved for the general premium discount.

**Premium Rating Examples (In Dollars)**

	<b>1995<sup>7</sup></b>	<b>2005<sup>8</sup></b>	<b>2015<sup>9</sup></b>	<b>2022<sup>10</sup></b>	<b>2024</b>
<b>Base premium</b>	\$5,600	\$2,625	\$3,350	\$3,000	<b>\$3,250</b>
<b>1. Sole Practitioner - Real Estate Law</b> - real estate practice coverage option - \$10,000 defence & indemnity deductible - early lump sum payment discount - \$250,000 Optional Innocent Party cover	\$6,000 <sup>11</sup>	\$2,528	\$3,549	\$2,825	<b>\$3,056</b>
<b>2. Firm Practitioner - Real Estate Law</b> - real estate practice coverage option - \$25,000 defence & indemnity deductible - \$250,000 Mandatory Innocent Party cover	\$6,000 <sup>12</sup>	\$2,547	\$3,431	\$2,725	<b>\$2,944</b>
<b>3. New Lawyer Practising in Association</b> - first year in practice discount - \$250,000 Mandatory Innocent Party cover - \$10,000 defence & indemnity deductible - early lump sum payment discount	\$3,900 <sup>13</sup>	\$1,478	\$1,624	\$1,225	<b>\$1,331</b>
<b>4. Criminal Lawyer (sole practitioner)</b> - Restricted Areas of Practice discount - \$10,000 defence & indemnity deductible - early lump sum payment discount	\$5,600 <sup>14</sup>	\$1,228	\$1,374	\$1,225	<b>\$1,331</b>
<b>5. Part-time Lawyer (in association)</b> - Part-time Practitioner discount - \$1,000,000 Optional Innocent Party cover - \$10,000 defence & indemnity deductible	\$6,000 <sup>15 16</sup>	\$1,877	\$1,923	\$1,400	<b>\$1,506</b>
<b>6. Firm Practitioner with 1 Claim</b> - claims history levy surcharge - \$5,000 defence & indemnity deductible - \$250,000 Mandatory Innocent Party cover	\$8,500 <sup>17</sup>	\$5,375	\$6,100	\$5,500	<b>\$5,750</b>
<b>7. Sole Practitioner with 2 Claims</b> - claims history levy surcharge - \$5,000 defence & indemnity deductible	\$10,600 <sup>18</sup>	\$7,625	\$8,350	\$8,000	<b>\$8,250</b>
<b>8. Designated Agency Lawyer</b> - \$5,000 defence & indemnity deductible - Risk Management Credit (x 2)	\$5,600	\$2,550	\$3,250	\$650	<b>\$713<sup>19</sup></b>

<sup>7</sup> Members are also required to pay a \$25 levy for each civil litigation or real estate transaction not otherwise excluded.

<sup>8</sup> Members are also required to pay a \$50 levy for each civil litigation or real estate transaction not otherwise excluded.

<sup>9</sup> \$65 per real estate transaction and \$50 per civil litigation transaction. Premium for the Real Estate Practice Coverage Option was also applied.

<sup>10</sup> \$250,000 Innocent Party cover now provided free for all insureds.

<sup>11</sup> 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).

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Subject to \$250,000 Innocent Party cover only, additional limits not available.

<sup>17</sup> Supra, note 11

<sup>18</sup> Supra, note 11

<sup>19</sup> If a lawyer is employed exclusively by 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

16. A number of virtual CPDs and resources prepared by practicePRO, LAWPRO's risk management initiative, have helped lawyers identify and avoid potential fraud, better understand their LAWPRO coverage, other insurance considerations, and manage the day-to-day challenges of managing files. These virtual programs were produced in partnership with the Toronto Lawyers Association have proven very popular - with sessions attracting hundreds of participants. Each program is eligible for 1.5 hours of professionalism CPD credit and LAWPRO's Risk Management Credit. They are also available as an anytime replay from [practicePRO.ca/cpd](http://practicePRO.ca/cpd):

- [Top Tips for Advocates](#)
- [Insurance 101 for lawyers](#)
- [Protecting your firm against fraud](#)
- [Tips for Corporate Commercial Lawyers](#)
- [Tips for Real Estate Lawyers](#)
- [Survival Tips to Prevent Fraud](#)
- [Tips for Wills & Estates Lawyers](#)
- [Avoiding the wire fraud nightmare – what you need to know to protect yourself and your clients](#)
- [A Discussion: Continuing to Manage – Mental Health, Resilience and Resources](#)
- [Managing the Second Wave: Mental Health, Resilience and Resources](#)
- [Preparing for Pro Bono: Tips for Successfully Delivering Pro Bono Services](#)

A [full listing of the 20 most downloaded resources](#) is available on the practicePRO website but the most popular are listed below:

- [Check your cheques: Five ways to spot fraudulent cheques](#)
- [Tips for calculating limitations deadlines accounting for the COVID-19 emergency suspension period](#)
- [Non-resident Sale Holdback Flowchart](#)
- [Subdivision Control under the Planning Act. What do you need to know?](#)
- [General Retainer Letter](#)
- [CPD: Tips for Advocates](#)
- [CPD: Avoiding the wire fraud nightmare: What you need to know to protect yourself and your clients](#)
- [CPD: Tips for Wills & Estates Lawyers](#)

- [CPD: Diversity, Inclusion & Cultural Competence to Avoid Claims](#)
- [Limitations and Notice Periods Chart](#)

## PROMOTING ACCESS TO JUSTICE

17. Since 2017, LAWPRO has approved eleven 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.<sup>20</sup>
18. 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 (“PBO”) 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 practicing lawyer takes part in these activities and a claim arises, that lawyer will not have to pay a claims history levy surcharge or deductible. This is particularly welcome for the many currently insured and exempt lawyers who volunteer with PBO’s popular Free Legal Advice Hotline. 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<sup>21</sup>.

## CLAIMS TRENDS

19. As the paragraphs below highlight in more detail, as a result of changes from the pandemic, the count, cost and types of claims in the LAWPRO claims portfolio continues to fluctuate. At this point, we can’t fully know exactly how all the changes brought on by COVID-19 will further affect claims in the coming years.
20. 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.<sup>22</sup> In a typical year we expect to see approximately 275 claims costing more than

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<sup>20</sup> See the [LAWPRO website for more details and a list of LAWPRO approved Designated Agencies](#).

<sup>21</sup> For more on this, see the [LAWPRO Pro Bono Coverage](#) Chart.

<sup>22</sup> “[Don’t let claims follow you into retirement](#)”, LAWPRO Magazine Vol. 16.3 (February 2017).

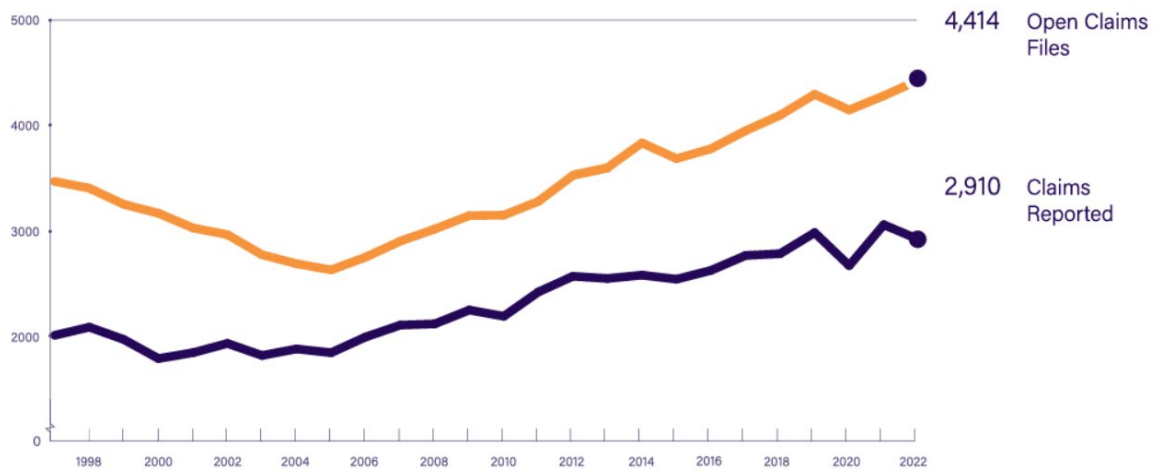
\$100,000, and 5-15 claims hit the \$1 million dollar per claim policy limit. Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior 10 years were over three times more likely to report a claim during the past year than those with no claims in the prior 10 years. The 32% of LAWPRO insureds with 2 or more claims are responsible for 87% of LAWPRO's claims costs (See Appendix E).

21. 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. Increasing inflation since 2022 has caused the Bank of Canada to increase the key interest rate significantly over the last year and half. The key rate was flat in 2021, increased 4.0% during 2022 and an additional 0.75% in 2023 to where it currently sits at 5.0%. We also expect to see an increase in claims when the courts recommence 5-year automatic dismissals (and are taking steps to minimize this impact). Claims caused by non-client fraud have been on the rise with an all-time cost high in 2022 and no signs of it diminishing in 2023.
22. As the following graph indicates, in 2022, we saw 2,910 new claims, a small reduction compared to the previous year, but still notably higher than the reduced number of 2,661 claims seen in 2020. It's possible that claims were inflated somewhat in 2021 due to a backlog of economic and legal activities that were on pause during the shutdowns of 2020. However, the long-term trend in claims count continues to show steady year-over-year growth as the legal profession expands and the complexities of legal matters continue to multiply.

*(See next page)*

## Number of claims reported and open claims

Total number of open claims at Dec. 31, 2022



Beyond claims counts, LAWPRO monitors claims costs, which also show every indication that business activity and litigation volumes are returning to normal. Claims costs for the Primary Program for the first half of 2023 were \$51 million, up 31% relative to the same period last year. Our current estimate for 2024 is approximately \$116 million due to the return to more normal business levels, increased defence costs and the current inflationary environment.

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 3.0% for the period 2001 through 2020. Total costs were \$59 million for 2001 and crossed the \$100 million threshold in 2016. Claims count has also increased over time, but at a lower average annual rate of 2.2% over the period of 2001 to 2020. The net effect has been an increase in average cost per claim from \$33,000 in 2001 up to \$36,000 in 2020.<sup>23</sup>

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<sup>23</sup> Average cost per claim figures quoted here do not include claims after 2020 as it typically takes 2-3 years for LAWPRO to investigate and set a *reserve* on a claim file (i.e., the amount we expect a claim will ultimately cost us).

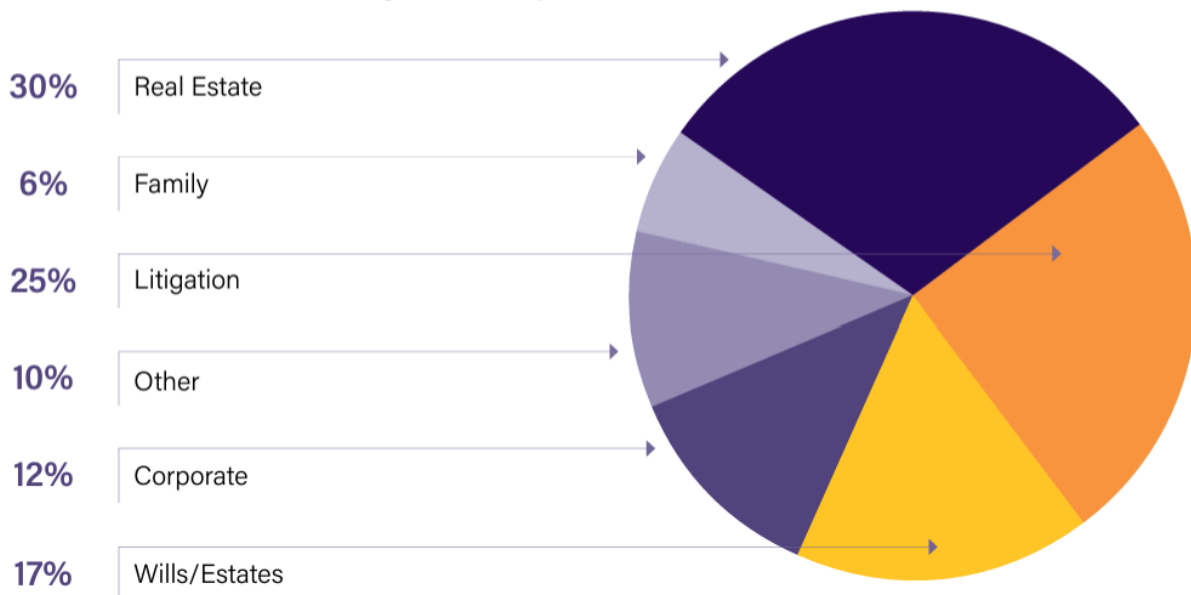


24. What types of claims are happening? Over the years, LAWPRO has seen fairly consistent claims trends by area of law and type of malpractice error, which are illustrated in the graphs below and discussed in more detail in the next two paragraphs.

25. LAWPRO's present risk analysis reaffirms the results of previous Reports to Convocation indicating that the practice of real estate and civil litigation represent the greatest claims costs to the program when compared to other areas of practice. As illustrated in the following pie chart, these two areas of practice represented 55% of the claims reported under the Primary Program in 2022. In 2022, the largest percentage of reported claims continued to be related to real estate (30%) and litigation (25%). However, the number of litigation claims was still fewer than that seen in 2019, which may reflect the continuing hold on administrative dismissals, a policy initiated in response to the pandemic. Once the hold is eventually lifted, we may see a corresponding additional increase in claims numbers.

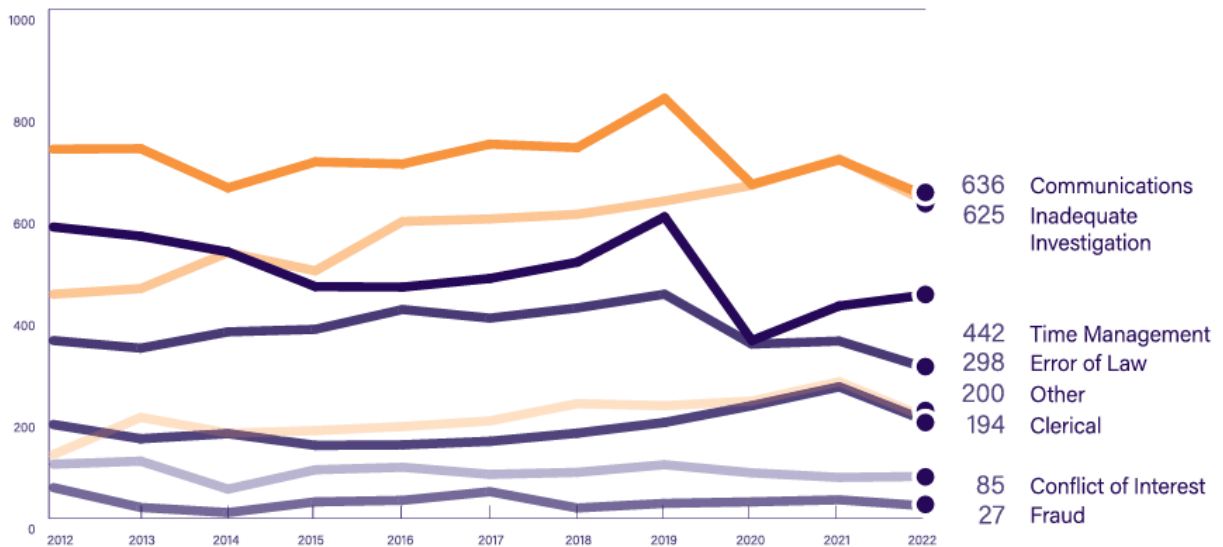
#### Claims Count by Area of Law (2022)

Distribution of claims by area of practice



26. As in the past, inadequate investigation, communication errors and time management mistakes caused the most claims. However, there were small decreases in the number of claims caused by

inadequate investigation and communication-related errors. In 2022, we began to see what appears to be a gradual return to the pre-pandemic distribution, with time management on the upswing.



27. Fact sheets that highlight the most common causes of malpractice claims for the major areas of practice can be viewed at [practicepro.ca/factsheets](https://practicepro.ca/factsheets).

## RISK MANAGEMENT INITIATIVES

28. A principal philosophy of LAWPRO is to help members of the legal profession reduce their claims risks by helping them understand and reduce 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.ca 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, Ontario lawyers are recognizing and avoiding frauds but fraudsters' continued sophistication and creativity means lawyers are still being victimized and an increase in fraud attempts in 2022 and 2023 means that fraud-related claims continue to be an ongoing and significant concern for LAWPRO. Currently, funds redirection and ID theft on real estate transactions are the most common frauds we are seeing (i.e., lawyers wiring funds to a fraudster from their trust account after being duped). 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. In 2023, we updated our [Fraud Fact sheets](#) for more details and to cover more current fraud attempts. They are available practicepro.ca, are a good reminder of ways to identify possible dangerous situations. In 2022 and 2023, we received many calls from lawyers asking about suspicious situations they were seeing and for advice. We were able to go over the scenario with them and help provide the fraud before it happened in some instances or help them recover missing money in others.

**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 2024, lawyers (and paralegal insureds in combined licensee firms) must have participated in LAWPRO-approved CPD programs or Homewood Health e-Learning courses between September 15, 2022 and September 16, 2023. 9,894 lawyers claimed 12,064 credits for the 2023 policy year. 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 and proprietary

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 experience challenges to physical or mental health, and to use, misuse or even become addicted to alcohol or legal/illegal drugs. 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 EVOLUTION OF THE PRIMARY PROGRAM FOR 2024

29. The LAWPRO Board and management 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 2024 Primary Program, LAWPRO has considered claims trends and costs, including fraud-related claims; and the pressure on our insured professionals to control costs, especially in the current environment. For the 2024 Primary Program, LAWPRO has focused on keeping premiums as low as possible despite rising claims and operational costs associated with the current economic environment, enhanced coverage, and improving the customer experience.
30. Another change being introduced for 2024 is greater availability of the part-time practice discount. Currently, lawyers can qualify for a discount equal to 50% of the base premium (i.e. \$1,625 off) if they:
31. have no claims with a repair/indemnity payment made in the last 5 years;
  32. limit their hours of professional time to a maximum of 20 hours/week on average (750 hours/year) for the current and prior fiscal year; and
  33. their gross billings for the current and prior year are less than \$90,000.

34. For 2024 the gross billing threshold is being increased to \$100,000, making it even easier for lawyers to qualify for this discount.
35. A new exclusion has been introduced that modifies the coverage limit available for claims arising from social engineering. If, for example, a bad actor impersonates a lawyer's client and has funds redirected from the lawyer to the criminal, this would be an example of social engineering (i.e., the criminal has induced an innocent lawyer into doing something that is against their best interests by dishonest means).
36. Claims relating to these kinds of frauds have more than tripled since 2017 as more and more bad actors realize that lawyers often have money in trust accounts that are ready to be disbursed and a high enough volume of transactions that make it easier for mistakes or red flags to be overlooked. This is driving up the costs of claims and putting clients at risk.
37. Often times, if lawyers were to take simple steps to verify the veracity of the instructions, the crime could be prevented. These steps include having clear language in communications with clients that describe how revised instructions for transferring funds should and will be handled. Lawyers should ensure they have up-to-date contact information and funds transfer instructions for their clients. And if a lawyer gets an unexpected email or text to change funds transfer instructions, the lawyer should use another method (such as a phone call to the number in the file, or by arranging a face-to-face in-person or virtual meeting) to verify such instructions.
38. If a loss occurs that otherwise comes within the coverage despite these conditions being met (or if the loss would have still occurred even if the conditions had been met) then the lawyer will still have the usual limits available. If, however, the loss occurred because these simple loss prevention steps were not taken, a lower limit of \$250,000 would apply.
39. After more than two years of preparation and work, in July 2023 LAWPRO launched OneShield Market Solutions (OMS) a new policy and claims administration system. The legacy system, which was more than 25 years old, no longer met LAWPRO's operational needs and technical requirements. OMS is a modern, cloud-based system that will help LAWPRO operate more effectively and better meet customer needs far into the future.

40. As we transition to OMS, LAWPRO will be making changes to its renewal process this year. Normally, insureds complete a renewal application beginning in October each year. For the 2024 renewal process, LAWPRO will be offering automatic renewal to the approximately 70% of insureds that don't change their coverage from one year to the next. By proceeding with automatic renewal instead of an application, LAWPRO insureds will be saved time and effort while minimizing mistakes or delays as LAWPRO transitions to OMS.
41. We also made other minor changes to the policy wording for underwriting clarity in conditions and definitions.<sup>24</sup>

## REVENUES

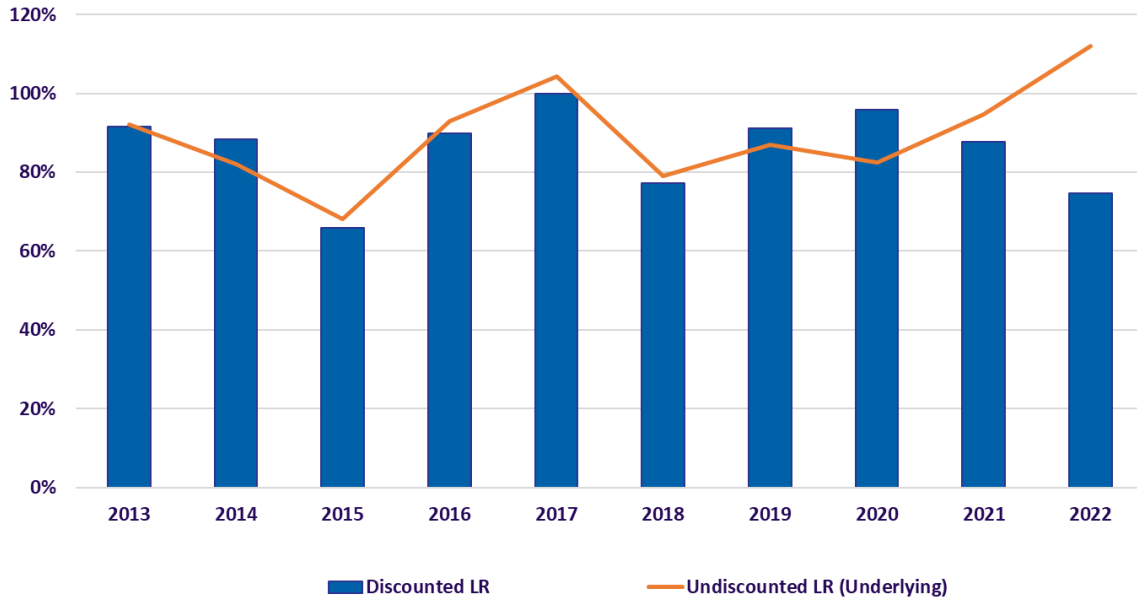
42. To meet the total expected Primary Program claims costs and operating expenses for 2024, LAWPRO considers premiums, transaction levies, other discounts and surcharges, as well as investment income. LAWPRO does not operate to make an underwriting profit and due to LAWPRO's commitment to lower than market premium and expenses, as shown in the graphs below. The first graph shows the loss ratio (i.e., claims incurred divided by earned premium) and illustrates that claims costs represent on average approximately 90% of the premium revenue. The second graph shows the combined operating ratio (i.e., claims incurred plus operating expenses, divided by earned premium) and illustrates that on average LAWPRO is operating at an underwriting loss. The Company is able to break even, on average, from its return on investments.
43. When compared to the average combined loss ratios of other insurance companies, the value the Ontario bar receives from LAWPRO is substantial. The Property and Casualty Insurance Compensation Corporation (PACICC) whose mission is to protect eligible policyholders from undue financial loss in the event that a member insurer becomes insolvent reported that in 2021 "the loss ratio for liability insurance was 58.9%, compared to 84% last year."<sup>25</sup> This means competitive liability insurers, on average, made a 41 cent profit on every dollar they collected in premium. Their investment income was on top of that.

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<sup>24</sup> These changes include clarifying when the Law Society can provide notice of a claim on behalf of a lawyer, or what are "related errors".

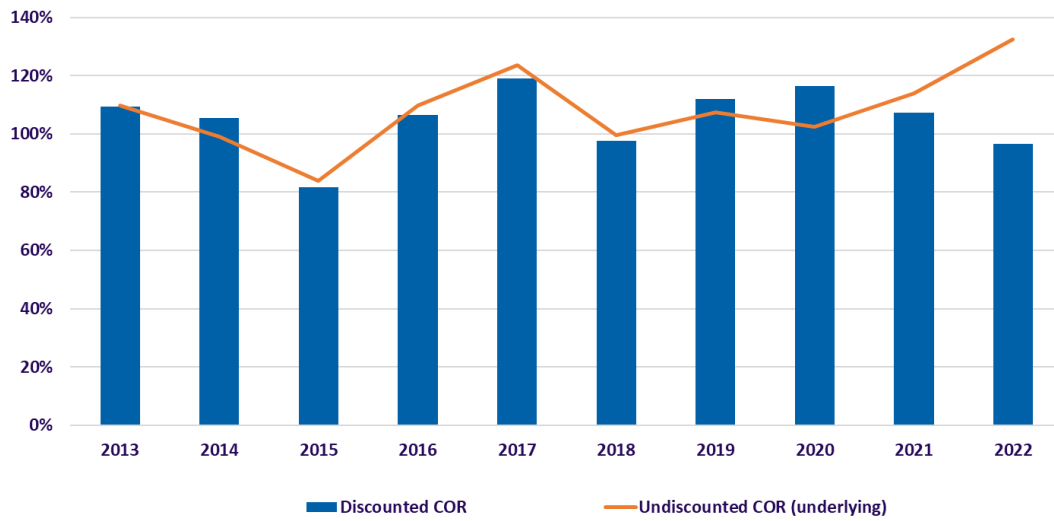
<sup>25</sup>[https://www.canadianunderwriter.ca/insurance/how-profitable-was-canadas-pc-industry-last-year-1004220029/#:~:text=The%20loss%20ratio%20\(claims%20paid,strong%2053.3%25%20reported%20in%202020.](https://www.canadianunderwriter.ca/insurance/how-profitable-was-canadas-pc-industry-last-year-1004220029/#:~:text=The%20loss%20ratio%20(claims%20paid,strong%2053.3%25%20reported%20in%202020.)

**Primary E&O Historical Loss Ratios  
2013-2022**



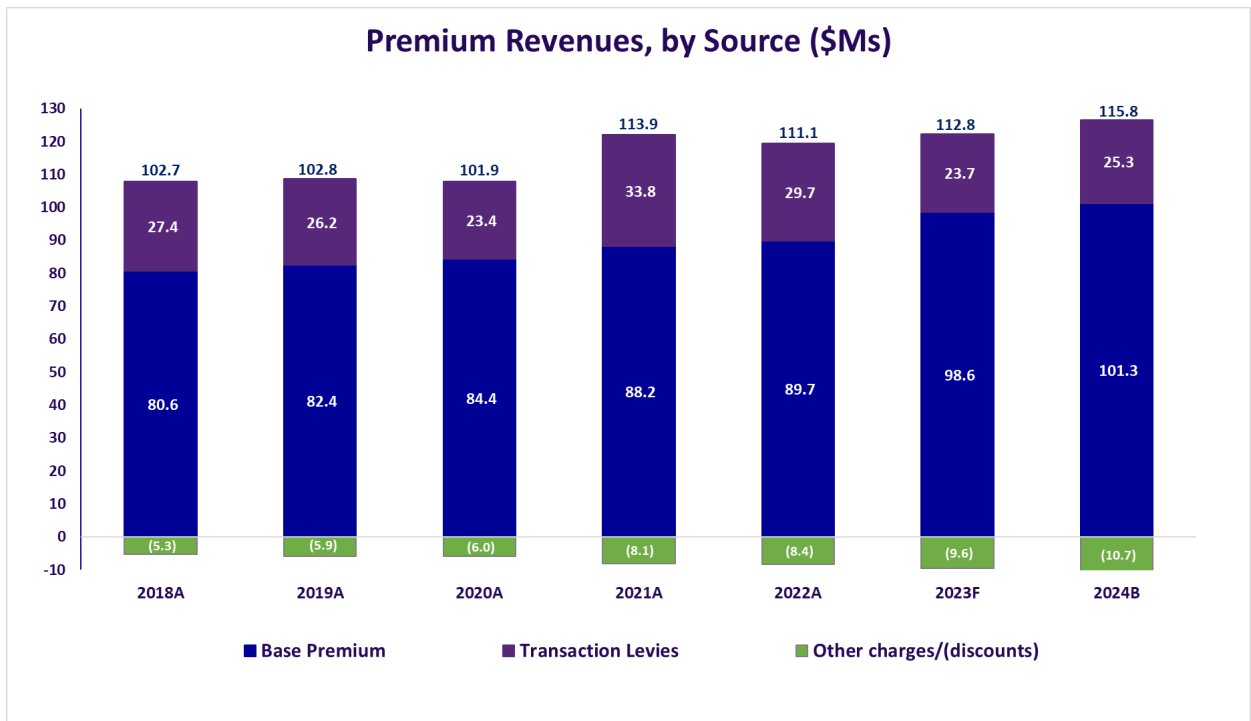
Calculated under IFRS 4

**Primary E&O Historical Combined Operating Ratios  
2013-2022**



Calculated under IFRS 4

44. Premium revenues for recent years are illustrated in the following graph. The total premium revenues, which consist of base premium, transaction levies, and other charges/(discounts) are forecast to total \$113 million in 2023 and projected to be \$116 million in 2024.



*Investment Income*

45. LAWPRO’s prudent investing philosophy works to position the portfolios for capital preservation and steady growth. LAWPRO takes full advantage of the time between the collection of premiums and the payment of claim costs by investing any available funds into conservative and well-diversified portfolios 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.

46. 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 holding any surplus capital 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 Canadian and Global equity securities.

47. The ALM Portfolio and the fixed income portion of the Surplus portfolio are impacted by interest rate changes, and together represent around 82%<sup>26</sup> of the total investment portfolio. The Bank of Canada's overnight interest rate increased 400 basis points throughout 2022 and 75 basis points in 2023 to currently sit at 5.0%. This steep increase in rate over the last year and half, coupled with the markets not always correctly anticipating the rate increases, has resulted in volatile market returns, including those in LAWPRO's portfolio.
48. LAWPRO maintains a prudent investing philosophy to reduce risk and protect its investments. LAWPRO's equity investments were negatively impacted in 2020, following the general market trend. The portfolio recovered in 2021 as the markets stabilized. The significant interest rate increases, high inflation, and recession concerns in 2022 contributed to the negative returns in both fixed income and equity market. LAWPRO's portfolio has followed the market, but generally with slightly better returns. The first half of 2023 produced positive returns in the LAWPRO portfolio, mirroring the markets.

### *Levy Surcharges*

49. 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 larger 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 58 of this Report.

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<sup>26</sup> As at 30 June 2023, the entire investment portfolio was divided as follows: 82.3% fixed income and 17.7% equity.

50. 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.
51. 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. Claims history levy surcharge revenues have been quite stable over time.
52. While litigation levy revenues have also been quite stable over time, the shutdown of the courts in 2020 caused a significant reduction in civil litigation transaction levy revenues. These levies rebounded 27% in 2021 then decreased 8% 2022. We estimate civil litigation transaction levies will be \$7.0 million in 2023 and \$7.4 million in 2024. 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. There was a decline in real estate transaction levy revenue in 2020 due to the pandemic shut-downs, followed by a significant increase in 2021 reflecting the increase in activity in the Ontario real estate market and a subsequent decrease in 2022.
53. The Ontario real estate market has seen a shift in the last few years, with an anticipated slow down resulting from increasing interest rates. The Teranet-National Bank House Price Index<sup>27</sup> shows a year over year increase but the gain is smaller than the previous years. Recent economic commentary predicts a decline in the number and price of home sales. For the first half of 2023, real estate

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<sup>27</sup> <https://housepriceindex.ca/#maps=c11>

transaction levy revenue was 5% less than the same period in 2022. We estimate the real estate transaction levies will be \$16.8 million in 2023 and \$17.9 million in 2024.

### *Real Estate Practice Coverage Option (REPCO)*

54. 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.<sup>28</sup> 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.

55. 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 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*

56. The base premium will remain at \$3,250, the same amount as the prior program year. It should be noted that a base premium of \$3,250 per lawyer is still 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).

## THE ERRORS & OMISSIONS INSURANCE FUND

57. 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

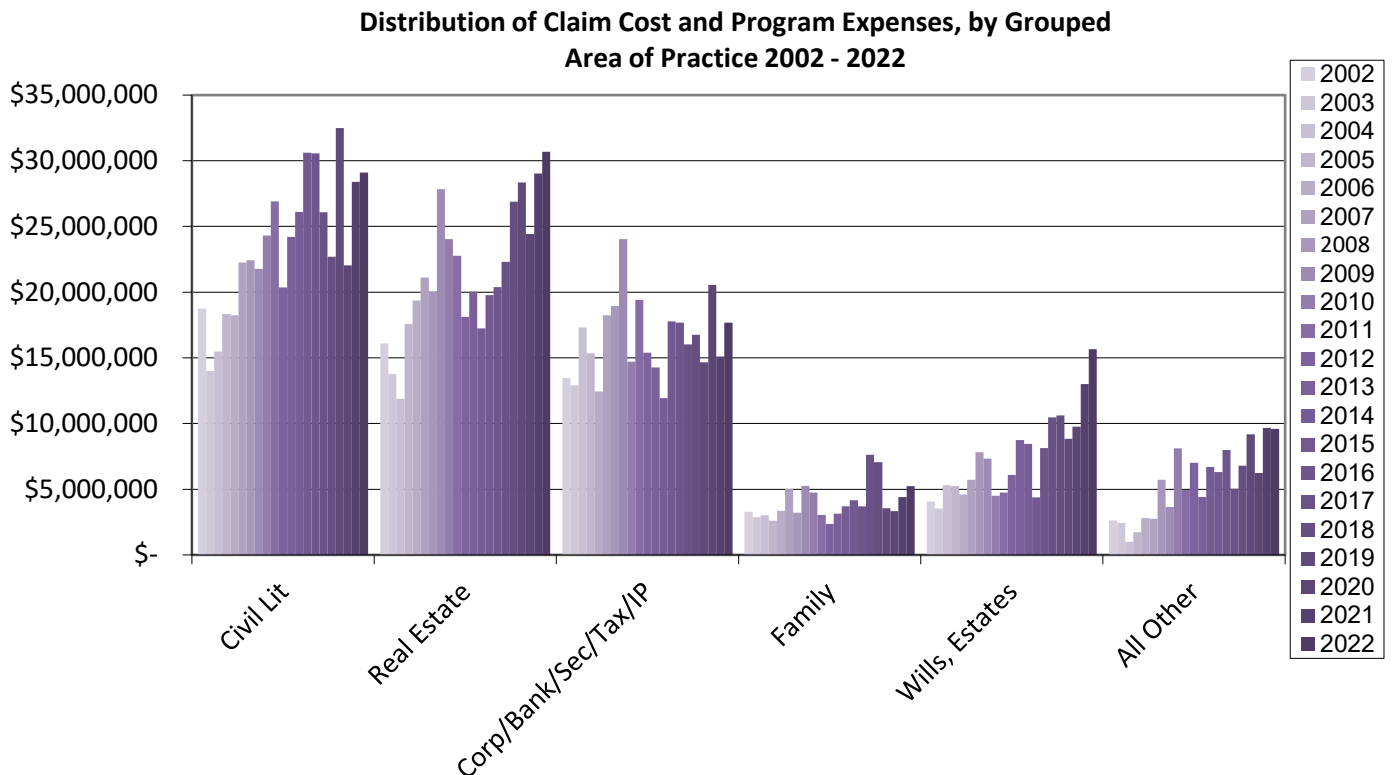
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<sup>28</sup> For more on this, see Bob Aaron's Toronto Star article of December 30, 2006: "[In 2006, title fraud top real estate story](#)".

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 LAWPRO, at June 30, 2023, the E&O Fund had no outstanding claims liabilities as all files for 1994 and prior years were closed. Funds in the E&O Fund are held in a separate bank account that also functions as the transfer mechanism by which lawyers' insurance premiums and transaction levies are deposited and then remitted to LAWPRO by the Law Society on behalf of all lawyers who are required to pay them.

## RISK RATING

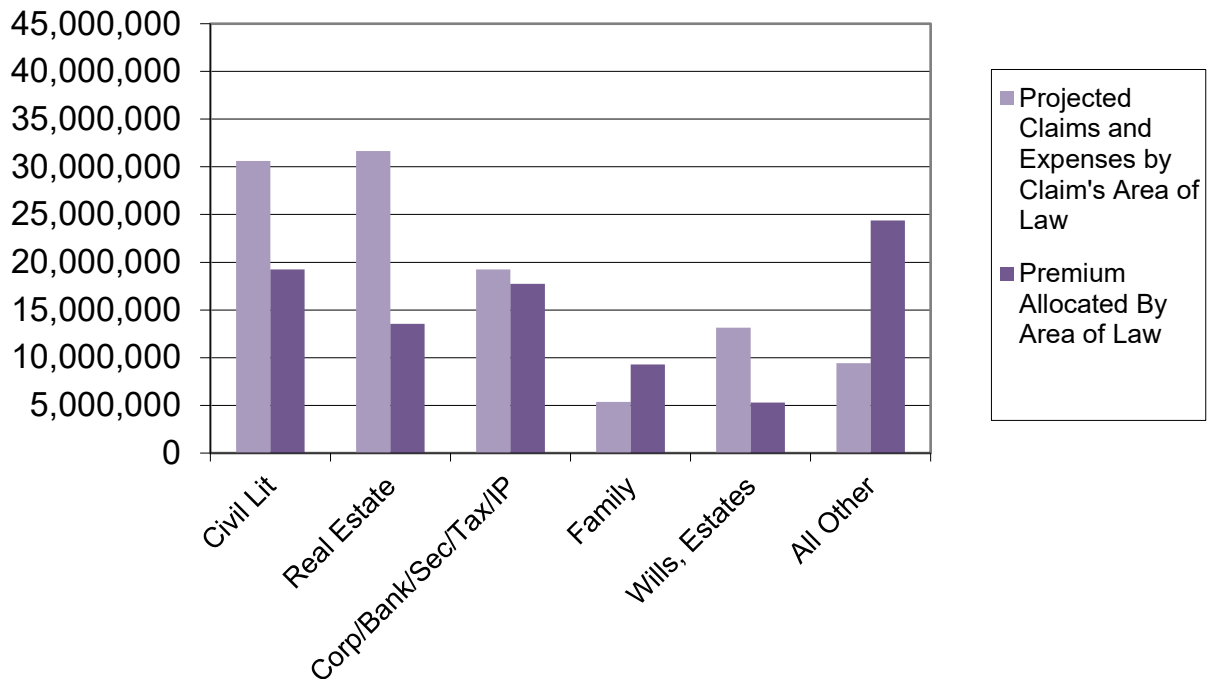
58. Risk rating, a concept raised throughout this Report, promotes fairness by allocating premium responsibility based on risk and deters claims by apportioning higher costs to riskier practitioners. The following chart shows the distribution of ultimate expected claims costs by area of practice.



59. Apparent from this chart are the significant claims costs in certain practice areas and the fact that real estate and litigation continue to have higher claims costs 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.

60. 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, 2022), 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.

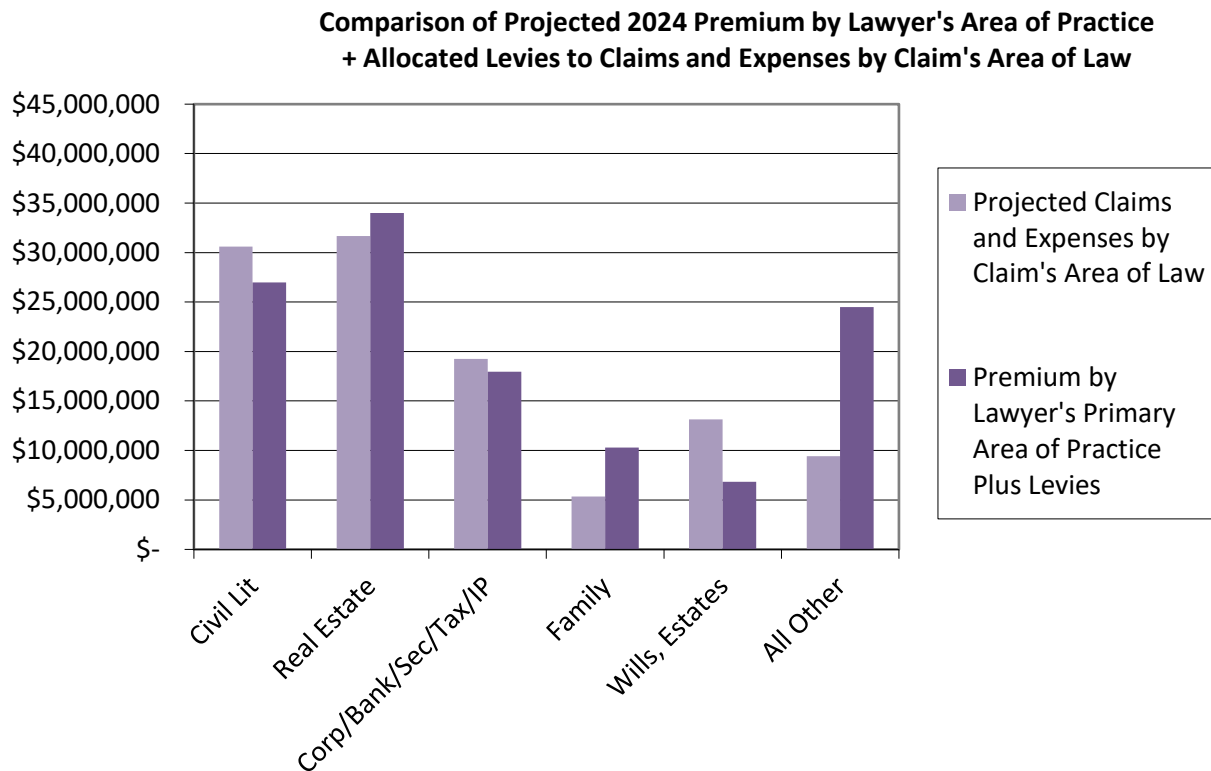
**Comparison of Projected 2024 Premium by Lawyer's Area of Practice to Claims and Expenses by Claim's Area of Law**



61. 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. The real estate and civil litigation

transaction and claims history surcharge levies are essential forms of premium, used to avoid any substantial dislocation among the bar in the higher risk areas of practice which would otherwise occur with risk rating. Without transaction levies, real estate and litigation lawyers would be paying a base premium around two times higher than the current LAWPRO base premium.

62. 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.



63. 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 real estate. Civil litigation is still more costly than the total premiums. LAWPRO will continue to monitor the real estate and civil litigation costs compared to premium revenue to determine whether transaction levy fees will need to be increased in the future. . 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 which also impacts this analysis.

64. 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.
65. 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.
66. 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.
67. Appreciating the foregoing variables and possibilities of comparison by area of practice, and notwithstanding the atypical variations caused by the pandemic, 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."<sup>29</sup>
68. 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"](#).

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<sup>29</sup> 1994 Insurance Committee Task Force Report, at page 4.

69. 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.
70. 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.
71. 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.
72. 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 Jun 30, 2023
New Lawyer Discount (20%-50% discount)	5,774 lawyers (19% of all insureds)
Restricted Area of Practice Discount (50% discount)	1,811 lawyers (6% of all insureds)
Part Time Practice Discount (50% discount)	2,470 lawyers (8% of all insureds)
<b>TOTAL</b>	<b>10,055 lawyers (33% of all insureds)</b>

**REINSURANCE AND CAPITAL PRESERVATION**

73. LAWPRO annually assesses its need for reinsurance based on its capital position and its claims results and volatility.
74. In its early years, LAWPRO purchased Primary Program-wide quota share reinsurance<sup>30</sup>. 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.

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<sup>30</sup> “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).



75. For 2024, LAWPRO will again look to purchase reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005 (the “Clash Excess of Loss Reinsurance”<sup>31</sup>). 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 2024.

76. Accordingly, 100% of the premiums and losses for the Primary Program will again be retained by LAWPRO in 2024, subject to reinsurance protecting the Primary Program from multiple losses arising out of a common event or nexus.

## CAPITAL REQUIREMENTS

77. 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”.)

78. 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.

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<sup>31</sup> “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).

79. 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. As part of the implementation of IFRS 17, the regulator has revised the MCT formula to include a 1.1 times multiple to the capital required.
80. Canadian regulators require that an insurer's MCT not fall below 150%. If it does, the insurer can expect regulatory intervention, up to and possibly including taking control of the company. As well, regulators require the Board to set an internal MCT target above the regulatory minimum. Should the MCT fall below this target, regulators would expect the Board and management to introduce measures to increase it. In 2016, LAWPRO completed its first capital assessment pursuant to the Office of the Superintendent of Financial Institutions' ("OSFI") *Guideline E-19 Own Risk and Solvency Assessment ("ORSA")* and the Autorité des Marchés Financiers' *Guidance on Capital Adequacy Requirements*. Although LAWPRO is regulated by the Ontario provincial regulatory body, the Financial Services Regulatory Authority of Ontario or FSRA, this regulator generally follows OSFI guidance. LAWPRO's ORSA review pegged the internal target MCT at 170% which has been reaffirmed in all subsequent years.
81. In addition, as part of the above exercise, the Board set LAWPRO's long-term preferred operating range for the MCT 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.
82. The MCT was at the middle of the preferred range at December 31, 2022 (227%) and fell to the lower half of the range at June 30, 2023 (216%). The preferred range is set to provide an appropriate buffer that allows 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. For example, the MCT dropped from 242% at 31 December 2019 to 197% at 31 March

2020, mainly due to impacts from the pandemic. If LAWPRO had not started with an MCT at the top of the preferred range, the 45-percentage point drop could have pushed the company below the 150% supervisory intervention level.

83. The insurance industry has undergone a complete financial statement overhaul from the move to International Financial Reporting Standards 17 – Insurance Contracts (IFRS 17) effective January 1, 2023. OSFI indicated that they expect IFRS 17 to be capital neutral for the industry as a whole, but not necessarily for individual companies. The initial impact on LAWPRO is flat to slightly negative. OSFI intends to revise the MCT calculation for 2025. We will monitor the impact this will have on LAWPRO’s capital requirements.

## CONCLUSION

84. LAWPRO successfully navigated the operational and financial challenges of the pandemic and is adapting to the new realities of a post-pandemic world.

85. 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 recommends that Convocation approve this Primary Program of Insurance for 2024 as offered so that it can be implemented by January 1, 2024.

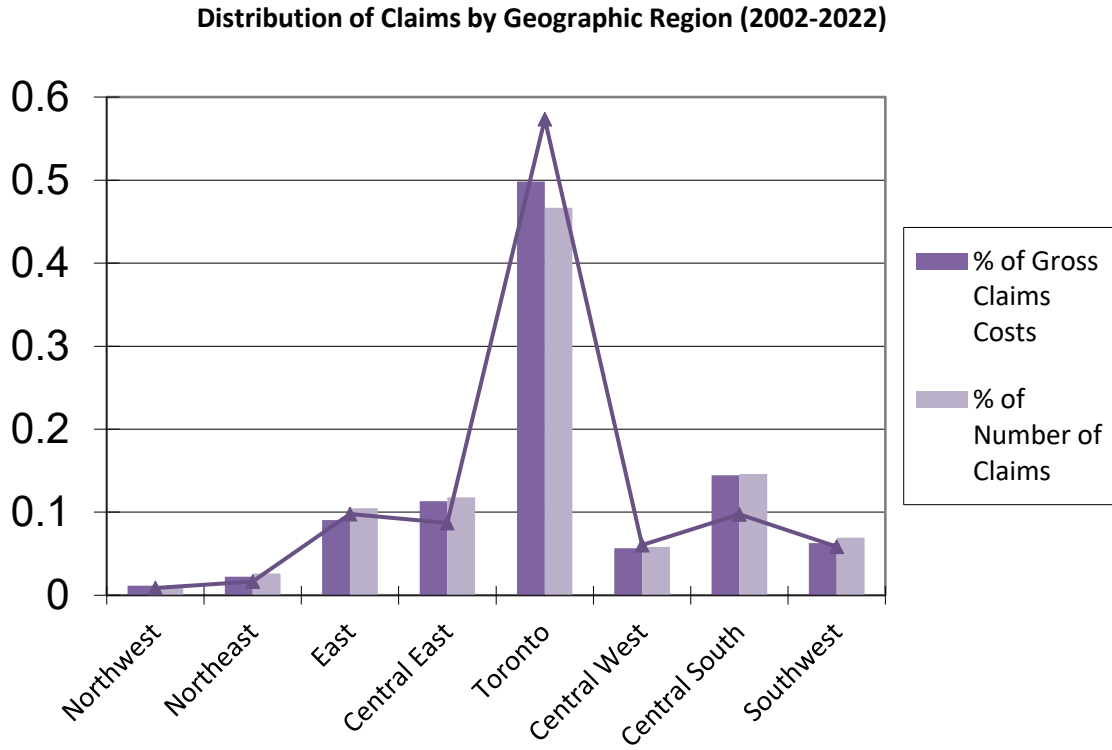
ALL OF WHICH LAWPRO’S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION.

September 2023

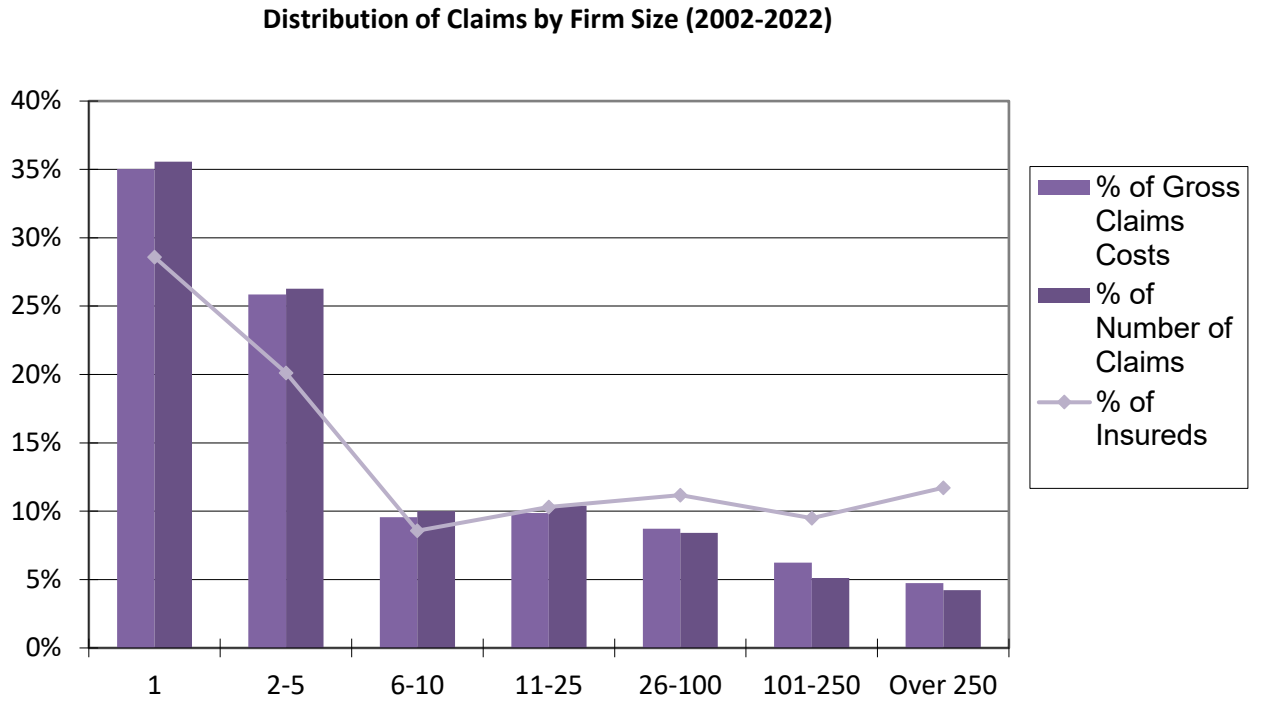
*Andrew Spurgeon*  
Chairperson of the Board  
Lawyers’ Professional Indemnity Company

*Daniel E. Pinnington*  
President & CEO  
Lawyers’ Professional Indemnity Company

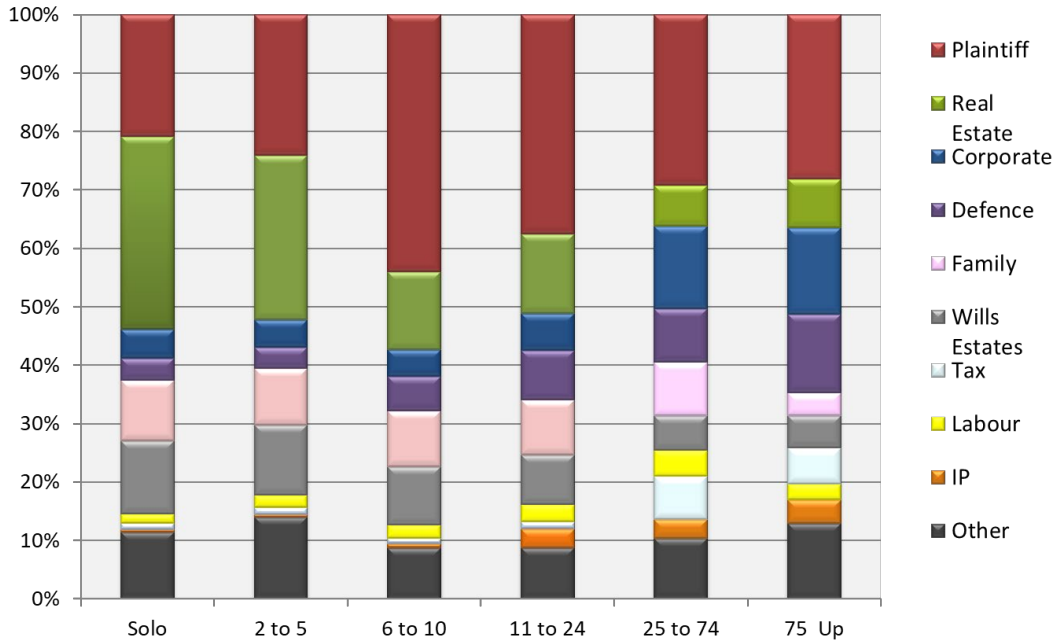
## Appendix A – Distribution of Claims by Geographic Region



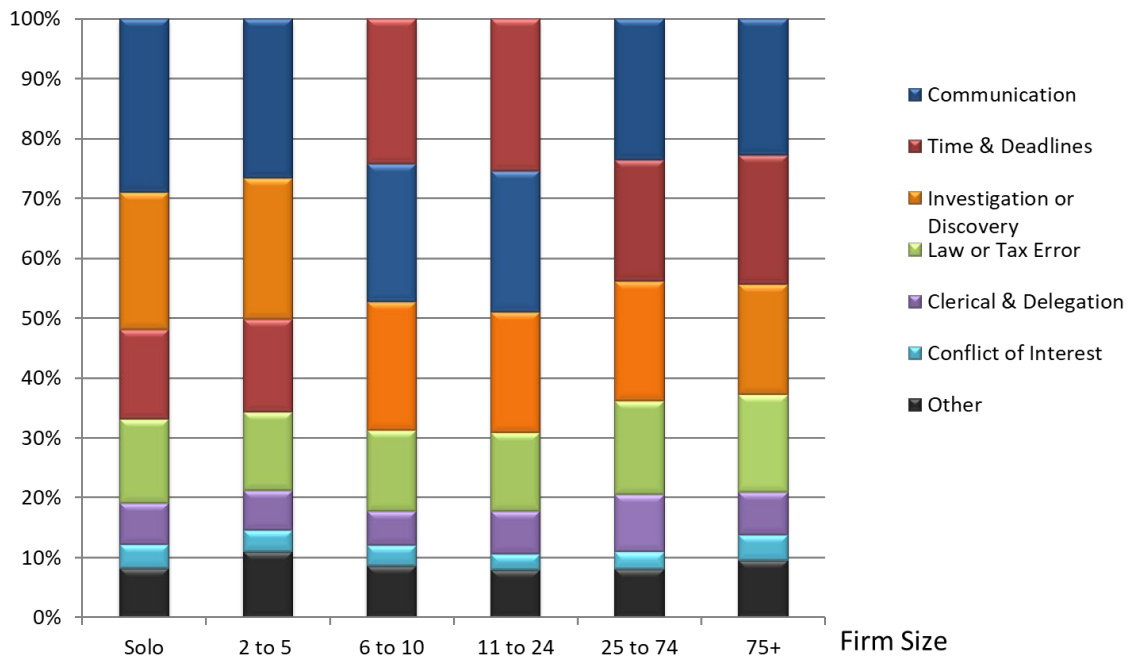
## Appendix B – Distribution of Claims by Firm Size



## LAWPRO claims count by area of law and firm size (2012-22)

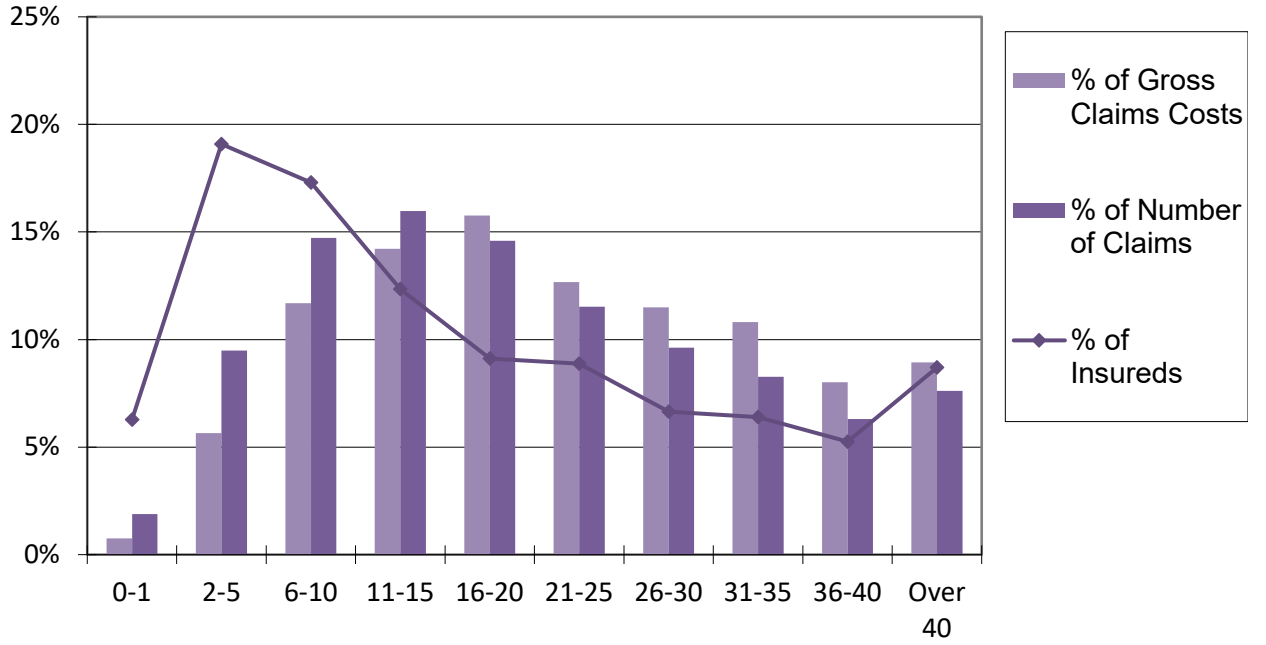


## LAWPRO claims count by error type and firm size (2012-22)



## Appendix C - Distribution of Claims by Years in Practice

**Distribution of Claims by Insured Years in Practice (1989-2022)**



## 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.



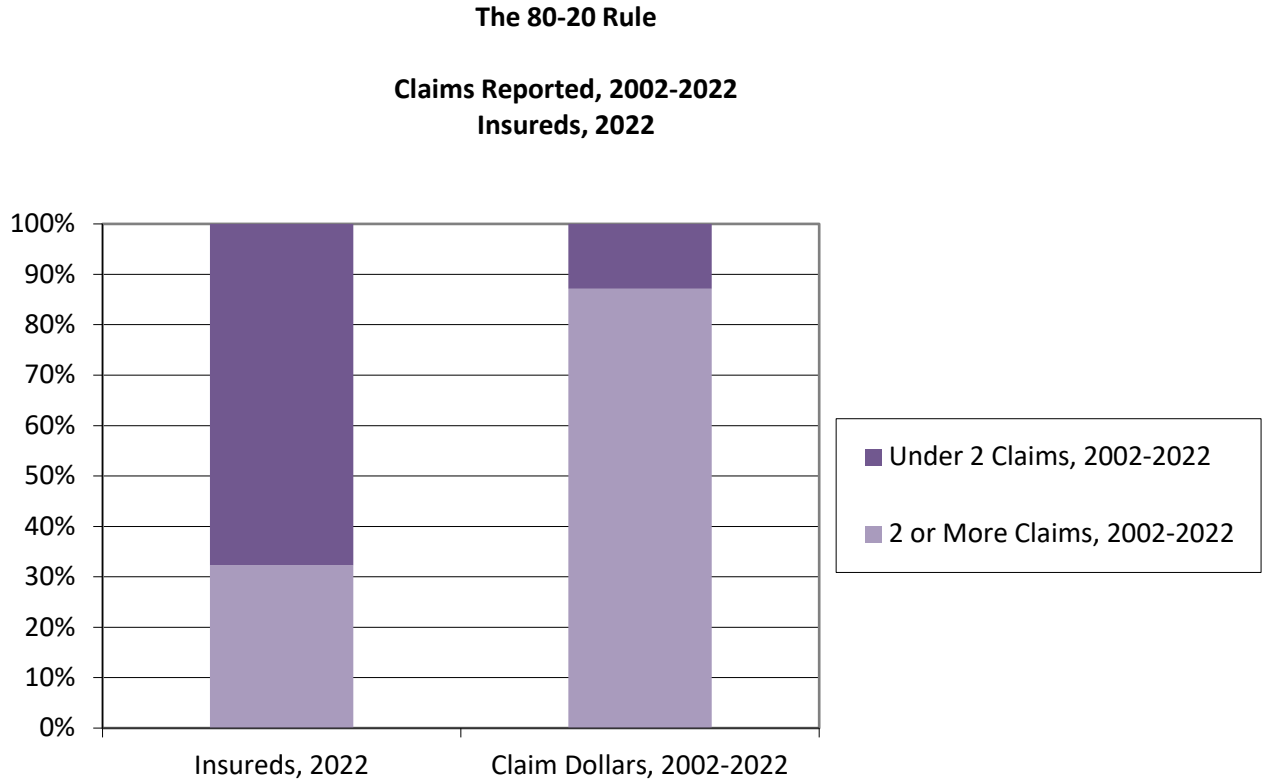
**Conflict of interest:** There are two types of conflict claims: the first arises when conflicts occur between multiple current or past clients represented by the same lawyer or firm. The second is a conflict that arises when a lawyer has a personal interest in the matter. As they regularly act for 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](http://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 - Lawyers with multiple claims responsible for bulk of claims costs

The 32% of LAWPRO insureds with 2 or more claims are responsible for 87% of LAWPRO's claims costs



## Appendix F - LAWPRO Vision, Mission & Values and Corporate Social Responsibility

These documents 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.