

LAWPRO Update

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Agenda

- 2022 insurance program changes
- LAWPRO history and mandate
- Why LAWPRO matters
- Pandemic claims
- New resources
- Questions

2022 insurance program changes

Very minor changes coming with 2022 program

- We feel the current LAWPRO Insurance Program continues to meet the needs and practice realities of the profession
- Minor changes to the policy wording for underwriting clarity in conditions and definitions
- And the base premium will remain **unchanged at \$3,000**

LAWPRO operates like a not-for-profit entity

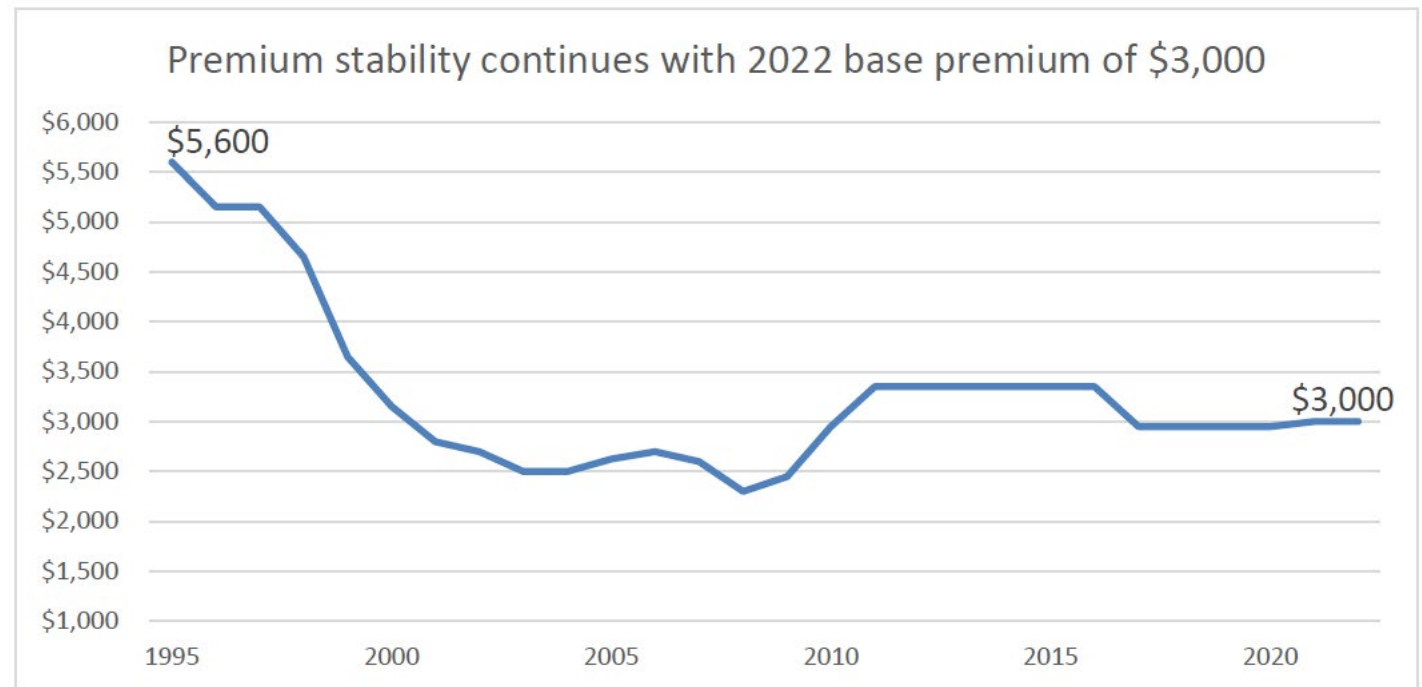
- LAWPRO is a for-profit entity
- But unlike other insurance companies, LAWPRO does not operate to make an underwriting profit
- LAWPRO loses approximately 10 cents on every dollar
- We make up the difference to breakeven with investment returns
- Must manage our capital to meet minimum capital requirements to meet regulatory requirements

We seek to deliver the lowest possible premium

LAWPRO premium over the years

- LAWPRO premium is significantly cheaper today than it was in the past – something you won't find with just about any other type of insurance

- In 2016, the base premium was \$3,350 -- \$350 more, or **10% higher than today**
- If the base premium in 1995 was adjusted for inflation it would be **\$9,105.59 today**



Many lawyers pay less than the base premium

New Lawyer Discount 20% to 50% discount for those called in the last 1-4 years	6,284 users 21%
Part-Time Practice Discount 50% base premium discount for eligible lawyers	2,398 users 8%
Criminal or Immigration Practice 50% base premium discount	1,769 users 6%

TOTAL: 10,451 lawyers or 35% of all insureds benefit from significant premium discounts.

The evolution of LAWPRO

LAWPRO's origins as an independent regulated insurance company date back to the early 1990's when the Law Society's insurance program found itself with more than \$200 million dollars in unfunded claims

A task force was created to deal with this crisis and resulted in the creation of LAWPRO with the following mandate:



Operate independently of the Law Society with its own Board of Directors.



Operate in a commercially reasonable manner (in compliance with requirements of FSRA)



Provide insurance at a cost that reflects risk (i.e., those with greater risk pay a higher premium)



Settle claims fairly and quickly, but not on a "no-fault" basis.

Why LAWPRO matters

- LAWPRO is integral to the Law Society's public protection mandate
- Sets clients right in the event they suffer a loss due to the negligence of their lawyer
- Insure **30,450** lawyers in private practice
- And an additional **38,116** lawyers who were formally in private through Run-off coverage

Almost half of all lawyers will have a claim during their career

- **3,000** Ontario lawyers will contact LAWPRO in 2021 to indicate they have a real or potential claim
- That's **12** lawyers each and every business day of the year
- Ultimately, only **15%** of those 3,000 claims will involve an indemnity payment
 - That is, a finding that the client suffered compensable damages due to the negligence of their lawyer
- **85%** of claims do not involve negligence
 - But many require management and defence
 - Often fee disputes, clients unhappy with outcomes/results

LAWPRO offers many advantages to the bar

- 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
- Automatic and free life-time 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 be relied upon to pay claims

LAWPRO vs. commercial insurers

- Premiums and availability would vary widely by firm size and area of practice, and for individuals with a history of reported claims
- 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
- There would be the potential for gaps in coverage as a new policy would be required if a lawyer changed firms, and a lawyer would likely have to obtain a separate policy to cover claims related to work done at a previous firm
- Commercial providers may only provide claims prevention resources to the lawyers and firms they insure – if at all
- Lawyers would have to pay insurance broker fees, adding 15% or more to the cost of insurance.

The magic of insurance

- **3,000 new claims** reported to LAWPRO each year
- More than **275 of those claims** will exceed \$100,000 in costs
- Between **5 and 15** of them – this varies from year-to-year - will hit the LAWPRO program **limit of \$1 million**
- A large claim would be **financially ruinous** for most Ontario lawyers
- As a rule of thumb, a million-dollar claim costs each Ontario lawyer in private practice just **\$35**

Setting clients right and protecting lawyers from financial ruin is the very real benefit LAWPRO provides

***The magic of insurance:
By contributing a bit of money to a big pot we
help each other protect our clients and ourselves***

Pandemic impacts on claims

- Relative pre-pandemic trends, there was a **significant decline** in the number of claims reported to LAWPRO in 2020, in large part **due to the courts being closed and reduced economic activity**
- There were 2,768 reported claims in 2020, down from 3,121 in 2019
- However, all indications are that claims are **increasing as business gets back to normal** and the courts have reopened and moved to online hearings
- For example, in the first half of 2021, LAWPRO received 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**

*Short decline followed by
higher than normal claims rate*

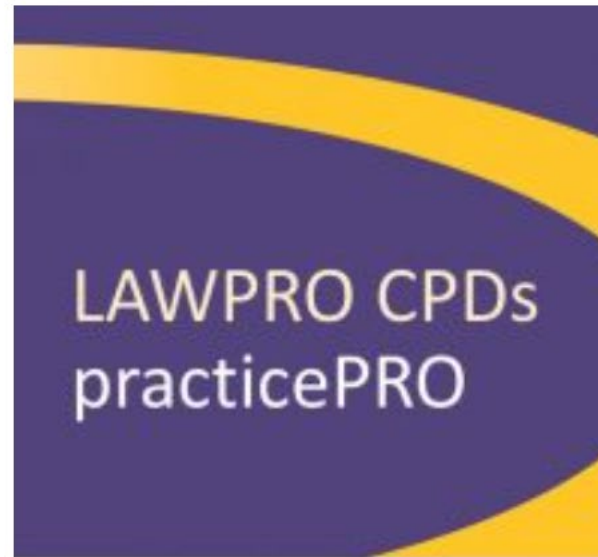
Claims costs are increasing

- 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
- 2021 claim costs estimate is \$102 million, and \$100 million for 2022
- Expecting premium increases in future years
 - New IFRS accounting standards, lower investment returns, and increasing claims costs

***We cannot predict how COVID-19
will affect claims beyond 2022***

New resources from practicePRO.ca

Free CPDs
Practicepro.ca/CPD



View our on demand CPD recordings here. Each presentation offers qualifying LSO professionalism hours and is approved for the LAWPRO Risk Management Credit program (which must be [declared separately here](#)).

Upcoming Free CPD Session

Avoiding the Wire Fraud Nightmare

- ✓ December 2nd, 9:30-11:00 am
- ✓ Presented by TitlePLUS, with Toronto Lawyers Association
- ✓ 1.5 professionalism hours (LSO CPD)
- ✓ Eligible for LAWPRO's Risk Management Credit
- ✓ Register through the Toronto Lawyers Association website
 - Register as a guest if not a member

Good practice tip sheets help avoid errors

Find them at:

practicepro.ca/practice-aids/practice-tip-sheets/

CONFLICT OF INTEREST TIPS

A conflict of interest happens when there is a substantial risk that a lawyer's duties to a client will be compromised by the lawyer's own interest or the lawyer's duties to another client, former client, or another third person.

- 1. DEVELOP AND FOLLOW A CONFLICT CHECKING SYSTEM**
 - Every new client means new potential conflicts. Implement and follow a rigorous conflict-checking system that applies to every new client and new file. Also, make sure there are no conflicts with other lawyers at the firm, or with your own business interests. You can't always objectively judge your own conflicts, so it may be a good idea to get the opinion of someone outside the matter.
- 2. KNOW WHO YOUR CLIENT IS**
 - Ask yourself "who is my client?" Some family or business disputes find lawyers taking instructions from multiple individuals. Ensure you know which natural or corporate persons you represent in all circumstances. Send clients for IA when appropriate. Remember that conflicts can unexpectedly arise in the middle of a matter.
- 3. DON'T ACT FOR FAMILY MEMBERS OR FRIENDS**
 - It's best not to act for family or friends. They are too close to you. It increases the risk that you may have an interest in the matter, be unable to remain objective or manage your client's expectations. We see claims where lawyers don't make proper enquiries or proper documentation because they assumed they knew their family or friends' personal circumstances or family members' matter as they would normally. It's best not to act for them, but if you must, treat them as if they were strangers.
- 4. DON'T BE AFRAID TO WALK AWAY**
 - When a real or potential conflict of interest situation arises, it is critical that a lawyer immediately informs the client, and either withdraws, or proceeds with the client's consent where this is permitted.
- 5. SEEK FURTHER GUIDANCE WHERE NECESSARY**
 - For further guidance, consult the Law Society of Ontario's [Tips for Dealing with Conflicts of Interest](#) (Basic resource, the [Canadian Bar Association's Conflicts of Interest Toolkit](#) and our [Managing Conflicts of Interest](#) [Webinars](#) booklets.

LEARN MORE ABOUT AVOIDING CONFLICTS AND MANAGING YOUR RISKS: See the "Malpractice Claims Fact Sheets" and the practicePRO conflicts of interest webpage.

COMMUNICATION TIPS

The #1 cause of claims in almost every area of practice is communication breakdown. Implement the following actions to help avoid communication problems in your practice.

- 1. START CLIENT MANAGEMENT AT THE FIRST MEETING**
 - Use the initial client meeting to set clear client expectations.
 - Meet with the client face-to-face (in person or online if necessary) to discuss the client's legal issue, understand their needs, and set parameters for the relationship.
 - This is the time to find out all the information you will need to effectively act.
 - If you end up not acting for a prospective client, confirm it in writing.
- 2. SET THE SCOPE IN WRITING**
 - Have written retainer agreements with clients. This ensures that you and your client agree on the cost of your services and helps manage client expectations.
 - It is important that you clearly express what is and what is not included in your services. Helping clients avoid surprises can lower your claims exposure.
- 3. KEEP YOUR CLIENT INFORMED**
 - Keep clients up-to-date on the status of their matters.
 - Explain obligations and deadlines that will arise.
 - Ensure your clients understand the implications of signing key documents (such as contracts and settlement agreements) and the potential ramifications of all decisions (such as guilty pleas and custodial sentences on employment or immigration status).
 - An unhappy client who feels neglected or ignored may try to challenge your actions later.
- 4. DOCUMENT INSTRUCTIONS, ADVICE, AND STEPS TAKEN**
 - Take detailed notes and confirm client conversations in writing to minimize misunderstandings, manage client expectations, and stay on course.
 - Clients only have one lawyer, but lawyers have many clients. The details of the case are therefore memorable for the client. Unless you have detailed notes, the client's recollection may be more credible than yours.
- 5. CONFIRM RECEIPT OF CORRESPONDENCE**
 - When sending correspondence to your client or third parties, especially foreign agents, ask them to confirm receipt of that correspondence. If you don't receive confirmation within a reasonable time, follow up to ensure that correspondence was received.
- 6. BE CLEAR WHEN THE RETAINER IS OVER**
 - A final reporting letter detailing what you did and the advice you gave can be a great help if a claim occurs, which may arise long after you've forgotten the details of a particular file.

LEARN MORE ABOUT EFFECTIVE COMMUNICATION AND MANAGING YOUR RISKS: See the "Malpractice Claims Fact Sheets" and the practicePRO communication webpage.

INVESTIGATION TIPS

We often see claims related to lawyers who have not uncovered all the facts or developed a sufficient understanding of a client's matter. Here are tips to ensure a thorough understanding of the file.

- 1. MAKE INQUIRIES TO KNOW YOUR CLIENT**
 - Ask about clients' circumstances to ensure your advice takes everything into account. For example, a client's immigration status can be a key consideration when representing a person in criminal law, learning a client's family tree, including previous marriages, is vital to preparing a will.
 - Consider whether any title, corporate, or litigation searches may be necessary to develop a complete understanding of the file.
- 2. ASK FOR DOCUMENTATION AND USE PROBING QUESTIONS**
 - Some lawyers do not request client documents or ask the questions that could uncover material facts. Not knowing key information can cause significant problems in how you serve your client.
 - To reduce this risk, ask open-ended questions during client intake and throughout the retainer.
 - Inform your client what documents you will need from them. Follow-up with them with further questions. Ask, ask, ask. And then do a reporting letter to confirm your understanding of the facts and to confirm your instructions for next steps.
- 3. TAKE TIME TO CATCH AND CONSIDER ALL THE DETAILS**
 - Whether it is misreading (or not reading) information on a document, not conducting a search or not researching thoroughly, rushing or taking shortcuts can come back to haunt you. Make sure clients understand the risks if they instruct you to take shortcuts (usually to reduce fees), and that these discussions are documented. Do not be pushed into taking shortcuts that make you uncomfortable.
- 4. IF YOU ARE GOING TO OFFER LIMITED SCOPE RETAINER SERVICES, DO IT RIGHT**
 - Learn about unbundled legal services best practices, sample retainers and other resources on the practicePRO Limited Scope Representation Resources page.
 - Recognize that unbundled legal services are not always appropriate.
 - A limited scope retainer does not mean less competent or lower quality legal services.
 - Identify the discrete tasks that can be undertaken competently, confirm the scope of the retainer in writing and stick to it.
- 5. MAKE USE OF CHECKLISTS AND REPORTING LETTERS**
 - A final reporting letter detailing what you did and the advice you gave can be a great help if a claim occurs, which may arise long after you've forgotten the details of a particular file.

LEARN MORE INVESTIGATION TIPS AND MANAGING YOUR RISKS: See the "Malpractice Claims Fact Sheets" and the practicePRO Inadequate Investigation webpage.

CYBERSECURITY AND FRAUD PREVENTION TIPS

Phishing attacks and other forms of cyberfraud are an increasingly common source of loss for lawyers. Our constantly changing technology, and the changing tactics used by fraudsters, require constant vigilance and adaptation. Here are a few tips to keep you and your clients' information secure and prevent fraud.

- 1. IMPLEMENT ROBUST COMPUTER AND PHONE SECURITY PRACTICES**
 - Ensure that you have robust password protocols, including training your staff to use complex (not numeric) passwords along with two-factor authentication.
 - Make sure computers have adequate anti-virus protection and are regularly updated. Use end-to-end encryption when transmitting data over the internet.
 - Implement regular data back-ups to a secure server or storage to prevent fraudsters from holding your data hostage following a ransomware attack.
 - Consider using penetration testing tools to assess network vulnerabilities.
- 2. PROVIDE STAFF TRAINING ON IDENTIFYING BAD CHECKS AND PHISHING MESSAGES**
 - Train yourself and your staff to notice red flag associated with bad checks and phishing attacks.
 - Visit the practicePRO [fraud prevention webpage](#) for the LAWPRO Fraud Fact Sheets and tips for identifying fraud.
- 3. VERIFY INSTRUCTIONS RECEIVED BY EMAIL**
 - Spam-phishing attacks will often involve email instructions that appear to have originated from a client, law firm on the other side of a transaction or other trusted party, but are deceptions by fraudsters. Before following requests that come by email, particularly involving the transfer of funds, call the party providing those instructions on the phone to confirm their accuracy.
- 4. ENSURE YOU HAVE SUFFICIENT CYBER INSURANCE**
 - Malpractice insurance only protects certain cyber risks and firms should not assume their general liability insurance will cover all cyber risks. Consider whether a policy directly addressing the costs associated with cyberattacks is appropriate for your practice.
- 5. MAKE OR UPDATE YOUR INCIDENT RESPONSE PLAN**
 - Because a cyberattack can cause significant harm, law firms should be prepared to take action immediately. An Incident Response Plan addresses the steps for the detection, containment, and eradication of a cyber breach, recovery of normal operations, and follow-up analysis. LAWPRO's resources on the [Incident Response Plan](#) can help you get started.

LEARN MORE ABOUT CYBERSECURITY AND FRAUD PREVENTION TIPS: See the practicePRO [fraud prevention webpage](#) and the [cyber dangers webpage](#).

TIPS FOR MANAGING DEADLINES

Missed deadlines are a major source of malpractice claims. Lawyers sometimes fail to determine the limitation period on a matter or fail to properly calendar it, miss other deadlines or fail to act when they arise. Here are tips to avoid these claims.

- 1. FAMILIARIZE YOURSELF WITH LIMITATION AND NOTICE PERIODS**
 - The most problematic limitation periods are the ones you don't know you don't know. Take time to educate yourself on limitation and notice periods and other deadlines.
 - The [practicePRO timeline page](#) provides helpful guides on limitation periods and notice periods in Ontario.
- 2. ADVISE CLIENTS OF DEADLINE AND DOCUMENTATION REQUIREMENTS**
 - Make sure the client is made aware (in writing) of all deadlines for submitting documents to you and knows the consequences of a delay or failure to provide documents.
 - Give the client a response date that allows for follow-up (i.e. that allows you to review and request further documents or responses from your client before the final deadline).
- 3. KEEP YOUR FILES MOVING USING PRACTICE MANAGEMENT TOOLS**
 - Diarize key deadlines and the steps you need to take to move your client's matter forward.
 - Use practice management software and reminder systems to alert you to these approaching deadlines.
- 4. DON'T LEAVE THINGS TO THE LAST MINUTE**
 - Get in the habit of completing tasks before actual deadlines. If there is an unexpected problem, the extra time will allow you to take corrective action before the deadline has passed.
- 5. CHECK AND DOUBLE-CHECK DATES**
 - Always take the time to double-check that correct dates are entered on all documents and diary systems, and instruct staff to do the same.
- 6. AVOID ADMINISTRATIVE DISMISSALS**
 - Under rule 48.14 of the Rules of Civil Procedure, matters commenced now are dismissed on a rolling basis five years after commencement. These dismissals will happen without notice to the parties. [LAWPRO's Rule 48 Toolkit](#) can help you avoid such administrative dismissal claims.

LEARN MORE ABOUT EFFECTIVE TIME MANAGEMENT AND MANAGING YOUR RISKS: See the "Malpractice Claims Fact Sheets" and the practicePRO time management webpage.

TIPS FOR KEEPING UP WITH THE LAW

Claims from a failure to know the law are less frequent than people think. However, it is still important to make sure you've got adequate subject-matter knowledge.

- 1. DO NOT DABBLE IN AREAS OUTSIDE YOUR EXPERTISE**
 - Law is complex and diverse, so don't stray outside your areas of expertise. Recommend your client retain the services of an expert for specialized areas like tax, intellectual property, or franchise law if you don't have a thorough knowledge of those fields.
- 2. DON'T GIVE ADVICE ON FOREIGN LAW**
 - Remember that the LAWPRO policy provides protection for claims that result from your "professional services" involving the laws of Canada. Its protection and terms vary. While coverage is fact specific, generally the LAWPRO policy does not cover non-Canadian law. If your client requires assistance from a foreign agent consider having your clients retain a foreign agent directly. Being the conduit for communications with foreign agents increases your exposure to a claim.
- 3. ALWAYS BE LEARNING**
 - Subscribe to helpful newsletters, industry publications, blogs and social media within your practice areas to be alerted to new developments that may affect your clients. Many institutions, including LAWPRO, offer CPE programs that can help you keep on top of the latest legal developments and keep your communication with foreign agents skills sharp.
- 4. ASK FOR HELP**
 - Ask others for help. Contact colleagues for general help in understanding developments in your area. For general legal research assistance, law librarians are great supporters.
- 5. STAY CONNECTED TO YOUR PEERS**
 - Connect with colleagues in your practice areas through law associations and consider [getting or becoming a mentor](#).

LEARN MORE ABOUT MANAGING YOUR RISKS AND KNOWING THE LAW: See the "Malpractice Claims Fact Sheets" and the practicePRO [Failure to Know the Law](#) webpage.

Keep up to date with our articles and
tools by visiting **AvoidAClaim.com**
regularly



Welcome to the New TitlePLUS

The new TitlePLUS is the fast and easy way for lawyers and clerks to get the title insurance their clients need. Getting great title insurance in Canada has never been easier.

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BREAKING NEWS

Watch for it on Monday, November 22

Questions please!

Thank you and stay in touch!

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