

LAWPRO Update

Dan Pinnington

President & CEO

FOIA 2021 Spring Plenary

Agenda

2020 Financials

Claims Trends

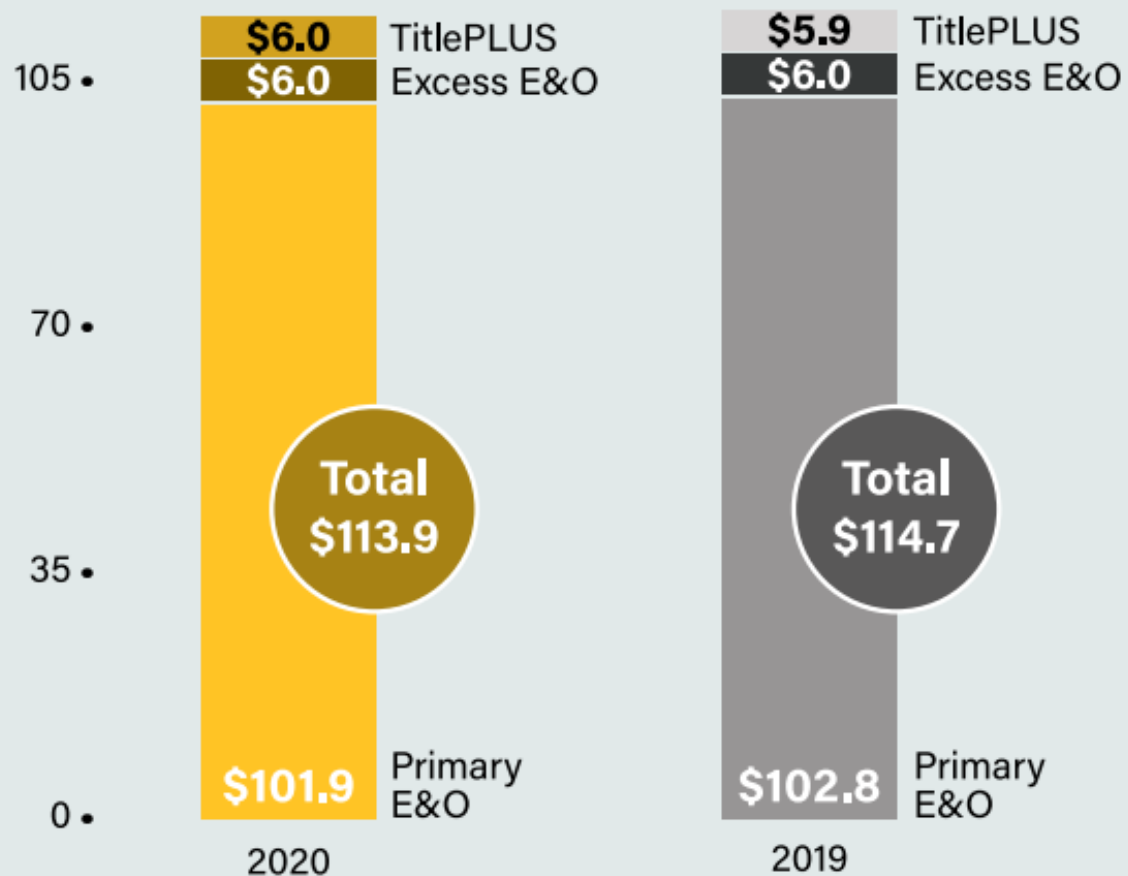
NEW TitlePLUS

Risk Management Resources

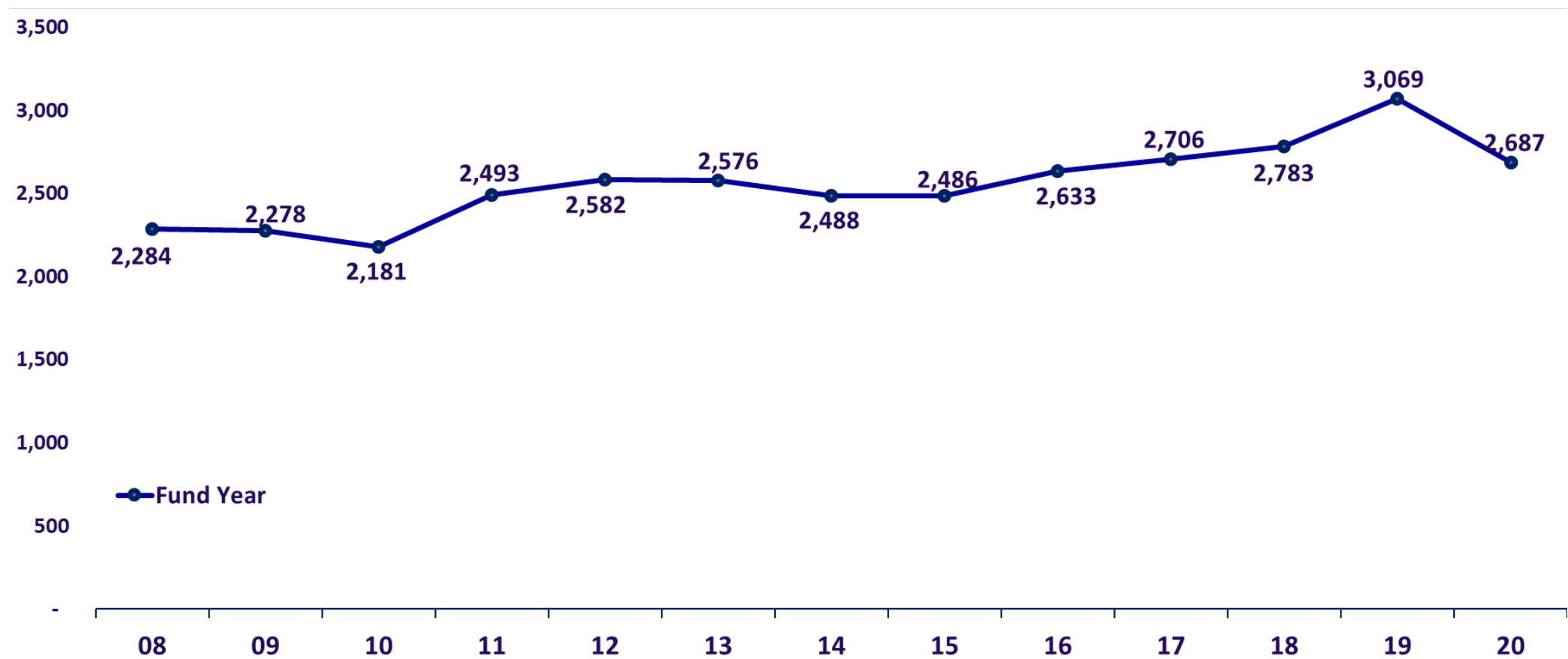
Questions



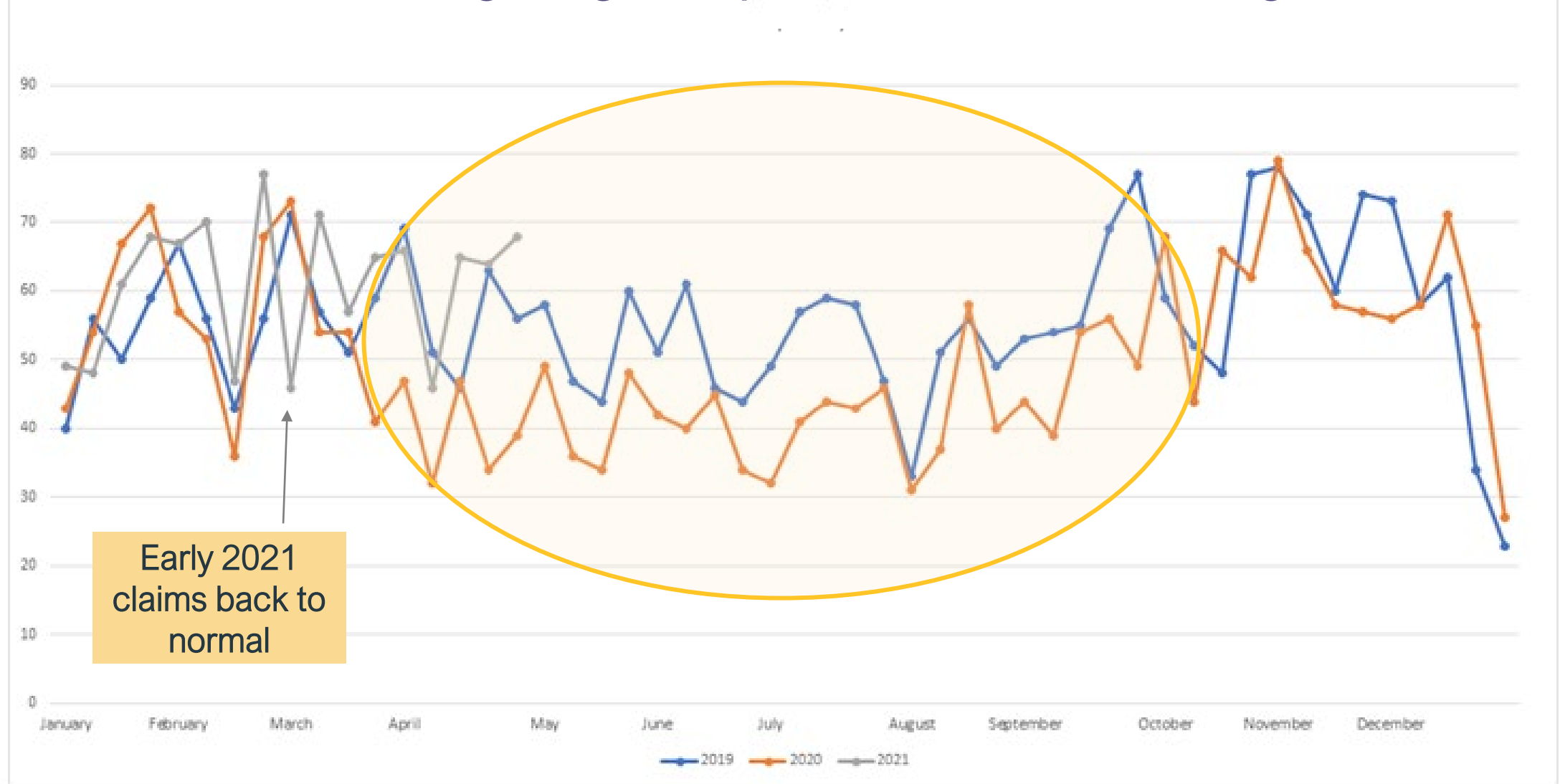
Gross Written Premium



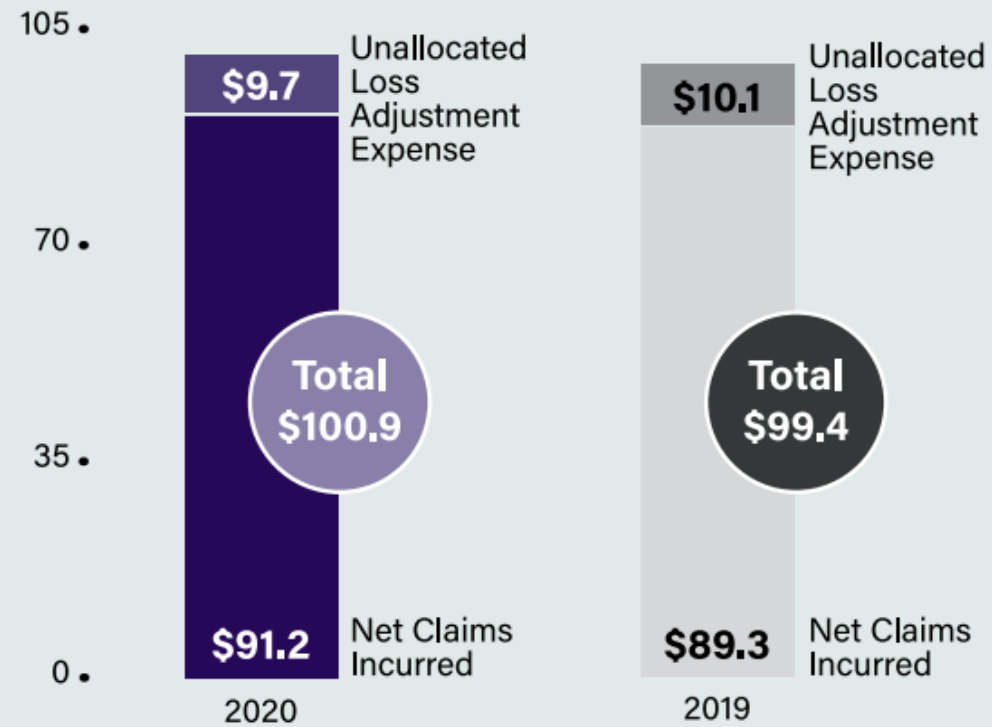
Ultimate Claims Count – Ontario Mandatory E&O



Lower claims during height of pandemic but returning to normal

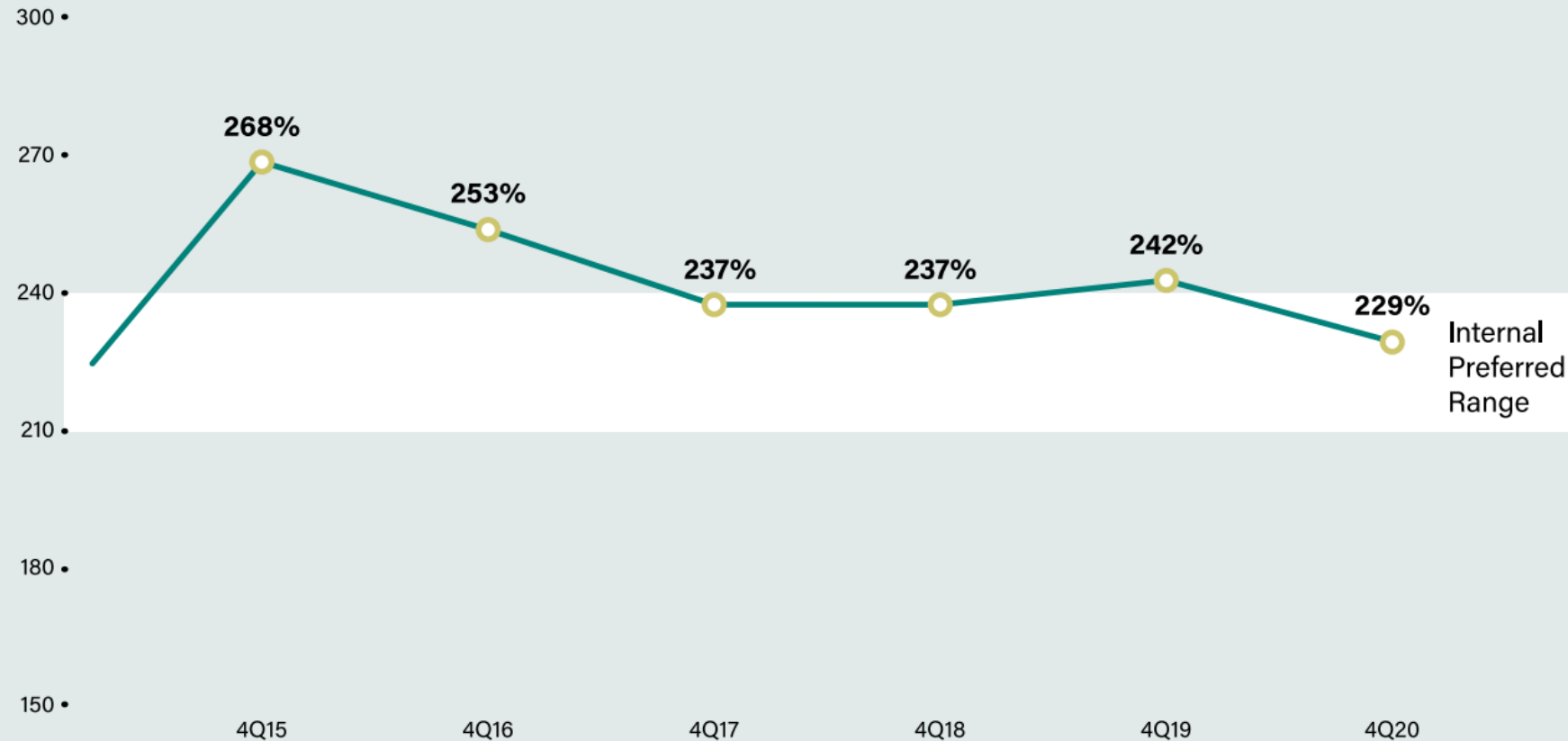


Net Claims Incurred



Higher claims costs

Minimum Capital Test



Protecting the profession

The Minimum Capital Test:

- An insurance company's assets are sufficient to meet its present and future obligations

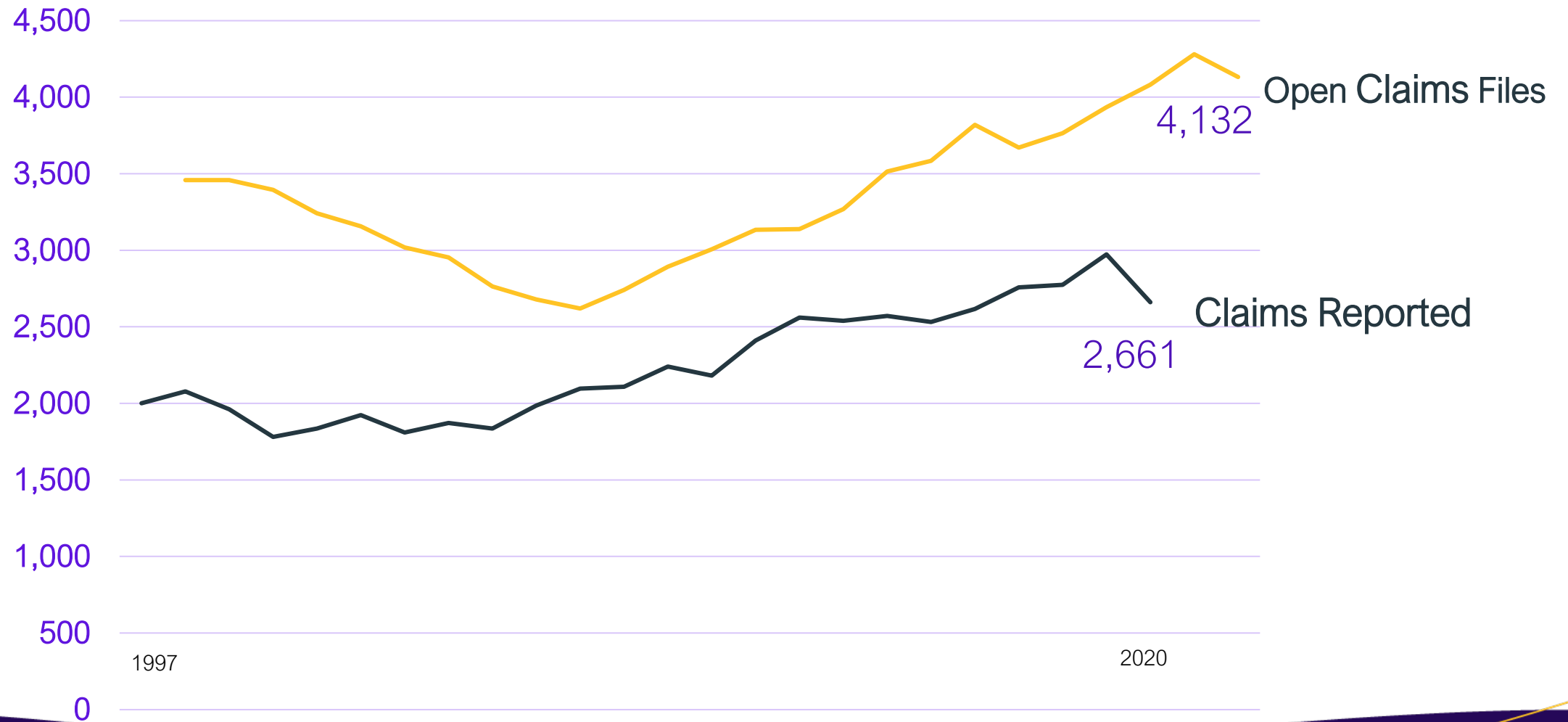
Impacted by:

- Insurance risk
- Market risk
- Credit risk
- Currency risk
- Operational risk

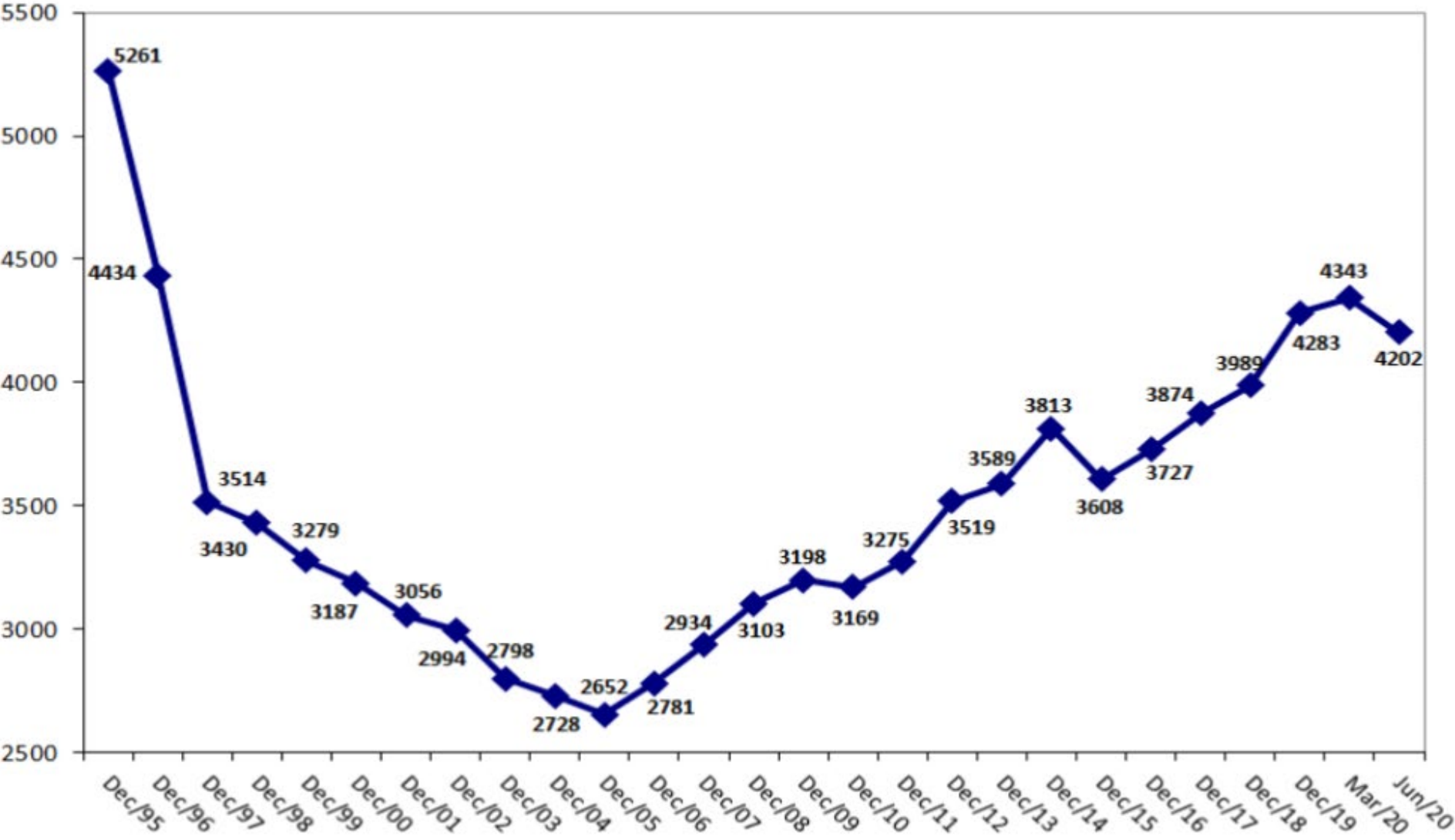
2020 Claims trends

2,768 new claims
4,132 open claims

Number of claims reported and open claims files



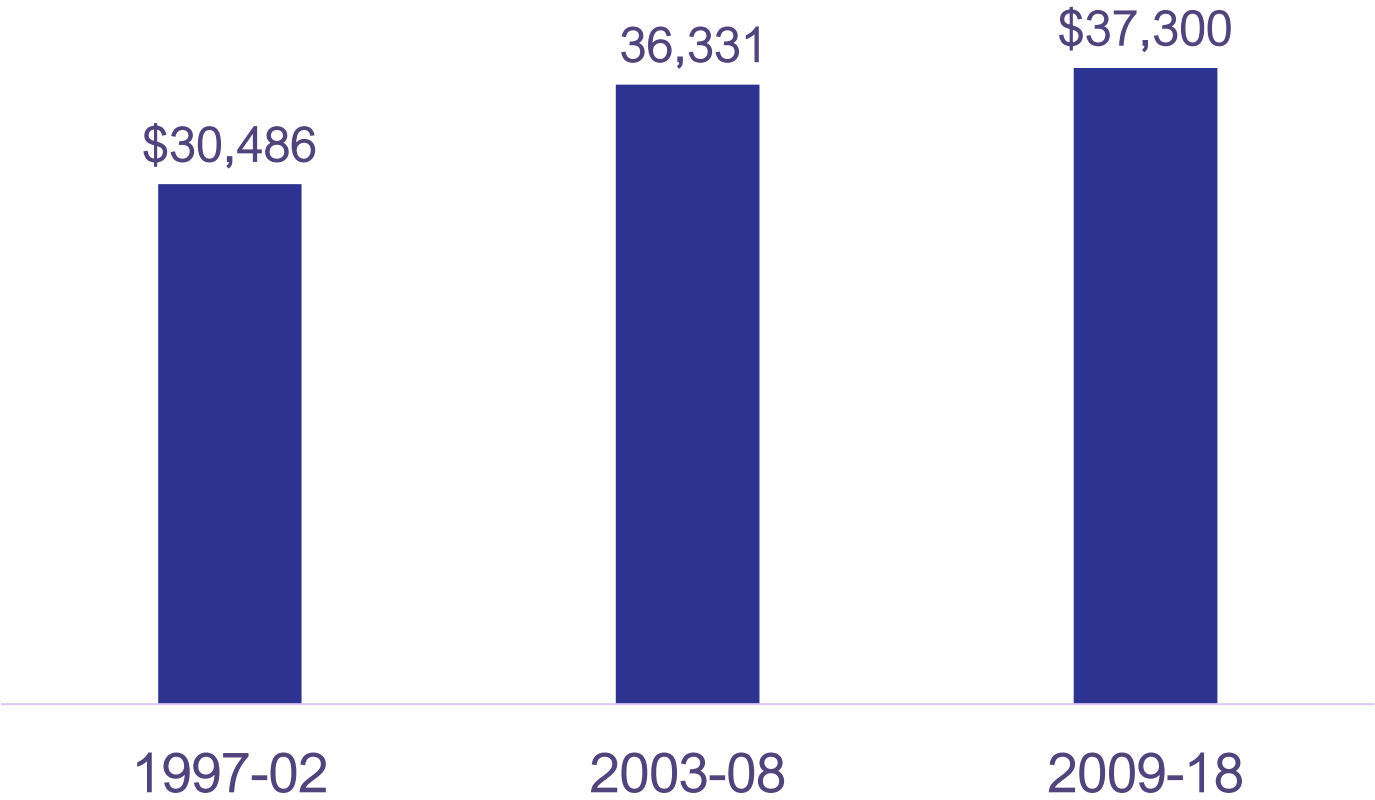
Open Claims (for fund years 1995 and forward)



Claims per thousand lawyers



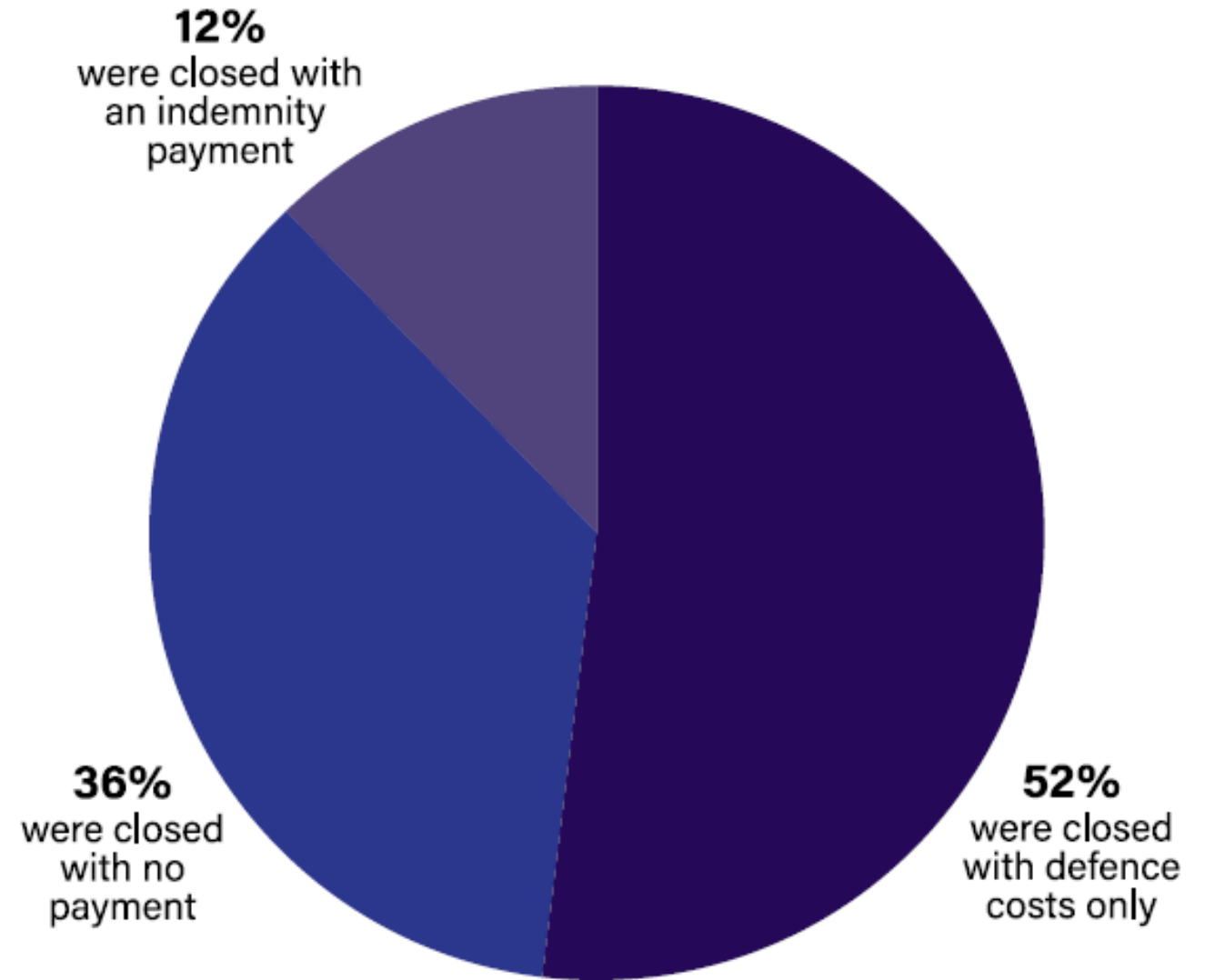
Average cost per claim



Number of claims reported with a value greater than \$100,000

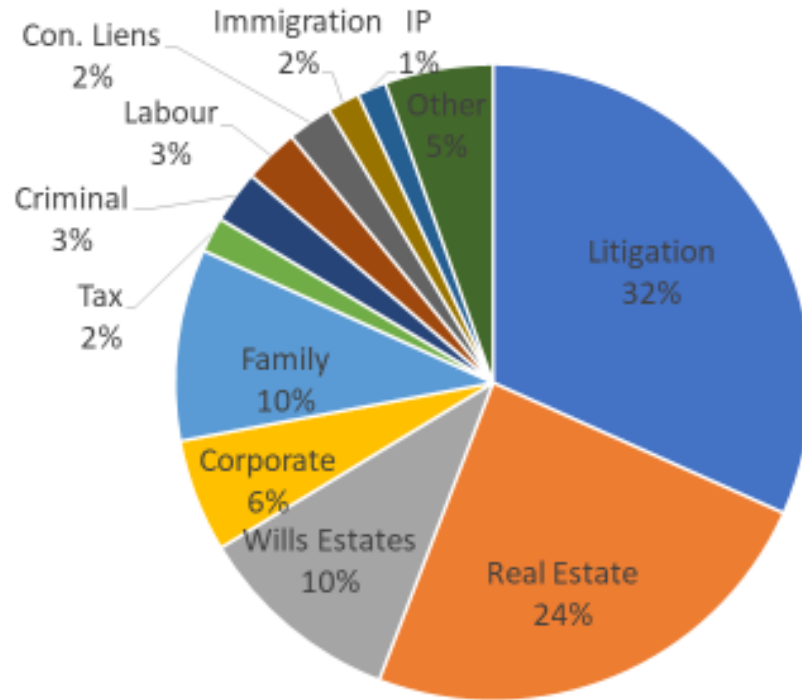


Claims by outcome

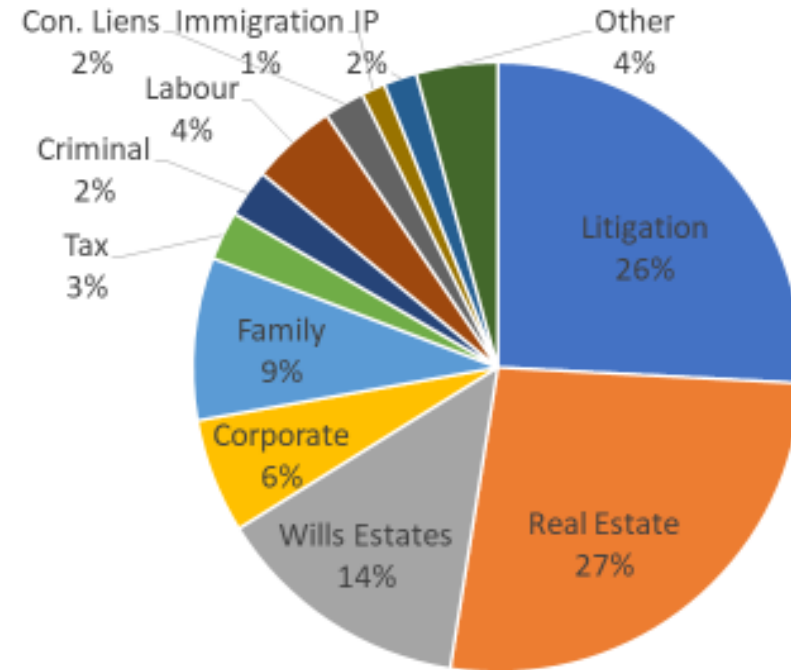


COVID19 impacts on LAWPRO

Claims by area of law (count)




Claims reported in all of 2019




Claims reported March 15 to Dec 31/20

Walpractice Claims Fact Sheets


LAWPRO REAL ESTATE CLAIMS FACT SHEET



2 claims area by cost
- average total cost \$2.1 million per year




2 claims area by count
- average 932 claims per year




\$34,000 average cost per claim

RISK MANAGEMENT TIPS




Meet clients in person at least once

Meet with the client in person to review the transaction and understand client instructions, particularly with regard to the client's intended use of the property. Not every matter is straightforward, and you don't want to have to address a problem that was only noticed at the time of closing, or never noticed at all.




Remember, the lender is also your client in most residential transactions

The lender is also your client and is owed a duty of care. Provide any information to the lender that is material to the lender's decision to advance funds under the mortgage. Lending clients can sue lawyers for failing to disclose all relevant information they know or ought to have known.




Document your conversations with and instructions from the client

This is the best defence against a malpractice claim. Clients may only be involved in one or two real estate transactions in their lifetime and will remember the details, while the lawyer who sets countless transactions will likely have little specific recollection of one matter. Keep notes of your conversations and document discussions and your actions in a detailed reporting letter to the client.



Do not give your Teraviva password to anyone


Your Teraviva PPS is only valid for your transactions. As such, it may be in a busy real estate practice to let the clerk register instruments requiring a lawyer's electronic signature... just don't.




Review the title insurance policy with your client

You should have a solid understanding of the title insurance policy and be able to explain standard coverages, exclusions and property-specific exceptions. It is also important to have a detailed understanding of the client's planned use of the property to ensure the coverage obtained applies to those uses.


LAWPRO WILLS AND ESTATES CLAIMS FACT SHEET



4 claims area by cost
- average total cost \$2.7 million per year




Average 221 claims per year




3 claims area by count

RISK MANAGEMENT TIPS




Ask client probing questions

Some lawyers are not asking the questions that could uncover facts that could cause problems later. They also do not make it clear what information the client needs to provide. A lawyer may not realize that the client doesn't understand all the implications of choices proposed. A lawyer should provide detailed recommendations based on a full analysis of the case, including a reminder that the client's decision is the client's alone. Documenting these communications (using a checklist and taking notes provides a valuable record of your efforts in the event you are faced with a claim).




Take time to compare the drafted will with your notes

It sounds like obvious advice, but we see claims where the will did not adequately reflect the client's instructions, or overlooked some important contingencies. Many of these errors can be spotted by simply reviewing the notes from the meeting with the client. It can help to have another lawyer proofread the will, or at least take for a few days and reread it with fresh eyes. When you review it, consider the will from the position of the beneficiaries or disappointed would-be beneficiaries. Ask yourself if you were going to challenge this will, on what basis would you do so?



Confirm as best you can the capacity of the testator and watch for undue influence


With greater numbers of elderly clients, lawyers need to be vigilant about such issues. Meet with the client separately from those benefiting from a will change, and have written proof that the client understands what they are asking and the advice you've given. And while it is difficult to be completely certain of capacity, be sure to document the steps you've taken to satisfy yourself that the client's capacity has been verified.




Don't act for family members or friends

We see claims where lawyers didn't make proper enquiries or make proper documentation because they assumed they had good knowledge of their family or friends' personal circumstances. It's best not to act for them, but if you must, tread them as if they were strangers. Remember, if a claim arises it will likely not be from the friend or family member, but from a disappointed beneficiary with no personal relationship with you.


LAWPRO CRIMINAL CLAIMS FACT SHEET



Average total cost \$1.09 million per year




Average 55 claims per year




\$20,000 average cost per claim

RISK MANAGEMENT TIPS




Ensure the client understands your recommendations

Failing to effectively communicate with the client is the biggest claim pitfall in the criminal law area. A lawyer may not realize that the client doesn't understand all the implications of choices proposed. A lawyer should provide detailed recommendations based on a full analysis of the case, including a reminder that the client's decision is the client's alone. Documenting these communications (using a checklist and taking notes provides a valuable record of your efforts in the event you are faced with a claim).




Ensure you have all the facts

Lawyers should ensure about client's circumstances - for instance, immigration status or employment - to ensure that advice takes those details into account. Clients whose immigration status may be at risk should be advised to consult an immigration lawyer, and that advice should be documented.




Discuss potential consequences

We frequently see claims involving a failure by the lawyer to communicate the potential ramifications of guilty pleas and custodial sentences on employment or immigration status. For instance, a truck driver convicted of a DWI may become unemployed as a result. A non-Canadian sentenced to six months or more may lose the right to apply for permanent residency. When meeting with a new immigration client, be sure to ask about criminal convictions and changes. If a client is facing a criminal charge, advise them to retain competent criminal counsel.



Make clients aware 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 (e.g. outside the response date imposed by the government entity).



Promptly notify LAWPRO of potential claims

Early reporting of client complaints does the best opportunity for claims repair. Lawyers are encouraged to report allegations immediately, even where they are during trial, so that LAWPRO counsel can provide risk management advice. In an appeal alleging ineffective assistance of counsel, the Crown may ask the trial lawyer to sign an affidavit supporting the ground of appeal. If asked to do so, you should call LAWPRO right away so that we can advise whether preparing an affidavit is necessary, and if so, how it can be done so that privilege is maintained and there is no admission of negligence.

LAWPRO IMMIGRATION CLAIMS FACT SHEET



Longest claim reporting time 15 years



Average 26 claims per year



Average total cost \$413,000 per year

RISK MANAGEMENT TIPS



Don't overpromise, and keep your client informed

Claims against immigration lawyers are often prompted by a client's disappointment about the outcome of a residency application or refugee claim. Manage client expectations by fully exploring admissibility criteria, requirements and the need to have documents provided in a timely manner to comply with deadlines. Keep clients up to date on the status of their applications. An unhappy client who feels neglected or ignored will likely take steps to challenge your representation. Keep good notes on communications with clients which can later go into a reporting letter or follow-up letter.



Know the changes in the law and program criteria

Over the past few years the Immigration and Refugee Protection Act has been amended several times. Ensure you refrain from an "assembly line" approach to processing applications. Citizenship, residency, refugee work permits etc. all have time sensitive deadlines and the programs and criteria change frequently.



Discuss potential consequences of criminal matters

We frequently see claims involving a failure by the lawyer to communicate the potential ramifications of guilty pleas and custodial sentences on immigration status. A non-Canadian sentenced to six months or more may lose the right to apply for permanent residency. When meeting with a new immigration client, be sure to ask about criminal convictions and changes. If a client is facing a criminal charge, advise them to retain competent criminal counsel.



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LAWPRO EMPLOYMENT LAW CLAIMS FACT SHEET



Longest time before reported claim: 16 years



Average 49 claims per year



\$18,000 average cost per claim

RISK MANAGEMENT TIPS




Maintain written confirmation of instructions and advice

As in all areas of law, documentation is crucial to helping LAWPRO defend you in the event of a claim. "Conferences with client re risks and costs of litigation" is much better than just "conference with client re lawsuit."




Create detailed docket notes

Use the to-do above, detailed docket notes offer the benefit of helping protect you in the event of a claim. "Conferences with client re risks and costs of litigation" is much better than just "conference with client re lawsuit."



Do not dabble in employment law


A lawyer should either be an expert in employment law or refer his or her client to an employment law specialist. We see a number of claims in this area resulting from a lawyer not being aware of the correct forum to bring a client's matter (Superior Court, Federal Court, Ontario Labour Relations Board, etc.) or not being aware of the related deadlines and limitations periods.




Be prepared for nuisance claims

The emotional toll of a job loss and resulting legal fight can leave lawyers in this area more likely to have claims made against them for "violating" various professional rules, such as the Rules of Professional Conduct or the Rules of the Law Society of Ontario. These often coincide with Law Society complaints or Human Rights Tribunal claims against a former employer [and the insured who represented them], and in several cases are brought by self-represented or unrepresented litigants. LAWPRO has yet to see an indemnity on this type of claim, but they cost on average \$20,000 to resolve. While they may be difficult to guard against, taking the above advice to keep detailed notes, documenting instructions, as well as maintaining high standards of professionalism in heated disputes will help ward off these accusations.


LAWPRO CORPORATE/COMMERCIAL CLAIMS FACT SHEET



3 claims area by cost
- average total cost \$40.1 million per year




Average 180 claims per year




5 claims area by count

RISK MANAGEMENT TIPS




Carefully document instructions, advice and steps taken

Keep detailed notes and documents on all instructions and advice given. This helps avoid misunderstandings. Claims often involve a dispute over what was said and done, or not said and done, or confusion over who was to look after which tasks. LAWPRO's Checklist for Commercial Transactions has a detailed list of matters to consider when communicating with clients.




Follow the firm's conflict checking system and take action on conflicts

Most law firms have rigorous conflict checking systems that do a good job of catching potential conflicts. The problem is that these warnings are often ignored. Listen to your instincts and ask yourself "who is my client?" You can't always objectively judge your own conflicts, so get the opinion of someone outside the matter. Send clients for I/A when appropriate. Keep in mind that conflicts can unexpectedly arise in the middle of a matter. If there's a real or potential conflict, decline or terminate the retainer, even if it means turning down work for a good client or turning down substantial fees.



Take time to catch and consider all the details

Whether it is misleading (or not reading) information on a corporate document, not doing a title search on a corporate lease matter, or failing to ensure that two merged corporations don't lose a grandfathered exemption, rushing or taking shortcuts can come back to haunt you. Take the time to do the job right, even if it takes a bit longer or involves coming back on another day. Make sure clients understand the risks if they instruct you to take shortcuts (usually to reduce fees), and that those discussions are documented. Do not be pushed into taking shortcuts that make you uncomfortable.



Do not dabble in areas outside your expertise

Corporate/commercial law is complex and diverse, so don't stray outside your area of expertise. If necessary, recommend your client retain the services of an expert in specialized areas like tax, IP or franchise law if you don't have a thorough knowledge of those fields.

LAWPRO FAMILY LAW CLAIMS FACT SHEET



5 claims area by cost
- average total cost \$6.1 million per year



4 claims area by count
- average 220 claims per year




\$20,700 average cost per claim

RISK MANAGEMENT TIPS



Proactively direct and control client expectations

Family law clients can be emotional and volatile. They may also have changing and unrealistic expectations. This makes it especially important that you manage their expectations from the very start of the retainer. Helping clients avoid disappointment and surprises will significantly lower your claims exposure.



Carefully explain agreement terms to clients

Carefully explain domestic contracts or settlement agreements so that clients cannot later allege that they did not understand the contents of these agreements.




Be aware of the limitations of your legal knowledge

Family law is one of the most complex practice areas, with federal and provincial statutes and voluminous case law. No lawyer can hope to be an expert in all aspects of this field, so it's important to know when to seek advice from more specialized counsel (e.g. for estate planning) or third party experts (e.g. tax advisors, accountants, appraisers or actuaries).



Make better use of checklists and reporting letters

LAWPRO's Checklist for Domestic Contracts, Affidavits, Separation Agreements and Forms that contain issues lawyers should consider as they conduct the interview on a domestic contract matter and when they meet with the client to review and sign the document. A final reporting letter detailing what you did and what advice you gave can be a great help in the event of a claim, which may arise long after you've forgotten the details of a particular file.



Don't lower your standards for limited scope matters

A limited scope retainer does not mean less competent or lower quality legal services. Identify the discrete collection of tasks that can be undertaken on a contingent basis and confirm the scope of the retainer in writing. Clearly document all work and communications. Recognize that unbundled legal services are not appropriate for all lawyers, all clients, or all legal problems. Sample retainers and checklists can be found on the Limited Scope Representation Resources page at products.lawpro.ca/limitedscope.

LAWPRO FRANCHISE LAW CLAIMS FACT SHEET



Average total cost \$1.4 million per year



Average 9 claims per year



\$48,000 average cost per claim

RISK MANAGEMENT TIPS



Familiarize yourself with the Arthur Wishart Act disclosure requirements

Lawyers acting for franchisees or franchisees should ensure that their clients are aware of the disclosure obligations which the Act (and the courts) place on franchisors. Inadequate disclosure creates a franchisee to rescind the franchise agreement within two years and to receive restitutive damages.



Do not dabble in franchise law

Franchise law is a complex area of law. Lawyers doing work in this area should have sufficient expertise to handle that work, and if not, they should refer the matter to someone who has franchise law expertise. The client should also retain a chartered accountant familiar with franchises. The detailed financial disclosure requirements can be beyond the scope of a lawyer's expertise.



Beware of "Franchises in disguise"

A lawyer might fail to identify a commercial transaction as a franchise arrangement when dealing with a new franchisee - when the party behaving as a franchisor is not yet fully aware that they are creating a franchise. This goes back to the point about not dabbling - as anyone knowledgeable in the area would immediately recognize a franchise arrangement, regardless of what it's called.



Avoid limited retainers


Limited retainers, even if they are reduced to writing, tend to be ineffective in franchise cases. In the context of a franchise to franchisee purchase in particular, lawyers who think they are just acting on the "closing" may not deal with the franchise aspects of the case, which can lead to disaster. You can't treat a franchise like a typical asset purchase.




Carefully document instructions and advice

Many of LAWPRO's larger franchise claims have involved allegations that a lawyer failed to advise the franchisor or franchisee regarding proper documentation. Regularly, lawyers' files often have little or no documentation that the statutory provisions of the Act and the consequences of non-compliance were explained to the client. As a result, liability is often a foregone conclusion or turns on a credibility contest, which commonly favours the client.


LAWPRO LITIGATION CLAIMS FACT SHEET



1 claims area by cost
- average total cost \$22.7 million per year




1 claims area by count
- average 744 claims per year




\$30,400 average cost per claim

RISK MANAGEMENT TIPS




Familiarize yourself with Limitations and Notice Periods

We continue to see claims related to lawyers' unfamiliarity with the limitations rules and notice periods. In addition to having a claim within the applicable limitation period, lawyers need to know notice provisions that apply in certain cases (e.g. Crown and municipal liability, construction lien matters). Take the time to review limitations and notice periods on the products.lawpro.ca/limitedscope page.



Keep your files moving using practice management tools

Consider the key deadlines and the steps you will need to take to move your client's matter forward. Identify the appropriate limitations periods and advise the matter. Use practice management software and matter systems to alert you to approaching deadlines and to keep you on top of your files moving. For more time management tips, visit products.lawpro.ca/timemanagement.



Avoid administrative dismissals

Under Rule 16.13 of the Rules of Civil Procedure, matters commenced after January 1, 2012 will be dismissed on a rolling basis five years after commencement. These dismissals will happen without notice to the parties. Use the products.lawpro.ca/timemanagement tool to help you avoid administrative dismissal claims.



Talk to clients more often. Don't rely solely on email

Lawyers are increasingly using email to communicate with clients, and this is resulting in misunderstandings. Clients and lawyers read things into emails that aren't there, miss the meaning of what is said, or read between the lines and make assumptions. During a long litigation matter, arrange some face-to-face meetings, or at least a phone or video call if distance is an issue.



Have written confirmation of instructions and advice

As in all areas of law, it is crucial to helping LAWPRO defend you in the event of a claim or you may have no recollection of the details years later. Take notes on your conversations with the client, and document in writing things like the details of settlement offers, the scope of your retainer (especially in limited retainer cases), your advice on accepting offers, and the likelihood of winning or losing a case and the costs involved.

LAWPRO IP LAW CLAIMS FACT SHEET



Longest time before reported claim: 14 years



Average 46 claims per year



\$80,000 average cost per claim

RISK MANAGEMENT TIPS



Ask for, and make sure you receive receipt of correspondence

When sending correspondence to others, 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 the correspondence was received.



Review delegated work

To run an efficient and profitable IP practice you probably delegate appropriate work to a clerk. Remember that as the lawyer you are ultimately responsible for the work of a clerk, so take care to review delegated work, especially if there is something unusual involved in the matter.



Check and double-check dates

Date related errors are one of the most common causes of claims in IP law. Encourage lawyers and staff to double check that correct dates are entered on all documents and diary systems.



Carefully document instructions, advice and steps taken

Taking detailed notes and documenting client conversations can minimize misunderstandings and help you give clients reasonable expectations, which in turn can help avoid fee disputes.



Don't leave things to the last minute

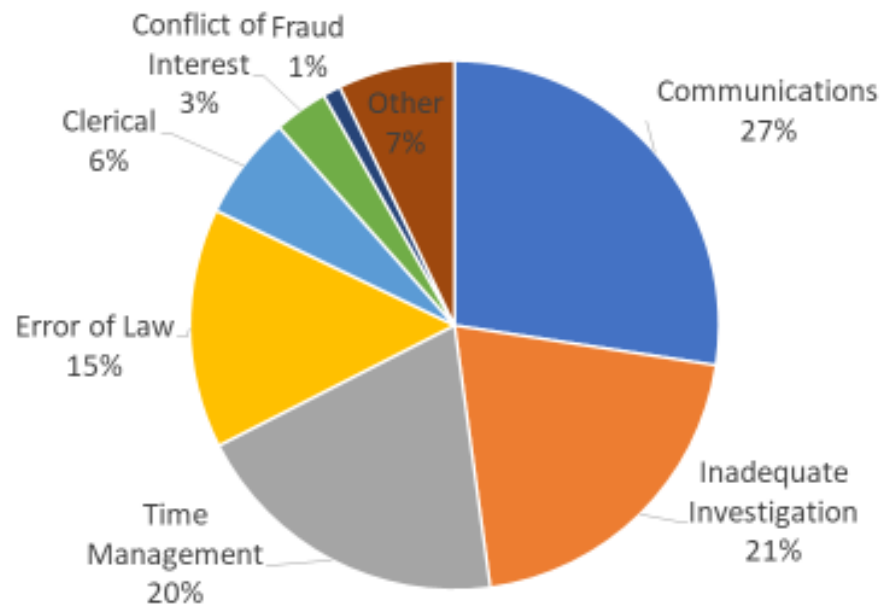
Get in the habit of making payments and completing filings well before actual deadlines. In the event there is an unexpected problem, the extra time will allow you to take corrective action before the deadline has passed. Document your advice to clients about the need for timely instructions.



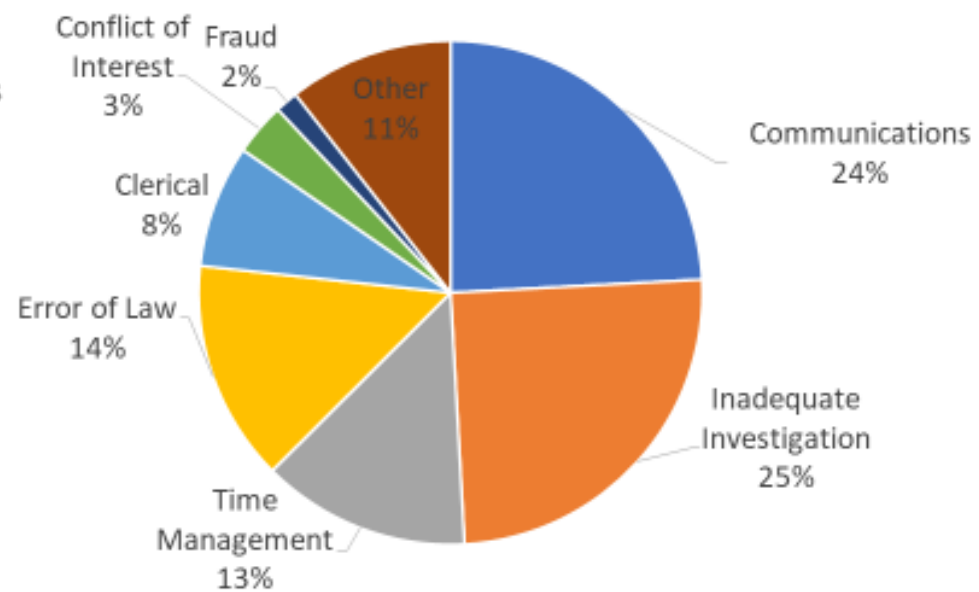
Don't give advice on foreign law

Remember that the LAWPRO policy provides protection for claims that are the result of your "professional services" for others involving the practice of the law of Canada, its provinces and territories. What will or will not be covered can be very fact-specific, but you should expect you are not covered for work involving non-Canadian law. If your client requests assistance from a foreign agent consider having your client retain foreign agents directly. Being the conduit for communications with foreign agents increases your exposure to a claim.

Claims by global description of loss (count)



Claims reported in all of 2019



Claims reported March 15 to Dec 31/20

COVID19-related claims

- 73 pandemic-related claims
- 3 main types
 - Loss of value in asset or deal
 - Limitation/procedural deadlines
 - Practice management/operations
- No obvious wellness-related claims
 - A few where things don't add up
 - “The notice came in and I didn't deal with it..”
 - Some clusters of claims



- LAWPRO co-funds the Member Assistance Program (MAP) with the Law Society of Ontario
- The MAP is a **confidential health and wellness service**, operated by Homewood Health and provided at no cost to all lawyers, paralegals, law students, and judges in Ontario, as well as their family members

LAWPRO

magazine

JANUARY 2020 VOL 19.1

Finding your way

Coping with health
and wellness issues

PLUS

Why it's important for firms to be proactive about mental health
How it feels to make a mistake
Getting help from the Member Assistance Plan and other resources





Introducing the *new* TitlePLUS



The NEW TitlePLUS launches May 17!

A one-stop, easy process for lawyers and clerks to get great title insurance coverage for clients.

Our new platform offers:

- ✓ An intuitive application website that is streamlined and easy to navigate
- ✓ TitlePLUS Legal Counsel Fee to recognize the work done by lawyers
- ✓ Easier, faster underwriting and one-step issuance
- ✓ Fewer administrative roadblocks and easier processing
- ✓ No more entering common title matters
- ✓ Separate policies for owners and lenders


New website:

titleplus.ca

100% Canadian-owned title insurer

Backed by LAWPRO | Our other sites: [practicepro.ca](#) | [avoidclaim.com](#)

Contact Us | Lender | Property Owner | LOGIN

About TitlePLUS | Residential | Commercial | Resources | Blog

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.


[Login](#)


Get Started


Our new policies are easy to understand, saving you time and unnecessary follow-up. Plus, we are recognizing your work with the TitlePLUS Legal Counsel Fee.

But not everything has changed. Backed by LAWPRO, you can still count on TitlePLUS to provide unmatched comprehensive coverage for complete peace of mind.


[Learn more >](#)

ORDER A POLICY

GET A QUOTE


FILE A CLAIM

Title Insurance For Your Transaction



RESIDENTIAL

TitlePLUS residential title insurance policies are available for properties with purchase prices and mortgage amounts up to



COMMERCIAL

TitlePLUS commercial title insurance policies are available for commercial properties in Ontario with purchase prices and



Introducing the NEW TitlePLUS™

BACKED BY LAWPRO

Rebuilt with you in mind

- A new, intuitive website and application
- TitlePLUS Legal Counsel Fee to recognize your work
- Easier, faster underwriting and one-step issuance
- Separate policies for owners and lenders
- Most policies automatically include legal service coverage

Built for lawyers,
backed by LAWPRO

We know your business
Give us a second look

What you've always wanted

- ✓ Efficiency
- ✓ Simplicity
- ✓ TitlePLUS Legal Counsel Fee
- ✓ Expertise you can count on
- ✓ Excellent protection for your clients

THE VERDICT IS IN The **NEW TitlePLUS** is better than before

The new TitlePLUS® is fast and easy-to-use. It's a one-stop shop to purchasing title insurance that busy legal professionals expect. Within minutes, you can complete an easy online application and receive a user-friendly title insurance policy that automatically includes legal service coverage.

Backed by LAWPRO®, TitlePLUS is the only Canadian-owned title insurance provider that puts lawyers first. We understand that lawyers are a critical part of the real estate transaction, and we are committed to offering a service that values lawyers' expertise.

From instant quotes to streamlined underwriting to simplified sign-up, all our enhancements are designed with lawyers at the forefront. And, when real estate transactions are more complex, our team of specialists are available to make sure your clients get the solutions they need.

BETTER TECHNOLOGY

- A new and modern application process that's easier to use
- No more entering common title matters
- More information at your fingertips so you can finish faster
- Complete your commercial application in Ontario online

CLEARER WORDING. SEPARATE POLICIES

- Separate owner and lender policies to provide ease of use and clarity
- Simplified language so your clients understand what they are getting
- Modern format and clearer layout
- Most policies automatically include legal service coverage

UNDERWRITING TO EASE YOUR BUSINESS

- Auto-generated underwriting removes the guess work
- Searching efficiencies save time
- Simplified policy issuance process
- Coming soon: insure more than one mortgage or multiple properties for the same transaction in one application

DESIGNED TO PUT YOU FIRST

- TitlePLUS Legal Counsel Fee to recognize your work
- Easy sign-up and instant quotes
- Expert guidance when you need it

The new TitlePLUS launches on May 17 at titleplus.ca and will be available soon on RealtiWeb®. Watch for further announcements coming soon.

Contact us for a free demo

✉ titleplus@lawpro.ca
☎ 1-800-410-1013
416-598-5899

250 Yonge Street, Suite 3101, P.O. Box 3 Toronto, ON M5B 2L7
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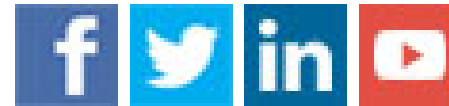


Risk management, claims prevention and law practice management resources

AvoidA
CLAIM

Visit AvoidAClaim.com for daily insights on claims prevention, practice management, and current frauds targeting lawyers.

Follow us on



Looking ahead

- Watch the markets
- Handle incoming claims
- Monitor claims trends
- Keep pushing wellness message
- Questions....

Thanks and questions please

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LAWPRO is on LinkedIn and Facebook and Twitter

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More info:



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www.lawpro.ca/excess



www.titleplus.ca



www.practicepro.ca