

# LAWPRO Update

Dan Pinnington  
President & CEO

FOLA 2023 Spring Plenary

# Agenda

Review of 2022

Claims Trends

TitlePLUS

Risk Management Resources

What will the future bring?

Questions and comments



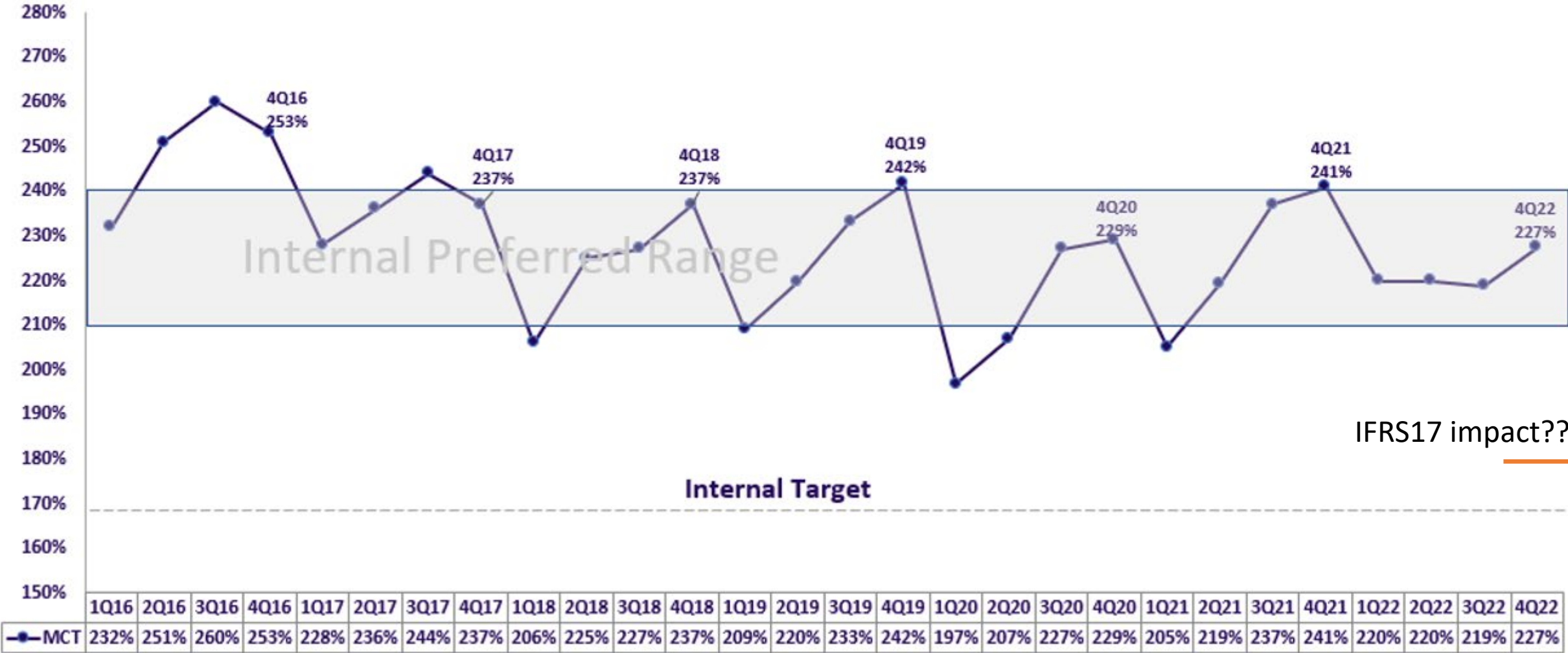
Full detailed Annual Report  
available at [lawpro.ca/annualreport](https://lawpro.ca/annualreport)

- Premiums \$126.4M
- Operating expenses \$27.6M
- Claims costs \$84.9M
- Investment loss \$13.8M\*
- Change in unrealized losses: \$19.7M\*

\*2022 investment returns better than benchmarks!

## LAWPRO 2022 financial highlights

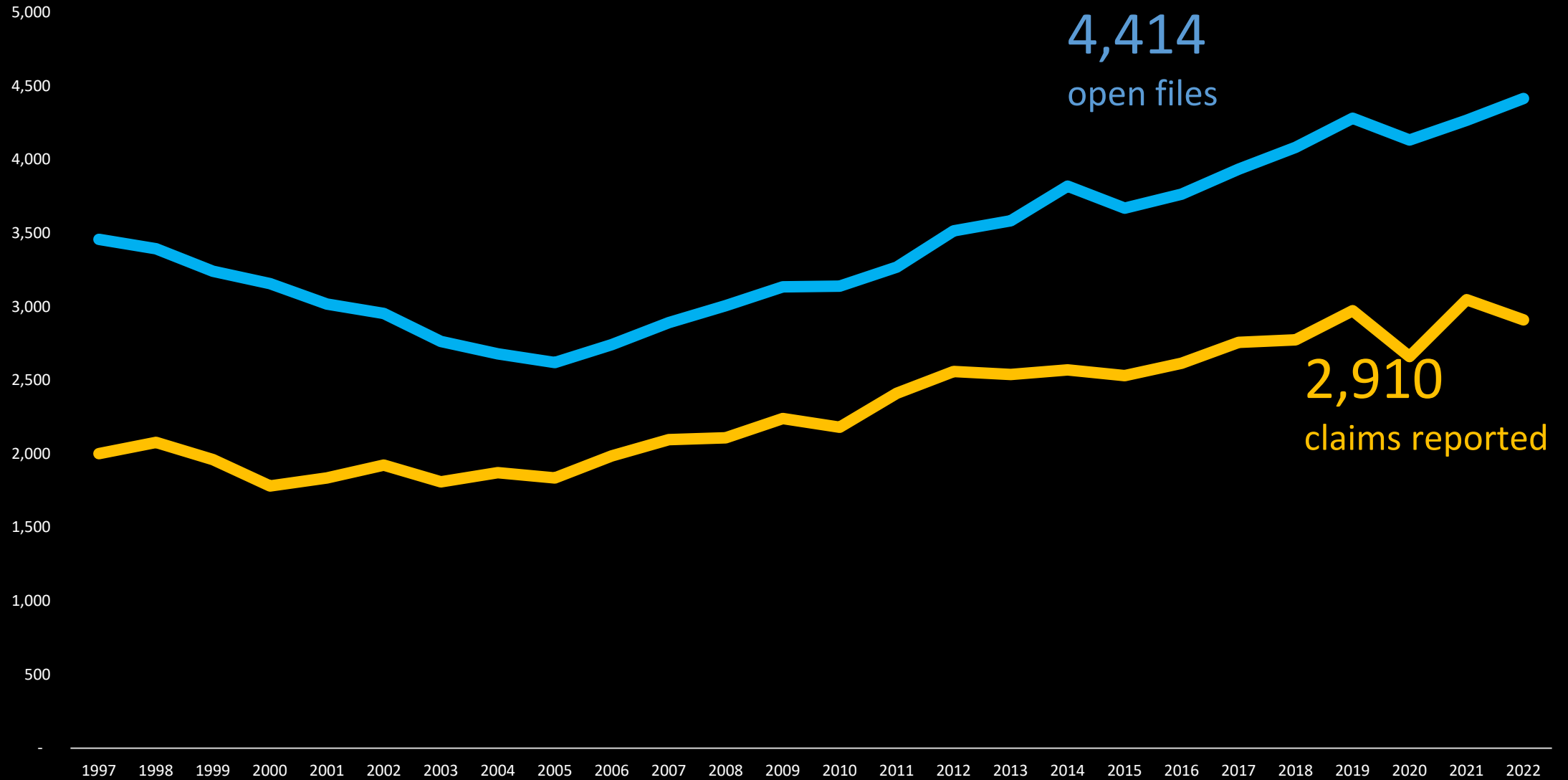
# Exhibit 8b – Minimum Capital Test (MCT) Historical



2022

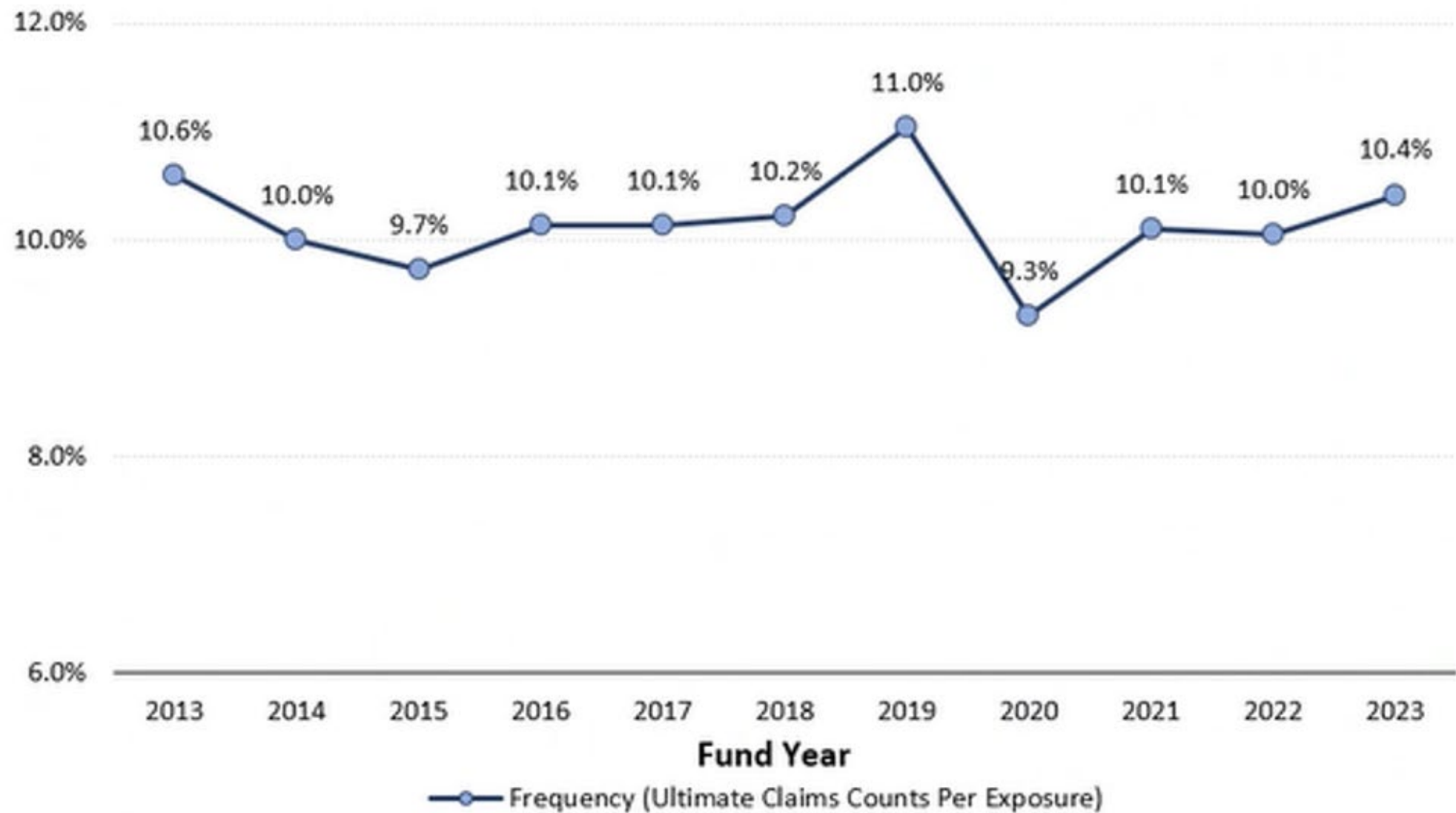
2,910 new claims

4,414 open claims

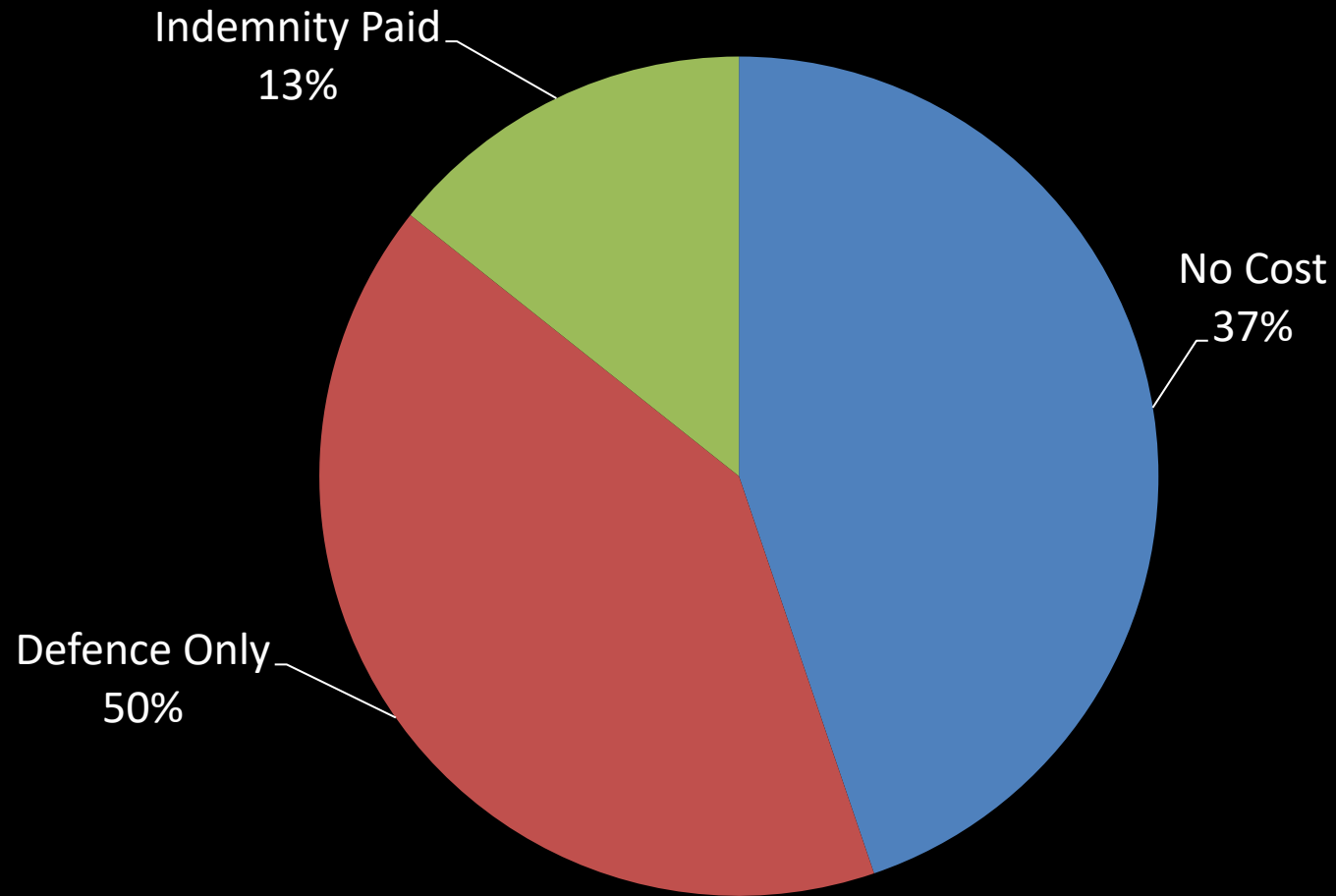


# Claims count trends

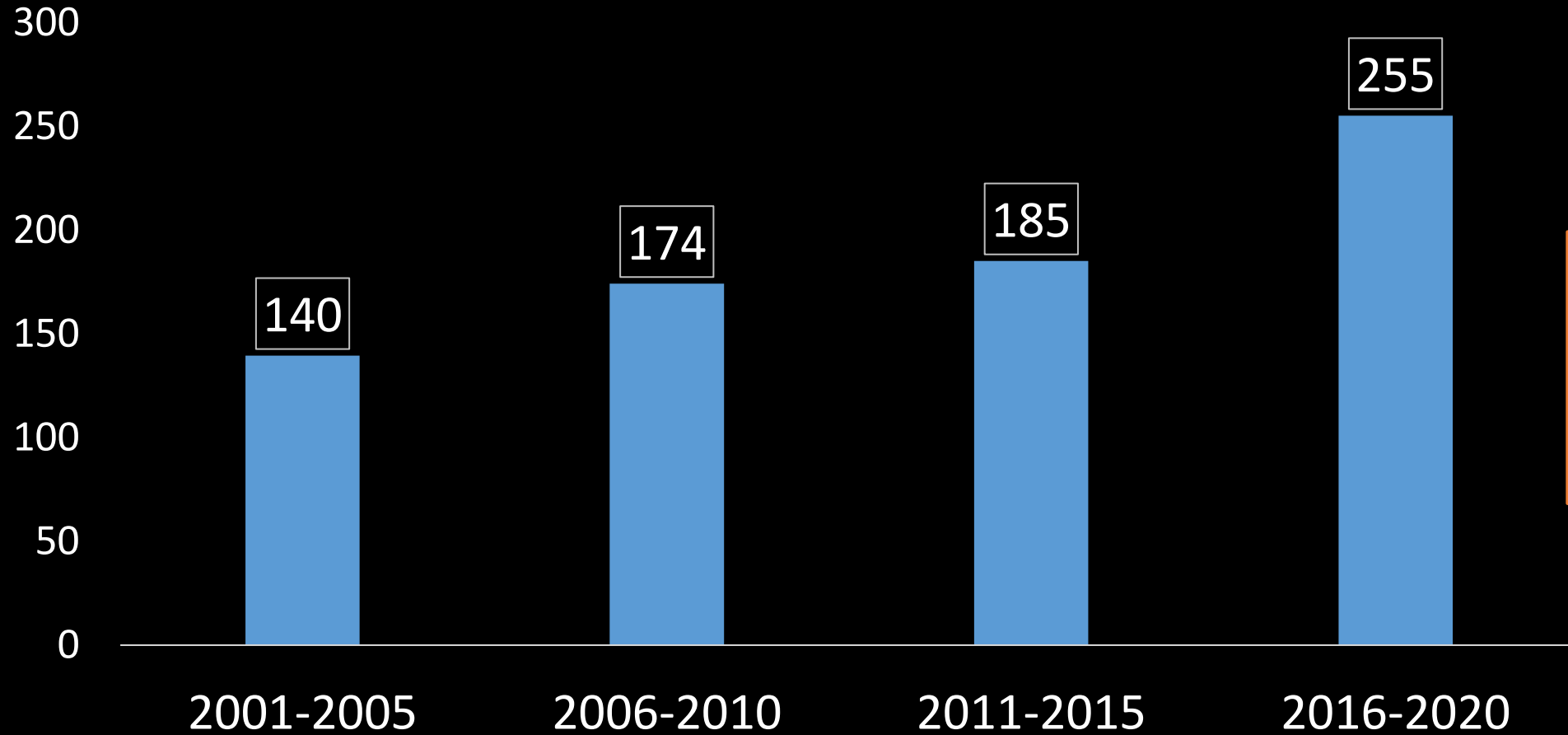
**Frequency by Fund Year  
Ontario E&O excl. REPCO  
31 March 2023**



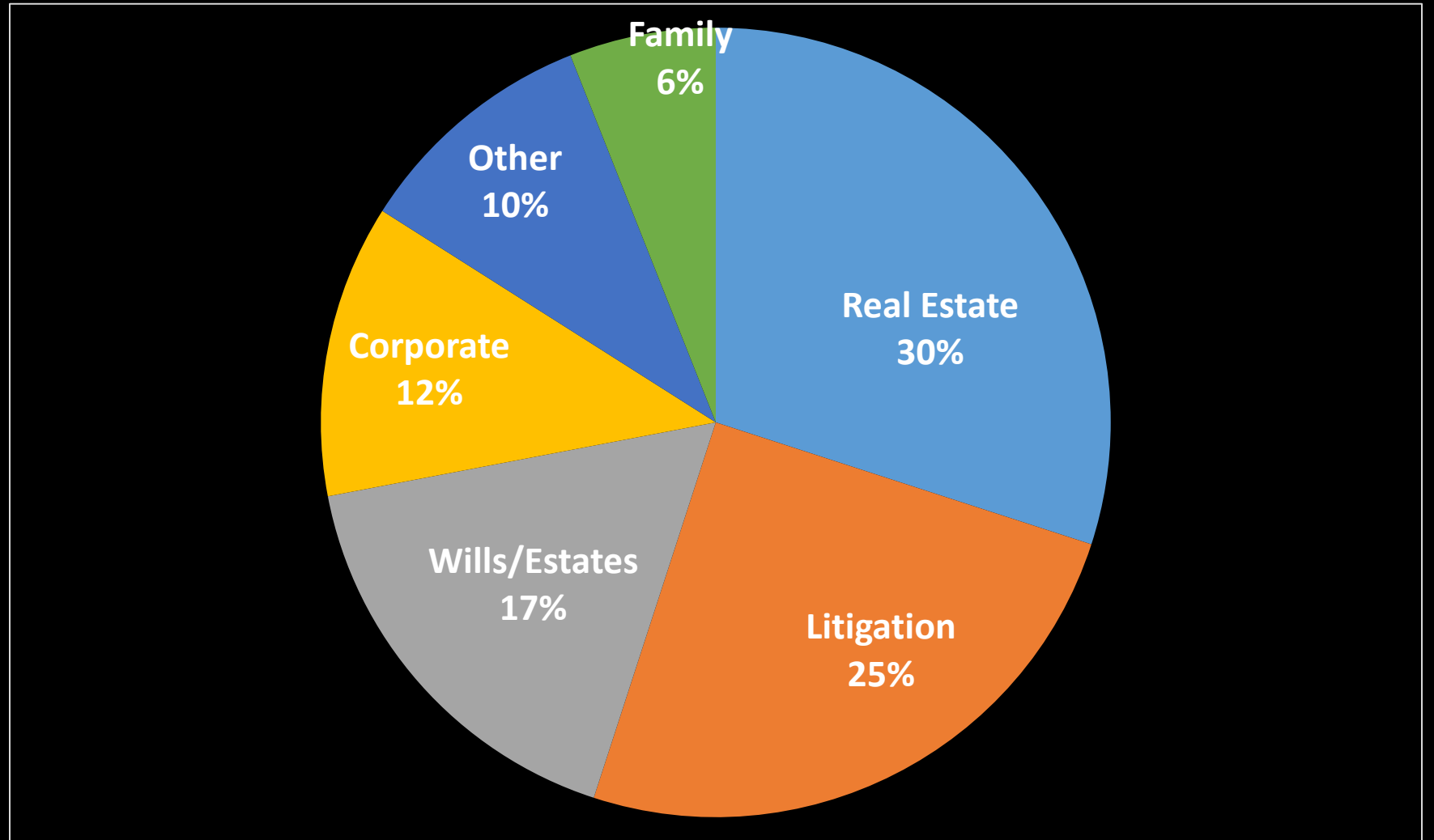




Resolution of LAWPRO claims (2022)



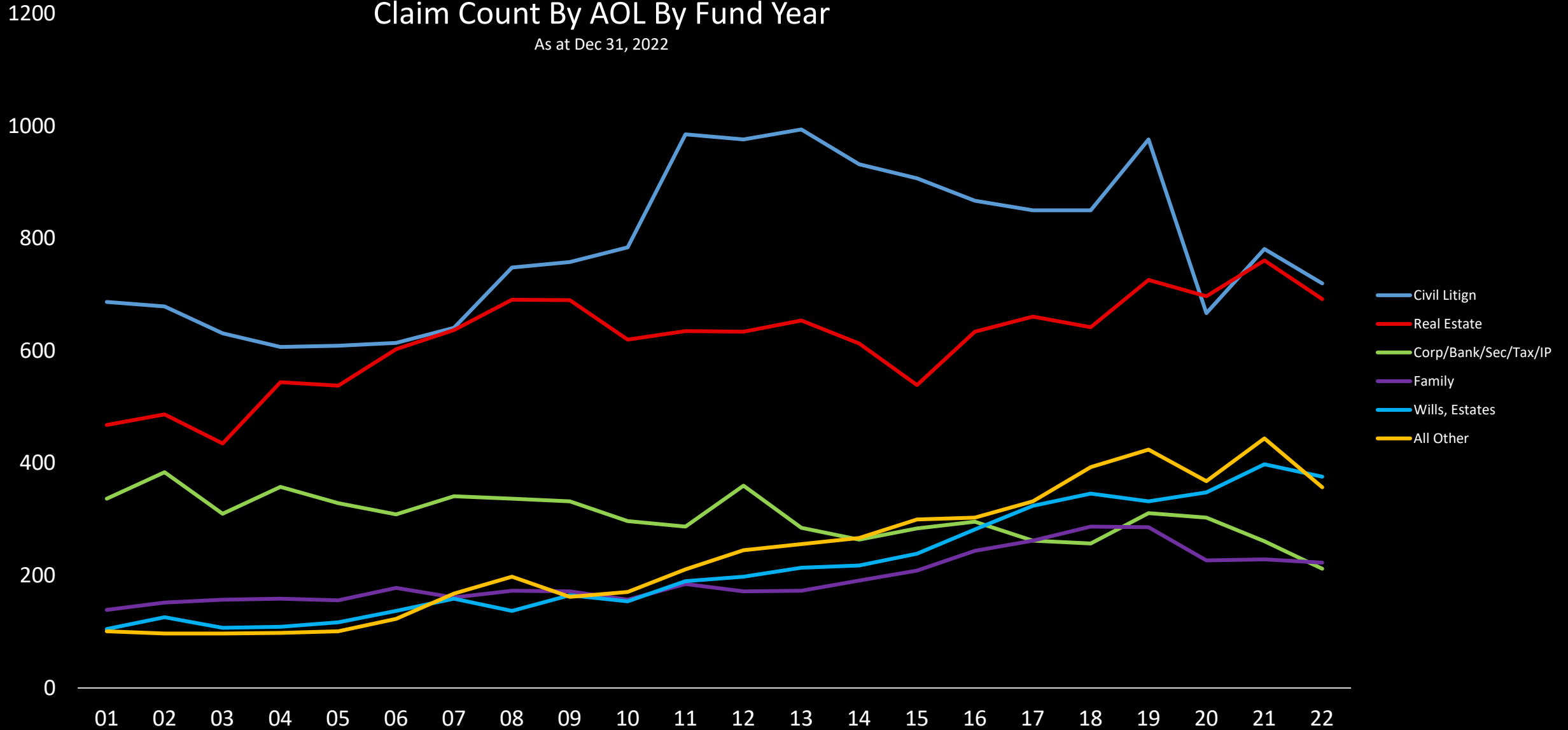
Average number of claims over \$100k

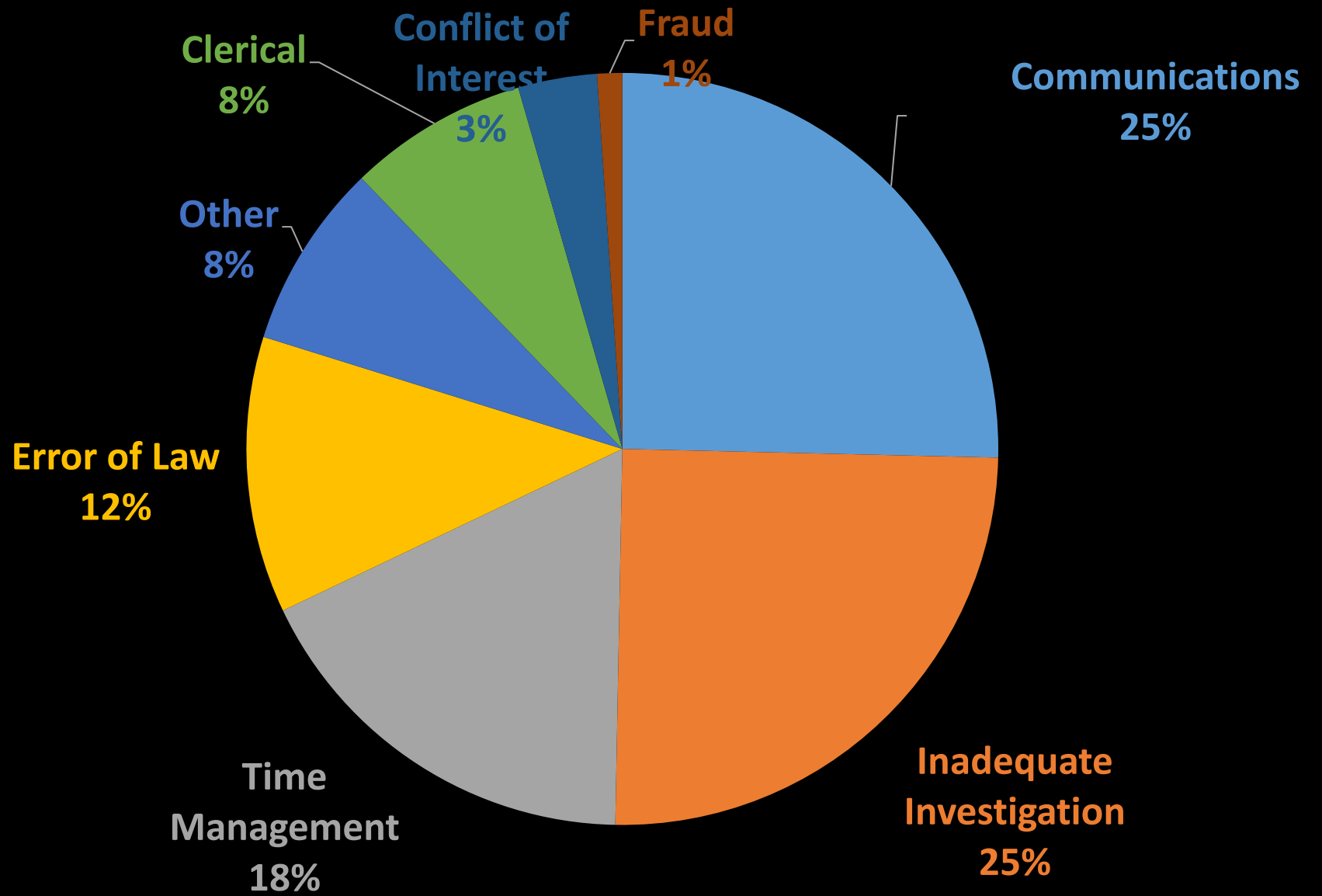


Claims by area of practice (2022)

# Claim Count By AOL By Fund Year

As at Dec 31, 2022

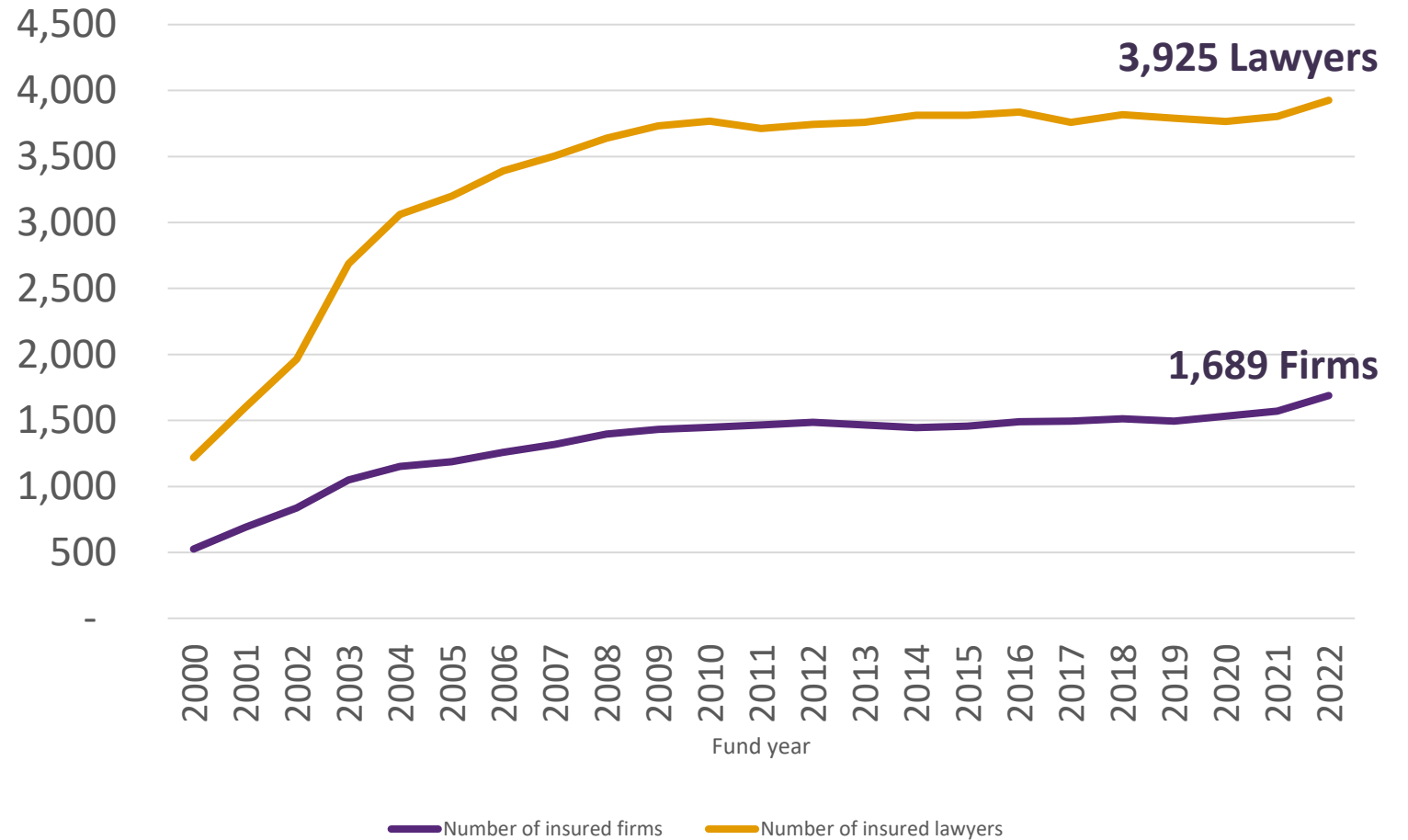




Claims by type of error

# LAWPRO EXCESS PROGRAM

118 new firms chose Excess insurance from LAWPRO in 2022





# WE IMPROVED TitlePLUS DELIVERY

 100% Canadian-owned title insurer

**Existing Owner Policies**  
for homeowners who didn't get title insurance when they first bought their home but want coverage now in light of recent increase in fraud

**Monthly Billing Page** to spend less time on administrative work, stay organized and track the total cost of your issued TitlePLUS policies.

**Pre-underwritten policies** for new developments through the popular New Home Program back on [titleplus.ca](http://titleplus.ca)



**practicePRO**

# **Risk Management Resources**

Brought to you by  
**LAWPRO**



# Malpractice Claims Fact Sheets

## LAWPRO CORPORATE/ COMMERCIAL CLAIMS FACT SHEET

**# 3 claims area by cost**  
average total cost \$9.9 million per year

**Average 162 claims per year**

**# 5 claims area by count**

### RISK MANAGEMENT TIPS

- Carefully document instructions, advice and steps taken**  
Following detailed notes and documenting client communications can minimize misunderstandings. Claims often involve a dispute over what was said and done, or not said and done, or confusion over who was to do what after which LawPRO's Checklist for Corporate/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 that often arises is when you ignore them. 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 to ILA 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 minimize the matter, even if it means turning down work for a good client or turning down substantial fees.
- Take time to read and consider all the details**  
Whether it is reviewing (or not reading) information on a corporate document, not doing a title search on a corporate lease matter, or failing to ensure that you request corporations don't lose a "grandfathered" exemption, nothing or talking 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 insist you do the shortcuts (likely 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 a complex discipline, and don't stray outside your area of expertise. If necessary, recommend your client retain the services of an expert in specialized areas like IP or franchise law if you don't have a thorough knowledge of those fields.

## LAWPRO CRIMINAL CLAIMS FACT SHEET

**Average total cost \$1.1 million per year**

**Average 62 claims per year**

**\$24,000 average cost per claim**

### RISK MANAGEMENT TIPS

- Ensure the client understands your recommendations**  
Failing to effectively communicate with the client is the biggest deficit 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 decides in the client's shoes. Documenting these communications (using a checklist and taking notes provides a valuable record of what you did in the event you are faced with a claim).
- Ensure you have all the facts**  
Lawyers should inquire about clients' circumstances. For instance, immigration status or Indigenous identity. To ensure that advice takes these details into account. Clients whose immigration status may be at risk should be consulted with 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 collateral sentences on employment or immigration status. For instance, a truck driver convicted of a DWI may become unemployable as a result. A non-Canadian sentenced to 90 months or more may lose the right to apply for permanent residency. We have also seen claims alleging lack of communication about defence choices, such as a decision not to file an affidavit as a witness, or failure to apply for participation in a litigation insurance program.
- Promptly notify LAWPRO of potential claims**  
Early reporting of client complaints and potential claims report lawyers are encouraged to report allegations immediately, even where they arise during trial, so that LAWPRO can take the most effective risk management actions. In an unpaid affidavit, ineffective assistance of counsel, the Crown may ask the trial lawyer to sign an affidavit supporting the grant of appeal. If that is for you, 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 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 where you may have no recollection of the details were later. Take notes on your conversations with the client and the details of settlement offers, the scope of your expertise (especially in limited retainer cases), your advice on accepting offers, the likelihood of winning or losing a case and the costs involved.
- Create detailed docket notes**  
Like the tip 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 arbitration 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 "lost rights violation" or "malicious prosecution", alleging wrongdoing, bias or collusion against the client. These often coincide with Law Society complaints or similar third party claims against a former employer (and the insured who represented them), and in several cases are brought by self-represented or vexatious litigants. LAWPRO has yet to pay an indemnity on this type of claim, but they can be costly to resolve. What 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.

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## LAWPRO FAMILY LAW CLAIMS FACT SHEET

**# 5 claims area by cost**  
average total cost \$4.2 million per year

**# 4 claims area by count**  
average 222 claims per year

**\$18,700 average cost per claim**

### RISK MANAGEMENT TIPS

- Proactively direct and control client expectations**  
Family law clients can be emotional and difficult to manage. 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 hybrid and provincial statutes and extensive 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. estate planning) or third party experts (e.g. tax advisors, accountants, appraisers or actuaries).
- Make better use of checklists and reporting letters**  
LAWPRO's Domestic Contract/Matter/Divorce has checklists 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 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 component basis and confirm the scope of the retainer in writing. Clearly document all work and instructions, particularly with respect to the client's intended use of the property. Use all courts, all orders, all legal problems. Sample retainers and checklists can be found on the Limited Scope Representation Resources page at [g333.com/clientservices](http://g333.com/clientservices).

## LAWPRO FRANCHISE LAW CLAIMS FACT SHEET

**Average total cost \$1.4 million per year**

**Average 9 claims per year**

**\$145,000 average cost per claim**

### RISK MANAGEMENT TIPS

- Familiarize yourself with the Arthur Wishart Act disclosure requirements**  
Lawyers acting for franchisors or franchisees should ensure that their clients are aware of the disclosure obligations which the Act (and the courts) place on franchisors. Indecent disclosure obligations which the Act (and the courts) place on franchisors. Indecent to disclose extensive 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 marketing a franchise is not yet fully aware that they are creating a franchise. This poses back the point about not dabbling - as anyone knowledgeable in the area would immediately recognize a franchise agreement, regardless of what it's called.
- Avoid limited retainers**  
Limited retainers, even if they are reduced to writing, tend to be ineffective in franchise claims. In the context of a franchise to franchisee purchase in particular, lawyers who think they are just acting on the "losing" may not deal with the franchise aspects of the case, which can lead to disaster. You can't treat a franchise like a typical service contract.
- Carefully document instructions and advice**  
Many of LAWPRO's larger franchise claims have involved allegations that a lawyer failed to follow the franchisor's or franchisee's proper disclosure. "Regrettably, 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 invariably favours the client.

## LAWPRO IMMIGRATION CLAIMS FACT SHEET

**Longest claim reporting time 15 years**

**Average 31 claims per year**

**Average total cost \$488,000 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 results of their immigration application. Clients are often unaware of the expectations to fully explain administrative criteria, requirements and the need to have documents prepared 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 be more likely to file a claim. 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 refer from an "openly live" approach to processing applications. Citizenship, refugee, residence, work permits, etc. all have time sensitive deadlines and the program 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 collateral 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 charges. 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 not in you and know the consequences of a delay or failure to provide documents. Give the client a response date that allows for follow-up (i.e. outside the response date imposed by the government entity).
- Promptly notify LAWPRO of potential claims**  
Early reporting of client complaints, missed deadlines, etc. offers the best opportunity for claim repair. Allegations of ineffective assistance of counsel should be reported immediately. Early reporting allows LAWPRO to investigate, keep good notes on communications with clients which can later go into a reporting letter or follow-up letter, and that there is no admission of negligence.

## LAWPRO IP LAW CLAIMS FACT SHEET

**Longest time before reported claim: 24 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 clients, especially foreign agents, ask them to confirm receipt of that correspondence. If you do not 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 with 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**  
Having detailed notes and documenting client communications can minimize misunderstandings and help give clients reasonable expectations, which in turn can help avoid disputes.
- Don't leave things to the last minute**  
Get in the habit of making payments and completing files 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**  
IP 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 IP 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.

## 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' failure to advise clients of the limitations rules and notice periods. In addition to issuing a claim within the applicable limitation period, lawyers need to be aware of provisions that apply to certain cases (e.g. Crown and municipal liability, construction law matters). Take the time to review limitations and notice periods on the practicePRO Litigation Portal Resources 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 limitation periods and advise them. Use practice management software and tickler systems to alert you to approaching deadlines or to keep your files moving. For more time management tips, visit [practicepro.ca/time-management](http://practicepro.ca/time-management).
- Avoid administrative dismissals**  
Under Rule 48.4 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 [practicepro.ca/clientservices](http://practicepro.ca/clientservices) to help you avoid administrative dismissal claims.
- Talk to clients more often. Don't rely solely on email**  
Lawyers are increasingly using email in communication 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 litigious 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, this is crucial to helping LAWPRO defend you in the event of a claim where you may have no recollection of the details were later. Take notes on your conversations with the client, and document in writing things like the details of your settlement offers, the scope of your expertise (especially in limited retainer cases), your advice on accepting offers, and the likelihood of winning or losing a case and the costs involved.

## LAWPRO REAL ESTATE CLAIMS FACT SHEET

**# 2 claims area by cost**  
average total cost \$21.5 million per year

**# 2 claims area by count**  
average 632 claims per year

**\$34,000 average cost per claim**

### RISK MANAGEMENT TIPS

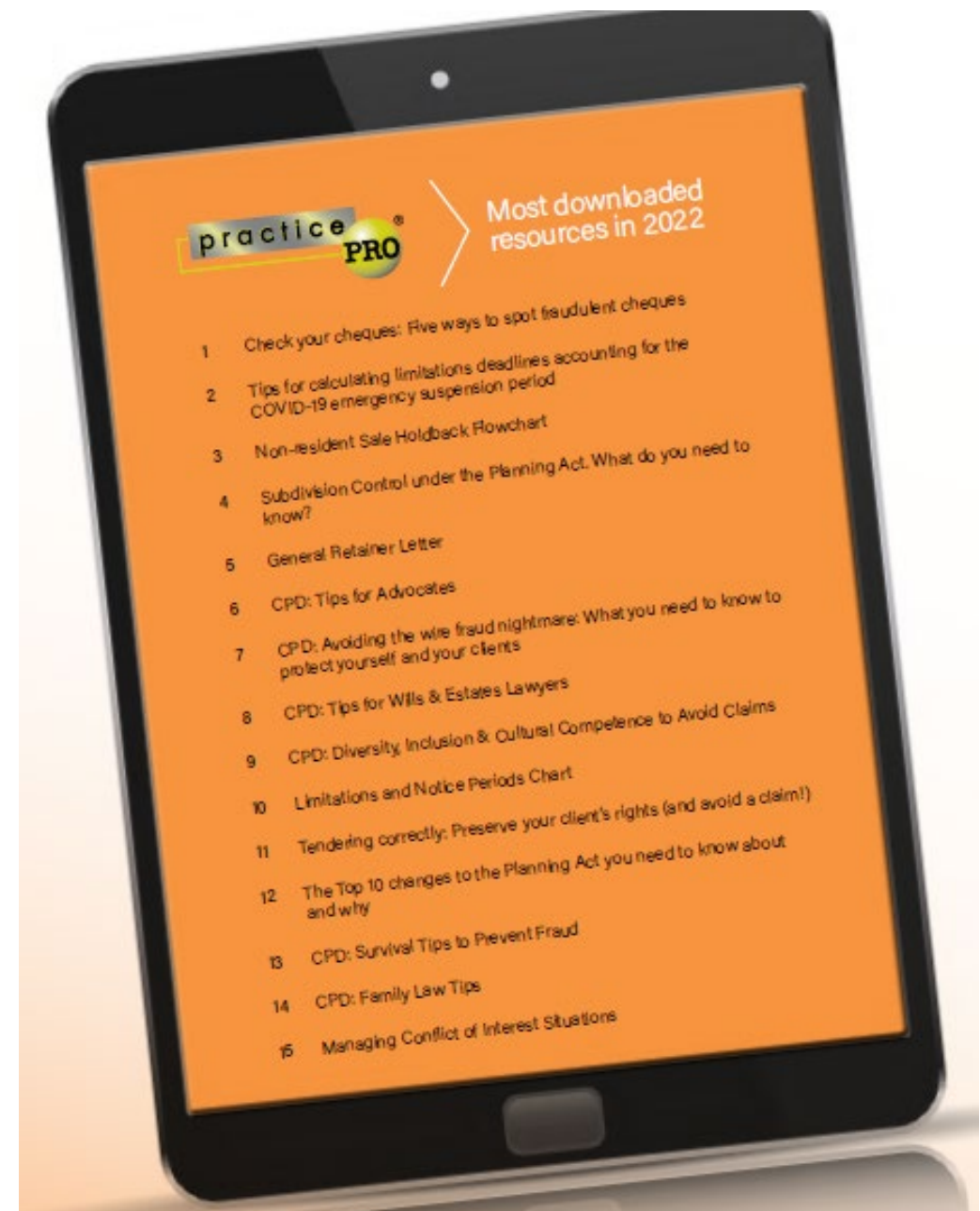
- Meet clients in person at least once**  
Meet with the client to review the transaction and understand client instructions, particularly with respect to the client's intended use of the property. Not every matter is straightforward, and you don't want to have to address a problem that was only noticed in the file's 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 only 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 knew or ought to have known.
- Document your conversations with and instructions from the client**  
This is the best defence against a real estate 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 sees 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 PIN is only valid for your transactions. As tempting as it may be in a busy real estate practice to let the client register themselves regarding a lawyer's electronic signature, just don't.
- Review the title insurance policy with your client**  
The checklist is a good starting point for reviewing 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.

New resources updated regularly

CPDs – professionalism hours, RMC credits

Articles on AvoidAClaim about current issues

Reach us at [practicepro@lawpro.ca](mailto:practicepro@lawpro.ca) with questions concerns or more info



# Newest resources from practicePRO


**PHISHING**

Personal information and identity theft occur payment scams are the modern behind most phishing scams. Phishing is an email, text message or phone call that appears to come from a trusted source, institution, vendor or company, but is actually from a malicious intruder. Phishing emails, texts or voice messages are intended to trick you into giving fraudsters your information by asking you to update or confirm personal or online account information.

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# FRAUD WATCH

If you aren't constantly on a look for updates, beware the danger. If you've been asked to do something that seems suspicious, get suspicious. If it looks too good to be true, it's probably a scam.

A graphic for a phishing scam featuring a computer monitor displaying a login page, a cloud icon, and various data points and lines representing digital information.

**WIRE FRAUD**

Fraudsters are actively trying to direct lawyers and law firms to wire money to them – often through spoofed emails of people you know or looking into emails.

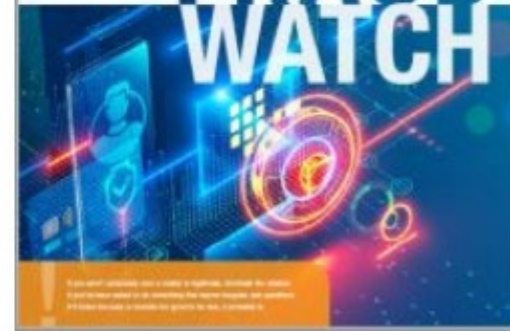
Fraudsters have pretended to be:

- A lawyer in the firm directing staff to wire funds to a client or to complete a transaction
- A lawyer or staff acting for a seller in a transaction directing the other side to wire funds
- A financial institution directing wire payment to itself
- A client seeking payment of funds to wire

LawPRO

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A graphic for wire fraud featuring a globe, a wire transfer icon, and various data points and lines representing digital information.

**CORPORATE ID FRAUD**

Changing or stealing the identity of corporate identity records is commonly accomplished by filing a notice naming transfer directors and officers, using fake ID for the real directors and officers or changing the address of the registered office. The fraudsters then obtain a loan or to sell or mortgage the corporation's assets.

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# FRAUD WATCH

If you aren't constantly on a look for updates, beware the danger. If you've been asked to do something that seems suspicious, get suspicious. If it looks too good to be true, it's probably a scam.

A graphic for corporate ID fraud featuring a globe, a document icon, and various data points and lines representing digital information.

**REAL ESTATE SCAMS**

Real estate fraud often occurs in situations where the true owner's identity is stolen (ID theft) for sale or mortgage purposes, or the value of a property is misappreciated.


Identity theft

When a client uses fake ID to secure the identity of selling property owners or sets a Notice of Change to become a director or officer or corporate name for the purpose of controlling funds, this is identity theft. Once identity has been stolen, the fraudster sells or mortgages the property, or discharges a mortgage from title, then gets a new mortgage from another lender.

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# FRAUD WATCH

If you aren't constantly on a look for updates, beware the danger. If you've been asked to do something that seems suspicious, get suspicious. If it looks too good to be true, it's probably a scam.

A graphic for real estate scams featuring a house icon, a bank icon, and various data points and lines representing digital information.



# Prevent wire fraud



Call before you click



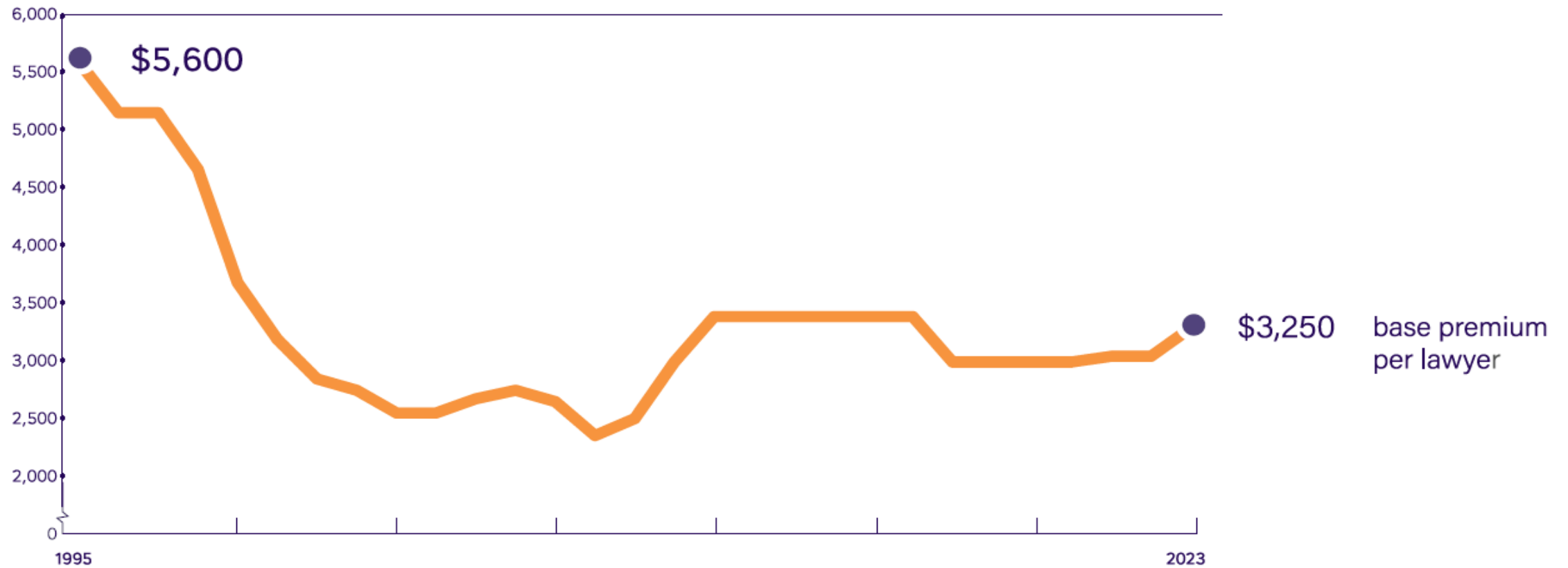
Train your staff



Warn your clients

# WE PROVIDED PREMIUM STABILITY

Base premium since inception



Questions and comments please!

# Thank you and stay in touch!

Dan Pinnington  
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Web: [www.practicepro.ca](http://www.practicepro.ca) and [www.lawpro.ca](http://www.lawpro.ca)  
Blogs: [AvoidAClaim.com](http://AvoidAClaim.com)  
Twitter: @LAWPRO and @practicePRO