

LAWPRO Update

Dan Pinnington

LAWPRO President & CEO

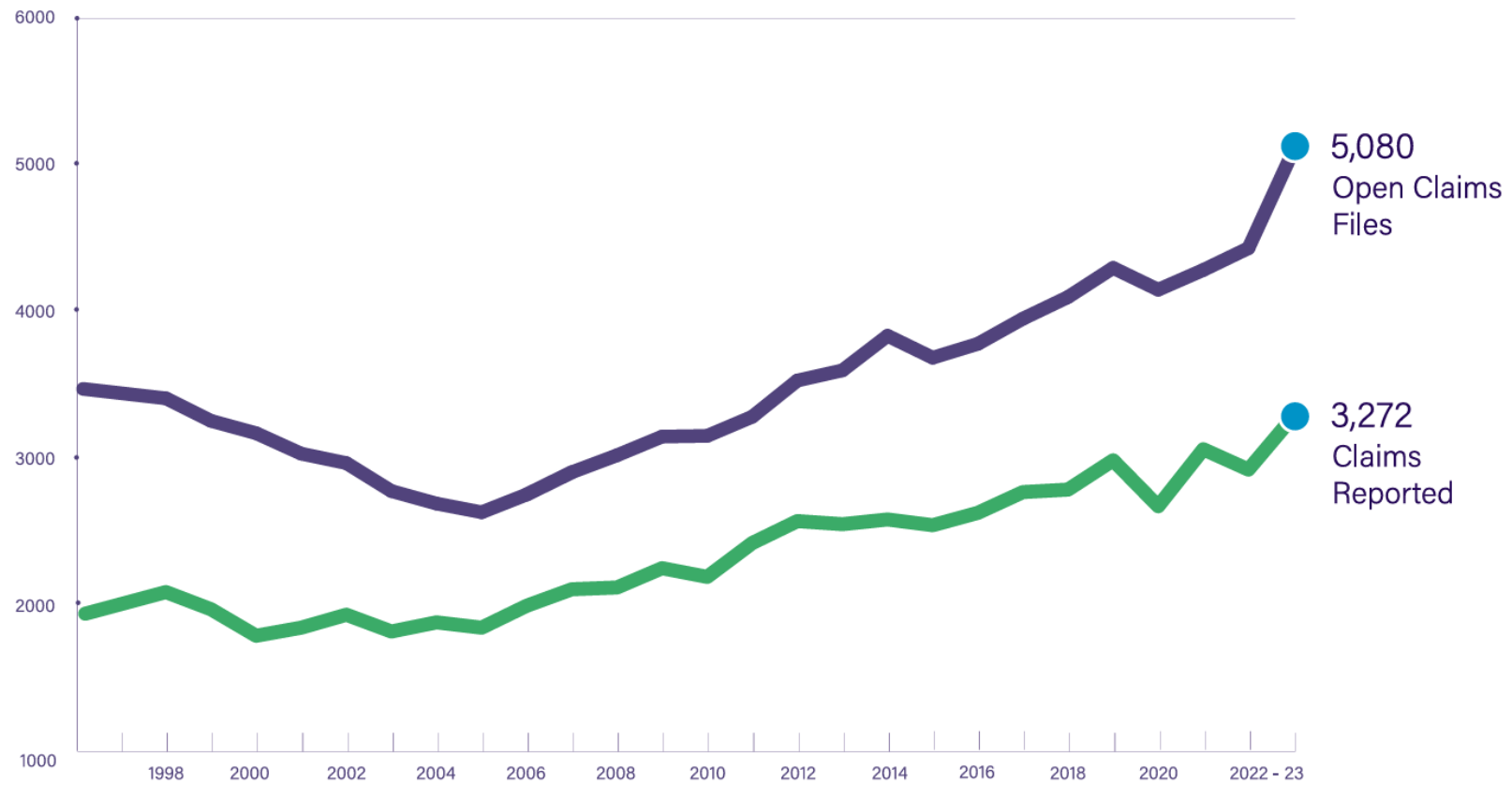
Agenda

- Claims trends
- 2025 insurance program changes
- PracticePRO update
- Phishing and social engineering risk
- Questions

Claims trends

Number of claims reported and open claims

Total number of open claims at Dec. 31, 2023



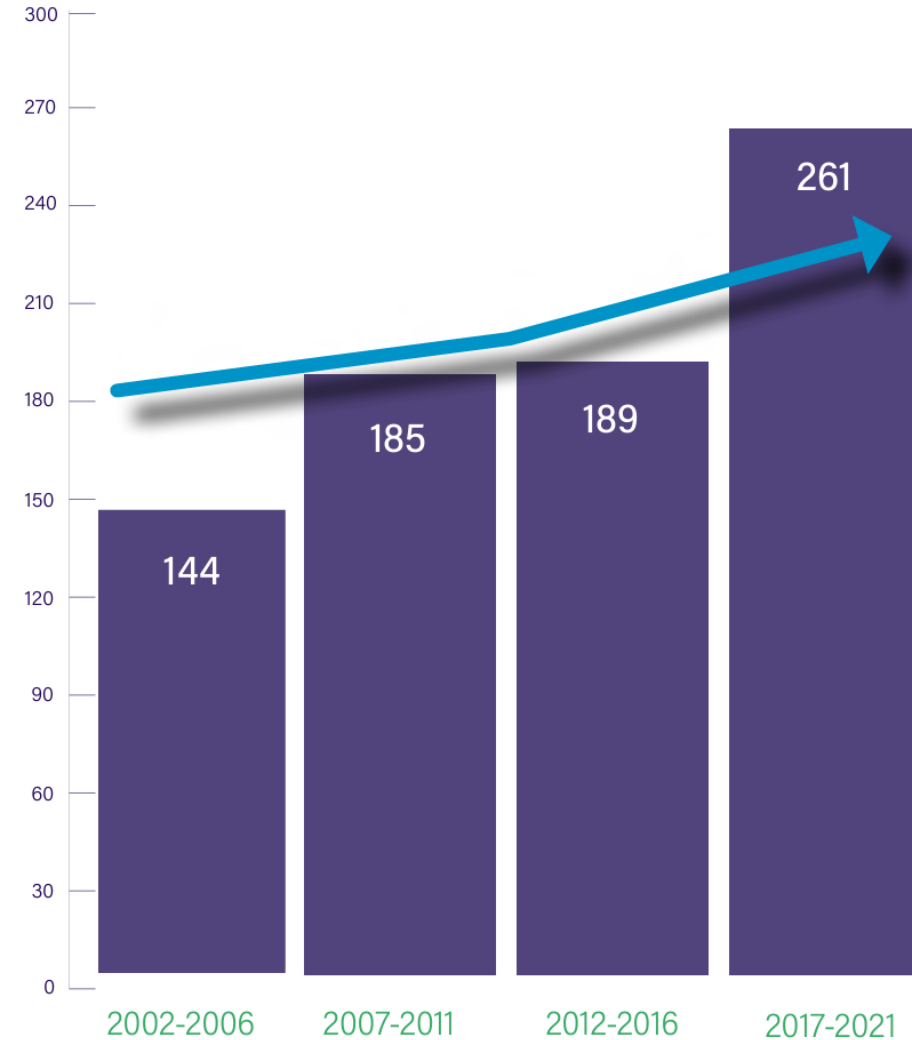
Cost of claims is on the rise

High-value claims:

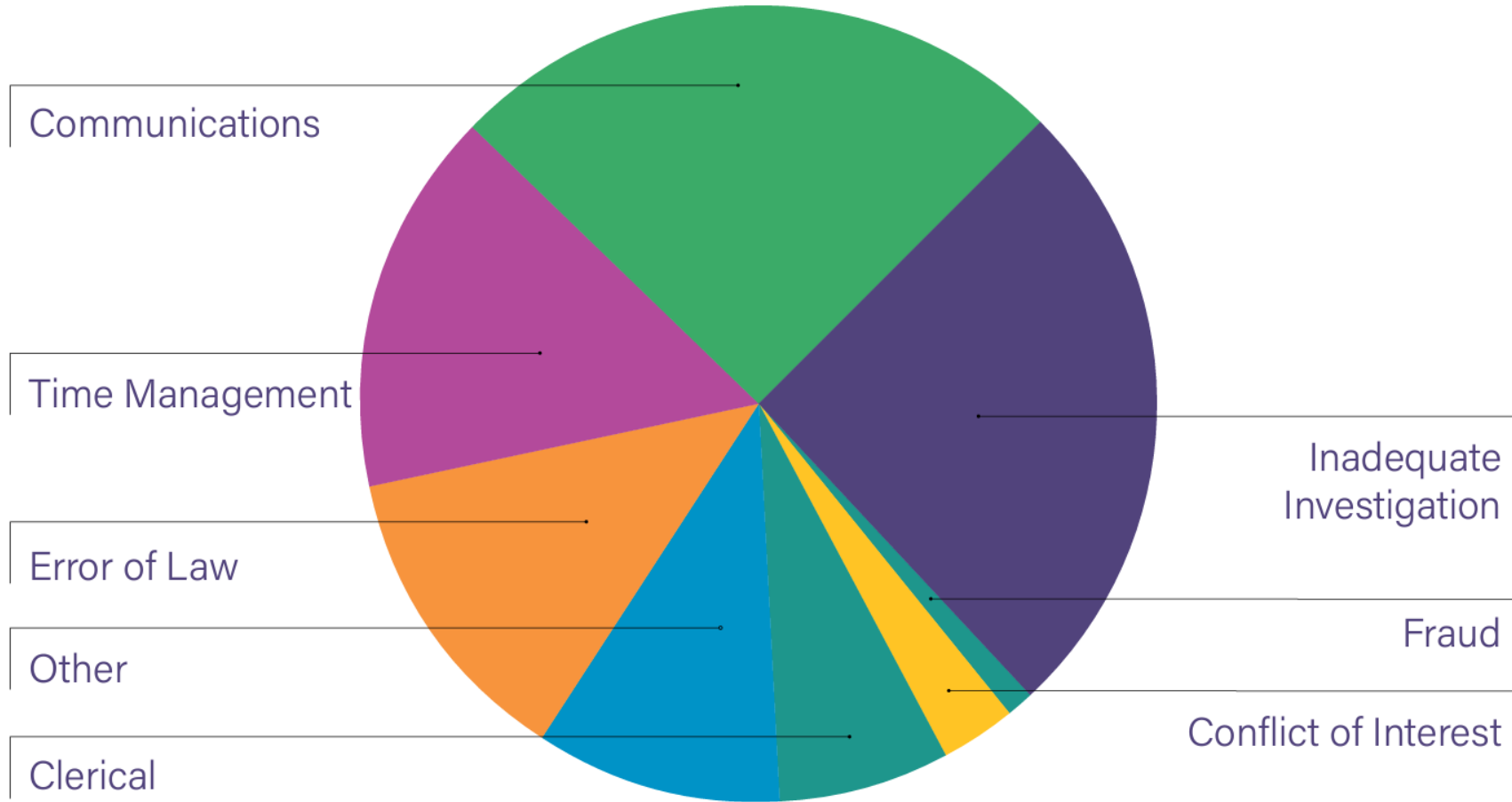
- \$750,001 to \$1 million
- \$6.1 million for 7 in 2022
- \$11.6 million for 13 in 2023

Average number of claims

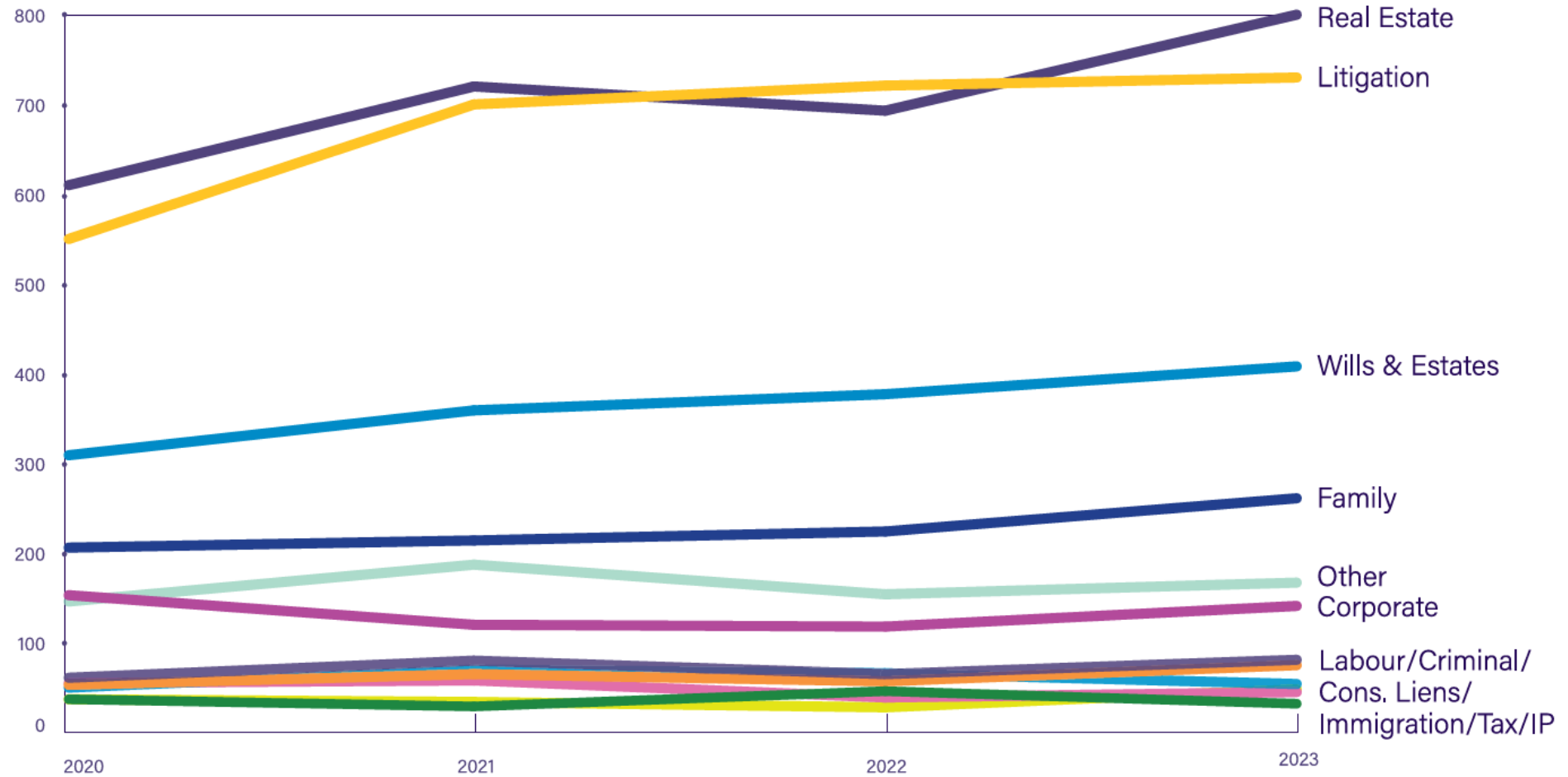
with a value greater than \$100,000



What kinds of mistakes are we seeing?



Claims by area of law



Claims closed in 2023:

Claims by outcome

55%

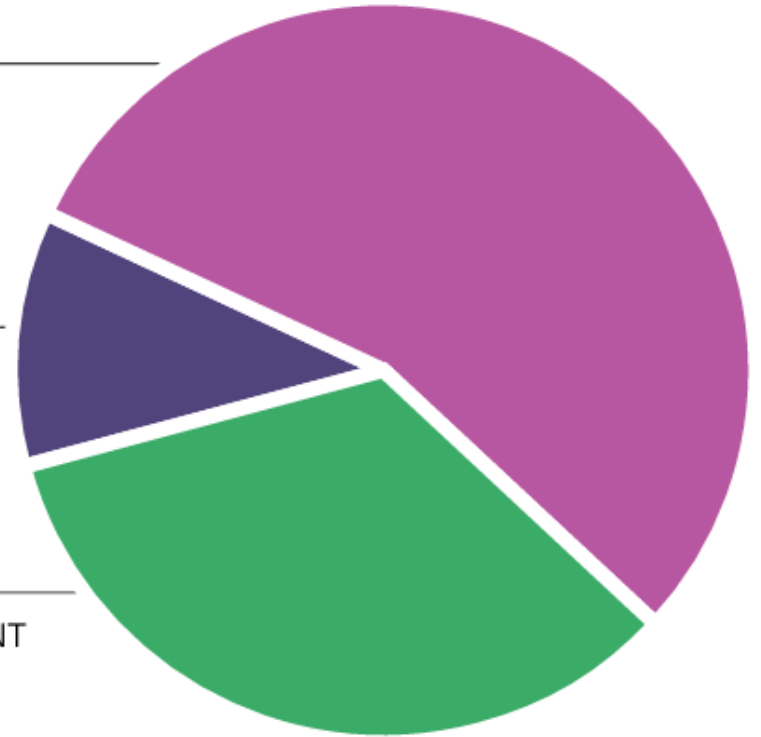
CLOSED WITH DEFENCE
COSTS ONLY

11%

CLOSED WITH INDEMNITY
PAYMENT

34%

CLOSED WITHOUT ANY PAYMENT



2025 insurance program changes

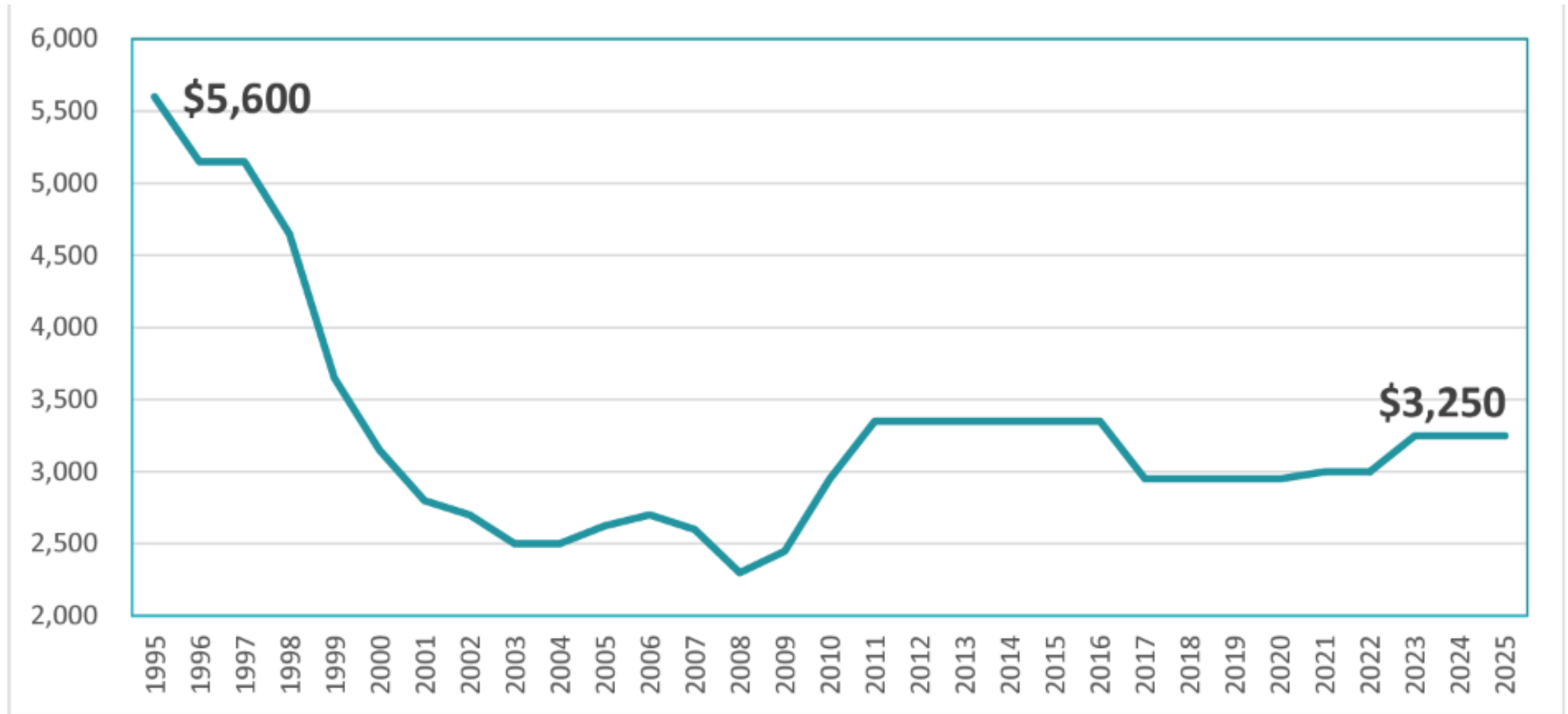
Factors we consider when developing the new insurance program

- Claims trends and costs
- Capital requirements due to regulatory obligations (FSRA)
- Economic and investment market trends
- Scope of coverage
- The changing environment in which lawyers practice
- Comments received from the profession during the previous year

2025 Policy key points

- No change to base premium: \$3,250
- Optional coverage to meet CPATA requirements
- Electronic funds transfer exclusion
- Discontinuance of quarterly payment option

Base premium since inception



Many lawyers pay less than the base premium

New Lawyer Discount 20% to 50% discount for those called in the last 1-4 years	5,841 (18%)
Part-Time Practice Discount 50% base premium discount for eligible lawyers	2,554 (8%)
Criminal or Immigration Practice 50% base premium discount	1,919 (6%)

*Also...25% of all insureds take advantage of
LAWPRO's Risk Management Credit*

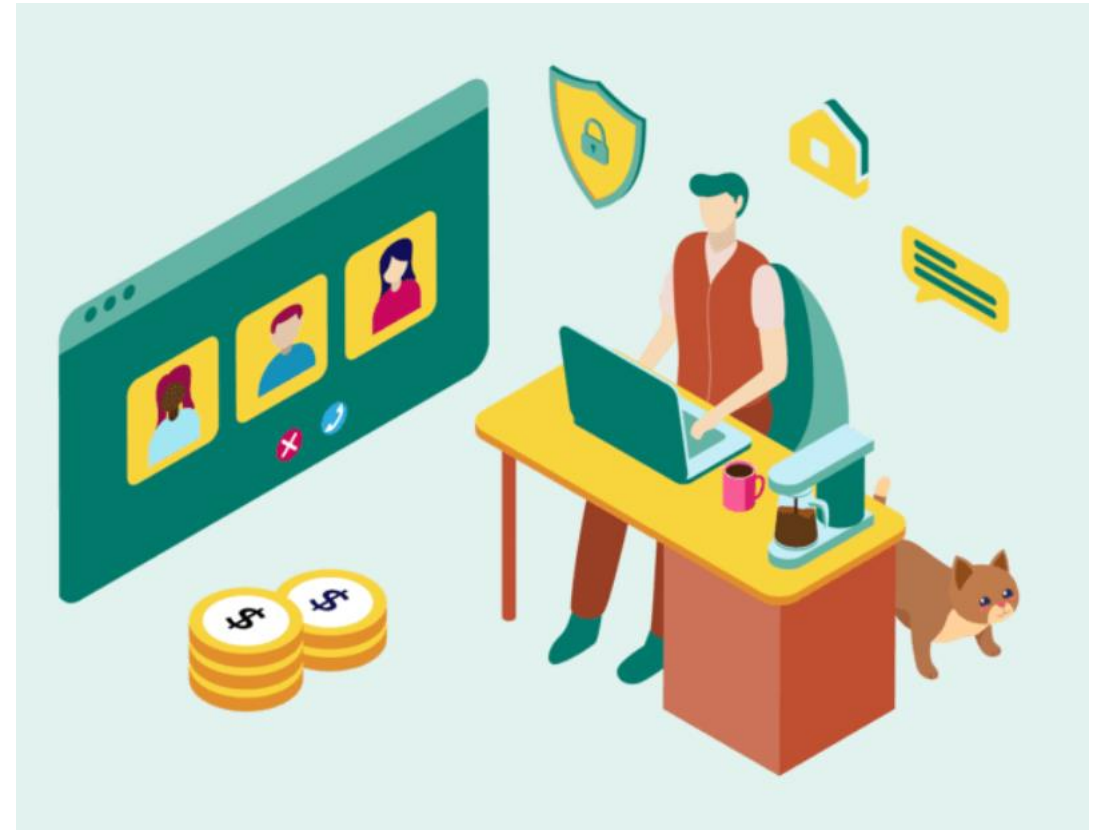
New! Optional coverage for CPATA members

- LAWPRO will begin offering optional coverage to meet the insurance requirements of the College of Patent and Trademark Agents – known as CPATA.
- **Protects** against claims originating within Canada as well as claims originating outside the country.
- Based on a risk analysis and the goal of charging the lowest possible premium, the surcharge for this optional coverage will be \$2,000.



Electronic funds transfer exclusion

- LAWPRO **will** cover losses from errors and omissions by the LAWPRO
- LAWPRO **will not** cover funds “lost in transit” or caused by mistakes or problems with the software or it’s operators



Reminder! Social engineering sublimit and key steps

- ❖ Significant increase in fraud attempts
- ❖ Especially using social engineering techniques
- ❖ LAWPRO introduced a sublimit of \$250,000 with an increase to \$1 million....

...if basic risk mitigation steps are taken.

What is social engineering ?

Talking a target into revealing specific information or taking certain action for illegitimate reasons.

Can you give me an example?

A lawyer, following what appears to be a legitimate instruction from a trusted person (who is actually an imposter) redirects where funds are to be transferred.

How to protect yourself and maintain the full \$1 million limit?



Confirm payment arrangements in retainer



Confirm no changes will come from firm




Call or meet if changes are necessary

Call before
you click!

Update from practicePRO.ca



PracticePRO

- **Information:** LAWPRO magazine, the practicePRO website, webzines, Claims Fact Sheets, live presentations, and social media.
 - **Practice Aids:** checklists, precedent or template documents, sample retainers, toolkits
 - **Education:** CPD programs – in person and virtual and RMC Credit program
 - **Wellness and balance:** The MAP and other resources
- 

“I was just served with the attached Statement of Claim.

I am totally blindsided!

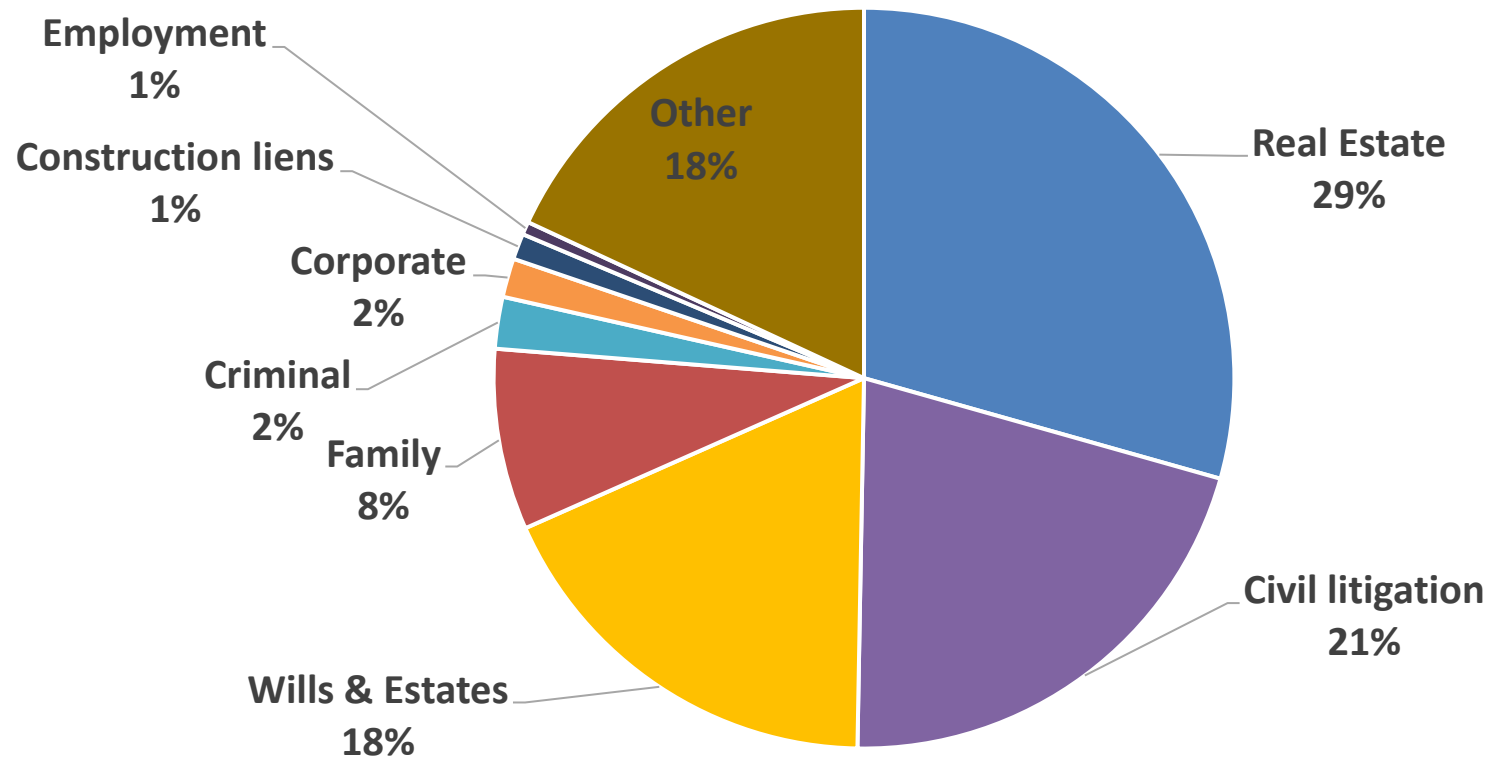
What should I do?”

**PracticePRO
Update**

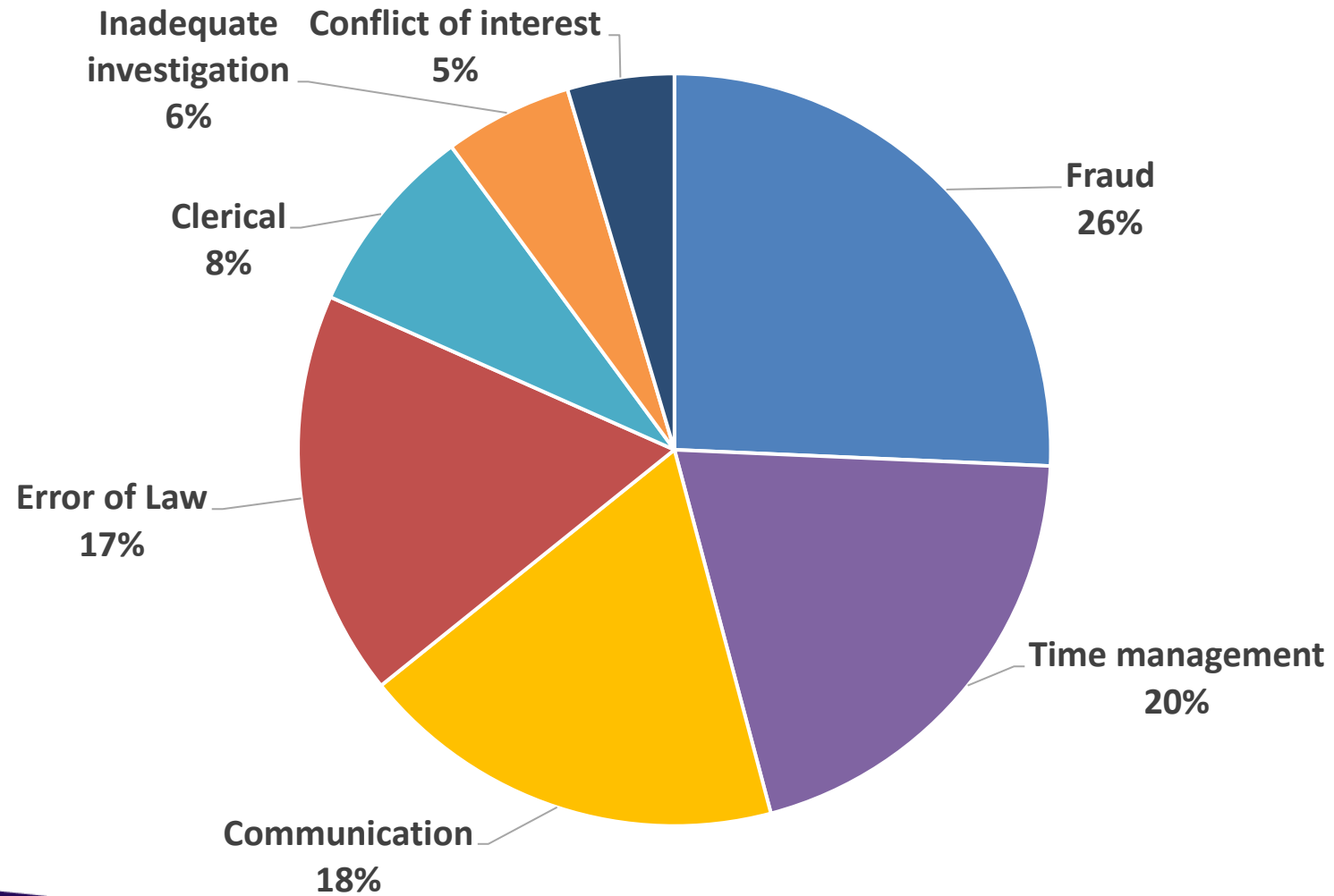
A few more examples

- How do I complete virtual ID verification when my client is in the US ?
- Can you please advise on any way we can extend a claim past the 5-year mark and avoid automatic dismissal if it has not been set down for trial?
- I mistakenly wired a trust fund in the amount of \$400,265.07 from my TD trust account to the Bank of Montreal.
- Someone is impersonating me by using my name and law firm letterhead – this is really upsetting.
- One of the beneficiaries says there is a secret trust promising her additional funds.

Questions mirror claims areas of law



Questions mirror causes of loss



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 didn't treat their friend or family member's 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](#) [fact sheet](#), the [Canadian Bar Association's Conflicts of Interest Toolkit](#), and our [Managing Conflicts of Interest](#) [webpage](#).

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

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 requirements for submitting documents to you and knows the consequences of a delay or failure to follow instructions.
 - 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 tickler systems to alert you to these approaching deadlines.
- 4. DON'T LEAVE THINGS TO THE LAST MINUTE**
 - Get in front 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.

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.

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 alphanumeric 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 Toolkit](#) 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 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 provinces and territories. 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 client retain a foreign agent directly. Being the contact 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 practice management and risk management skills sharp.
 - Visit [practicePRO's area of law page](#) for more on particular risks by practice areas.
- 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 [mentors](#) or [business advisors](#).

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.

Our **Free** CPD recordings are available at proacticePRO.ca/cpd



- ❖ Coming soon: What They Didn't Teach You In Law School: Marketing, Management, and Mentorship
- ❖ Professional Civility: Avoiding Costs, Arguments, and Malpractice Claims
- ❖ Unlocking Real Estate Wisdom
- ❖ Succession Planning for your Legal Practice
- ❖ Practice Tips for Wills and Estates Lawyers
- ❖ Building Resilience and Maintaining Mental Health in the Legal Profession



**LAWPRO does local presentations
for law associations!**

Questions please!

Thank you and stay in touch!

Dan Pinnington
President & CEO, LAWPRO
dan.pinnington@lawpro.ca

Web: www.practicepro.ca and www.lawpro.ca

Blogs: AvoidAClaim.com

Twitter: @LAWPRO and @practicePRO