

INDEMNITY ISSUES: *Program Report*

A publication of the Law Society of British Columbia



Lawyers
Indemnity
Fund

The Lawyers Indemnity Fund program

Quick summary:

- "insurance program" now an "indemnification program"
- claim reports are now accepted by email
- indemnity fee unchanged for 2020: \$1,800
- reimbursement coverage has been added
- internet-based risks and social engineering fraud
- two "social engineering" scams hit BC law firms in 2019
- our risk management takeaways of 2019

Your 2020 indemnification program

THE LAWYERS INDEMNITY Fund manages the Law Society's indemnification program, including the BC Lawyers Compulsory Professional Liability Indemnification Policy. The policy is issued by the Law Society through its wholly owned subsidiary, the LSBC Captive Insurance Company Ltd., and provides the following coverage: Part A – professional liability (errors & omissions), Part B – trust protection for dishonest appropriation, and Part C – trust shortage liability arising from social engineering fraud or reliance on fraudulent certified cheques.

Recent amendments to the *Legal Profession Act* have changed the "insurance program" into an "indemnification program" and clarified that, where the Law Society or a non-captive subsidiary operates the program, they are not subject to the *Financial Institutions Act* or *Insurance Act*, and their employees are not required to be licensed as adjusters. On January 1, Lawyers

Insurance Fund became Lawyers Indemnity Fund, and we made hundreds of changes to nomenclature in the Policy, documents and forms, on the website, and in the Rules and BC Code. Rest assured that LIF will continue to handle claims, take calls, deal with firms and covered lawyers, and reply to advance rulings and email inquiries, just as it always has.

Your 2020 indemnification policy

Master Policy 20-01-01 has been issued for 2020, and now includes a table summarizing limits of liability and deductibles. Each of Part A, Part B and Part C now has a single Indemnity Agreement, so the headings for Insuring Agreements A2, B2 and C2 have been changed to "Defence, Expenses and Settlement" and headings for Insuring Agreements A3, B3 and C3 have been changed to "Claims First Made and Reported."

Now easier to report

We now accept claim and potential claim reports by email to LIFclaims@lsbc.org.

Remember to report immediately!

2020 indemnity fee

The indemnity fee remains at \$1,800 per full-time lawyer for 2020 and has only increased by \$50 since 2011. The fee level and stability are the result of your early identification and reporting of claims and potential claims, and our successful repairs, effective claims handling, as well as solid risk management and investment policies.

Reimbursement coverage has been added

New coverage has been added to reimburse you for defence costs incurred in the successful appeal of a penalty assessed pursuant to the *Income Tax Act* or *Excise Tax Act*, or defence of a prosecution of an offence under *Personal Information Protection and Electronic Documents Act*. This new coverage will be up to a sublimit of \$100,000 (Part A 2.9).

Some definitions have been refined

Professional services: Lawyers provide a wide range of services connected and incidental to their practice of law. Although

all possible services cannot be specifically listed in the policy, we have added two of the more common activities — acting as an “escrow holder” and “attorney appointed under a Power of Attorney” — to the definition of “professional services.” “Publishing or communicating on a website, blog or social media platform” is also covered, but only if it is directly connected and incidental to your practice of law. On the other hand, mortgage brokering services are not the practice of law and have never been covered, and the policy now explicitly states that.

Claims: Not all claims against you will be in the form of a filed law suit. To add clarity, the definition of “claim” now includes “the threat of” an action or other proceeding against you.

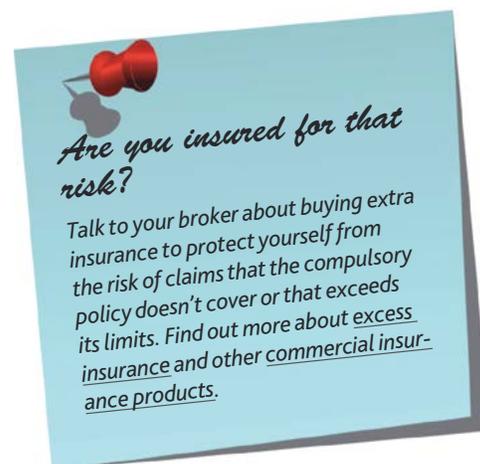
Damages: The policy covers you for claims for compensatory damages. The definition of “damages” has been clarified to confirm that non-compensatory damages are not covered, such as the cost of complying with declaratory, injunctive or other non-monetary relief.

Network security breach and social engineering fraud: Data breaches, ransomware and social engineering fraud are three of the biggest insurance risks you and

your firm face. These types of losses are not typically covered under professional liability policies, and continue to be excluded from Part A coverage (Exclusion 10). However, new definitions for “social engineering fraud” and “network security breach” have been added to the policy to clarify the scope of those risks and coverage.

Although you have Part C coverage for trust shortage liability arising from social engineering fraud under the policy, the coverage is limited and does not replace a cyber insurance product or social engineering fraud coverage. “Stand alone” policies for social engineering fraud are not available, but the coverage is widely accessible with cyber and crime policies. Cyber insurance protects you and your firm from financial loss resulting from a data breach caused by internet-based risks, and more generally from risks relating to information technology infrastructure and activities. Also, employee privacy concerns have increased as employees’ private data is stored electronically. Cyber coverage typically provides coverage for both direct loss to you and claims by third parties against you.

Visit LIF’s [commercial insurance](#) web page for more information on cyber and social engineering coverage.

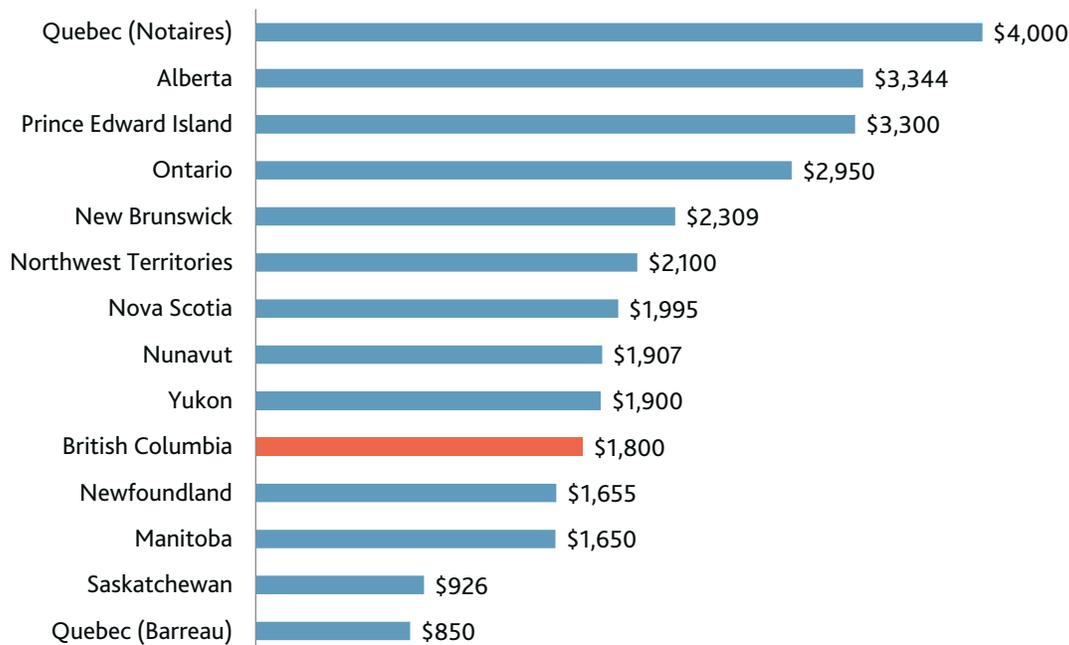


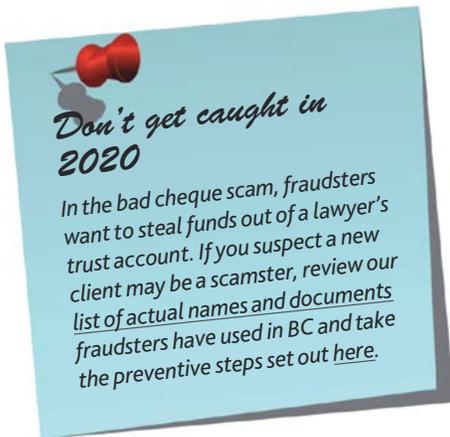
Clarifications to Part A exclusions

Contract: If you agree to “assume” the tort liability of a third party, such as providing a hold harmless agreement, the policy does not provide you with a means to shift your voluntarily undertaken contractual obligation to the indemnitor. To clarify coverage, we have added an exclusion for liability assumed under contract where there has been no error or omission (Exclusion 13).

Injury: The policy continues to exclude liability for risks of injury or property damage, commonly covered by a commercial general liability policy. However, your policy now explicitly covers you for claims of

2019 INSURANCE FEES





emotional distress or humiliation caused by an error (Exclusion 3).

Do you need additional coverage?

Consider whether you might need insurance for management liability, employment practices, cyber risk, data breaches, crime (including employee theft), general liability, property or social engineering fraud unrelated to a trust account shortage, because the policy doesn't cover these risks. We have updated our information on [commercial insurance](#) and prepared a table summarizing [Risks and insurance for the private practitioner: A closer view](#). For example, did you know that crime (fidelity) insurance provides coverage for risks much broader than employee theft? Crime policies also cover:

- an employee forging your signature and withdrawing money from an account;
- client coverage, including loss of trust funds;
- loss of money and securities from inside or outside your premises;
- loss resulting directly from the acceptance of counterfeit drafts and paper currency;
- loss resulting directly from forgery or alteration of a financial instrument issued by you; and
- computer and transfer fraud, hackers, viruses, fraudulent instructions sent to your financial institution and fraudulently induced transfers (social engineering fraud).

"Sanctioned *pro bono* services" coverage

The policy provides coverage to all lawyers in good standing for "sanctioned *pro bono* services," including retired lawyers and those exempt from paying the indemnity fee. These are *pro bono* services delivered to an individual, previously unknown to you, through a *pro bono* legal services program provided both the program and the services are approved by the Law Society.

For more information, consult the [Access Pro Bono website](#). Any services you

provide to approved programs will be covered. You will continue to be covered for any error arising while performing these services, even after you retire.

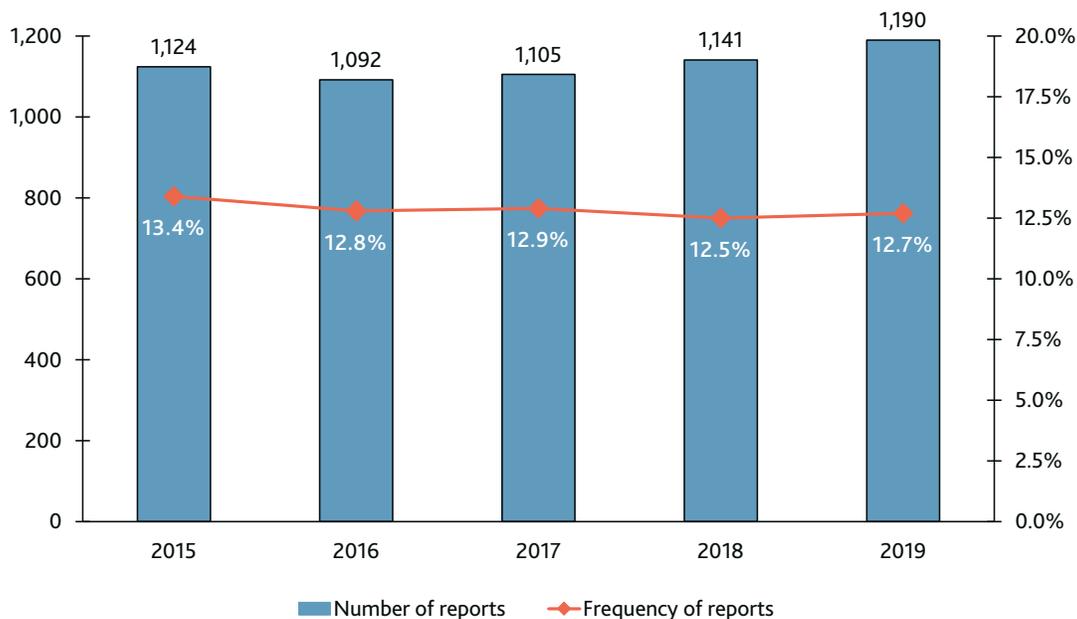
The deductible, surcharge and the loss of the part-time discount will all be waived for claims arising from providing sanctioned *pro bono* services. Also, lawyers with the part-time discount do not need to include any of the hours spent engaged in these services in their calculation of hours for the discount.

A review of claim and potential claim reports

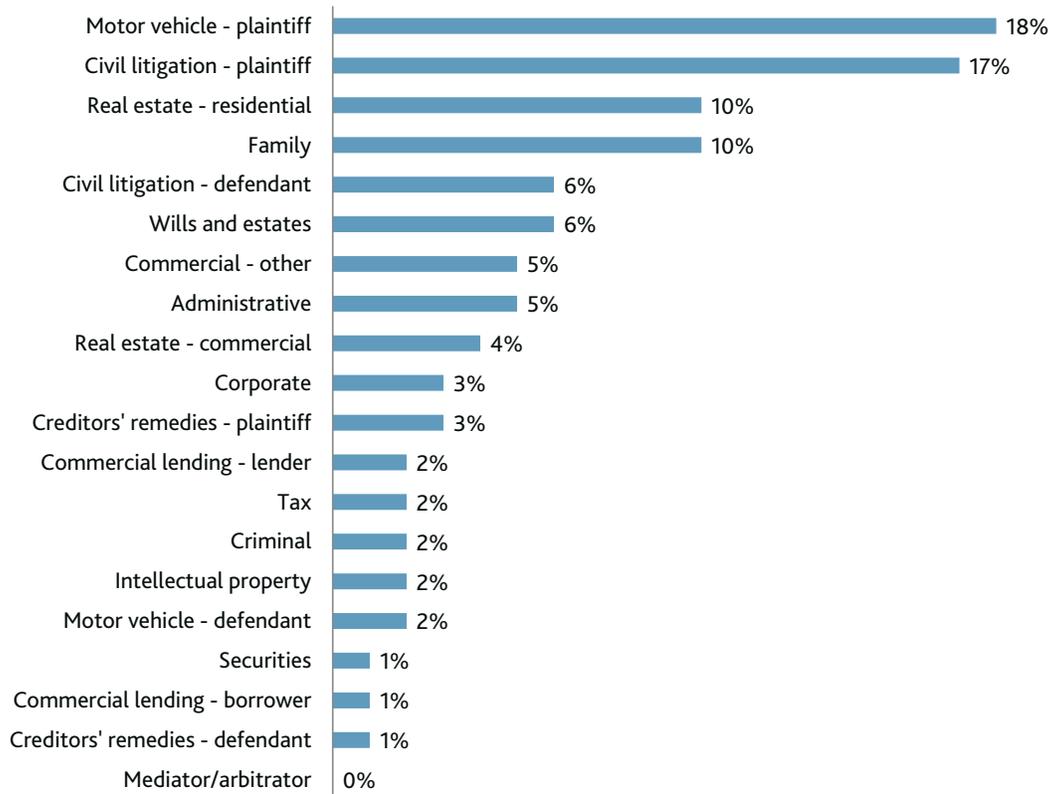
Part A: Professional liability (errors & omissions)

The chart below shows the number of reports and their frequency (reports divided by lawyers) over the past five years. The two charts on page 4 provide more information about the specific claims experience in 2019 by area of law. The first chart shows the percentage of reports generated by the different practice areas. Civil litigation and motor vehicle on the plaintiff side continue to account for roughly one-third of all reports. These areas attract a higher risk of a missed deadline or settlers' remorse claim, and the

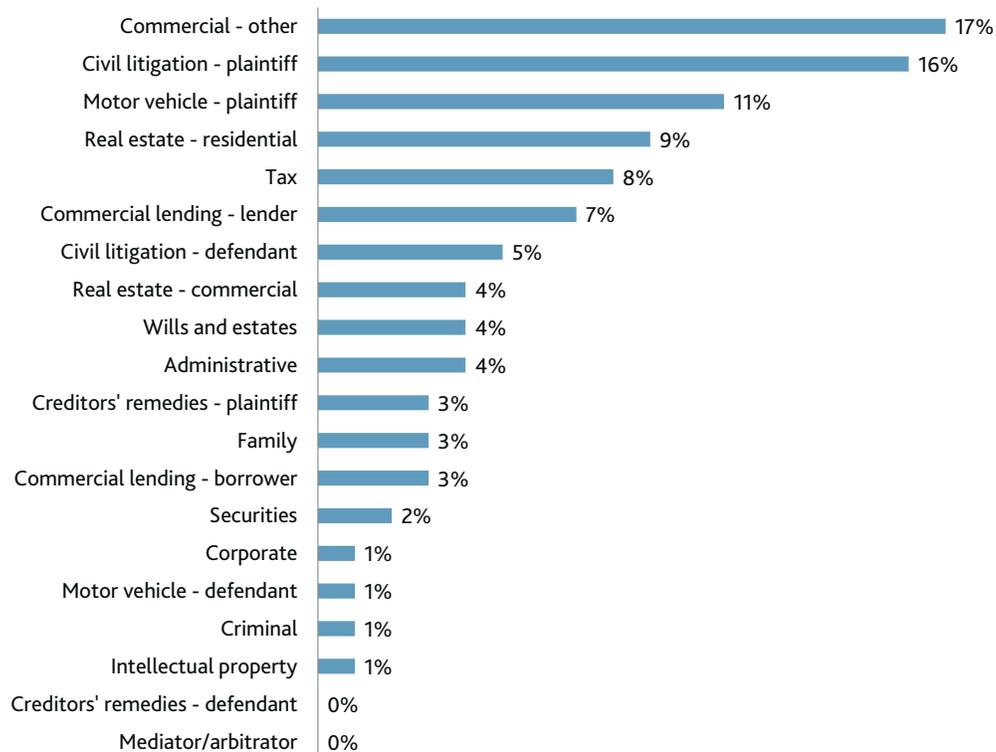
NUMBER AND FREQUENCY OF REPORTS



FREQUENCY OF REPORTS BY AREA OF LAW – 2019



SEVERITY OF REPORTS BY AREA OF LAW – 2019



claims activity likely reflects that risk. The second chart shows the areas of practice according to severity — the expected cost of claims.

Part B: Trust protection for dishonest appropriation

Since this coverage was introduced in 2004, total compensation of \$2,821,500 has been paid relating to 112 claims involving 33 different lawyers. Given the 8,800 or so lawyers in private practice, our claims experience continues to demonstrate the very small number of lawyers involved in misappropriations.

In 2019, 16 claims were paid on behalf of seven different lawyers, totalling approximately \$239,300.

The following claims were paid in respect of determinations by hearing panels:

- Angiola Patrizia De Stefanis (now Oddo):* We paid \$42,260 in relation to the circumstances set out in *Law Society of BC v. De Stefanis*, 2019 LSBC 14. In the course of acting as executor of an estate, De Stefanis misappropriated funds held in trust for the estate beneficiaries.
- Steven Mansfield:* Payments of \$88,009 were made in relation to circumstances described in *Law Society of BC v. Mansfield*, 2019 LSBC 27, in which Mansfield misappropriated client funds held in trust while acting in matrimonial matters. A total of \$471,920 has now been paid on behalf of Mansfield in connection with the circumstances described in this decision and in *Law Society of BC v. Mansfield*, 2018 LSBC 30.

*For more details, see the [hearing reports on the Law Society website](#). The *Law Society Rules* permit disclosure of the name of a lawyer or former lawyer and the circumstances of Part B claims when a discipline hearing panel finds misappropriation.

The following amounts were also paid:

- \$51,400 on behalf of a lawyer who was paid and kept retainer funds to represent clients in three matrimonial matters and a strata dispute, but did not provide sufficient or any services to justify the amount of the retainers. A total of \$75,100 has now been paid under Part B on behalf of this lawyer.

- \$40,000 for the balance of sale proceeds held in trust that were misappropriated by a lawyer retained in a real estate conveyance.
- \$9,600 on behalf of a lawyer who accepted retainer funds to act on five matters, including immigration, family and estate files. In each, the lawyer did not complete the work and did not return the funds.
- \$6,000 on behalf of a lawyer who accepted retainer funds to represent a client in criminal matters. The lawyer did not provide sufficient services to justify the amount kept.
- \$2,000 in respect of two matrimonial disputes for which a lawyer was paid retainers and kept the funds, but did not complete the work.

These lawyers are no longer members of the Law Society.

Other claims in 2019 are not being pursued or did not involve misappropriation, or we are not yet in a position to determine if the claim is payable.

We take steps to recover amounts paid on all claims, including suing lawyers and executing on judgments where feasible, and have now successfully recovered over \$146,500.

Part C: Trust shortage liability arising from social engineering fraud or reliance on fraudulent certified cheques

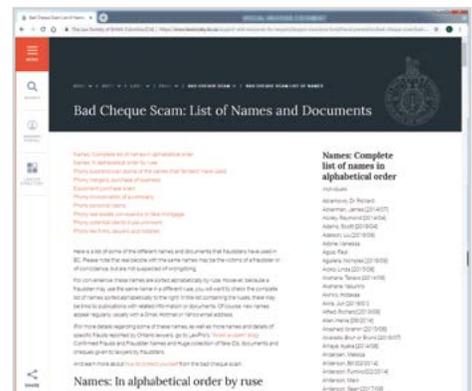
Part C was introduced in 2012 to provide insurance for the “bad cheque” scam and expanded in 2017 to provide some coverage for other “social engineering” scams. Since 2012, LIF has paid almost \$2 million for these claims. Part C has a \$500,000 per error limit, a 35 per cent deductible and a \$2 million profession-wide annual aggregate limit. With its limited coverage and high deductible, Part C is not intended to replace a cyber insurance product. Insurance is available on the [commercial market](#) to respond to social engineering frauds, so talk to your [broker](#).

In 2019, we received two Part C reports involving a “phony change in payment instructions” scam. At both firms, prior to wiring funds the lawyer received an email, purportedly from the client but in fact from a fraudster, directing that the funds be wired

to a different account than originally instructed. The client in both instances never received the funds as the lawyer sent the funds to the fraudster’s account. Read more about the details of these scams [here](#).

Don’t get caught in 2020. Any time a payment of trust funds is imminent, assume that a fraudster is also aware. It is a fraudster’s full-time job to gain access to, monitor and intercept your or your client’s email account. Establish due diligence protocols for transferring funds, and ensure all staff receive training and adhere to them. In addition, share the Law Society’s email fraud alerts with your staff.

Read “[Recent Scam Attempts and Fraud Prevention](#)” in the Spring 2019 *Benchers’ Bulletin* (pages 11-12), and “[Scams against lawyers persist – What are they and what can you do about them?](#)” in the Summer 2018 *Benchers’ Bulletin* (pages 9- 10), to stay on top of current scams. And review the [list of actual names and documents](#) fraudsters have used in BC.



The Law Society website provides a [list of actual names and documents](#) fraudsters have used in BC.

2020 and beyond

Our low indemnity fee is not an accident. Your efforts to manage the risks of practice are the first and best tool to fight against losses. Although the policy provides broad professional liability coverage, commercial insurance should also be a part of your risk management plan. We will continue to provide you with information on new or evolving risks to your firm and how to mitigate through risk management practices and commercial insurance products.

2019 Risk Management in Review

Read our 2019 risk management advisories to get a head start in the new year

1. The Civil Resolution Tribunal has exclusive jurisdiction to determine entitlement to Part 7 benefits for accidents on or after April 1, 2019. A notice issued to ICBC in compliance with new [section 103](#) of the *Insurance (Vehicle) Regulation* **suspends the limitation period indefinitely** for claims for Part 7 benefits if ICBC does not issue a written response.

- » [January 2019 E-Brief](#)
- » [March 2019 E-Brief](#)
- » [April 2019 Notice to the Profession](#)

2. [The Supreme Court of Canada](#) found a lawyer and his firm liable for over \$7 million for making a referral.

- » [March 2019 E-Brief](#)

3. The [Protection of Public Participation Act](#) came into force in March.

- » [May 2019 E-Brief](#)

4. Settlers' remorse: Watch this video clip for a real-life example from our claim files.



5. Our [Spring 2019 Insurance Issues](#) reported on the insurance program.

- » [Spring 2019 Insurance Issues: Program Report](#)

6. Are you about to pay out trust funds and your payment instructions have changed? Stop and make direct contact with your client, to ensure that the change is legitimate.

- » [August 2019 Fraud Alert](#)

7. We updated our [limitations and deadlines quick reference list](#).



- » [October 2019 E-Brief](#)

8. You may procrastinate but time will not. Watch this video clip for a real-life example from our claim files.



9. Litigation deadlines: We cautioned lawyers about Washington's 90-day service rule and Alberta's drop dead rule.

- » [October 2019 E-Brief](#)

10. Suing the right parties: Watch this video clip for a real-life example from our claim files.



11. [Real estate identity frauds](#) are back.

- » [November 2019 E-Brief](#)

12. We reminded real estate lawyers that additional property transfer tax is payable if a purchaser is a foreign national, foreign corporation or taxable trustee.

- » [December 2019 E-Brief](#)

13. BC Law Institute issued a [consultation on the Builders Lien Act](#).

- » [December 2019 E-Brief](#)