

INSURANCE ISSUES: *Program Report*

A publication of the Law Society of British Columbia



Lawyers
Insurance
Fund

The Lawyers Insurance Fund program

THIS INSURANCE ISSUES:

- reports on the 2015 insurance program and policy revisions
- reviews statistics on claims and potential claims
- highlights a free risk management presentation
- reports on LIF's role in the Law Society
- reports on an upcoming resource – "My Insurance Program: Questions and Answers"

The 2015 program and policy

THE LAWYERS INSURANCE Fund (LIF) manages the Law Society's insurance program for BC lawyers. The program provides professional liability insurance for negligence (Part A), trust protection coverage for dishonest appropriation (Part B) and trust shortage liability insurance for reliance on fraudulent certified cheques (Part C).

Insurance assessment

The insurance fee is \$1,750. Thanks to solid claims handling, risk management and investment policies, our fee has not increased since 2011. Our fee also compares very favourably with other Canadian programs, including those in Alberta and Ontario (see chart on page 2). Once again, we are unique in charging one flat fee for both negligence (Part A) and theft (Part B) insurance.

Compulsory policy wording

LIF issued a consolidated policy for 2015, which was included with the December 2014 *Member's Manual* amendment package. Other policies and endorsements issued since 2000 are available on the Law Society's website ([Lawyers > Lawyers Insurance Fund](#)).

Minor style and wording changes are made for 2015.

General

Format and display changes make reviewing the policy easier. The policy year is clearly stated at the start of the title. Each section starts on a new page, with a more prominent heading. This makes it simpler to locate specific provisions within the declarations, definitions, insuring agreements, exclusions and conditions. We have also added an online index to help you navigate

the policy.

A change to the investment exclusion, Exclusion 10 (see below), results in changes to every other exclusion that uses phrases such as "arising out of" or "connected to or arises out of, in whole or in part". For consistency, these phrases are replaced with "arising out of or in any way connected to" in all of the exclusions except 6, 13, 16, 17 and 21. Similar changes are: in Exclusion 6.2, "in connection with" is replaced with "in any way connected to"; in Exclusion 11.2, "in any way" is added after "caused by"; and in Exclusion 20, "that arises in" is replaced with "arising out of".

Part A: Professional Liability (for negligence)

Investment advice

The policy is not intended to respond to a lawyer's provision of investment advice,

unless as a direct consequence of providing professional services. To better clarify that intent, the words “or in any way connected to” are added to the investment exclusion, Exclusion 10.

Tendering the defence

Occasionally, a lawyer will refuse to settle a claim despite defence counsel’s recommendation, based on the risk of an adverse judgment at trial. To avoid the undue risk to the fund of ultimately paying in excess of a recommended settlement, it may be appropriate to invoke Insuring Agreement A 2.1.2. It gives us the option of settling in any event, or capping the amount of our exposure and tendering the defence to the lawyer. If we invoke the second option and the lawyer is found liable, the lawyer must pay any amount in excess of that for which we could have settled. The Insuring Agreement is revised to require the lawyer to post security for that excess amount. Some claims will be easily quantified, but in others we will need to exercise our judgment as to the appropriate amount.

This revision avoids the possibility that a claimant will be left without recourse if the lawyer is unable to pay any excess amount.

Declining a defence

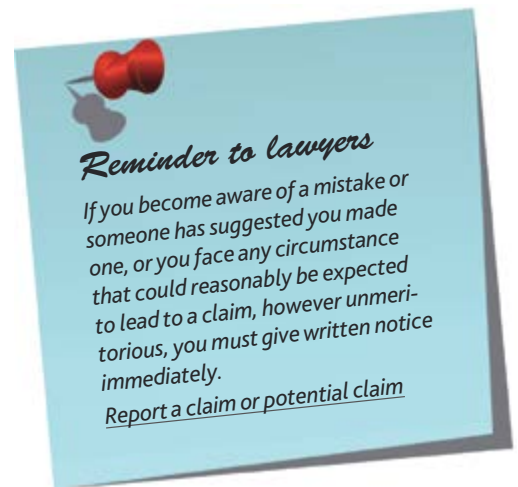
In theory, the insurer could be obliged to pay defence costs in relation to a claim that, even if successful, would not fall within the policy’s broad coverage. This is because the pleadings may trigger a duty to defend even for a claim to which the policy was not intended to respond. To cure this anomaly, Insuring Agreement A2.8 is added. It allows us to decline to defend when we have reasonable grounds to do so, despite the pleadings, and introduce at an arbitration the evidence on which our position is based. Through this new provision, we can protect the fund from the risk of payments in relation to a claim that the policy does not cover.

Part B: Trust Protection (for dishonest appropriation)

As Part B does not respond to claims brought against those lawyers who are Canadian legal advisor members of the Law Society, a small change to that definition was needed to clarify that the category includes members of the Barreau du Quebec (see Mobility – update below).

Mobility – update

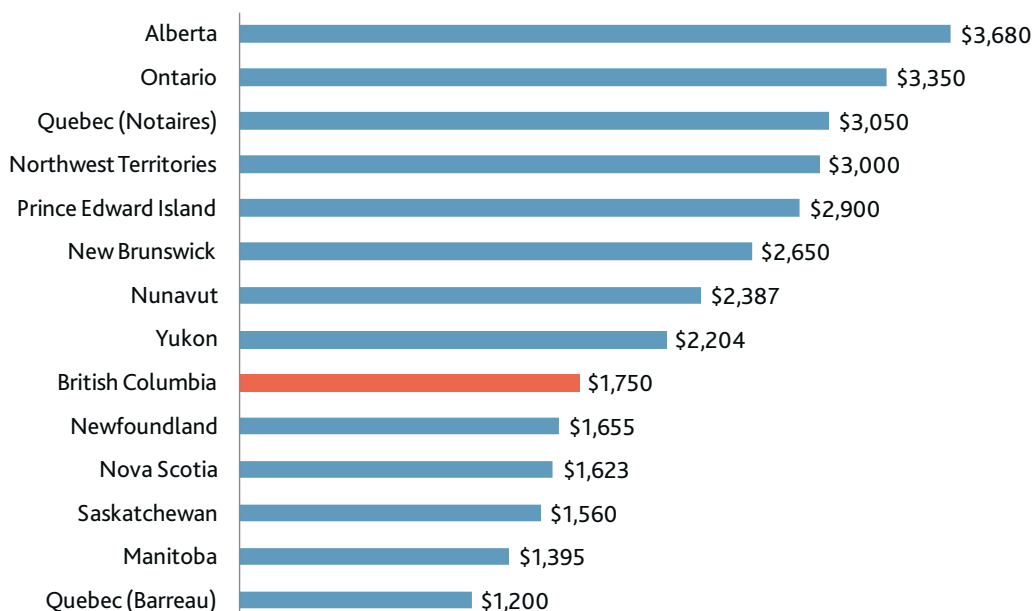
The National Mobility Agreement 2013,



once implemented, will allow BC lawyers to practise law as members of the Barreau du Quebec, insured in both jurisdictions. Reciprocity means that the Canadian legal advisor category of membership for members of the Barreau will become unnecessary. A small change to the definition of “Canadian legal advisor” was required for Part B purposes, as noted above.

Once implemented, LIF’s online information on [mobility within Canada](#) will be updated.

2014 INSURANCE PREMIUMS



A review of claim and potential claim reports

Part A (negligence)

The chart on page 4 shows the number of reports and their frequency (reports divided by insured lawyers) over the past five years. The two charts on page 5 provide more information about the specific claims experience in 2014 based on area of law. The first chart shows the percentage of reports generated by the different areas of practice. *Civil litigation – plaintiff* and *Motor vehicle – plaintiff* continue to account for one third of all reports, likely the result of the higher risk to lawyers practising in this area of missing a deadline or facing a “settler’s remorse” claim. The second chart shows the areas of practice according to severity – the actual or expected cost of reports. The impact of the recession appears to be abating. For the first year since 2011, the conveyancing and commercial areas of law accounted for 40%, reduced from 50%, of all dollars spent or reserved.

Last year marked the 10-year anniversary of the Law Society’s shift from a compensation fund to an insurance model for compensating innocent victims of lawyer theft. For a summary of a decade’s worth of claims experience and performance ratings, read our special report “Trust Protection Coverage: the first ten years.”

Part B (theft)

Since this coverage was introduced in May 2004, total compensation of \$890,800 has been paid relating to 63 claims involving 17 different lawyers. Given the 8,000 or so lawyers in private practice, our claims experience continues to demonstrate the very small number of lawyers involved in misappropriations.

In 2014, two claims were paid on behalf of two different lawyers, totalling approximately \$132,900:

- a payment of \$51,100 was made on behalf of a lawyer who acted for a client in relation to mortgage security

and misappropriated repayment funds received from the borrower;

- a payment of \$81,800 was made on behalf of a lawyer who accepted and kept a retainer to defend criminal matters. The lawyer did not provide enough services to justify the amount kept.

The first lawyer is no longer a member of the Law Society, and the second is deceased.

Other claims in 2014 were either withdrawn or abandoned by the claimants or did not involve misappropriation by a member of the Law Society. In the remaining reports, the claimants are not actively pursuing a Part B claim, or we are not yet in a position to determine if the claim is properly payable. In 2014, we sued the former lawyer in relation to the first paid claim referenced above and recovered \$51,100. An additional \$2,400 was recovered from another former member.

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Part C (trust shortage liability)

Last year, we noted that LIF had not paid any claims relating to the “bad cheque” scam since Part C insurance was introduced in 2012, and wondered if we could make it a hat-trick. We did, thanks to you, making it three years in a row of avoiding any payments of good money out of trust on the strength of a phony certified cheque or similar instrument. If lawyers continue to take appropriate steps to avoid getting caught by reviewing the [comprehensive risk management material](#) published on the “bad cheque scam” – including the list of names and documents used by fraudsters in BC – and reading the Law Society’s email fraud alerts, we’re on track for a fourth Part C claims-free year.

LIF’s role in the Law Society

A Law Society initiative to ensure that it continues to improve in delivering on its regulatory responsibilities was to examine

the relationship between the Law Society as the regulator of lawyers and the Law Society as the insurer of lawyers. The Rule of Law and Lawyer Independence Advisory Committee completed its review of the issue, and prepared a report with recommendations that was considered by the Benchers in 2013. A working group was created to consider the options presented in the report, and met several times in 2014.

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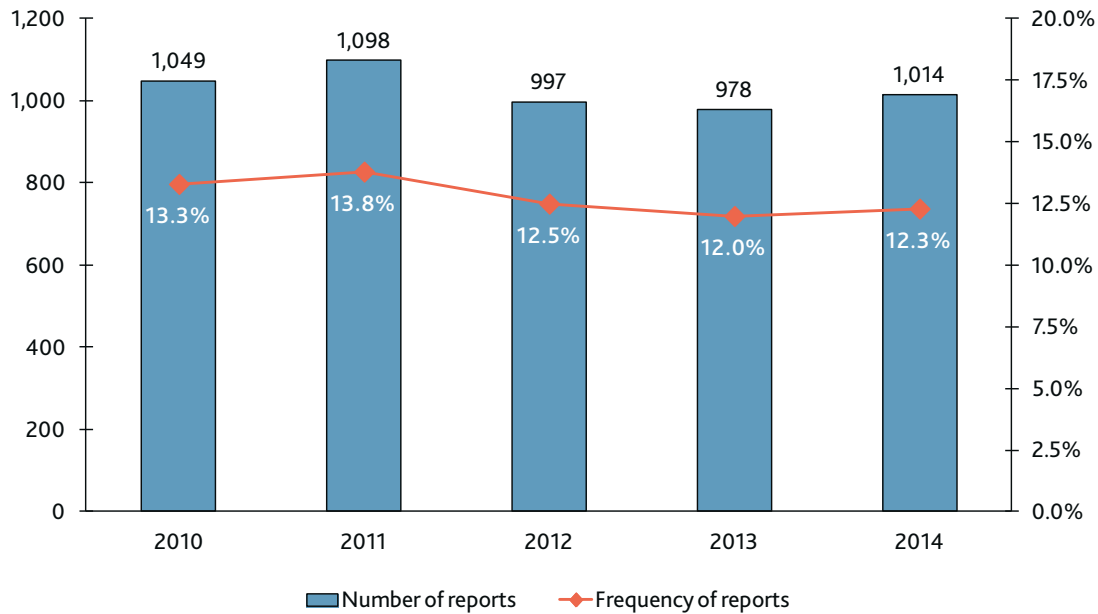
The recommendations of that working group are expected to go to the Benchers for their consideration this spring.

We expect the recommendations will focus on strengthening and bringing clarity to the separate and operational independence of the Law Society’s discipline and insurance functions. If accepted, they will lead to the implementation of various operational steps that will more clearly separate and distinguish the professional conduct and discipline functions from the insurance functions of the Law Society. As noted below, any resulting operational changes that will affect our insured lawyers will be referenced in “[My Insurance Program: Questions and Answers.](#)”

“My Insurance Program: Questions and Answers”

In the past two years, we’ve added two helpful online resources for lawyers. “[My Insurance Policy: Questions and Answers](#)” gives important information ranging from how much the policy pays to how retired lawyers are protected. It explains clearly what’s covered and what’s not, and details your responsibilities as an insured lawyer. “[My Claim: Questions and Answers](#)”

NUMBER AND FREQUENCY OF REPORTS



deals with many of the frequently asked questions that our insured lawyers ask about the claims-handling process. Both use straightforward, plain language, to answer questions such as *What exactly is my basic coverage, I've just reported. What should – or shouldn't – I do next?* and *Will there be a black mark on my professional record with the Law Society if I report a claim?*

Stay tuned for the third and final chapter in our online Q&A book. "My Insurance Program: Questions and Answers" will outline the program and its various components – claims management, insurance, underwriting and risk management. It will answer questions about the program such as *What exactly is the Lawyers Insurance Fund?* and *Do I have to pay the insurance fee?* It will also provide information that reflects any operational changes that may be implemented as a result of the working group noted above, to clarify the relationship between LIF and the Law Society's professional regulation groups.

We are always happy to answer questions in person, but hope these FAQs will assist lawyers who like the convenience of accessing information online.

Preventing claims: The building blocks of a bulletproof practice

LIF offers a lot of tips and advice to lawyers on how to avoid making a mistake – or having someone say you did. But this fall, we're going to give you a comprehensive, factual response to the big question: *Where does the risk of a claim truly lie?* And we're going to use big data to answer it – 15 years of data, in fact.

Since 2000, we've used a sophisticated coding system to capture the underlying cause of each report of a claim or potential claim. The story from 14,787 reports from BC lawyers allows us to identify the failures on the part of lawyers that lead to claims. Understanding why you are at risk in practice is a first, critical step in any risk management program. By giving you the answer, we hope to position you to identify proactive steps that you can take in your own practice to avoid claims, as well as hone in on material that's relevant to you and your practice, from our "[Preventing claims](#)" section.

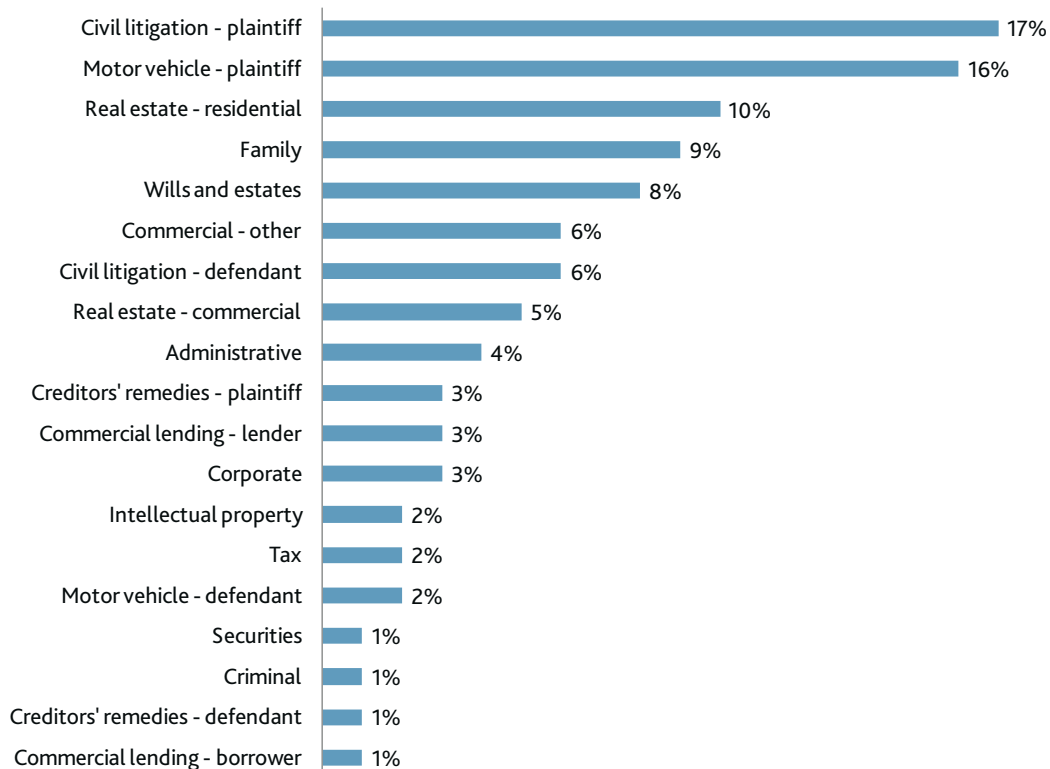
Plan to attend this free webinar, presented by LIF in partnership with the Continuing Legal Education Society of BC. It is scheduled for Tuesday, September 22, 2015, and titled "The Naked Lawyer." [Register now.](#)

2015 and beyond

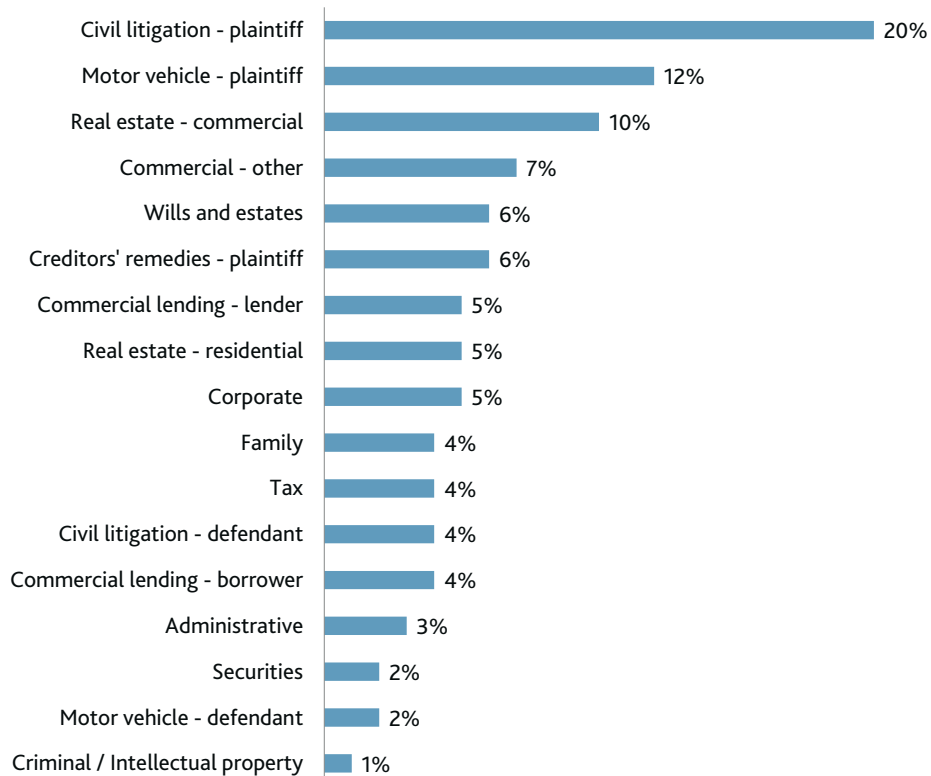
Our hope is to maintain the current, modest insurance fee of \$1,750 in 2016. We'll work hard to continue to provide you with solid claims handling, risk management resources and investment returns. But the most effective means of reducing the cost of claims is by lawyers engaging in safe practice. By educating yourself about when and how you are at risk, you can personalize your risk management strategies to cover off the areas in which you are most vulnerable.

Make a resolution to get educated on where risk really lies in your practice, and attend the free webinar on preventing claims.

FREQUENCY OF REPORTS BY AREA OF LAW – 2014



SEVERITY OF REPORTS BY AREA OF LAW – 2014





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