

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 2019 insurance program and policy revisions
- reviews statistics on claims and potential claims
- details a “social engineering” scam that hit BC law firms in 2018
- highlights statistics on disposition of claims

The 2019 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 social engineering fraud (Part C).

Insurance assessment

The 2019 insurance fee is \$1,800. The fee remains unchanged from 2018 and has only increased by \$50 since 2011. Solid claims handling, risk management and investment returns continue to keep the insurance fee for BC lawyers one of the most favourable in Canada. Further, unlike other programs, this single fee is all that is paid by BC lawyers for coverage for negligence (Part A), theft (Part B) and social engineering fraud (Part C).

Compulsory policy wording

LIF issued a consolidated policy for 2019, which was included with the [December 2018 Member’s Manual amendment package](#). Policies and endorsements issued since 2000 are available on the [Law Society’s website](#) (Support and Resources for Lawyers > Lawyers Insurance Fund > Insurance Program Overview > [Policies and Endorsements](#)). For 2019, only a few minor changes are made to clarify the policy’s intent.

“Error” and “Professional services” clarified

Lawyers are often appointed to act as executors of wills. The policy provides coverage for claims arising from such appointments as long as both the appointment as executor and the related services are connected with and incidental to the lawyer’s practice of law. Some legislation, including the *Wills, Estates and Succession Act*, SBC 2009 c. 13, now refers to this role as a “personal

representative” as opposed to an “executor.” In order to modernize policy language, we have added “personal representative” to paragraph (a)(iii) of the definition of “error” and paragraph (d) of the definition of “professional services.”

Similarly, revisions have been made to paragraph (c) of the definition of “professional services” to specifically include coverage for lawyers acting as parenting coordinators as well as for lawyers acting as locums, winding-up caretakers or other roles similar to that of a custodian.

A review of claim and potential claim reports

Part A (negligence)

The chart on page 3 shows the number of reports and their frequency (reports divided by insured lawyers) over the past five years.

LAWYERS INSURANCE FUND

The two charts on page 4 provide more information about the specific claims experience in 2018 by 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 roughly one-third of all reports. These areas attract a higher risk of a missed deadline or “settler’s remorse” claim, and the reported claims activity likely reflects that risk. The second chart shows the areas of practice according to severity — the actual or expected cost of reports.

Part B (theft)

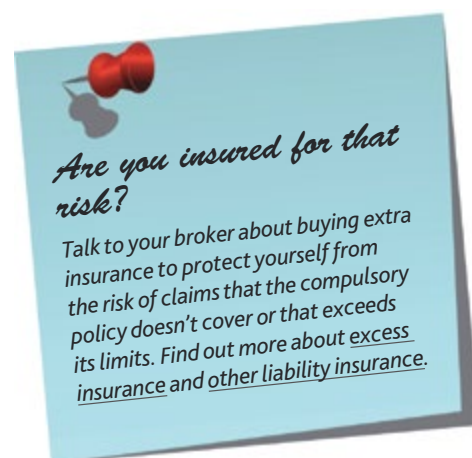
Since this coverage was introduced in 2004, total compensation of \$2,582,000 has been paid relating to 98 claims involving 28 different lawyers. Given the 8,500 or so lawyers in private practice, our claims experience continues to demonstrate the very small number of lawyers involved in misappropriations.

2018 saw a significant increase in Part B claim payments, primarily as a result of claims against a single lawyer. In the year, 19 claims were paid on behalf of six different lawyers, totalling approximately \$1,427,100.

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

- Patricia Lebedovich:* Payments totalling \$4,313 were made in relation to the circumstances described in *Law Society of BC v. Lebedovich*, 2018 LSBC 17. In the course of acting as solicitor and executor of an estate, Lebedovich misappropriated funds held in trust for the estate beneficiaries. An earlier payment of \$50,517 was made on behalf of Lebedovich based on other circumstances described in the same decision.
- Steven Mansfield:* A payment of \$208,000 was made in relation to the circumstances described in *Law Society of BC v. Mansfield*, 2018 LSBC 30. While acting in a family law matter, Mansfield misappropriated settlement funds held in trust.

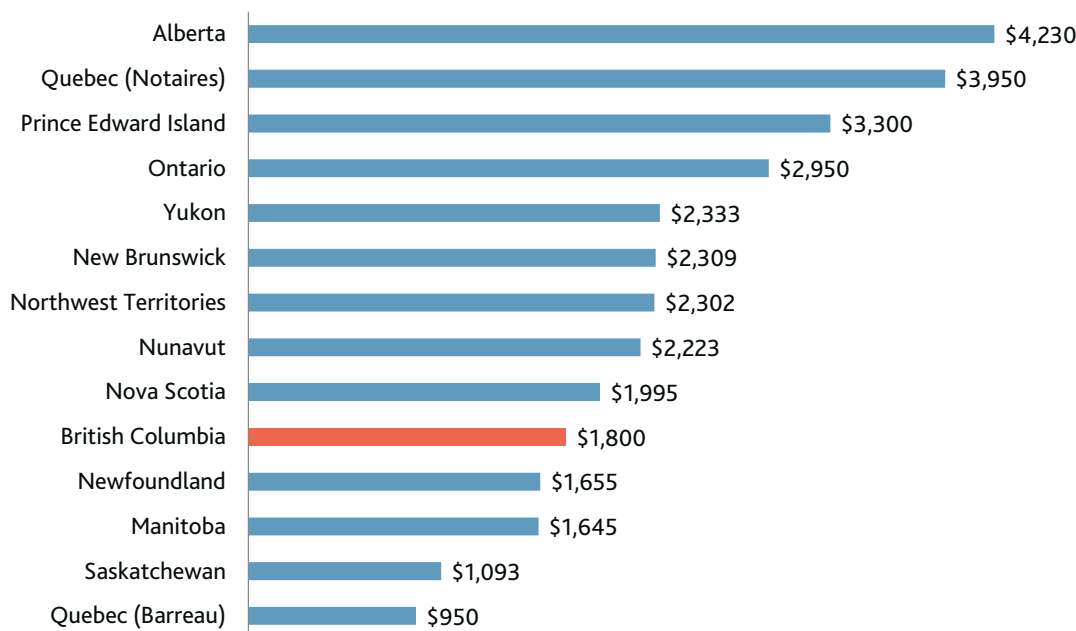
* For more details, see the *hearing reports on the Law Society website*. The Law Society Rules permit disclosure of the name of a lawyer or former lawyer and the circumstances of Part B claims when a discipline hearing panel finds misappropriation.



The following claims were also paid:

- Payments totalling \$1,153,400 were made on behalf of a lawyer acting in six matrimonial matters. During the course of these matters, the lawyer misappropriated retainer funds and settlement funds held in trust.
- Payments totalling \$26,400 were made on behalf of a lawyer retained to act in two matrimonial matters. In one, the lawyer misappropriated retainer funds without completing the work. In the other, the lawyer misappropriated the

2018 INSURANCE PREMIUMS



balance of settlement funds held in trust. A total of \$55,800 has now been paid on behalf of this lawyer under Part B.

- Payments totalling \$23,700 were made on behalf of a lawyer who accepted retainer funds to act in four matrimonial disputes. In each, the lawyer did not complete the work and did not return the funds.
- Payments totalling \$10,300 were made on behalf of a lawyer who accepted retainer funds to act in an estate matter and three matrimonial matters. In two, the lawyer misappropriated the funds without completing the work and, in the others, the lawyer provided no services and kept the funds.
- A payment of \$1,000 was made on behalf of a lawyer who accepted retainer funds to act in a dispute related to foster care costs. The lawyer misappropriated the funds without completing the work. A total of \$10,900 has now been paid on behalf of this lawyer under Part B.

One of these lawyers is deceased and the others are no longer members of the Law Society.

Other claims in 2018 were either withdrawn or abandoned by the claimants or did not involve misappropriation. 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 2018, we recovered \$10,200 on behalf of four lawyers for whom we had paid Part B claims. We have now recovered over \$57,500 from these lawyers. We also sued three former members for amounts paid under Part B, and those actions are ongoing.

Part C (trust shortage liability)

Part C was introduced in 2012 to provide insurance for the “bad cheque” social engineering scam. In 2017, Part C was expanded to provide some coverage for other social engineering frauds, such as the “phony change in payment instructions” or “phony direction to pay from a senior partner, staff member or other lawyer.” These are frauds that trick a lawyer into paying funds out of trust through the intentional misrepresentation of some material fact. In 2018, we received a Part C “phony change in payment instructions” scam report from a BC law firm that was holding funds in trust for

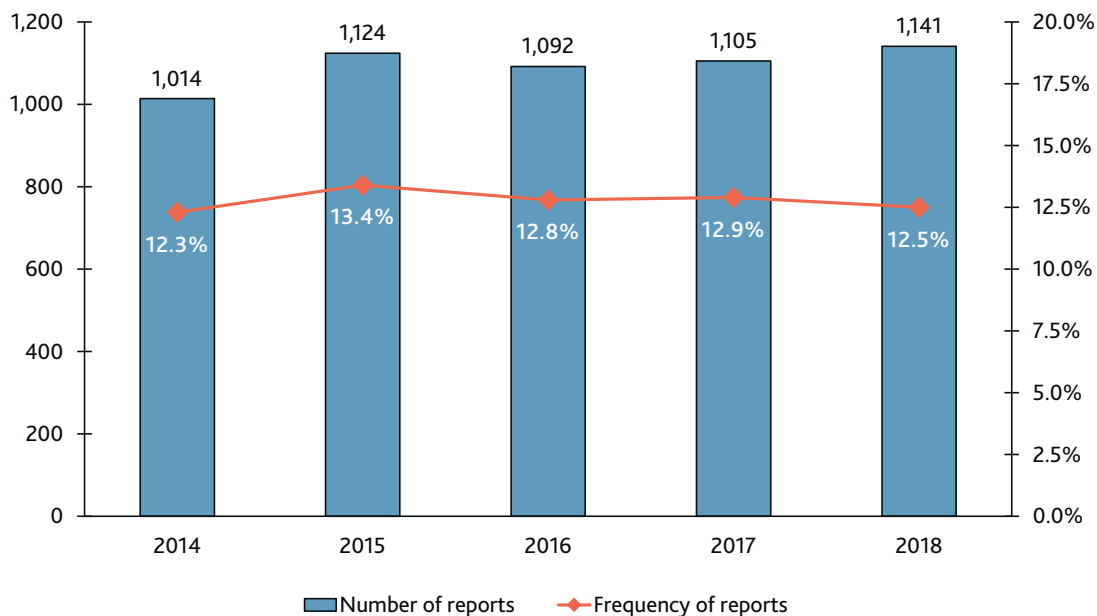


The Law Society website provides a list of actual names and documents fraudsters have used in BC.

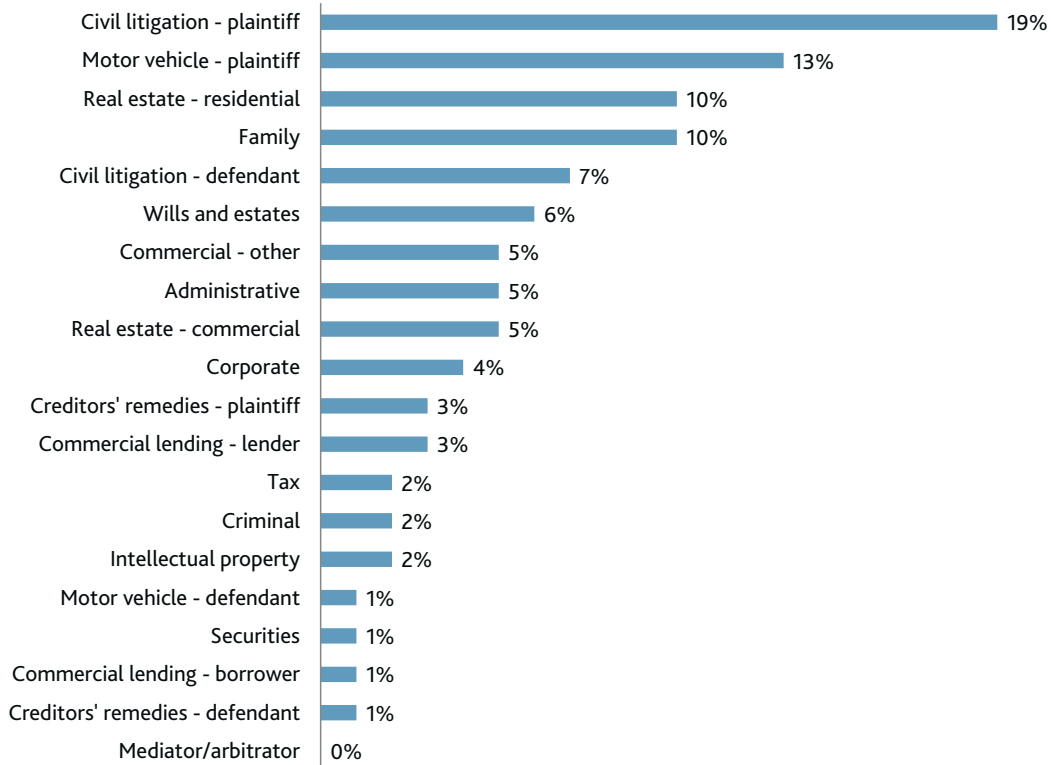
distribution to various estate beneficiaries. The firm received a change in payment instructions via email from someone the firm believed was the client but who was, in fact, a fraudster. One of the firm’s lawyers was about to call the client to confirm the change in payment instructions when the fraudster, purporting to be the client,

continued on page 5

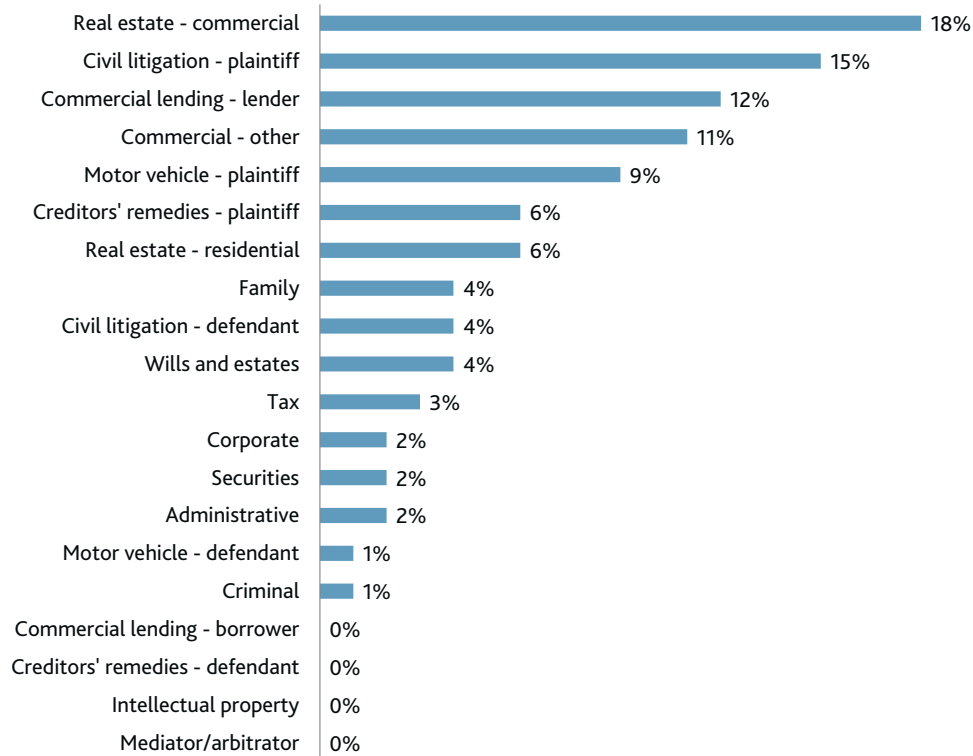
NUMBER AND FREQUENCY OF REPORTS



FREQUENCY OF REPORTS BY AREA OF LAW – 2018



SEVERITY OF REPORTS BY AREA OF LAW – 2018



continued from page 3

telephoned the lawyer and confirmed instructions to redirect the funds to another bank account owned by the fraudster.

Don't get caught in 2019. Read "[Recent scam attempts against BC lawyers](#)" in the Winter 2018 *Bencher's Bulletin* (pages 12-13), and "[Scams against lawyers persist – What are they and what can you do about them?](#)" in the Summer 2018 *Bencher's Bulletin* (pages 9-10), to stay on top of current scams. Learn about steps you can take to avoid scams by reviewing our risk management material on the bad cheque scam, including the [list of actual names and documents](#) fraudsters have used in BC.

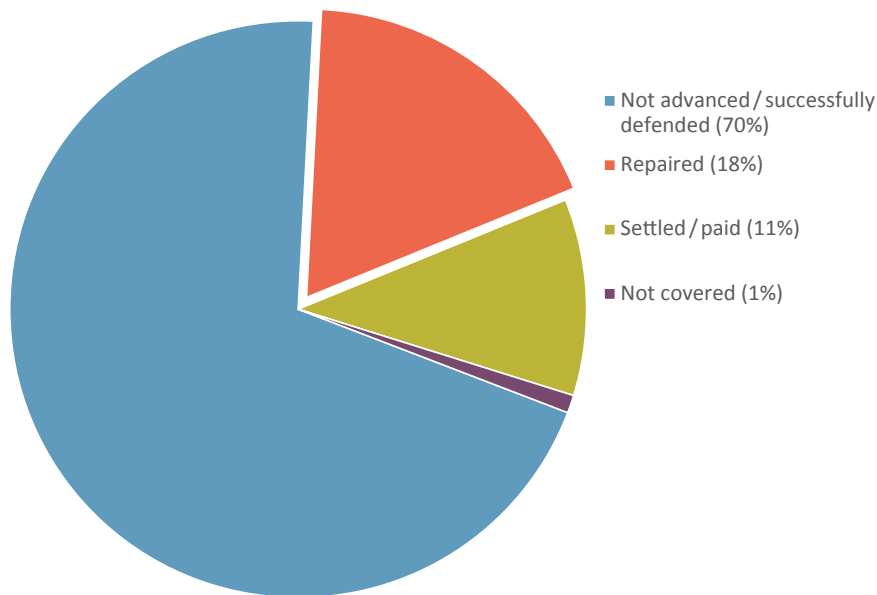
In addition, appoint someone in your firm to ensure that lawyers and staff are kept up to date with Law Society notices. And remember, if you receive any request to transfer funds or any change in payment instructions, consider the possibility that a fraudster is at work. Ensure every request is verified through direct, in-person contact with the client. Establish protocols for transferring funds and adhere to them.

Report early – let us help you

Almost one in five reports received by LIF is successfully repaired. In the last 15 years, this amounted to 2,813 repairs. If you contact us early — even before a claim is made — we will be in the best position to fix a problem or to avoid a claim. In addition, reporting early enables us to gather and secure evidence, seek an advantageous settlement and assist you in optimally defending a claim. Do not attempt to fix the problem before you report, as your efforts may result in a greater loss and put your coverage at risk. Although claims and potential claims must be reported in writing to comply with the policy, LIF claims counsel are always available to speak with you first by telephone. Our key contact list is [here](#). Our [Reporting Guidelines](#) will help you provide us with the necessary information.

Let us help you. Report potential errors promptly to minimize the many negative consequences that may flow from just one mistake.

DISPOSITION OF CLAIMS – 2004-2018



Repair examples

The following are two examples of errors we were able to repair and recommendations from the insured lawyers on how to avoid the mistakes.

Failure to sue all necessary parties

A lawyer retained in a motor vehicle matter knew additional parties were required but did not enter any dates into his diary system. As a result, he failed to join all appropriate parties by the limitation deadline. We successfully obtained an order adding the parties. The lawyer's advice: more back-ups. *"I thought we had a pretty tight system for limitation dates — but unfortunately the system is only as good as the people using it. Limitation date bring forwards are now a big thing in our office — they were before, too — but now I am fanatical. We have four or five checks and I am directly and personally involved in all files over which I have conduct."*

Failure to serve a notice of civil claim

In a commercial litigation action, a lawyer's assistant entered an incorrect deadline to serve the notice of civil claim into the firm's diary system. As a result, the NOCC expired and the lawyer did not realize the mistake until a year later. An order was obtained renewing the NOCC for a three-month period so that it could be served. The lawyer's advice: *"Upon filing the NOCC, either serve the NOCC immediately and/or insert the limitation in your calendar with a reminder at several intervals ahead of the limitation for service. Also, arrange software on your computer calendar to send an email of important dates. Create a checklist and include service of the NOCC as an item to be checked off."*

2019 and beyond

Over the past few years, we have seen an increase in the number of claims and potential claims reported to us and in the severity of those claims. The number of reports in 2018 set a new high. One reason for this increase is that the number of insured lawyers in private practice in BC has grown. While the frequency of reports (meaning the number of reports per insured lawyer) remained consistent with previous

years, we saw a significant increase in the reserves set aside to pay claims. If this continues, it could negatively impact the fee in future years.

While we will continue to manage claims in a practical, cost-effective manner, ultimately, effective risk management and claims avoidance is up to you. By taking care to avoid simple mistakes, you can help to limit the number and size of claims we receive.



Reminder to lawyers

If you become aware of a mistake or someone has suggested you made one, or you face any circumstance that could reasonably be expected to lead to a claim, however unmeritorious, you must give written notice immediately. Do not attempt to fix it on your own.

Report a claim or potential claim

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