

# INSURANCE ISSUES: *Risk Management*

A publication of the Law Society of British Columbia



Lawyers  
Insurance  
Fund

## The Naked Lawyer Part 2: Big Data Reveals Where You are at Risk

IN “THE NAKED Lawyer: Big Data Reveals Why You Are at Risk,” the Lawyers Insurance Fund (LIF) used 15 years of data to help lawyers understand why they are at risk of making a mistake — or having someone say that they did. Based on close to 15,000 reports of claims and potential claims from BC lawyers in those 15 years, we know that reports to LIF are triggered by one of five key underlying causes:

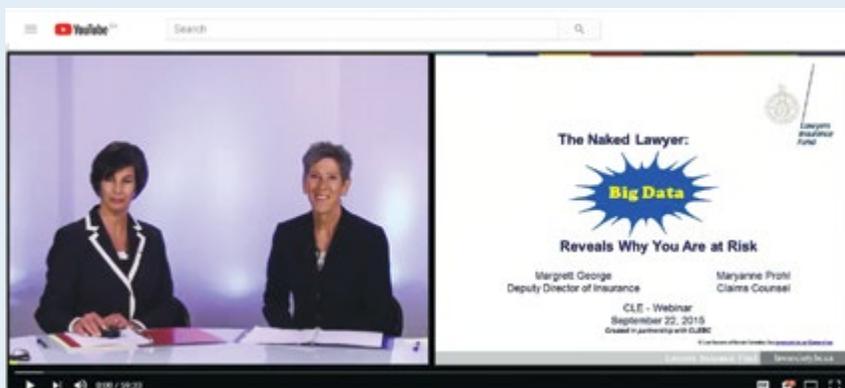
1. Engagement (retainer or non-retainer) management failures
2. Legal issue failures
3. Communication failures
4. Oversights
5. No trail

But the data shows us even more. It’s clear that the area of law in which you’re practising makes you more vulnerable to getting caught by some causes, but less vulnerable to others. In this article, we use 15 years of data to give you the lowdown on the five key causes in eight different areas of law:

1. Litigation
2. Corporate/commercial
3. Real estate
4. Family
5. Wills and estates
6. Criminal
7. Administrative
8. Intellectual property

The purpose of “The Naked Lawyer” series is to show where you, as a lawyer, are bare and vulnerable to claims. Armed with this additional knowledge of your exposure, you can identify where to introduce steps, processes and other tools to help you manage the risk.

Want more bytes? Go to our website at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca) (Support and Resources for Lawyers > Lawyers Insurance Fund > [Risk management](#)). The website also includes the materials set out in this article, as well as links to risk management tips that we’ve developed to help you “dress” for risk management success.

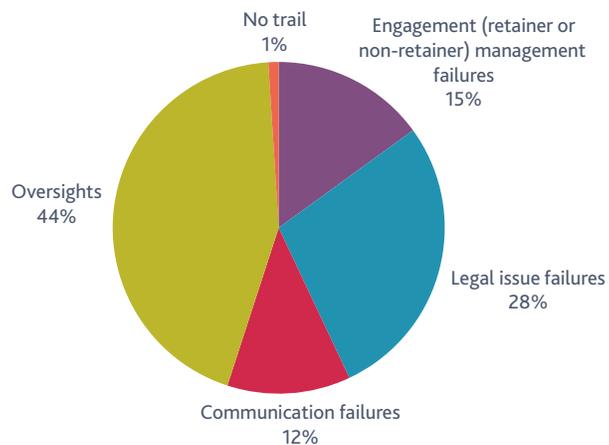


*The webinar “The Naked Lawyer: Big Data Reveals Why You Are at Risk,” was designed to help BC lawyers better manage risk. It uses statistics and true stories from actual claim files — including short videos with 10 of the lawyers at LIF — to give lawyers the information they need to identify proactive steps they can take in their own practice to avoid claims.*

## The 5 key causes by area of law

Do litigators have different exposures than, for instance, real estate practitioners? The answer, not surprisingly, is often yes. We know this because, for each report of a claim or potential claim to LIF, our data shows the area of law that generated the report. And thanks to our sophisticated coding system, we also know which of the five key underlying causes triggered that report. Find out what 15 years of data and 15,000 reports reveal about the different areas of law in the sections below. For a short explanation of the five key causes, see the legend on page 3.

### LITIGATION

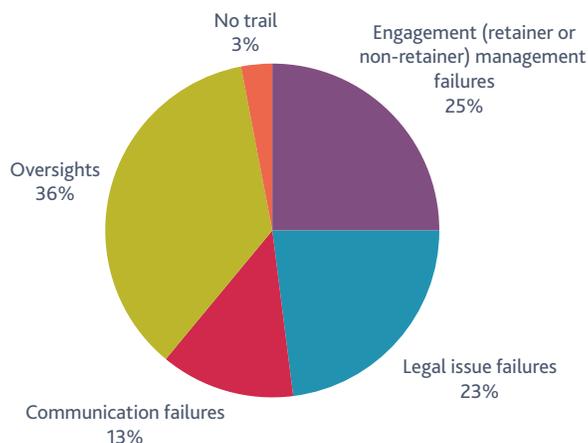


Six thousand, seven hundred thirty. That's the number of lawyers who reported litigation claims and potential claims to LIF in a 15-year period. In fact, not only does litigation consistently generate the largest number of reports to LIF, but over 40 per cent of litigation reports are the result of a lawyer missing a limitation or deadline. The underlying cause for the majority of litigation reports, including missed limitation or deadline problems, is simple oversights. Most oversights in a litigation practice are the result of ineffective personal or firm-wide diary systems, or lawyer procrastination.

This area of law consists of the following subcategories of practice: civil litigation, creditors' remedies and motor vehicle. You can find out more about each cause, including examples and video stories from actual claim files, as well as how the five causes break down by subcategory of practice, [here](#).

Date range: 2003-2017

### CORPORATE / COMMERCIAL

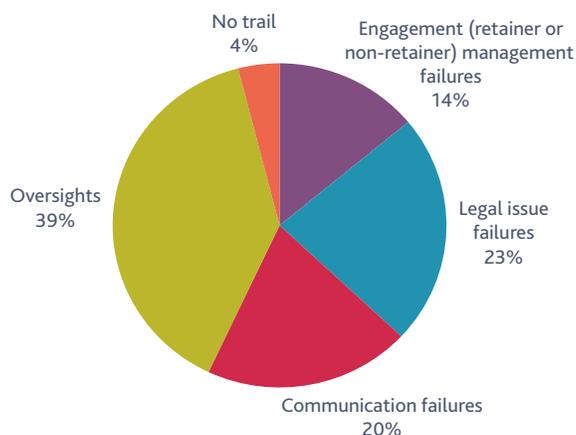


Corporate/commercial law accounts for the most dollars the insurance fund pays out on claims. Of the \$62 million in settlements, judgments and expenses that LIF paid between 2003 and 2017, this area of law accounted for 38 per cent of all of those dollars. It also gave rise to the biggest single payout on a claim in LIF's history: \$7 million. The top two risks? Tied for first place: oversights that result from simply forgetting or overlooking some step that needs to be taken; and legal issue failures in which you know the law but don't think through all the steps or strategies required to achieve your client's goal.

This area of law consists of the following subcategories of practice: commercial lending (lender/borrower), commercial other, corporate, securities and tax. You can find out more about each cause, including examples and video stories from actual claim files, as well as how the five causes break down by subcategory of practice, [here](#).

Date range: 2003-2017

### REAL ESTATE

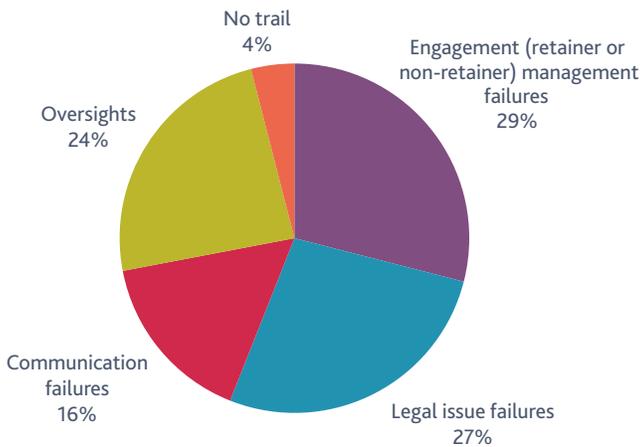


Commercial and residential deals often move at a furious pace. In this heated, frequently complex environment, real estate lawyers find themselves exposed to a higher risk than other practitioners of making two types of mistakes. The first is a legal issue failure — giving the wrong advice because you do not know the common law or a specific statute well enough to properly advise a client. This is the underlying cause of the numerous reports of GST and PTT errors that we receive from real estate practitioners. The second is a type of oversight — missing some step that needs to be taken but that would have been caught through a careful review of relevant file material.

This area of law consists of both residential and commercial real estate practices. You can find out more about each cause, including examples and video stories from actual claim files, as well as how the five causes break down between residential and commercial practices, [here](#).

Date range: 2003-2017

## FAMILY

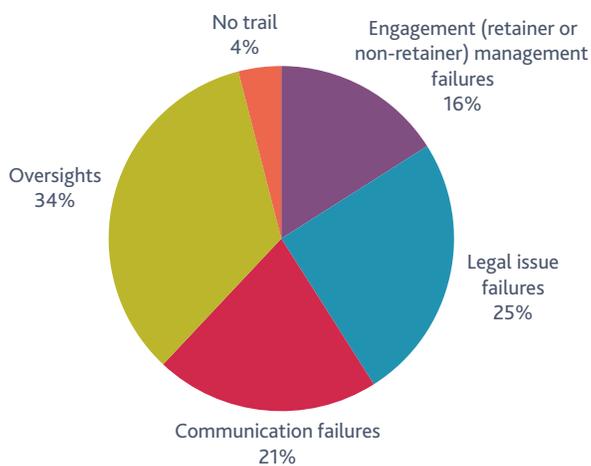


Given the emotionally charged environment of many family law matters, it is perhaps not surprising that family law lawyers are more likely than any other practitioners to report to LIF because of an engagement management issue. These include failures to recognize and manage a client's expectations of who is doing what or how much it's going to cost or — most significantly for the family law bar — a client's expectations of the legal process and what you can realistically accomplish. On average, we hear each month from at least one lawyer because a family law client, for whom the lawyer has provided perfectly good legal services, is unhappy with the result.

Learn more about each cause, including examples from our actual claim files, [here](#).

Date range: 2003-2017

## WILLS and ESTATES



There are three times as many people over 65 living in BC today as compared to 35 years ago. As this upward trend is expected to continue, challenges to estate plans and to the validity of wills are expected to become more frequent. Wills and estates lawyers are vulnerable. Stay safe. Deliver the best services you can and learn where you are at risk. The number one cause of claims for wills and estates lawyers? Oversights — primarily clerical mistakes in drafting documents, and just forgetting to take some step that needs to be taken.

Learn more about each cause, including examples from actual claim files and a video story, [here](#).

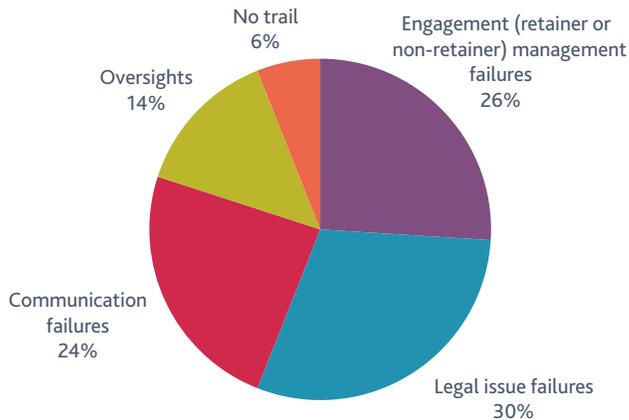
Date range: 2003-2017

## The 5 key causes: A short explanation

- **Engagement (retainer or non-retainer) management failures** – not managing the expectations of a client or a third party, not thinking through the effective delivery of the legal services or not managing an emerging conflict.
- **Legal issue failures** – not knowing the law, or not thinking through the legal issues and strategies needed to achieve the client's goal.
- **Communication failures** – failures in listening, asking or explaining.
- **Oversights** – forgetting to take some necessary step or failing to properly supervise staff in relation to a delegated task.
- **No trail** – no, or inadequate, notes, letters or emails documenting advice given or instructions received.

More detailed information about each key cause is on our [website](#).

## CRIMINAL

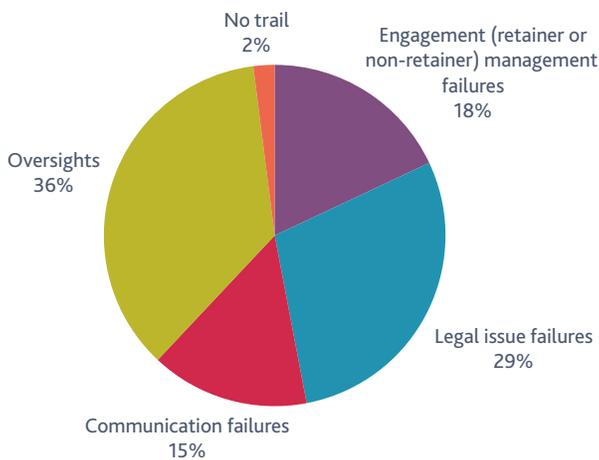


*This is an area of law that may be attracting more risk. In the three-year period starting in 2015, we received 2.5 times the number of reports from criminal lawyers than we'd received in the three years prior. The single biggest risk that criminal lawyers now face is a claim relating to some alleged failure that led to their client's wrongful conviction. Appeals of convictions on the basis of "ineffective assistance" of trial counsel may be grounded in allegations of a legal issue failure, such as failing to properly think through the defence strategy or the steps required to achieve an acquittal. They may also reflect an engagement management failure in not recognizing and managing the client's unrealistic expectations of the outcome at trial, or even a simple breakdown in communication.*

*Learn more about each cause, including examples from actual claim files, [here](#).*

*Date range: 2003-2017*

## ADMINISTRATIVE

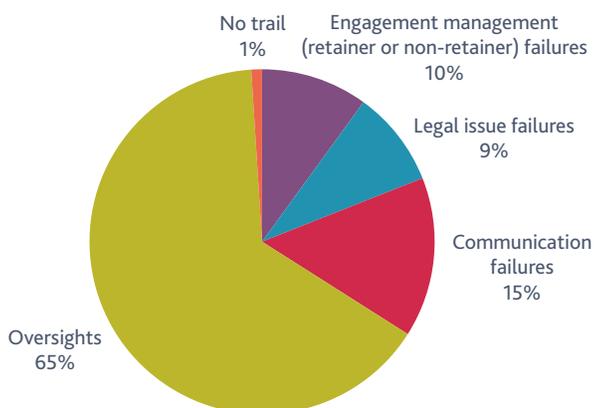


*Administrative law covers the extensive range of discrete practice areas that involve regulatory or government proceedings, from immigration to labour, human rights to health and safety. And because the decisions made by regulatory bodies and government agencies have the potential to profoundly impact people's lives, mistakes made in this area can have deep and lasting adverse consequences. The greatest risk for administrative lawyers? Just "dropping the ball." These are the oversights in which the lawyer forgets, for instance, about an administrative tribunal's deadline or document requirements. These simple, avoidable mistakes are also the leading cause of missed deadlines and limitations, the trigger for one-third of all reports from administrative lawyers.*

*Learn more about each cause, including examples from actual claim files, [here](#).*

*Date range: 2003-2017*

## INTELLECTUAL PROPERTY



*An alert for IP lawyers: This area of law jumps out from the rest of the pack with the highest percentage of reports resulting from simple oversights. In fact, two out of every three reports are the result of a breakdown in the firm's diary or other systems, a clerical mistake, a failure to properly review a document or just forgetting to take some step that needs to be taken. But these simple oversights are also the easiest to manage. Most can be avoided entirely if firms and lawyers develop, implement and follow systems, and use checklists. These sorts of tools are critical to managing the significant procedural challenges created by IP law's intricate technical requirements.*

*Learn more about each cause, including examples from actual claim files, [here](#).*

*Date range: 2003-2017*