

# INDEMNITY ISSUES:

## *Program Report*

### What's in this issue?

- LIF has a new website and fresh look
- Indemnity fee remains at \$1,800
- BC Lawyers Indemnity Association is new policy indemnitor
- In-house lawyers join the Program
- Optional BIC coverage now available by endorsement

### Your 2021 indemnification program

The Lawyers Indemnity Fund manages the Law Society's indemnification program, including the BC Lawyers Compulsory Professional Liability Indemnification Policy (the "Policy").

Beginning January 1, 2021, LIF has a new website – [www.lif.ca](http://www.lif.ca) – along with a new logo, telephone call display, staff email addresses, email banner for notices and reports, and a separate suite address. You can also follow us [@LIFBC on Twitter](#) for the latest information on our programs, risk management tips and videos. While LIF has always maintained confidentiality over claims information and operated at arm's length, these changes further enhance the separation of LIF from the conduct and discipline functions of the Law Society, and better support our ability to provide you with the information you need to practise claims-free.

Starting with the 2021 policy year, the Policy will be issued by a new, not-for-profit, wholly owned subsidiary of the Law Society that is exempt from regulation, called BC Lawyers Indemnity Association (BCLIA). BCLIA has assumed all of the rights and

obligations of the LSBC Captive Insurance Company Ltd., which was the indemnitor of all earlier policies. Personnel, claims handling, payments and administration of the program will remain virtually the same as they have been for many years.

#### Welcome in-house lawyers!

Since October 31, 2020, in-house and seconded lawyers have had the option of paying the annual indemnity fee and participating in the program, receiving the same coverage terms as private practice lawyers. This option is available to lawyers employed by, or seconded to, one of the following:

- a federal, provincial, territorial or municipal government department or a Crown corporation;
- a society or association;
- a partnership or corporation, other than a law firm;
- a trade union; or
- a regulatory body.

In-house lawyers are also eligible for a part-time indemnity fee discount, even if they are practising law full-time. The application asks for information about the legal services the lawyer is providing that could give rise to a claim by a third party, and then the

estimated number of hours the lawyer will spend providing those services. The time during which the lawyer provides direct legal advice to their employer (or seconding organization or partnership) should not be included. All other criteria for private practice lawyers remain applicable to in-house lawyers.

#### Optional business innocent party coverage (BIC)

Since 2002, LIF has managed an optional policy, the Business Innocent Covered Party Policy (the "BIC Policy"), designed to protect members and firms against a vicarious liability claim arising from a professional liability claim that has been denied under the compulsory Policy due to Exclusion 6.2, the "business exclusion." Exclusion 6.2 operates to exclude a claim by or in connection with any organization in which the responsible lawyer, their family or their law firm partners, associates or associate counsel had effective management or control or a greater than 10% ownership interest at the time of the error. Coverage is excluded for both the lawyer responsible for the error *and* for any lawyer and law firm vicariously liable for the responsible member's acts.

Starting January 1, 2021, the BIC Policy has been converted to an endorsement to

the compulsory Policy, with no change to the coverage. For more information, see our [website](#).

## Your 2021 Indemnification Policy

Your policy 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.

### The 2021 indemnity fee

The indemnity fee remains at \$1,800 per full-time lawyer for 2021, and has only increased by \$50 since 2011. The fee level and stability are the result of lawyers identifying and reporting claims and potential claims without delay, and LIF’s successful repairs, effective claims handling, and solid risk management and investment policies.

### Some definitions have been added to clarify coverage

The Policy covers costs as damages, except for special costs. Although the coverage is unchanged, definitions for “costs” and “special costs” have been added. Also, definitions for “related organization” and “seconded lawyer” have been added

regarding coverage for in-house lawyers.

### Amendment to Exclusion 7 – in-house lawyers

Exclusion 7 excluded coverage for claims against in-house lawyers. Given the decision to offer coverage to those lawyers, the exclusion has been amended so that only claims against an in-house lawyer by their employer, or its related organization, are removed from coverage.

### 2021 and beyond

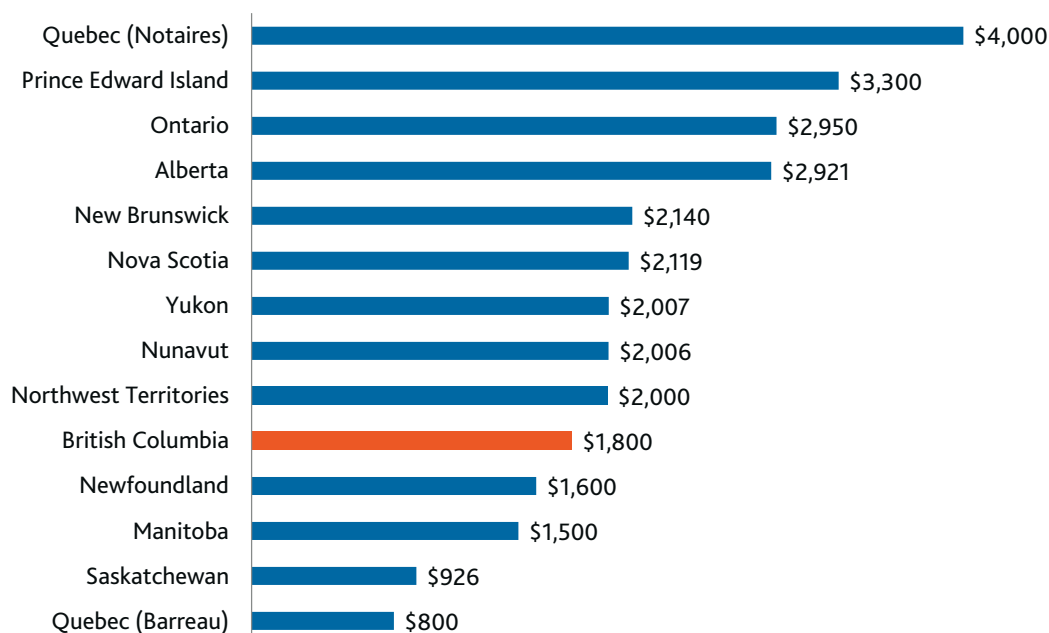
LIF continues to assess the indemnification program, and respond to changes in the practice of law and society at large. While COVID-19 has resulted in more rapid modernization of the legal profession, we will continue to adapt the program to respond to your needs. Your efforts to manage your practice well are the first and best tool to fight against losses. Although the policy provides the broadest professional liability coverage in Canada, commercial insurance should also be a part of your risk management plan. We will continue to provide you with information on new and evolving risks, and how to mitigate those risks through firm management practices and commercial insurance products.

## A review of claim and potential claim reports

### Part A (Negligence)

The extraordinary year that just ended has not (yet) resulted in significant changes to reporting patterns. The chart on page 3 shows the number of reports and their frequency (reports divided by lawyers) over the past five years. The drop in number and frequency in 2020 is likely the result of the reduction in legal work during the early months of the COVID-19 lockdown. The two charts on page 4 provide more information about the specific claims experience in 2020 by area of law. The first chart shows the percentage of reports generated by the different practice areas. *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 settlers’ remorse claim, and the claims activity likely reflects that risk. The second chart shows the areas of practice according to severity — the expected cost of claims. At this stage, COVID-19 does not appear to have had a material effect on the relative ranking of areas of practice.

### 2020 INDEMNITY FEES



## Part B (theft)

Since this coverage was introduced in 2004, total compensation of \$3,025,400 has been paid relating to 118 claims involving 36 different lawyers. Given the 9,000 or so lawyers in private practice, our claims experience continues to demonstrate the very small number of lawyers involved in misappropriations.

In 2020, seven claims were paid on behalf of six different lawyers, totalling approximately \$203,900.

The following amounts were also paid:

- \$168,000 for settlement funds held in trust that were misappropriated by a lawyer retained in a family law matter.
- \$14,400 on behalf of a lawyer who kept client funds held in trust after completing a real estate conveyance.
- \$7,500 in respect of a matrimonial dispute in which the lawyer kept a balance of funds held in trust.
- \$5,500 on behalf of a lawyer who did not return the unused balance of funds provided for a real estate transaction.
- \$5,300 for money paid to a lawyer for disbursements that were not incurred and the money was not returned.
- \$3,200 on behalf of a lawyer who accepted retainer funds to act in a family

dispute but did not complete the work and did not return the funds.

These lawyers are no longer members of the Law Society.

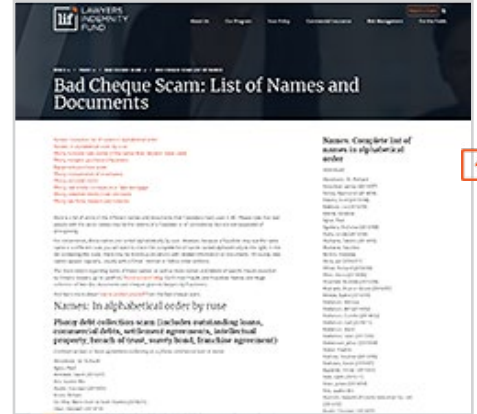
Other claims in 2020 are not being pursued or did not involve misappropriation, or we are not yet in a position to determine if the claim is properly payable.

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 \$162,000.

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

### Bad cheque scam

Part C was introduced in 2012 to provide coverage for the “bad cheque” scam. In this scam fraudsters try to trick lawyers into depositing what appears to be a genuine certified cheque or bank draft, but is actually a well-made fake, into trust. On the strength of that deposit, the lawyer pays good funds out of trust to the fraudster and is left with a trust account shortfall. Advice on how to avoid getting caught and become familiar with the common characteristics, red flags, twists and developments, and



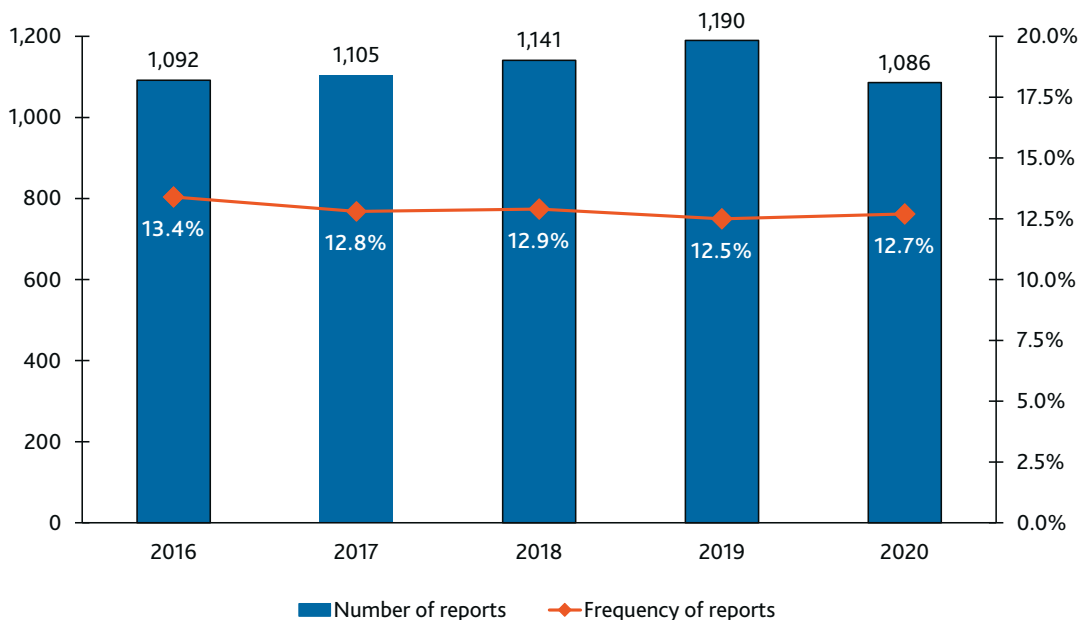
steps you can take to manage the risk is found [here](#). Review the list of actual names and documents fraudsters have used in BC:

### Other social engineering scams

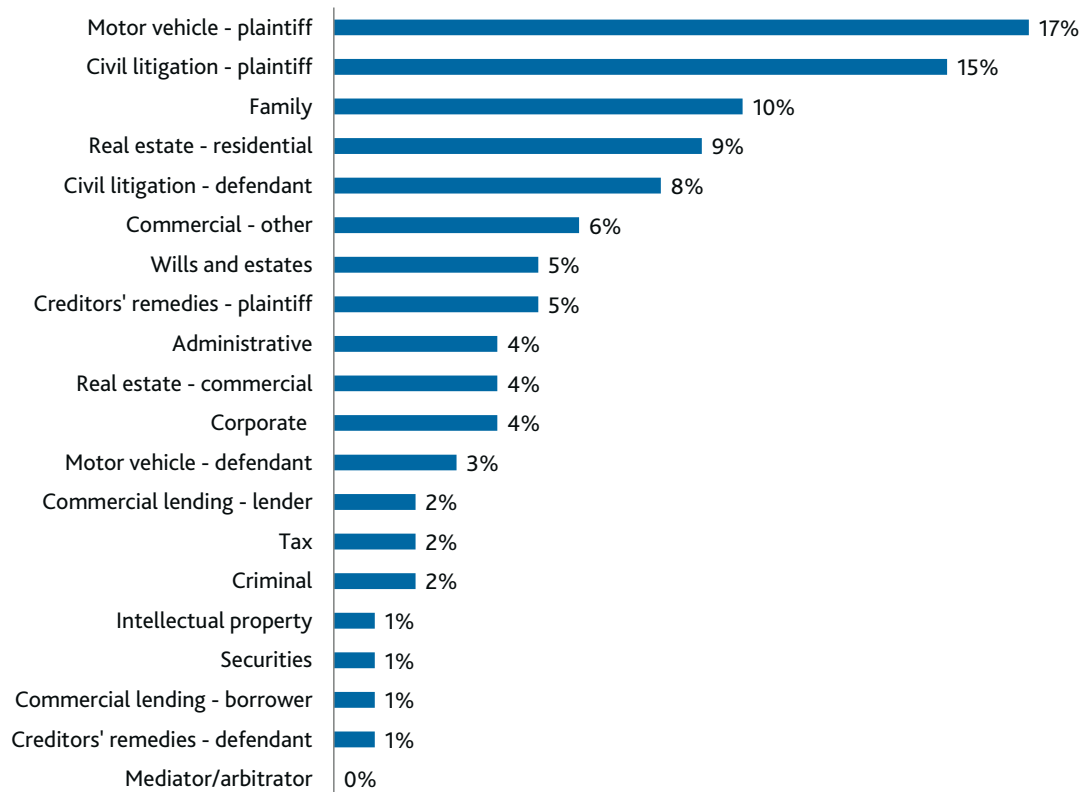
In 2017, Part C was expanded to provide some coverage for other “social engineering” scams, such as the “phony change in payment instructions scam” and the “phony direction to pay from a senior partner, staff member or other lawyer.” These frauds involve fraudsters pretending to be an existing client or someone genuinely authorized to give instructions on the client’s behalf and also result in trust funds going into the pockets of fraudsters.

*continued on page 6*

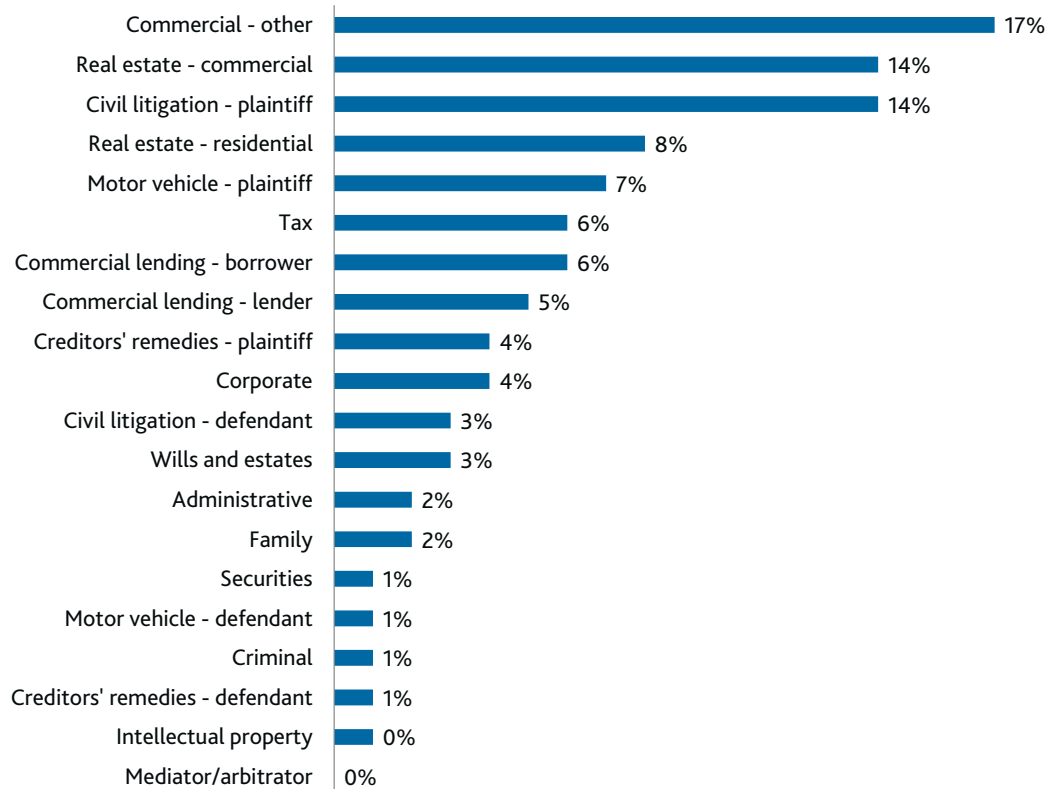
## NUMBER AND FREQUENCY OF REPORTS







## FREQUENCY OF REPORTS BY AREA OF LAW – 2020



## SEVERITY OF REPORTS BY AREA OF LAW – 2020



<h2>2020 Risk Management in Review</h2> <p><i>Read our 2020 risk management advisories to get a head start in the new year</i></p>	
<p>1. Sweeping amendments to the <i>Securities Act</i>. The amendments enable the BC Securities Commission (BCSC) to order administrative monetary penalties without a hearing for certain contraventions, order minimum sentences, increase penalties, and expand BCSC's investigative, enforcement and collection powers.</p>	<p>» <a href="#">January 2020 E-Brief</a></p>
<p>2. Our February <i>Indemnity Issues</i> reported on the indemnity program.</p>	<p>» <a href="#">February 2020 Indemnity Issues: Program Report</a></p>
<p>3. The Ministry of Attorney General issued a <a href="#">Consultation Paper on the Uniform Civil Enforcement Money Judgments Act</a>.</p>	<p>» <a href="#">April 2020 E-Brief</a></p>
<p>4. Beware of increased cyber-security risks during COVID-19. Always think before you click and read our Notice to the Profession for other tips.</p>	<p>» <a href="#">April 15, 2020 Notice to the Profession</a></p>
<p>5. A BC lawyer reported that funds were withdrawn from his bank account by the use of a counterfeit law firm cheque.</p>	<p>» <a href="#">May 1, 2020 Notice to the Profession</a></p>
<p>6. Watch this video to learn the story of a lawyer who suffered from depression and how lawyers can prioritize health and mental well-being.</p>	
<p>7. Reminder to beat the rush: file Notices of Civil Claim using Court Services Online.</p>	<p>» <a href="#">May 8, 2020 Notice to the Profession</a></p>
<p>8. Update on video-conferencing information: risk management tips.</p>	<p>» <a href="#">May 11, 2020 Notice to the Profession</a></p>
<p>9. The Government of Canada published draft federal legislative proposals that suspend certain time limits and enable federal ministers to extend or suspend other time limits.</p>	<p>» <a href="#">June 2020 E-Brief</a></p>
<p>10. Cyber-attacks on the rise during COVID-19.</p>	<p>» <a href="#">June 23, 2020 Notice to the Profession</a></p>
<p>11. Attention real estate lawyers: don't forget additional property transfer tax for foreign nationals, foreign entities and taxable trustees: Watch this video for our top risk management tips.</p>	
<p>12. Certain federal limitation periods have been suspended. <i>An Act respecting further COVID-19 measures</i> received Royal Assent on July 20, 2020.</p>	<p>» <a href="#">August 2020 E-Brief</a></p>
<p>13. Back to basics: Watch this video to learn about your indemnification policy.</p>	
<p>14. Reminder: Private BC companies must create and maintain a Transparency Register as of October 1, 2020.</p>	<p>» <a href="#">October 2020 E-Brief</a></p>
<p>15. Land Owner Transparency Registry in force November 30, 2020. Certain corporations, trusts and partnerships are required to file a transparency declaration and a transparency report with the LOTA administrator to disclose beneficial ownership. Failure to comply will result in the land title registry refusing the registration and may also result in fines.</p>	<p>» <a href="#">October 7, 2020 Notice to the Profession</a></p> <p>» <a href="#">November 25, 2020 Notice to the Profession</a></p>

<p>16. Attention civil litigation lawyers: missed limitations and deadlines are on the rise. Watch this video to learn how to prevent missed limitations and deadlines.</p>	
<p>17. Fraud alert: a BC law firm was hit with a sophisticated Trojan horse virus as a result of a weak password and an inadequate firewall. The virus allowed the fraudsters to gain access to the firm's banking and client information, and it caused emails to be sent to people on the firm's contact list.</p>	<p>» <a href="#">October 22, 2020 Notice to the Profession</a></p>
<p>18. Civil litigation claims: under the microscope. Learn more about the top three causes of civil litigation claims and effective practice management tips to avoid claims.</p>	
<p>19. Are you about to pay out trust funds and your client's payment instructions have changed? Stop. Ensure that the change is legitimate by calling your client at the number in your file. Watch this video to find out how two BC law firms fell victim to sophisticated social engineering frauds involving millions of dollars.</p>	
<p>20. BC Land Title &amp; Survey Authority – new online identity verification service.</p>	<p>» <a href="#">December 1, 2020 Notice to the Profession</a></p>
<p>21. Watch this video to learn about the four most common mistakes in commercial lending.</p>	
<p>22. Suspension of limitation periods ends on <b>March 25, 2021</b>. The suspension is no longer linked to the public health state of emergency.</p>	<p>» <a href="#">December 22, 2020 Notice to the Profession</a></p>

*continued from page 3*

Since 2012, LIF has paid almost \$2 million for these claims.

In 2020, we received two Part C reports, one involving fraudulent wiring instructions. The lawyer thought the instructions were from the client but they were in fact from a fraudster. The other involved the “phony change in payment instructions” scam. Social engineering frauds are becoming more and more sophisticated, and there is no one model. The best way to avoid getting caught is to follow our [due diligence tips](#).

Any time payment of trust funds is imminent, including via a wire transfer, assume

that a fraudster is also aware. Whether it is a system or email hack, our number one risk management tip is, stop! And verbally check payment or wire instructions or changes to them. Make direct contact with your client, to ensure that the instructions are legitimate. Watch this video to learn more about the phony change in payment instructions scam.



All firms should have due diligence protocols in place for transferring funds, and should ensure all staff receive training and adhere to them. At a bare minimum, your protocols should include calling the client, and documenting the call and instructions *before* a wire transfer is made.

Another tip is to share the Law Society's email fraud alerts with your staff. Useful information is found in our “Cyber-attacks on the rise during COVID-19” in the Law Society's [June 23, 2020 Notice to the Profession](#), “Trojan virus attacks BC law firm” in the [October 22, 2020 Notice to the Profession](#), and our top risk management tips on our [Cyber-crimes web page](#).