

INDEMNITY ISSUES:

Program Report

What's in this issue?

- [In-house lawyers join the program](#)
- [New cyber insurance for BC firms](#)
- [Indemnity fee remains at \\$1,800](#)
- [Expanded pro bono coverage](#)
- [Reduced Part C deductible](#)
- [2021 risk management in review – alerts and videos at your fingertips](#)

Your 2022 indemnification program

The LAWYERS INDEMNITY FUND manages the Law Society's Indemnification Program, including the BC Lawyers Compulsory Professional Liability Indemnification Policy (the "Policy").

More in-house lawyers are covered by the Policy

The number of in-house lawyers participating in the program has jumped by 28% in the first year since the option to pay the indemnity fee was introduced in October 2020. Not all in-house lawyers need the coverage, but those with third-party liability risk are now able to mitigate their risk with the Policy coverage.

BC firms now have cyber insurance

Cybercrime, data or privacy breaches and computer security failures are increasingly impacting BC firms and their clients. In June 2021, cyber insurance through Coalition, Inc. was incorporated into the program. Although the cyber policy provides very broad coverage, a firm's best investment remains in prevention.

The most effective low or no-cost ways for you to stop the three most prevalent types of losses are:

1. **Business email compromise:** Enable multi-factor authentication, password management and email security, such as SPF, DKIM, DMARC and an anti-phishing solution.
2. **Funds transfer fraud:** Define procedures for handling new payment and change in payment requests. These procedures would include calling the requesting party on a known good number seeking to confirm the request.
3. **Ransomware:** Train staff on email security, such as spam filtering, to avoid ransomware being installed when users open a suspicious attachment or visit a malicious website. Also, ensure technical vulnerabilities like old, unpatched software or insecure remote access tools are unavailable for attackers to exploit. And implement a backup strategy that includes frequent backups and

offline storage, allowing you to rebuild systems without paying the ransom.¹

Your *Cyber Coverage* on our website contains in-depth information about the cyber insurance and risk management provided by Coalition. If you wish help with your cyber security needs, please schedule a no-cost appointment with Coalition to discuss your options: [Schedule a Security Call with Coalition \(coalitioninc.com\)](#).

Your 2022 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 2022 indemnity fee

The indemnity fee remains at \$1,800 per full-time lawyer for 2022, and has only increased by \$50 in the last 11 years. The graph on page 2 shows how favourably we compare with other provinces and

¹ Coalition Insurance Cyber Insurance Claims Report H1 2021.

Are you in compliance with your cyber coverage?

Before paying out trust funds, verify that new or changed email instructions are legitimate through direct phone contact with your client, using the phone number on your file. This is a condition of your new cyber coverage. And if you have been the victim of a cybercrime, report immediately.

territories, especially considering that the coverage we provide is the broadest in the country. The fee level and stability are the result of lawyers identifying and reporting claims and potential claims promptly, and LIF's successful error repairs, effective claims and risk management, and sound investment policies.

Expanded coverage for pro bono services

Since 2002, LIF has approved free coverage for non-practising, retired or indemnity fee-exempt lawyers who volunteer at organizations providing sanctioned pro bono services. One criteria for the coverage was

that the services be provided to individuals. Listening to feedback from these organizations identified a significant need for pro bono corporate legal advice on:

- obtaining charitable status;
- registration or incorporation of a society or not-for-profit organization;
- compliance with the *Societies Act*;
- amending a constitution or bylaws; and
- general employment contracts.

As a result, LIF has expanded the program to include these specific corporate services as "sanctioned pro bono services" when provided to charities and not-for-profit organizations. For more information on how you can volunteer, check out [Support for Volunteer Lawyers | Access Pro Bono](#).

Reduced deductible for Part C claims

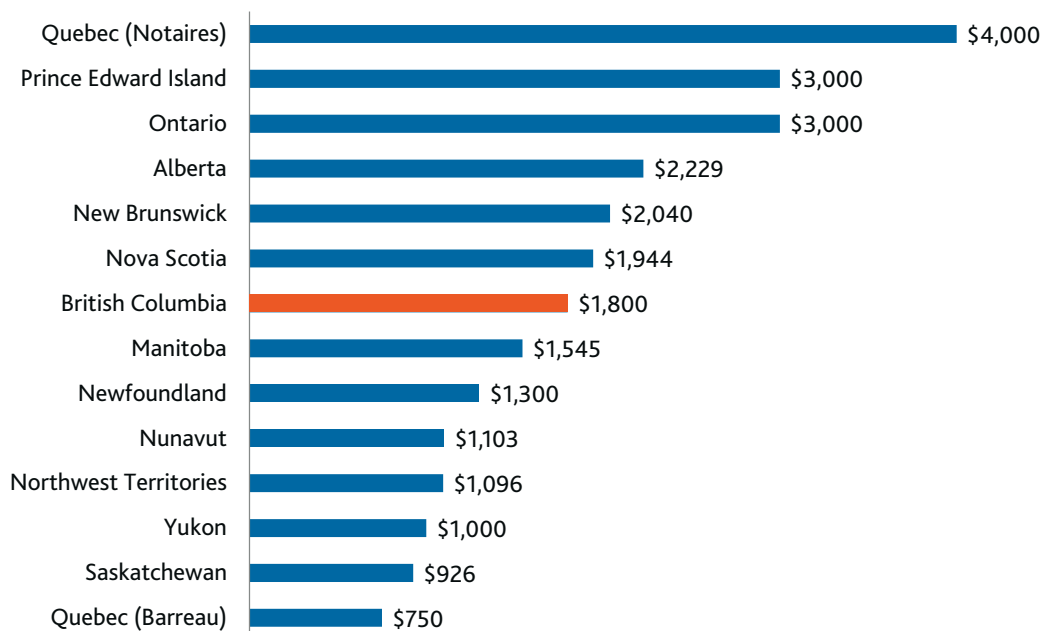
The new cyber program and the fact many law firms also purchase their own social engineering fraud coverage, lead us to position our Part C coverage (through an endorsement) and limit of liability above those other available limits. For those firms without other social engineering fraud coverage, we have reduced the deductible for a Part C claim from 35% to 15%.

A review of 2021 claim and potential claim reports

Part A: Negligence

The second year of the COVID-19 pandemic has not 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 and 2021 may be the result of the reduction in legal work during this period of COVID-19 lockdowns, greater care taken by lawyers, or a lack of litigious appetite for whatever reason, or a combination of all three. The two charts on page 4 provide more information about the specific claims experience in 2021 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 almost 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. Once again, COVID-19 does not appear to

2021 INDEMNITY FEES



have had a material effect on the relative ranking of areas of practice.

Part B: Theft of trust funds by a lawyer

Since this coverage was introduced in 2004, total compensation of \$3,367,778 has been paid relating to 120 claims involving 37 different lawyers. Given the 9,800 or so lawyers in private practice, our claims experience continues to demonstrate the very small number of lawyers involved in misappropriations. It also appears that the COVID-19 pandemic has not increased the incidents of theft by lawyers — at least not that we have seen to date.

In 2021, four claims were paid for a total of approximately \$342,417, as follows:

- \$64,749 was paid where a lawyer kept settlement funds rather than pay the money to third-party service providers, as directed by the client;
- \$15,668 was paid where a lawyer misappropriated funds from an estate; and
- \$207,000 and \$55,000 were paid on behalf of a lawyer who stole settlement funds received on behalf of his clients in two separate matrimonial matters.

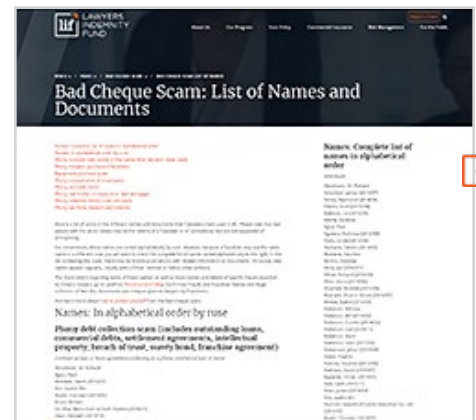
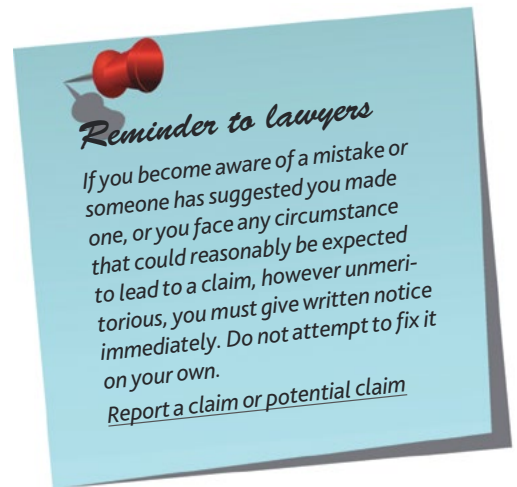
These lawyers are no longer members of the Law Society.

Other claims in 2021 did not involve misappropriation or are not being pursued, 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 \$175,000.

Part C: Loss of trust funds through social engineering cybercrimes

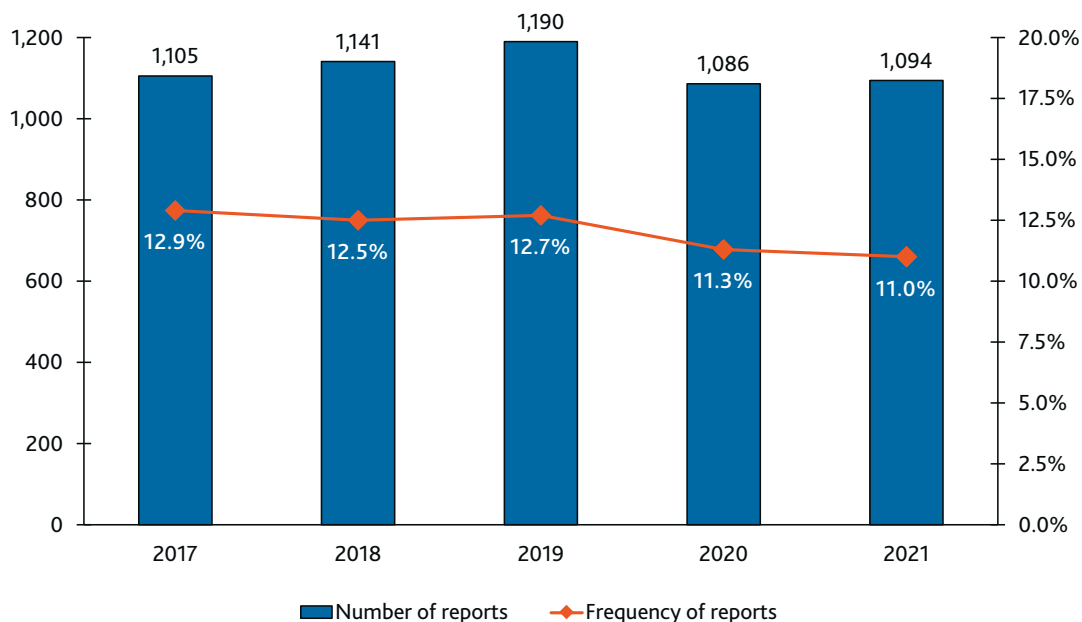
Part C was initially introduced in 2012 to provide coverage for trust fund losses arising from bad certified cheques and social engineering. In this scam, fraudsters trick lawyers into depositing what appears to be a genuine certified cheque or bank draft, but is actually a well-made fake, into trust. 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. In 2017, we expanded Part C to provide coverage for cybercrimes that used evolved social engineering techniques, involving fraudulent payment and change of payment



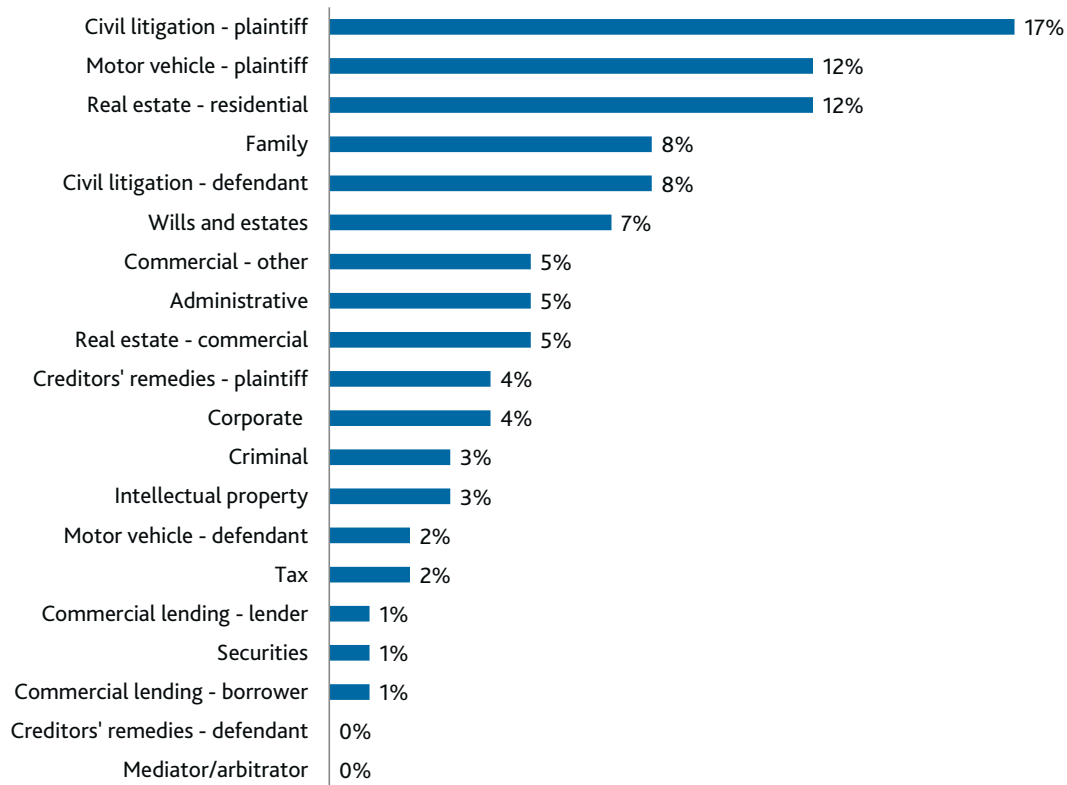
The LIF website provides a list of actual names and documents fraudsters have used in BC.

continued on page 6

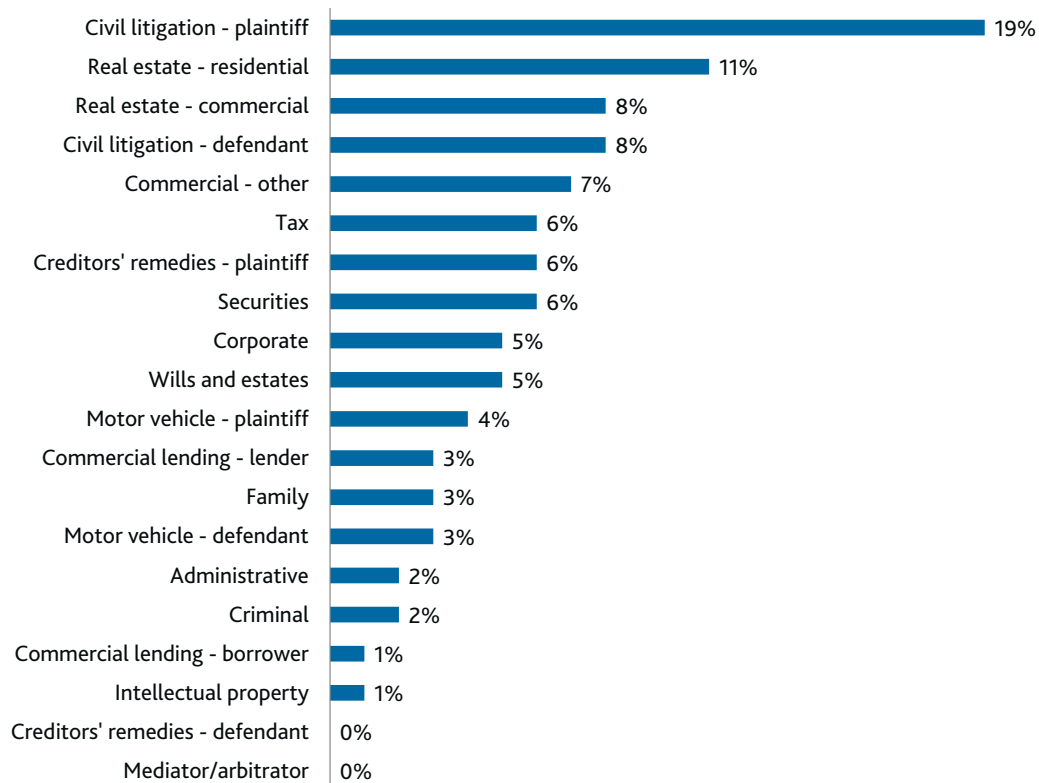
NUMBER AND FREQUENCY OF REPORTS






FREQUENCY OF REPORTS BY AREA OF LAW – 2021



SEVERITY OF REPORTS BY AREA OF LAW – 2021



<p>2021 Risk Management in Review</p> <p><i>Read our 2021 risk management advisories to get a head start in the new year</i></p>	
<p>1. Introducing LIF’s New Website. We have created a separate website to improve our services to you – lif.ca</p>	
<p>2. LIF Risk Management Video Series – Will Drafting Mistakes</p>	
<p>3. Suspension of Limitation Periods – your questions answered</p>	<p>» February 3, 2021 Notice to Lawyers</p>
<p>4. LIF Risk Management Video Series – Managing the risks of a limited retainer</p>	
<p>5. Two years means two years: BC Court of Appeal confirms strict limitation period for third party claims for contribution and indemnity</p>	<p>» February 2021 E-Brief</p>
<p>6. Introducing LIF’s New Digital Annual Report</p>	<p>» February 25, 2021 Notice to Lawyers</p>
<p>7. Don’t miss the limitation period for CRT Part 7 claims</p>	<p>» March 2021 E-Brief</p>
<p>8. Lawyers Indemnity Fund coverage expands to include cyber insurance</p>	<p>» March 2021 E-Brief</p>
<p>9. Risk Management Video Series – Suspension of limitation periods</p>	
<p>10. Have you filed your Appeal? TODAY the clock starts ticking again ...</p>	<p>» March 26, 2021 Notice to Lawyers</p>
<p>11. Risk Management Video Series – Hidden risks in file transfer</p>	
<p>12. Risk Management Video Series – Mental Health Video (re-release)</p>	

13. New Super-priority for the BC Securities Commission.	» July 2021 E-Brief
14. Social Engineering Frauds – a leading cause of cyber claims that you can prevent	» July 2021 E-Brief
15. Change in Payment Instructions Scam – BC firm targeted last week	» August 23, 2021 Notice to Lawyers
16. SCC addresses when limitation periods begin to run	» August 2021 E-Brief
17. If you delete an LTO web form by mistake	» August 2021 E-Brief
18. Disclosure by existing landowners required by November 30, 2021 (now postponed to November 30, 2022)	» September 21, 2021 Notice to Lawyers
19. Risk Management Video Series – Do you have 3 minutes to learn what’s new in your indemnity policy?	
20. LOTR Filing Deadline Extended	» November 2, 2021 Notice to Lawyers
21. Risk Management Video Series – The top 5 traps for real estate lawyers and how to avoid them	
22. Save the date: Junior Lawyers Risk Management Conference on April 27, 2022	» December 2021 E-Brief
23. Risk Management Video Series – ‘Tis the Season ... to avoid becoming a victim of cybercrime	
24. Cybercrime Continues to Surge	» December 15, 2021 Notice to Lawyers

continued from page 3

instructions that caused lawyers to pay trust funds to the fraudster.

Advice on how to avoid getting caught 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. In 2021, we received two Part C claims:

- A lawyer represented a beneficiary expecting to receive money from an estate. Malware placed on the estate lawyer’s laptop allowed a criminal to see the lawyer’s emails, spoof (replicate) the domain and create a new email account solely in the criminal’s control. The criminal sent wire

instructions to the beneficiary’s lawyer by email, and that lawyer acted on the fraudulent instructions without confirming them by transferring the funds to the criminal. He left his trust account short by over \$30,000.

- A client’s email was hacked by a criminal. Posing as the client, the criminal sent the lawyer an email changing the client’s earlier wire transfer instructions for the proceeds of a residential sale. Acting on the changed instructions, the lawyer transferred approximately \$275,000 to the criminal. Fortunately, the lawyer notified us immediately and we were able to cancel the transfer and retrieve the funds.

2022 and beyond

COVID-19 has resulted in more rapid modernization of our profession, and we will continue to adapt the program to respond to your needs. But it is your efforts to manage your practice well that are the first and best tool to protect your firm and your clients from 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.