

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 2016 insurance program and policy revisions
- reviews statistics on claims and potential claims
- highlights excess and other commercial insurance products available to protect you from risks that our policy does not cover
- reports on 15 years of feedback from insureds on the services we provide

The 2016 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

For the sixth consecutive year, the insurance fee remains at \$1,750. The fee level and stability are the result of effective claims handling, as well as solid risk management and investment policies. BC lawyers will continue to enjoy a fee that compares very well with other programs. Not only is it low in comparison to the two other larger programs, Ontario and Alberta (see chart on page 2), but the single fee is all that is charged both for negligence (Part A) and theft (Part B) insurance.

Compulsory policy wording

LIF issued a consolidated policy for 2016, which was included with the December 2015 *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 wording changes are made for 2016.

General

The policy includes several references to specific Law Society Rules, in the definitions of "additional insured," "individual insured" and "MDP partner," and in Condition 1.13 (Part C). Revised and consolidated Law Society Rules came into effect on July 1, 2015 that resulted in renumbering of the Rules. The numbers in the policy references have been updated accordingly.

Part A: Professional Liability (for negligence)

If a negligence claim is made against you, the policy will pay any compensatory damages awarded, as well as any related costs and interest. The definition of damages is revised slightly to clarify that a claim for costs only falls within coverage if sought in relation to compensatory damages. For consistency, similar wording in the definition of damages for Parts B and C was revised.

Part B: Trust Protection (for dishonest appropriation)

Since May 1, 2004, Part B has responded to claims formerly dealt with by the Special Compensation Fund. As the Fund ended in 2012, it is appropriate that the policy's definition of compensation program reference compensation funds generally, rather than the Fund specifically. Further, as all future claims for compensation will be dealt with

under Part B, a correlating exclusion for claims discovered prior to May 1, 2004 has been removed.

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. In 2015, we received the highest number of reports in the program's 30-year history. The two charts on page 4 provide more information about the specific claims experience in 2015 by area of law. The first chart shows the percentage of reports generated by the different areas of practice. Once again, *Civil litigation – plaintiff* and *Motor vehicle – plaintiff* account for roughly 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. Our claims experience in 2015 bears out the view that the impact of the recession has abated. For the second year in a row since 2011, the conveyancing and commercial

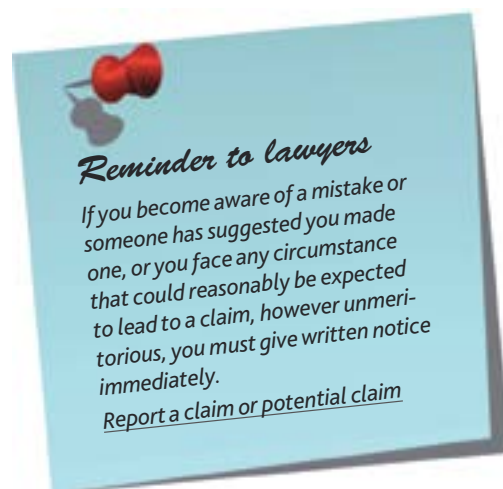
areas of law accounted for closer to 40 per cent, rather than roughly half, of all dollars spent or reserved.

Part B (theft)

Since this coverage was introduced in May 2004, total compensation of \$1,016,000 has been paid relating to 66 claims involving 18 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 2015, four claims were paid on behalf of three different lawyers, totalling approximately \$125,100:

- A payment of \$99,500 was made on behalf of a lawyer who acted for a client in relation to the sale of a company asset and misappropriated a portion of the funds received from the sale. A payment of \$51,100, made earlier on behalf of this lawyer, was recovered through our in-house collection efforts.
- A payment of \$2,000 was made on behalf of a lawyer who accepted retainer funds on a fixed fee agreement. The lawyer did not complete the work but kept the full amount of the retainer funds.
- Two claims totalling \$23,600 were paid

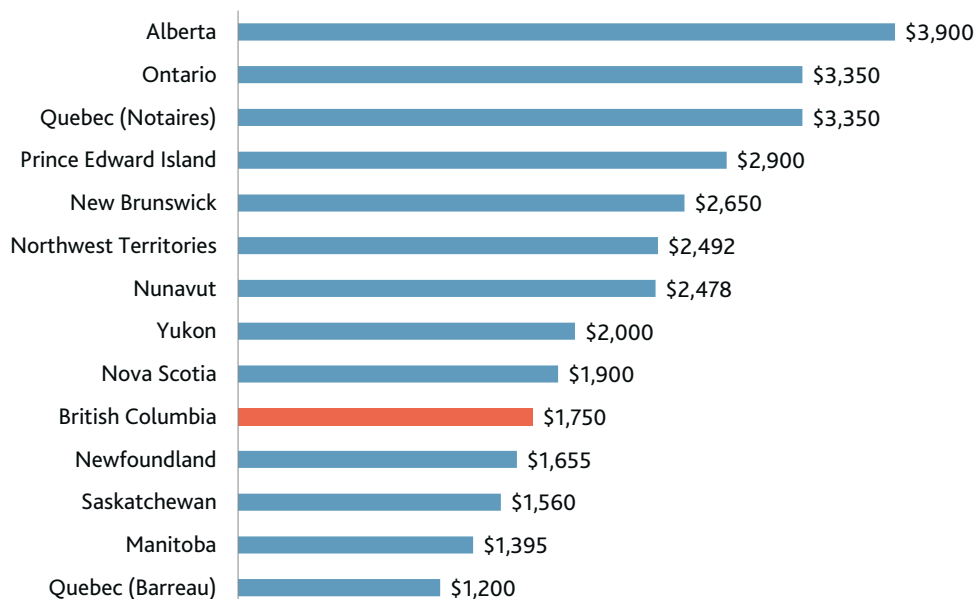


on behalf of a lawyer who accepted and kept retainers in relation to criminal matters. The lawyer provided either no services or not enough services to justify the amount kept. A total of \$105,000 has now been paid on behalf of this lawyer.

The first and second lawyers are no longer members of the Law Society, and the third is deceased.

Other claims in 2015 were either withdrawn or abandoned by the claimants or did not involve misappropriations. In the remaining reports, the claimants are not actively pursuing a Part B claim, or we are not

2015 INSURANCE PREMIUMS



yet in a position to determine if the claim is properly payable. In 2015, we recovered \$5,100 on behalf of two lawyers for whom we had paid Part B claims. We also sued two former members for amounts paid under Part B, although we have not yet made any recovery.

Part C (trust shortage liability)

Part C was introduced in 2012 to provide insurance for the “bad cheque” scam. This scam tricks lawyers into paying trust funds out to a fraudster on the strength of a phony certified cheque or similar instrument.

Although 2015 marked the fourth year in which no Part C payments were made, we came close on one file. The lawyer was contacted by email by a company purporting to own a hardware chain in Switzerland. The “client’s” story? It had made a down payment on the purchase of inventory from a US supplier. The supplier had reneged on the deal and it wanted the lawyer to help it recover the down payment. Demand was made, and the lawyer was advised that a partial payment would be coming from the supplier’s affiliate in Ontario. A bank draft payable to the lawyer arrived from an Ontario post office box. Although the lawyer deposited the draft into trust, he didn’t pay out right away as there were issues with

the client’s identification. Thankfully, the lawyer reported to us when the company threatened litigation (and bodily harm) if he didn’t wire the funds to some other party in Japan. The lawyer hadn’t appreciated that this was a “bad cheque” scam, because he didn’t think the scam could arise in a commercial context. We identified a number of red flags, and the lawyer’s bank subsequently confirmed that the draft he’d deposited had been stolen and the payee altered.

Let’s not even come close in 2016. 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 the different ruses used by scammers — and reading the Law Society’s email fraud alerts.

Excess and other commercial liability insurance

“He’s suing me for how much?” Do you have protection for claims that exceed \$1 million?

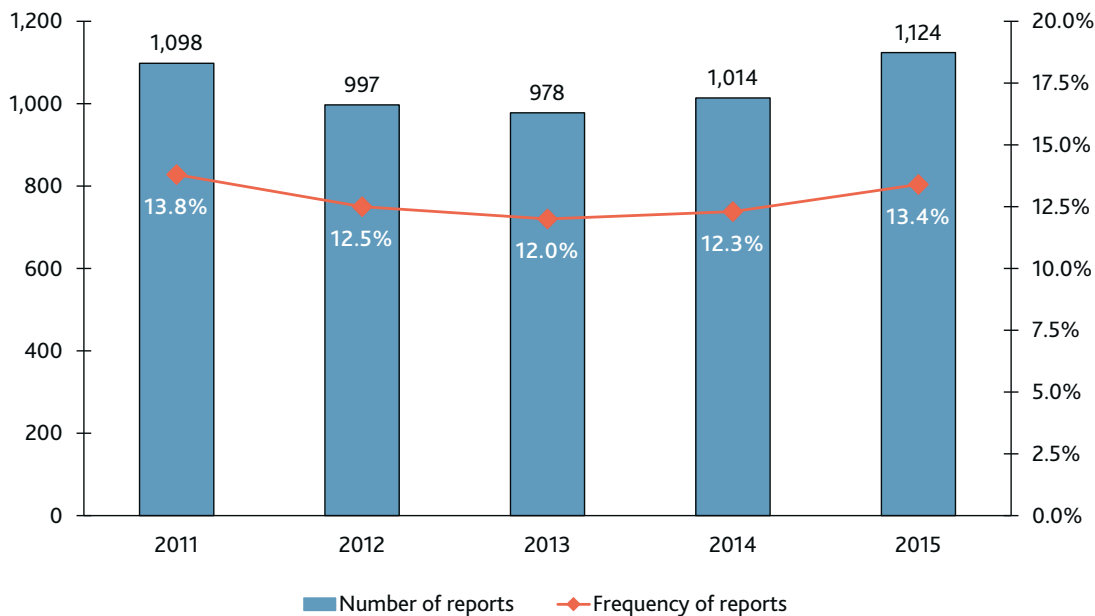
Although the \$1 million policy limit offers generous financial protection for the majority of claims lawyers face, this may not

be enough to protect you and your firm. If a mistake in your practice might lead to a claim that will cost more than \$1 million to defend and pay, you are both at risk. For instance, you might miss a limitation for a client suffering a significant brain injury from a car accident, prepare a tax plan that results in your client being reassessed by CRA or draft a contract that fails to give your client full value for the company just purchased. Without excess insurance, you, and potentially your partners, will start paying for that claim out of your own pocket as soon as our limits are exhausted.

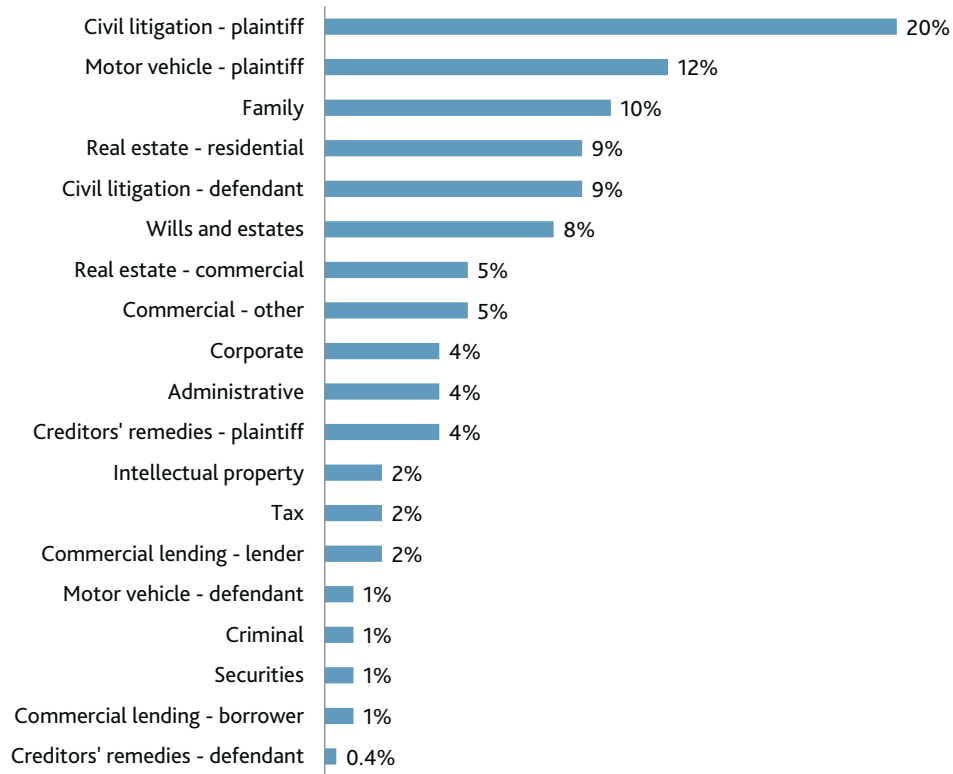
Excess insurance must be bought for the firm as a whole, not its individual lawyers. A broker can help you decide how much excess insurance may be appropriate for your firm, if any. Besides the financial consequences of just one mistake, other factors that will be considered include the frequency of large transactions and the potential liability for the mistakes of former partners. In addition, because excess coverage is generally triggered by discovery of the claim as opposed to when the work was done, you will also want advice on how long to carry excess so that you are protected when a claim is made.

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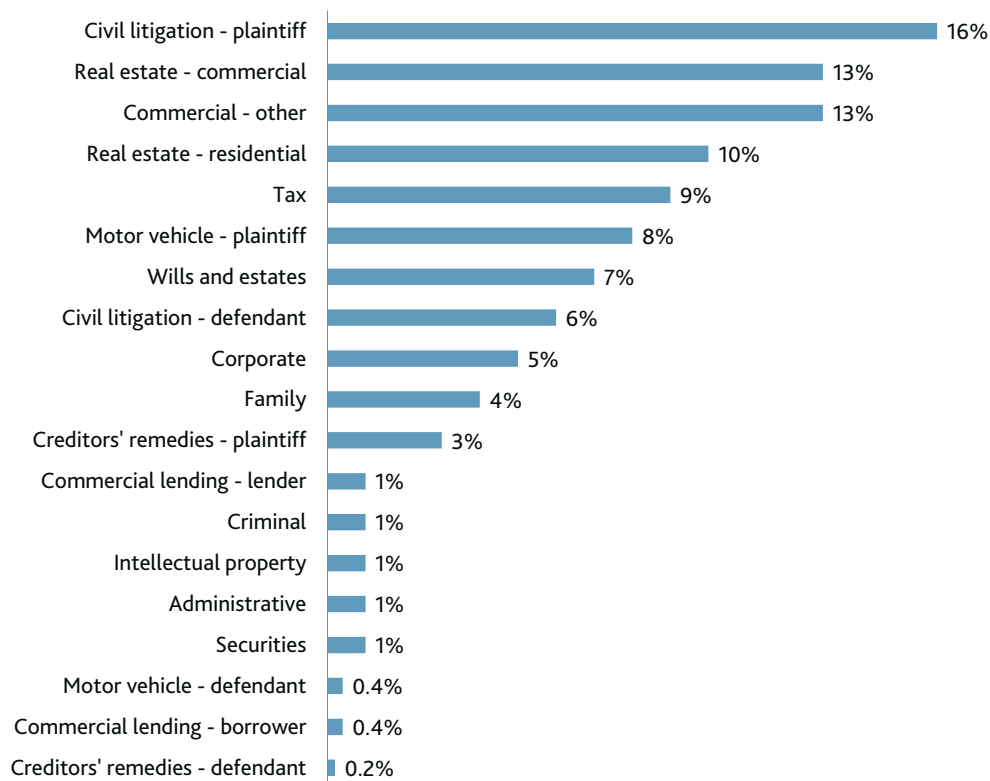
NUMBER AND FREQUENCY OF REPORTS



FREQUENCY OF REPORTS BY AREA OF LAW – 2015



SEVERITY OF REPORTS BY AREA OF LAW – 2015



Every year, we receive many reports of potential excess claims. Talk to a broker about buying excess. Sleep easy.

"I've been hacked!" Do you have protection for claims that our policy does not cover?

You may also be at risk of claims that are not covered. To help you understand the claims and activities that the policy covers — and those that it does not — "[My Insurance Policy: Questions and Answers](#)" on the Law Society website is essential reading. For instance, it explains that the policy does not respond to trust shortages caused by frauds — whether internal or external (other than some cover for the "bad cheque" scam). It also explains that:

The policy is not intended to respond to the business risk of data breaches. A data breach might result in the theft of a client's identity or confidential information advantageous to a competitor. A third party might gain access to confidential information by hacking a server, stealing your laptop or a client file left in your car, planting malware on your computer or rummaging through some unshredded garbage. Regardless, any claims arising out of or connected to the collection, use and/or disclosure of any information by that third party are excluded. Malware can cause additional problems through inadvertent transmission to others, and the policy will not protect you from any claims you might face as a result.

And when it comes to a data breach, it is likely more a question of when — not if — it will happen. Fifteen per cent of US law firms, for instance, experienced a security breach in 2012, either through hackers, a break-in, a website exploit, or a lost or stolen computer or smartphone. There's no reason to think it's different here.

Protect yourself. Familiarize yourself with cyber and other risks, and the steps that you can take to reduce those risks. The tips and links in "[My Insurance Policy](#)" can help get you started. And if you need insurance, buy it. Policies have been developed by commercial underwriters to protect the firm and its members for various risks that we do not insure, and help if you do get caught. For instance, crime or fidelity

insurance provides coverage for employee fraud or theft. It can also include the following coverages that will respond if you or your bank accounts are the target of a fraudster:

- Social engineering coverage protects you if a fraudster tricks you into transferring trust funds to them by pretending to be a legitimate client or third party. This fraud targeted one BC law firm last year, causing it to redirect sale proceeds that it was holding in trust for a real estate client on revised instructions from someone that the firm believed was the client. Before the firm wired the funds to the client, it received an email, purportedly from the client, directing the funds to be wired to a different account. The email address used by the fraudster was identical to that used by the client, except for one letter. The funds were sent, apparently to the fraudster's account.
- Wire fraud coverage can assist if a hacker plants a virus in your system that gives the hacker fraudulent access to your online banking.

Cyber liability insurance can respond to a loss of data or a data breach, whether the result of a malicious hacker or simply because you left your laptop at Starbucks. Breaches, for instance, can result in both first-party (e.g. costs related to notification, cyber-extortion and business interruption) and third-party (e.g. claims for damages arising from stolen data or confidential information) losses. Cyber liability insurance can respond to both, and may include assistance from data breach consultants and other experts.

There are other commercial products available for different risks, and the existing insurance continues to evolve to respond to new risks in doing business. Excess insurance can also "drop down" and respond to risks that our policy does not cover, usually subject to a deductible or self-insured retention. There are different insurance options available and the terms of cover, including deductible amounts, may vary between insurers and brokers, so you will want to talk to one or more brokers to learn what is best for you and your firm.

Your feedback: 15 years of survey results

For 15 years, we have asked insured lawyers for feedback on the services provided by claims counsel, as well as the lawyers retained to act as defence counsel. We do this by sending a Service Evaluation Form to the lawyer on file closing, asking that lawyer to rate his or her satisfaction on a scale of 1 ("not at all") to 5 ("a lot"). We also specifically ask for positive ("kudos") and negative ("grumbles") comments, and follow up if any feedback suggests that there's room for improvement.

When we started in 2001, the results were very positive — over 90 per cent of lawyers gave a high approval rating in all of the areas surveyed. Fifteen years later, the results continue to improve, as the chart on the next page demonstrates.

We enjoy a good return rate for a volunteer survey, in the last five years averaging 34 per cent. And we've received over 4,000 "kudos" in response to the query, "What did you most appreciate about the services we provided to you?" Some of the more recent comments include:

- *You cannot get better counsel than that provided by claims counsel. Claims counsel embodies the qualities of a "lawyer's lawyer" (which he is). He is at once objective and learned, insightful and supportive. It is good he does what he does.*
- *I feel so lucky to have had claims counsel assisting me through this experience. It was one of the worst experiences I have had to go through professionally, and claims counsel was professional, practical and realistic. Through her counsel, we were able to resolve the matters without delay. I feel so grateful for claims counsel. She is exactly the kind of person who you want representing you when issues like this arise. She is top notch!*
- *I very much appreciated the calm and matter of fact handling by claims counsel. Claims counsel took a more aggressive approach than I would have taken if I were dealing with this on my own. It was a lesson to me in trusting the experts, who know what they are doing. Claims counsel was very knowledgeable and*

LAWYER FEEDBACK CHART

Percentages of lawyers rating our services 4 or 5 on a scale of 1 to 5, where 1 means "not at all" and 5 means "a lot."

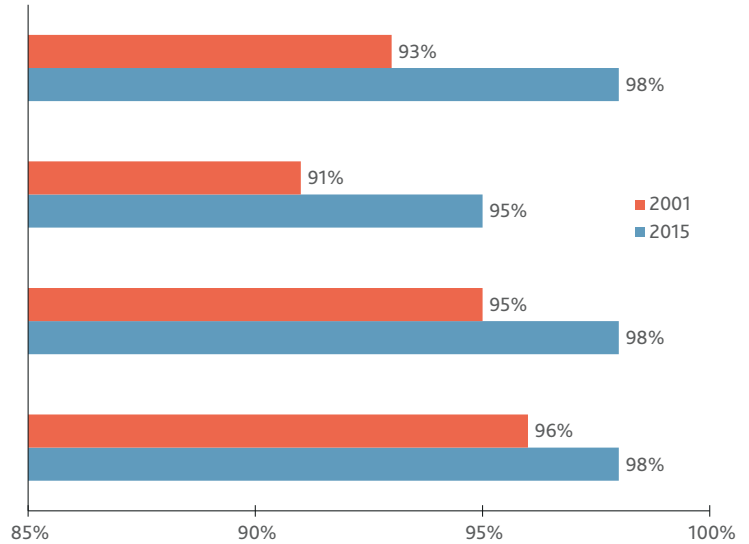
We asked:

How satisfied were you on the handling of your claim?

How satisfied overall were you with the services provided by defence counsel?

How satisfied were you on the outcome of your claim?

How satisfied overall were you with the services provided by claims counsel?



sensible. I was delighted with the service and the outcome.

- I most appreciated the calm, professional and understanding manner in which claims counsel conducted himself in dealing with me. Litigation is more than just laws, evidence and procedure. It is also about people. That point is often missed. Claims counsel understands the people aspect and, besides providing intelligent and informed advice and counsel, he addressed the "people" aspect very well.
- The Law Society Insurance resource for small firm practitioners is like having knowledgeable and experienced partners/associates to deal with difficult

issues as they arise, quickly and expertly. Thanks again.

Feedback is a gift. And thanks to so many insured lawyers taking just a few extra minutes to give us that gift through the survey, both claims counsel and the outside counsel we retain can continue to provide the exemplary service we want to deliver to BC lawyers.

2016 and beyond

1,135. That's the number of reports of claims and potential claims that LIF received in 2015, setting a new high watermark for reports in the program's 30-year history. Our

hope is to maintain the current insurance fee of \$1,750 again in 2017, but the fee is impacted by our claims experience. If last year's record repeats again in 2016, we may be dealing with a trend that could negatively impact the fee. Although we remain committed to managing claims cost-effectively, the strategies for avoiding situations that lead to claims and potential claims are within your control, not ours. Effective risk management by lawyers remains the single most effective way of reducing the cost of claims. By taking the steps that you need in your own practice to deliver your legal services safely, you'll help ensure that the 2015 experience is an anomaly, not the beginning of a different claims reality.

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