

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 2018 insurance program and policy revisions
- reviews statistics on claims and potential claims
- details three 'social engineering' scams that hit BC law firms in 2017
- highlights LIF resources that explain what's covered under the compulsory policy, and what's not
- reports on feedback on the Part B, Trust Protection Coverage experience from victims of lawyer theft

The 2018 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 or misrepresentations (Part C).

Insurance assessment

After seven consecutive years of maintaining the insurance fee at \$1,750, the Benchers approved a modest increase of \$50 to set the 2018 fee at \$1,800. The decision was based on a number of factors. Part A (negligence) claims continue to trend upwards in both frequency (number of claims) and severity (payments on claims). More payments are expected under Part C (trust shortage liability) as a result of the expanded coverage for certain social en-

gineering scams introduced last year, and some significant payments are expected on Part B coverage for lawyer theft. Given these factors, and recognizing that a small early adjustment may avoid more substantial increases later, the Benchers approved the increase. However, BC lawyers continue to benefit from a fee that compares very favourably with other Canadian programs (see chart on page 2). Further, unlike other programs, this single fee is all that is charged for both negligence (Part A) and theft (Part B) insurance.

Compulsory policy wording

LIF issued a consolidated policy for 2018, which was included with the December 2017 [Member's Manual amendment package](#). Other 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 Endorse-](#)

[ments](#)). For 2018, only a few small changes are made to clarify the policy's intent.

General

Declaration 3 sets out the limits of liability, and Declarations 3(a) and 3(e) set out the per-claim limits for Parts A and C. The wording relating to those limits is amended slightly to clarify that for any given claim, the limits of coverage include all related claims expenses and deductibles.

"Professional services" clarified

Lawyers in private practice are sometimes asked by clients to act as executors or in similar fiduciary capacities, or as patent or trademark agents. Revisions are made to paragraph (d) of the definition of "professional services" to emphasize that, in order to attract coverage for these services, both the services provided and the related appointment or retainer must be connected with and incidental to the lawyer's practice

of law. The revisions clarify that the policy does not respond to claims against lawyers who are appointed as a result of, for example, a familial relationship as opposed to a solicitor-client relationship.

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. The two charts on page 4 provide more information about the specific claims experience in 2017 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 “settlers’ 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)

In the 14 years that have passed since this coverage was introduced, total compensation of \$1,155,000 has been paid relating to 80 claims involving 25 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 2017, seven claims were paid on behalf of five different lawyers, totaling approximately \$45,000:

- A payment of \$4,100 was made to a claimant who inadvertently overpaid retainer funds to a lawyer for a patent application, and the lawyer failed to return the overpayment.
- A payment of \$1,500 was made on behalf of a lawyer who accepted retainer funds to pursue a small claims action. The lawyer did not complete the work and did not return the funds. A total of \$2,950 has now been paid on behalf of this lawyer under Part B.
- A payment of \$2,100 was made on behalf of a lawyer to whom a retainer was paid to complete the probate of a will. The lawyer provided no services and kept the retainer funds.

Are you insured for that risk?

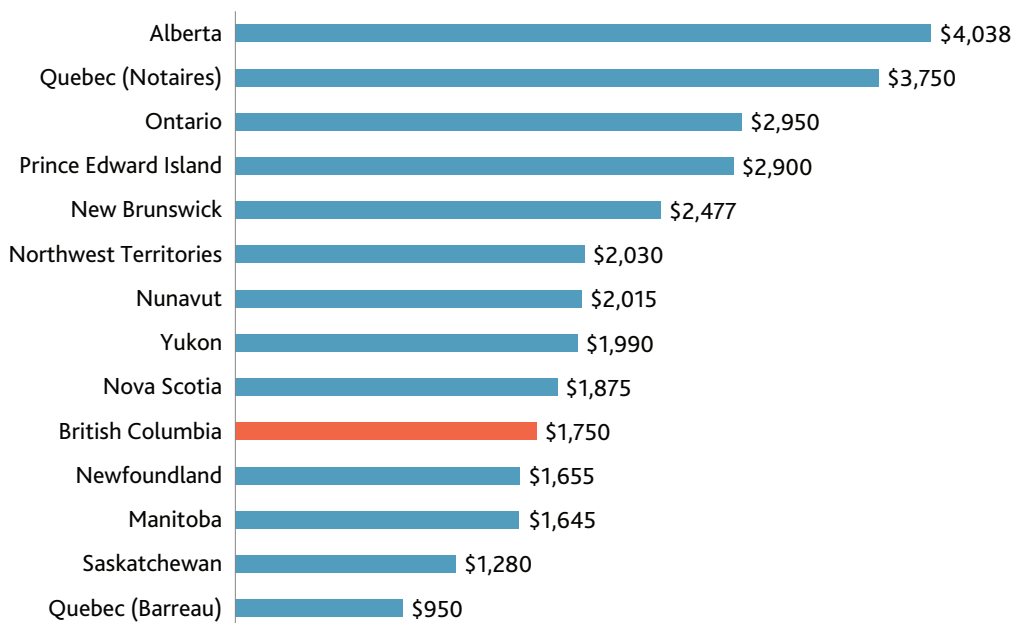
Talk to your broker about buying extra insurance to protect yourself from the risk of claims that the compulsory policy doesn't cover or that exceed its limits. Find out more about excess insurance and other liability insurance.

- Three payments totaling \$7,800 were made on behalf of a lawyer who was retained to act in various matrimonial matters. The lawyer misappropriated the retainer funds without providing any services in each case. A total of \$9,800 has now been paid on behalf of this lawyer under Part B.
- A payment of \$29,400 was made on behalf of a lawyer who misappropriated settlement funds held in trust after the conclusion of a matrimonial matter.

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

Other claims in 2017 were either with-

2017 INSURANCE PREMIUMS



drawn 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 2017, we recovered \$6,000 on behalf of two lawyers for whom we had paid Part B claims — we have now successfully recovered a total of over \$47,000 from these two lawyers. We also sued one former member for amounts paid under Part B, and that claim is ongoing.

Part C (trust shortage liability)

Part C provides some insurance for “social engineering” frauds, the scams that trick a lawyer into willingly paying funds out of trust through the intentional misrepresentation of some material fact. When it was introduced in 2012, Part C responded to lawyers targeted by the “bad cheque” social engineering scam. Part C was expanded last year 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.” In 2017, we received Part C reports from three BC law firms:

- In a variation of the “bad cheque” scam, a firm was contacted by an overseas business to facilitate the sale

of a large piece of construction equipment. The firm received a bank draft for the purchase of the equipment that was drawn on a Canadian bank and looked completely real. The lawyer sent the money on, only to later discover that the draft was fraudulent.

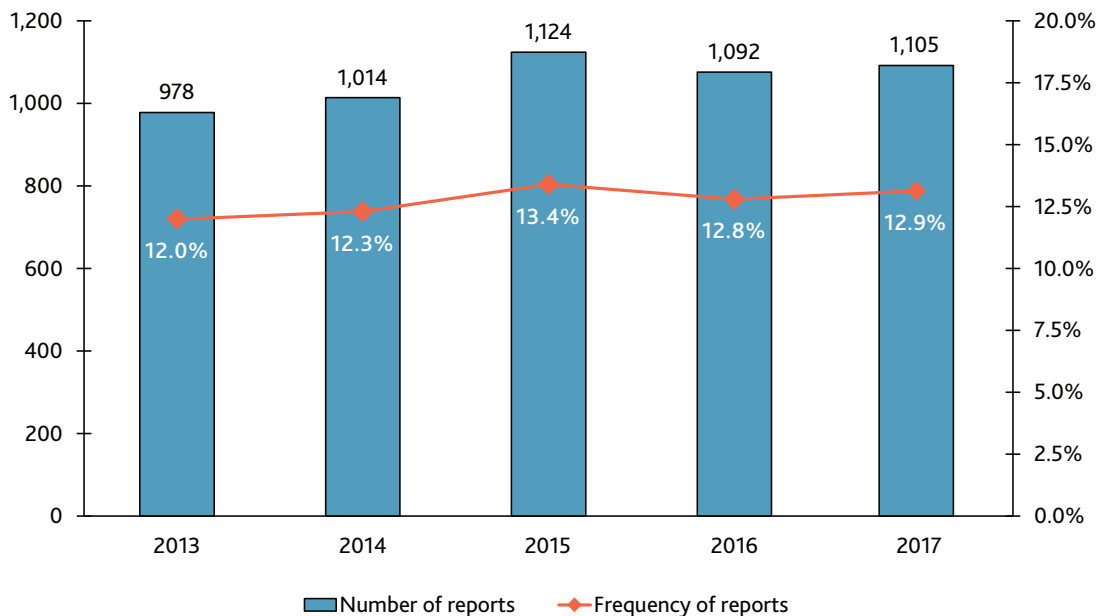
- In a “phony change in payment instructions” scam, a firm holding sale proceeds in trust for a real estate client had instructions to pay out the private lender. The firm received a change in payment instructions via email from someone the firm believed was the client’s lender but who was, in fact, a fraudster. The firm redirected millions of dollars in sale proceeds to the fraudster. In this case, the email address used by the fraudster was identical to that used by the client’s lender, except for one letter.
- In a “phony direction to pay” scam, the perpetrators hacked a firm’s computer and then monitored the firm’s email traffic for some time before making their move. As soon as the lawyer was on holiday, the fraudsters appear to have sent an email, directly from the lawyer’s own email account, urgently requesting that the lawyer’s assistant immedi-

ately transfer funds to a client’s bank account (in reality, the fraudsters’ account). Although the assistant attempted to reach the lawyer to confirm the instructions, the hackers intercepted and blocked her telephone calls. In addition, they responded to her email request to the lawyer to please telephone her by sending an email, again from the lawyer’s account, advising that he was tied up and unable to speak. The funds were transferred, leaving the firm with a significant trust shortage.

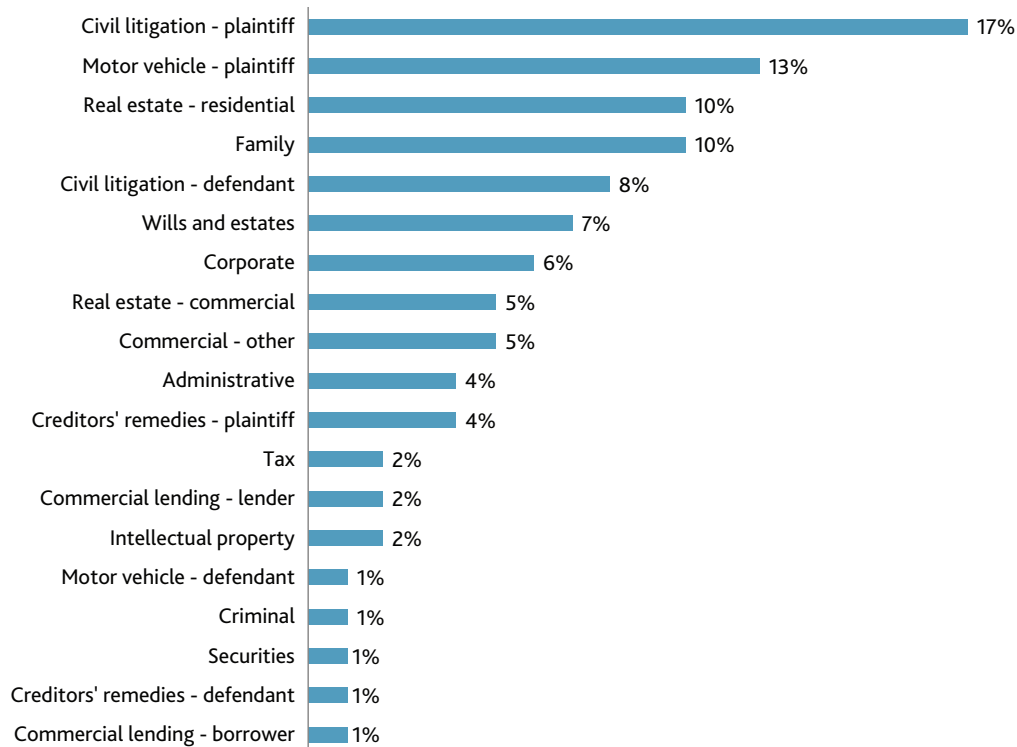
Don’t get caught in 2018. Learn about these scams and the steps that you can take to avoid them. Review our website material on the [bad cheque scam](#) — including the [list of names and documents](#) used by fraudsters — and on [other social engineering scams](#), including phony changes in payment instructions. In addition, share the Law Society’s email fraud alerts with your staff.

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 author. Establish protocols for transferring funds and adhere to them.

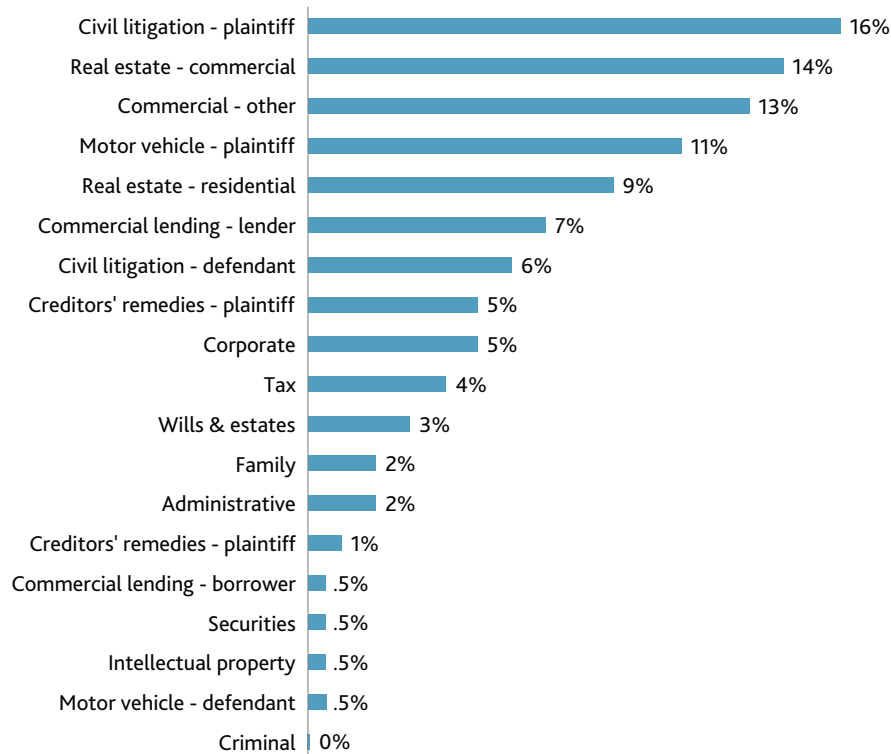
NUMBER AND FREQUENCY OF REPORTS



FREQUENCY OF REPORTS BY AREA OF LAW – 2017



SEVERITY OF REPORTS BY AREA OF LAW – 2017



Your compulsory policy: What's covered and what's not

You'll notice a brand new flag in this *Insurance Issues*. Are you insured for that risk? (page 2) repeats our biggest risk management message of 2017:

As a lawyer in private practice, you face risks. And because potential risks can turn into unpleasant realities, effective risk management begins with understanding what's covered under the compulsory policy — and what's not. By appreciating your exposure to uncovered risks, you can either avoid them entirely or buy other insurance that will respond if you do get tripped up.

Coverage under the compulsory policy is generous. However, as with every insurance program, there are limits. Good stewardship of the fund means providing reasonable coverage with limits that protect it from inordinate, unpredictable risks, particularly in situations in which they can be effectively managed by firms and insured through the commercial market. That's why we focused last year on the "are you insured for that risk?" message.

We delivered the message, along with the tools lawyers need to understand and manage the risk of uncovered



Two of our claims counsel, Maryanne Prohl and Coran Cooper-Stephenson presenting *Under the covers: Discover the insurance you need to sleep safe and sound.*

risks, in various ways. As the resources that we developed will help you stay safe again in 2018 and in the future, here's the comprehensive list:

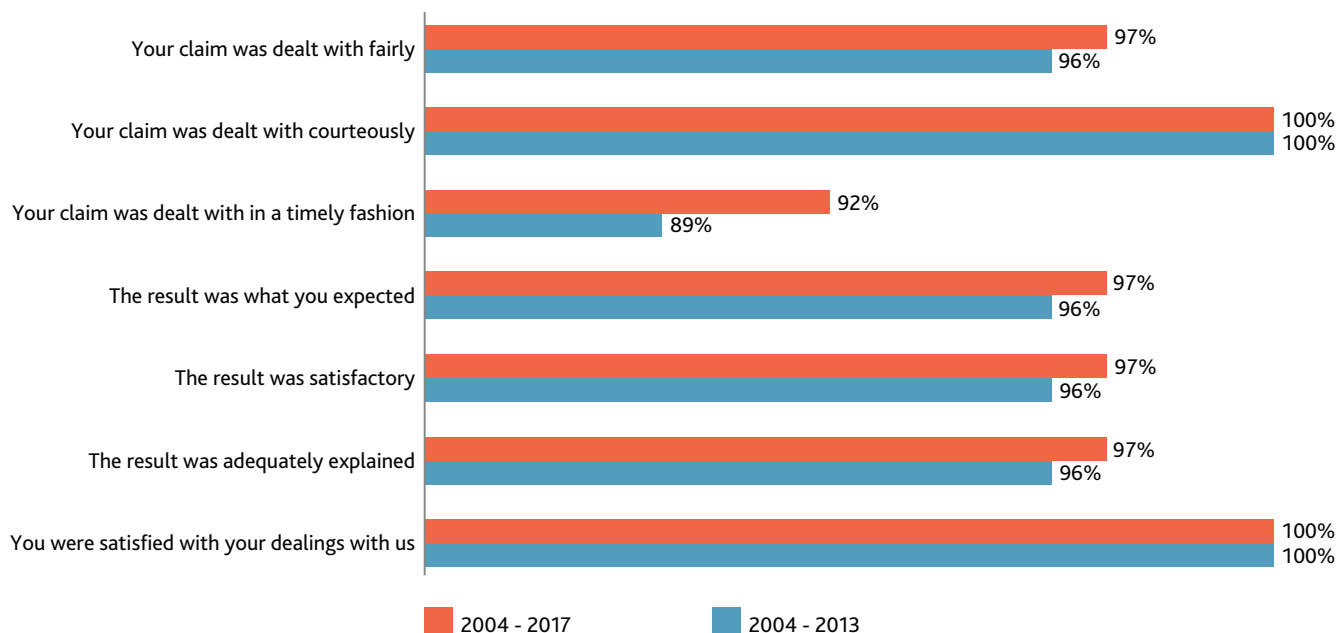
- We published '[Cover Pages: A guide to insurance for private practitioners](#)'. This short, easy-to-read brochure gives you a handy summary of the risks that you face as a practitioner and as a business person, and the insurance that's either provided through the compulsory policy or available for purchase through your broker. It starts with an overview of the risks and the insurance available, and then offers a closer look with de-

tails such as limits and deductibles. It also gives you a list of what's covered and what's not under Part A of the policy, Professional Liability (for negligence).

- We sent two of our claims counsel, Coran Cooper-Stephenson and Maryanne Prohl, on a CLEBC road show to deliver *Under the covers: Discover the insurance you need to sleep safe and sound*. This 15 minute presentation starts by explaining the policy and its coverage, then highlights the commercial insurance policies available to protect you from other risks, from a big claim that costs more than the

CLAIMANT FEEDBACK

(Percentage of claimants satisfied or very satisfied with our services)



policy's \$1 million limit, to a non-lawyer employee stealing your trust funds, to a data breach. The presentation is scheduled for more CLEBC conferences in 2018, and a recording will then be posted to our website.

- We made our web information about coverage, insurance and fraud risk management easy to read and accessible. In addition to *Cover Pages*, here's what you can find and where:

My Insurance Policy: Questions & Answers

Our plain-language explanation of the policy answers basic questions such as "How much will my policy pay each year?", explains what claims and activities are covered or excluded, and details your responsibilities as an insured.

Commercial Liability Insurance

This page offers information about excess and other commercial insurance for claims that our policy does not cover. It explains that crime (fidelity) for employee fraud or theft can include social engineering and funds transfer fraud coverages that will respond if you or your bank accounts are the target of a fraudster, and that cyber liability insurance can respond to a loss of data or a data breach. It includes a list of brokers through which the majority of excess policies are sold to BC law firms and that have information about other insurance policies for risks you may face.

Fraud Prevention

This section delivers the information that you need to stay safe from fraudsters. It explains how the different scams work and the steps that you can take to avoid getting caught. It includes sections dedicated to the "bad cheque" scam and other social engineering frauds, real estate value and identity frauds, and fraudulent investment schemes. We've also added to our section on employee fraud and cybercrimes — frauds that are not covered under the policy

— by giving you ten simple steps that you can start with to protect your systems and your data from cybercrimes.

To help you remember the importance of understanding the scope and limits of the compulsory policy, we will continue to use the "Are you insured for that risk?" reminder flag in future reports.

Part B (theft): Feedback from victims

Each year, we report on the claims that we pay under Part B, Trust Protection Coverage (TPC). These payments help address the financial loss suffered by victims of lawyer theft. However, ensuring that victims perceive the payment process itself as thorough, fair and timely is a critical step in mending another casualty of lawyer theft: a broken trust with the legal profession. To find out if we are effective, we ask claimants to complete a Service Evaluation Form and rate their satisfaction in a number of areas. In 2014, in our special report on Part B, Trust Protection Coverage: the first ten years, we advised that most, if not all, claimants were satisfied with the process and with their experience with us. In the years since, the program has continued to engender positive feedback, as the chart *Claimant feedback* (page 5) demonstrates.

We also ask for feedback, positive ('kudos') and negative ('grumbles'), and follow up if anything suggests that there is room for improvement. When asked, "What did you most appreciate about your experience with TPC and LIF?" claimants said:

- "That it exists."
- "I thank [claims counsel] for all the hard work and his professional work, and I hope no one goes through what I went through with my ex-lawyer."
- "Thank you, thank you, thank you [claims counsel]. I am so grateful for the work

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. Report a claim or potential claim.

and caring of this man. The result was not what I expected — thank goodness for that. I expected either to be passed to a costly lawyer or told there was nothing the Law Society could do about a lawyer who closed his practice and pulled his licence."

- "This has been an experience that has been stress-free and an end to an otherwise bad situation. Thanks, good job!"
- "The professional conduct displayed followed with kindness and compassion for my situation. Thank you [claims counsel]."

2018 and beyond

Last year, we identified 2015 and 2016 as high watermark years for the program in terms of numbers of reports and the amounts paid in indemnity and expense. Although we had hoped that these years were anomalies, it appears that we may well be dealing with an upward trend in both. The 2018 fee has been increased to address this, but careful practice and risk management remain the most effective tools for controlling the number and cost of claims. Your commitment to both is the key to sustaining a favourable insurance fee in the future.

