



# Annual Report

2018

Alberta Lawyers Insurance Association and Alberta Lawyers Insurance Exchange

## TABLE OF CONTENTS

A Message from the President and CEO, ALIA and ALIEX .....	3
About ALIA.....	8
About ALIEX .....	8
ALIEX Advisory Board .....	8
ALIEX Advisory Board Members in 2018.....	9
President and Chief Executive Officer .....	9
Auditors.....	9
Program Investment Manager .....	9
Program Actuary .....	9
2018 Financials.....	9
Claims Overview.....	10
Distribution of Professional Liability Claims by Area of Law.....	10
Policy Year 2018.....	10
Policy Years 2014-2018 .....	11
Incurred Damages and Defence Costs by Area of Law .....	13
Policy Years 2014-2018 .....	13
Reason/Cause for Professional Liability Insurance Claims .....	13
Professional Liability Claims .....	14
Breakdown of Claims by Area of Law .....	14
Part B Misappropriation Claims .....	14
2018 Program Initiatives .....	15
ALIAAlerts.....	15
ALIA Receives a 92% Satisfaction Rating from Members .....	15
Upcoming Initiatives .....	16
Report a Claim.....	16
Contact .....	16

## A Message from the President and CEO, ALIA and ALIEX

In recognition of the 30<sup>th</sup> anniversary of Alberta's lawyers' indemnity program, I am forgoing a traditional message from the CEO and instead providing the following highlights of the program's history.

### A LOOK BACK ON OVER 30 YEARS OF ALIA'S HISTORY

In the late 1960s, Alberta was the first jurisdiction in Canada to implement mandatory professional liability coverage for lawyers. Mandatory coverage was – and is – seen as a way to both protect lawyers from personal financial exposure in the event of an error and also to compensate members of the public who have suffered financial losses due to the negligence of a lawyer.

The history that has led the professional indemnity program to where it is today is one that has benefited from the hard work and foresight of many people, with periodic reviews and recalibrations to ensure that it continued – and continues – to meet the needs of its stakeholders. The brief summary set out below is based on my understanding of historic events as supported by available documentation and commentary by persons involved from time to time<sup>1</sup>.

In 1966, the Law Society of Alberta's Board of Directors (the "**Benchers**") established a special committee chaired by the late Mr. Justice Moir to study the issue of group insurance. His report was presented to the Benchers in January 1968 with the recommendation that the Law Society of Alberta ("**Law Society**") provide mandatory group liability coverage. With positive feedback from the bar, the Benchers adopted the recommendation in 1969.

Initially, the Law Society would purchase coverage from a commercial insurer that would issue a master policy to the Law Society for the benefit of its members (i.e. all participating lawyers) and certificates of insurance would be issued by the Law Society. The cost of the premium was recovered by a levy on each member (the "**Levy**").

To monitor insurance concerns, a standing committee (unsurprisingly, called the Insurance Committee) was established by the Benchers. In taking these steps, Alberta became the first jurisdiction in Canada to provide its members with a mandatory group professional indemnity program.

Other Canadian law societies gradually entered into self-indemnity programs, retaining risk through a deductible on each claim.

Between 1972 and 1983, the professional liability indemnity program was insured through Citadel Assurance Company. The rising cost of claims in Alberta necessitated higher levies and deductibles. In 1982, the individual deductible was increased from \$2,000 to \$5,000 and the Levy was increased by over 40% from the previous year.

Further Levy increases would follow.

---

<sup>1</sup> I acknowledge, with appreciation, speaking notes and messages prepared by Lisa Sabo, ALIA's former Director of Insurance, and Don Thompson Q.C., former Executive Director of the Law Society of Alberta as well as minutes of various Law Society of Alberta Bencher committees.

With a threatened increase of 60% in 1985, which would have seen the 1984 Levy of \$1,200 increase to over \$2,000 for the first time, it became apparent that the operation of the indemnity program might not be a sustainable solution.

Law societies, as insurance consumers, only had access to commercial insurance markets and, accordingly, were extremely vulnerable to fluctuations in the insurance market. Further, the number of insurers offering coverage was very limited. The fact that law societies were at the mercy of the market caused considerable discomfort among the law societies and their members. During the liability insurance market crisis of the mid-1980s, price and availability for this coverage grew increasingly volatile.

In 1985, the Law Society used the accumulated surplus in its Insurance Fund to offset further potential increases and keep the actual increase to the individual members to 20%. This action set the precedent for using accumulated surplus to offset the actual cost of the insurance charged to the members.

The Law Society looked for other solutions. As a first step in shifting some of the costs of the indemnity program to those members who create a disproportionate financial burden to it, in July 1985, the Benchers approved assessing a surcharge to the Levy of members with a paid claims history (i.e. an additional levy to be paid by those members for whom the indemnity program had made indemnity payments to clients or other members of the public).

While these steps were helpful, they were still not a complete solution. In particular, it was clear that using the accumulated surplus to keep the Levy artificially low could only last as long as that fund, and when it was ultimately depleted, a massive jump in the Levy would be required.

Vulnerable to the changing market, Canadian law societies were unable to modify the programs to keep pace with the increasing need for higher coverage limits, and both the members and the public were increasingly less protected.

Although the claims history in Alberta was worse than most other Canadian jurisdictions, the issue was national; Canadian law societies were facing steep premium hikes for their members. As a result, a group of Alberta practitioners, led by Donald Bishop, Q.C. (former president of the Law Society), the late Bernard Kelly, Q.C., Neil Wittmann, Q.C., the Honourable Alec Murray, and Sarah Burkett began advocating for a national lawyers insurance program that would make the profession indirectly self-insured or, at the least, provide a competitive purchasing alternative.

For a few years, the Federation of Law Societies of Canada<sup>2</sup> (the “**Federation**”) discussed the idea of a national professional liability program.

In late 1985, the Federation requested a feasibility study be undertaken on a national basis for both the mandatory level and voluntary excess level of professional liability insurance. A preliminary report was prepared by the Wyatt company (then the Law Society’s actuary).

The report recognized that, despite the need for a national professional liability program, there could not be a system that would be all things to all people or satisfy all of the stakeholders. A balance between the defence of lawyers and the payment of claims would have to exist. Further, although the public interest

---

<sup>2</sup> The national coordinating body of Canada’s provincial and territorial law societies (soon to be led by ALIA’s Chair, Steve Raby, Q.C.).

would be generally protected, some types of losses would not be covered, and limits on the amount of payments would be required for the program to be sustainable.

At the 1986 midwinter meeting of the Federation, it resolved to gather facts from the law societies through a questionnaire and have an expert proceed with the study and bring forward recommendations. One option was to establish a reciprocal insurance exchange, a form of unincorporated insurance company in which subscribers exchange policies. By banding together to form such an insurance company, the law societies would have access to direct insurance markets that would recognize the years of Canadian-specific claims history the law societies had built. Other options considered and rejected included a domestic captive and an offshore captive.

Based on those recommendations, brought back to the Federation in July 1986, the Federation formed an implementation committee in August 1987 for the purpose of creating a national professional liability program.

At an historic meeting in Montréal, the Canadian Lawyers Insurance Association (“**CLIA**”) was formed involving seven provinces, including Alberta. CLIA adopted an implementation date of July 1, 1988. Forged in an insurance crisis over 30 years ago, CLIA provided reliable, stable premiums on a not-for-profit basis. Excess insurance was also marketed, and, in November 1988, Alberta lawyers obtained mandatory insurance liability coverage through CLIA for the first time.

Phyllis Smith, an instrumental driving force in ensuring appropriate insurance coverage for Alberta lawyers, served as a member of CLIA’s Advisory Board from 1989 to 2012, including serving as its Chair from 2000 to 2006<sup>3</sup>.

In 1988, when the eyes of the world were on Calgary as host of the Winter Olympic Games, lawyers on behalf of the Law Society were researching opinions on what form Alberta’s indemnity company should take. The decision was made to create the Alberta Lawyers Public Protection Association (“**ALPPA**”) as a corporation whose shares would all be held by the Law Society.

For the first time, stable and fair rates and a permanent source of coverage were now within reach.

Based on advice from Law Society counsel and Price Waterhouse, in August 1988, it was determined that there should be a separation of financial reporting and internal controls between the Law Society and ALPPA, with the latter hiring its own employees, having separate books and financial reports, and operating as a separate entity effective August 1988.

At their February 1989 Convocation, the Benchers resolved, again based on legal advice, that the indemnity corporation should have its own board of directors and executive. It was resolved that all members of the Benchers’ Insurance Committee become members of ALPPA’s Board of Directors. Leading the new entity was its President (Mr. W. S. Sowa), supported by its Insurance Administrator (Ms. Sarah Brickett) and Treasurer (Mr. M. L. Scott).

---

<sup>3</sup> Phyllis Smith, Q.C., continues to serve the Alberta lawyers who participate in the indemnity program, using her expertise to defend them and sharing her experience and wisdom with ALIA’s management.

In July 1999, ALPPA changed its name to become the Alberta Lawyers Insurance Association (“ALIA”) to remove the implication that its primary objective was “public protection” and to clarify that its primary objective was insuring lawyers.

From 1988 through to 2014, CLIA wrote the group policy for Alberta lawyers, with all claims management being handled by ALIA.

Although the CLIA solution was a good one, over time it became less desirable. By the time ALIA left CLIA at the end of June 2014, it was by far the largest participant in that national program. As the largest participant, ALIA had both the greatest risk in the program and the highest premiums but did not have commensurate control over CLIA.

The decision was made by the Law Society and ALIA<sup>4</sup> to implement a “made in Alberta” solution by creating a reciprocal insurance exchange for the sole benefit of Alberta lawyers. Accordingly, in 2014 the Alberta Lawyers Insurance Exchange (“ALIEX”) was created to replace Alberta’s participation in CLIA.

As a reciprocal insurance exchange, ALIEX was regulated by Alberta’s Superintendent of Insurance (“SOI”), pursuant to the *Insurance Act* (Alberta). In accordance with the requirements of the *Insurance Act*, the Benchers appointed an Advisory Board for ALIEX, comprised of Steve Raby (Chair), Larry Ohlhauser (Vice-Chair), Carsten Jensen, Anne Kirker, Doug McKenzie, Dale Spackman (Corporate Secretary), Kathleen Waters and Don Thompson, three of whom<sup>5</sup> continue to serve as directors of the indemnity program.

At the time ALIEX was being created, regulation of reciprocal insurance companies in Alberta was not robust. Due to the failure of an unrelated Alberta reciprocal and other regulatory changes, the SOI took corrective action and Alberta became arguably the most heavily regulated jurisdiction for reciprocal insurance companies. The cost of compliance with the directives of the SOI, combined with required payments of premium tax and restrictions on ALIEX’s investments, contributes to the cost of the Levy paid by Alberta lawyers. ALIEX, ALIA and the Law Society are examining the opportunity for the program to operate more efficiently and effectively outside of the regime created by the SOI and the *Insurance Act*. This will involve moving the indemnity program from a regulated reciprocal to an indemnification program, as described in the *Legal Profession Act*, thereby reorganizing it outside of the auspices of the SOI and the *Insurance Act*.

Today, ALIA manages Alberta’s mandatory indemnity program for the approximately 6,800 participating Alberta lawyers<sup>6</sup>.

Although ALIA has overcome various challenges over the past 30 years, the challenges facing ALIA are by no means behind it. For example, we are again facing a hardening market in lawyers’ professional insurance around the world. This impacts ALIA and its participating lawyers, as ALIA purchases reinsurance to limit its losses and to avoid the likelihood of a special assessment on its participating

---

<sup>4</sup> Although ALIA’s sole shareholder is the Law Society, ALIA remains a separate corporate entity from the Law Society.

<sup>5</sup> Steve Raby (Chair), Larry Ohlhauser (Vice-Chair) and Dale Spackman (Corporate Secretary).

<sup>6</sup> Approximately 3,500 Alberta lawyers, generally comprised of in-house counsel and government lawyers, are exempt from participating in the mandatory indemnity program. Further, Alberta lawyers who provide pro bono services through certain recognized organizations are indemnified through the indemnity program but do not pay the Levy.

lawyers. Further, with rapid changes in the way lawyers will practice in the future, ALIA must be agile in addressing those changes, while continuing to ensure the program is sustainable.

ALIA has supported and defended the finances and reputation of Alberta lawyers for over 30 years and, over the same period of time, has compensated members of the public who have suffered financial losses due to the negligence of a participating lawyer. Further, ALIA has helped the profession weather the global economic crisis, Alberta's economic downturn, Alberta's mortgage fraud crisis from 2008 to 2011, and the vicissitudes of oil and gas prices, and looks forward to continuing to be there for its stakeholders in the future.

David Weyant, Q.C.  
President and Chief Executive Officer, ALIA and ALIEX

## About ALIA

Established in 1988, ALIA was created by its sole shareholder, the Law Society, to manage the mandatory indemnity program (the “**Program**”) for Alberta lawyers. This includes receiving and examining all claims, resolving claims by providing compensation when appropriate, and retaining external lawyers to litigate claims, when required. ALIA also acts as the Principal Attorney of ALIEX.

Each of the approximately 6,700 lawyers in private practice in Alberta must purchase a base level of professional liability and misappropriation coverage through ALIA. ALIA’s Board of Directors is comprised of four ex officio directors who are responsible for overseeing those operations of the Program that have not been transferred to the ALIEX Advisory Board.

## About ALIEX

ALIEX is a reciprocal insurance exchange licensed and regulated by Alberta’s Superintendent of Insurance under the *Insurance Act* (Alberta) in the same manner as a commercial insurance company. It was formed on June 1, 2014, by an agreement between ALIA, the Law Society, and the Law Society’s members.

In addition to writing the professional liability insurance policy administered by ALIA, ALIEX also writes the “trust safety” or misappropriation insurance that now compensates victims who previously made claims against the Law Society’s Assurance Fund. ALIEX retains ALIA to administer all claims. Although ALIEX has no employees (it operates through ALIA), it has its own board of directors who have significant experience in the insurance industry, the legal profession, governance and finance. In accordance with the direction of Alberta’s Superintendent of Insurance, ALIEX’s Board conducts itself as if it were a corporate board.

## ALIEX Advisory Board

The ALIEX Advisory Board (“the **Board**”) is comprised of up to 10 Directors, each serving terms of up to three years with the option for reappointment. The Law Society’s Board (“the **Benchers**”) appoints each Director and the Board reports to the Benchers, through the Board’s Chair.

The Board is responsible for ensuring that ALIEX operates in accordance with the Rules of the Law Society, the ALIEX Subscribers Agreement, the policies of the Superintendent of Insurance and all other relevant governing documents and policies. The Board is also responsible for compliance with the requirements of the *Insurance Act* (Alberta) and all other applicable legislation.

The Board oversees the professional liability and misappropriation insurance program and provides financial oversight for the Program, including approval of ALIEX’s budget and financial statements, and supervises the management, administration and investments of the funds of both ALIA and ALIEX.

Further, the Board reviews the draft budget and financial statements of ALIA and makes recommendations for approval to the ALIA Board of Directors, as well as undertaking certain governance functions on behalf of ALIA.



## **ALIEX Advisory Board Members in 2018**

- Steve Raby, Q.C., Chair
- Larry Ohlhauser, MD, Vice-Chair
- Dale Spackman, Q.C., Secretary
- Don Thompson, Q.C., Chief Executive Officer
- Rob Armstrong, Q.C., Director
- Diane Brickner, CIP, ICD.D, Director
- Michael Thompson, LLB, MBA, ICD.D, Director
- Linda Vennard, CA, CPA, Director
- Nancy Dilts, JD, Director<sup>7</sup>
- Carsten Jensen, Q.C., Director<sup>8</sup>
- Sheri Epp, BA, LLB, Director<sup>9</sup>
- Zoe Harrison, B.Comm, CRM, Director<sup>10</sup>

## **President and Chief Executive Officer**

David Weyant, Q.C.

## **Auditors**

PricewaterhouseCoopers

## **Program Investment Manager**

Mawer Investment Management Ltd.

## **Program Actuary**

Nicolas Beaudoin, Willis Towers Watson

## **2018 Financials**

By a Management Arrangement between ALIA and the Law Society, the Law Society's management is responsible for the preparation and fair presentation of annual financial statements on behalf of the Program in accordance with Canadian accounting standards for not-for-profit organizations.

To assist management in fulfilling its responsibilities, internal controls are in place to provide reasonable assurance that the financial statements are accurate and reliable. The financial statements are then approved by the Board.

The Board and ALIA's Board appoint external auditors each year to audit the financial records and internal controls of the Program and to express an opinion as to the fair presentation of the financial statements in accordance with the relevant accounting standards.

The Program's 2018 Financial Statements, as well as past statements, can be found on [ALIA's website](#).

---

<sup>7</sup> Resigned May 4, 2018, upon appointment as a Justice of the Court of Queen's Bench

<sup>8</sup> Term ended June 9, 2018

<sup>9</sup> Appointed June 10, 2018

<sup>10</sup> Appointed June 10, 2018

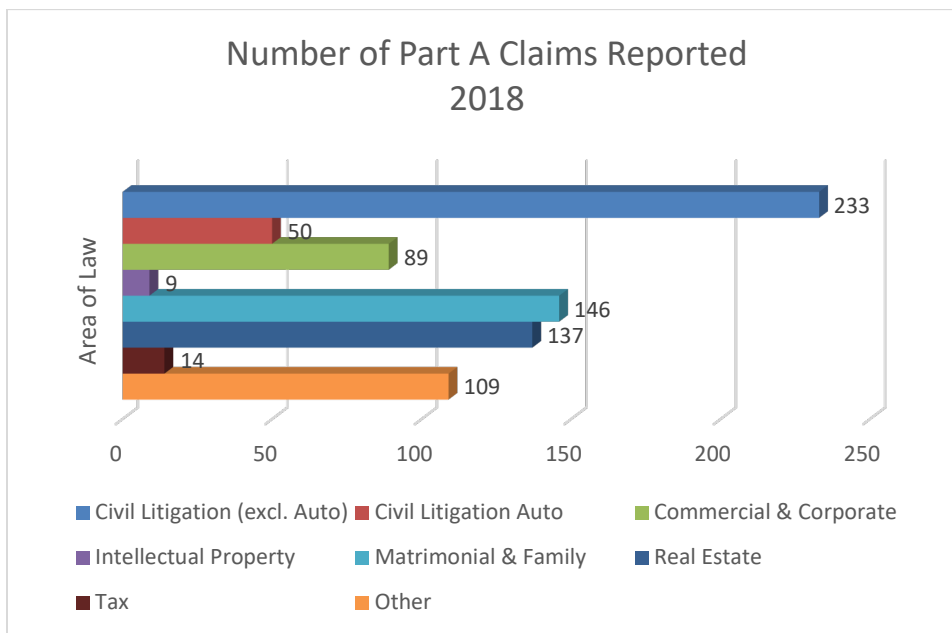
## Claims Overview<sup>11</sup>

The Program covers errors in the negligent rendering of professional services by an insured lawyer (“**Part A**”) and misappropriation by an insured lawyer (“**Part B**”), subject to the terms of the insurance policy.

The number of total claims reported by insured Alberta lawyers continues to rise. In 2018, this was driven by an increase in the number of Part A professional liability claims that rose from 733 to 787. There were also 23 Part B misappropriation claims, a decrease from 2017’s 35.

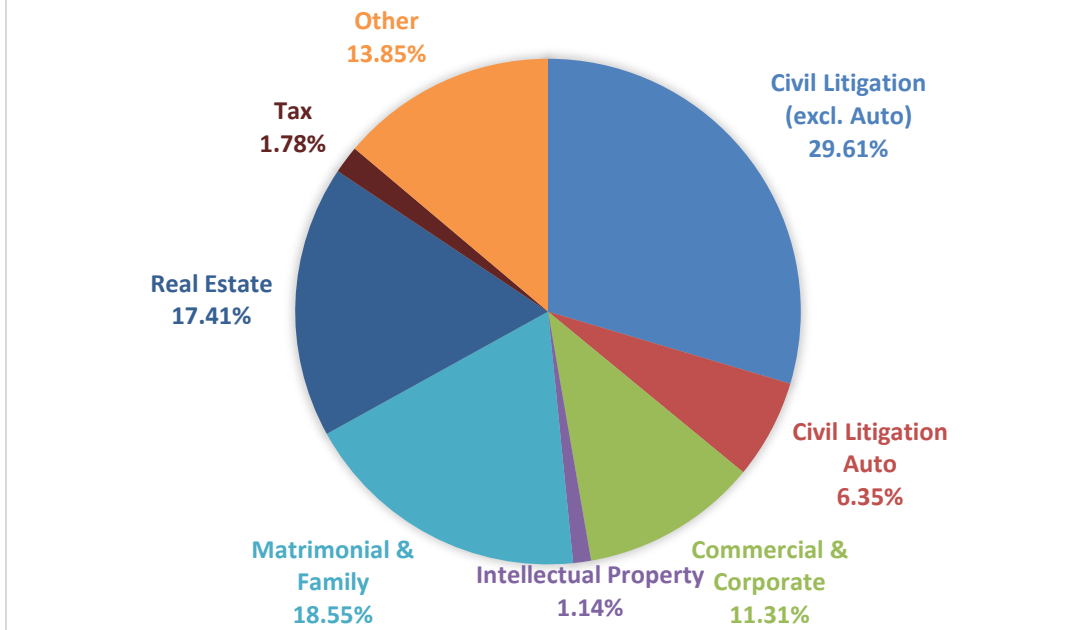
### Distribution of Professional Liability Claims by Area of Law

#### Policy Year 2018



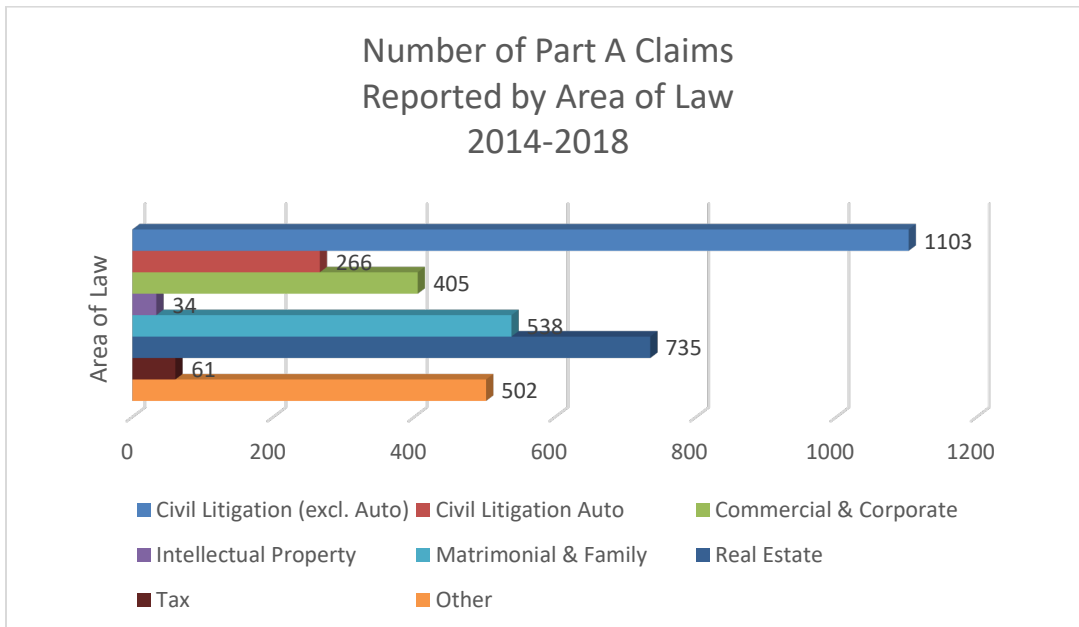
<sup>11</sup> Numbers are based on Policy Year – July 1, 2017, to June 30, 2018

### Percentage of Part A Claims by Area of Law 2018

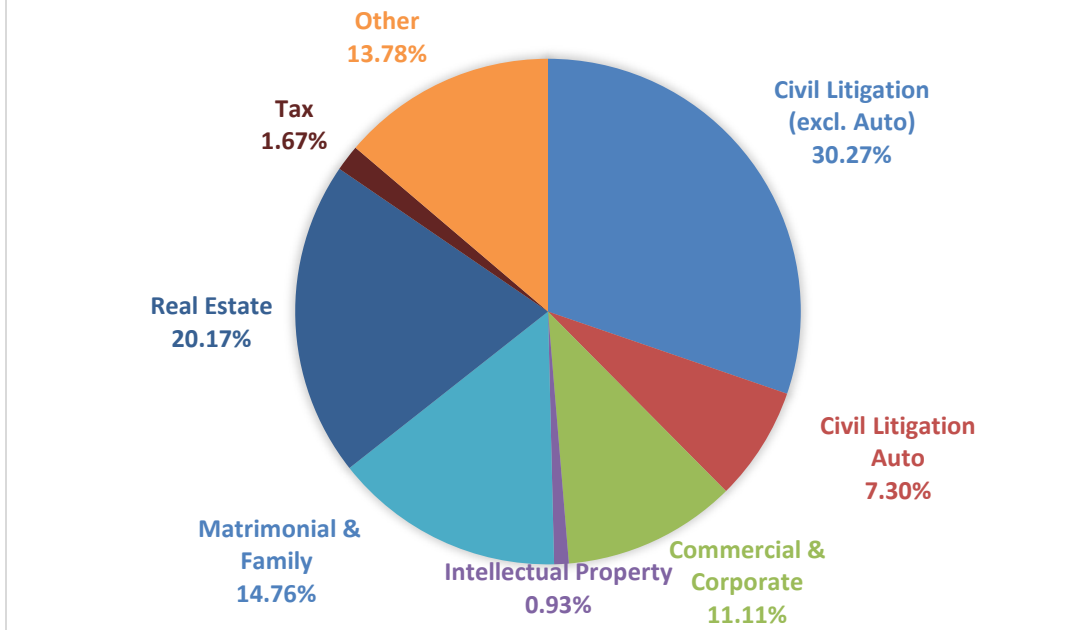


### Policy Years 2014-2018

### Number of Part A Claims Reported by Area of Law 2014-2018



Percentage of Part A Claims by Area of Law  
2014-2018

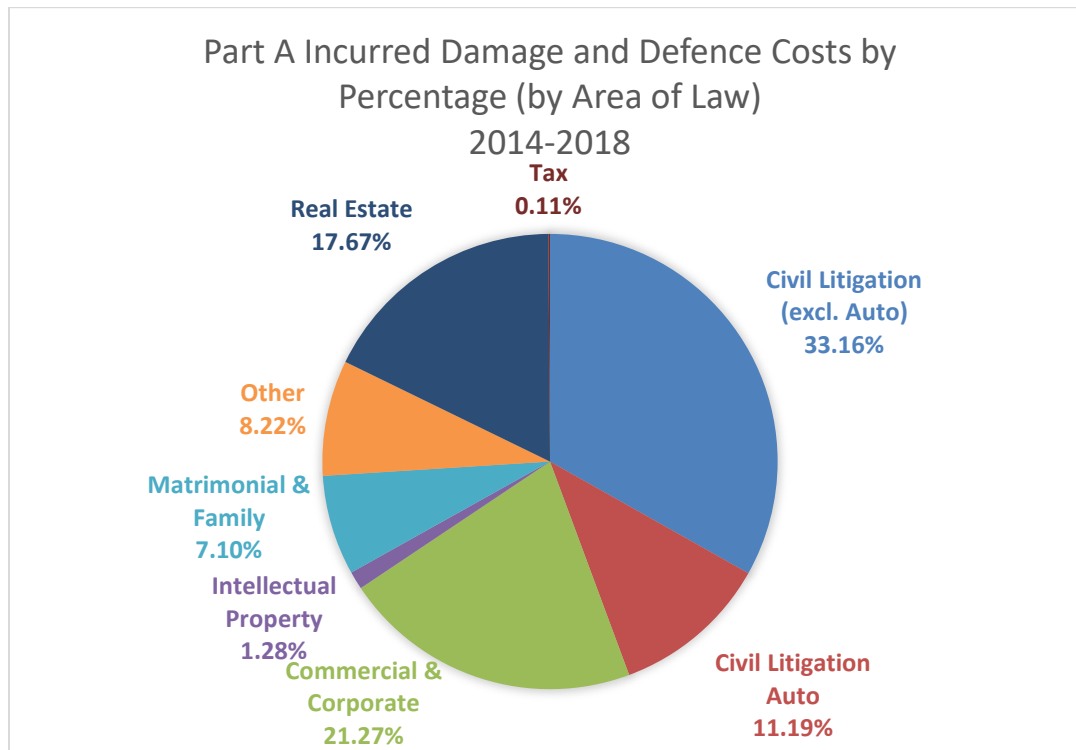


The total paid out by the Program in 2018 for Part A, professional liability claims was \$20,078,048, a slight decrease from the \$20,097,789 paid out in 2017. The incurred losses on misappropriation claims decreased by 33%, from \$76,543 in 2017 to \$51,487.

**\$20,078,048**  
Total claims paid out in 2018

## Incurred Damages and Defence Costs by Area of Law

Policy Years 2014-2018



### Reason/Cause for Professional Liability Insurance Claims

Because the Program operates on a not-for-profit basis, there is a direct connection between the amount the Program pays out to defend insured lawyers and satisfy claims against them and the total amount of the levy assessed on insured lawyers.

ALIA is committed to helping lawyers reduce the number of avoidable claims that impact the levy charged each year to insured lawyers and to avoid the need for clients to make claims against their lawyer's insurance. Accordingly, one of the goals of the Program is enhanced loss prevention in various ways, including highlighting the avoidable causes of insurance claims.

**61% of claims  
Due to Communications  
or Practice Management**

Historical trending indicates the primary reasons for professional liability claims are attributed to communications (failure to follow client instructions), practice management (clerical errors) and failure to advance an action in a timely manner, resulting in actions being struck pursuant to Rules 4.31 and 4.33 of the Alberta Rules of Court.

The causes behind these issues can often be addressed easily, and the lawyers involved could avoid these costly claims. Lawyers can use Law Society resources, such as Practice Advisors, to learn more about how to establish processes to address administrative, procedural and system issues.

### Reason/Cause for Part A Claims (2016-2018)

Reason / Cause for each claim	2018	2017	2016
Communication	34%	33%	36%
Systems/Procedures/Administrative	27%	32%	31%
Law	21%	16%	18%
Conflict	8%	12%	9%
Fee Dispute	4%	4%	3%
Delegation/Supervision	4%	3%	3%
Mortgage Fraud	1%	0%	0%
Fraud by Client/Other Party Dispute	1%	0%	0%

### Professional Liability Claims

Lawyers are human and, from time to time, make mistakes. Some of those mistakes result in their client suffering a financial loss. One of the primary reasons the Program exists is to compensate the client or other members of the public for such losses.

### Breakdown of Claims by Area of Law

Policy Year	Civil Litigation (excluding Auto)	Civil Litigation Auto	Commercial & Corporate	Intellectual Property	Family	Real Estate	Tax	Other
2009	210	95	105	7	56	353	12	77
2010	202	90	112	4	99	336	7	103
2011	193	76	110	9	84	204	16	82
2012	196	64	121	6	96	231	10	79
2013	172	55	86	8	75	124	13	90
2014	206	77	87	3	90	166	11	100
2015	210	47	59	7	88	154	12	83
2016	230	50	88	10	96	143	9	99
2017	224	42	82	5	118	135	15	111
2018	233	50	89	9	146	137	14	109

### Part B Misappropriation Claims

**Misappropriation coverage is not just for theft from trust accounts.** ALIA is frequently asked why lawyers who do not maintain trust accounts are still required to have “trust safety” insurance. The confusion arises because people assume the word “trust” refers to *trust* accounts, whereas it actually refers to

compensation for misappropriated money, securities or property *entrusted* to the lawyer (in the lawyer's capacity as a barrister or solicitor).

The fact that this insurance does not just address theft from trust accounts makes sense, as the theft may arise by lawyers not actually putting the funds into a trust account.

A small number of lawyers breach their clients' trust and misappropriate money, securities or other property each year. The impact is felt by all lawyers because these actions cause damage to the profession's reputation. These actions also result in payments under the Program, which result in higher levies for all insured lawyers.

In 2018, the Program received 26 misappropriation claims against four lawyers.

From its inception in 2014 to December 2018, ALIA returned \$338,411 to 101 victims as a result of misappropriation insurance claims.<sup>12</sup>

## 2018 Program Initiatives

### ALIA Alerts

ALIA has instituted notices, emailed to its members, called ALIA Alerts.

ALIA uses its [ALIA Alert](#) program to share tips and information to help lawyers identify, avoid and report schemes and scams targeting Alberta lawyers. In 2018, ALIA brought awareness to a number of fraud related schemes, some examples of which are as follows:

<b>June 29, 2018</b>	<a href="#"><u>A Fraudster Sitting Across the Desk from You?</u></a>
<b>June 20, 2018</b>	<a href="#"><u>Bad Cheque and Social Engineering Scams Continue into Summer</u></a>
<b>April 19, 2018</b>	<a href="#"><u>A New Twist on the Bad Cheque Scam</u></a>
<b>April 16, 2018</b>	<a href="#"><u>The Separation Agreement Scam is Back Again</u></a>
<b>March 2, 2018</b>	<a href="#"><u>Beware Phony DocuSign Phishing Scam</u></a>
<b>February 12, 2018</b>	<a href="#"><u>Quick Settlement Fake Cheque Scam</u></a>

### ALIA Receives a 92% Satisfaction Rating from Members

As part of the ongoing effort to continually improve its practices and services, ALIA regularly surveys Alberta lawyers who have had claims made against them. ALIA recognizes that having a claim can be a stressful time for a lawyer and wants to ensure that its claims management practices help make the process as "stress free" as possible.

Feedback provided via surveys is used to help ALIA continually improve its claims management procedures. 2018 survey results saw a claims satisfaction rating of 92%.

---

<sup>12</sup> These numbers do not include any legacy claims and payments under the Law Society's Assurance Fund.

Some of the comments ALIA received from satisfied members were:

- I thought that the services provided were exemplary.
- Prompt follow-up which demonstrated a solid understanding of the issues and potential risks facing all parties.
- [My Claims Counsel] and [my Defence Counsel] cc'd me on everything and prompted me for my views when required. I appreciated having telephone conferences with my examiner and lawyer from time to time - good team approach.
- My examiner was helpful and helped make a stressful situation easier.
- I received very helpful suggestions that led to the early resolution of this potential claim.
- You are a vital aid to lawyers.

ALIA encourages all lawyers who receive a Closed Claim Letter to complete the online survey and provide ALIA with valuable feedback that will ensure ALIA continues to meet the needs of lawyers participating in the Program. Your participation and support are both important and appreciated, as ALIA constantly strives to improve its services for Alberta lawyers in private practice.

### **Upcoming Initiatives**

- Enhancing Efficiency and Effectiveness Project to streamline the Program's operations under ALIA
- Root Cause Analysis Project
- Alternate revenue sources
- Protecting confidentiality/information sharing with the Law Society.

### **Report a Claim**

You can find instructions on how to report a claim on [the Law Society website](#).

### **Contact**

If you have any questions or comments about ALIA or ALIEX, please reach out.

Email [alia@lawsociety.ab.ca](mailto:alia@lawsociety.ab.ca)

Call 403.229.4716 or toll free 1.800.661.1694