



ANNUAL REPORT 2019



ALBERTA LAWYERS
INDEMNITY ASSOCIATION

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A MESSAGE FROM THE PRESIDENT AND CEO

When I joined the Alberta Lawyers Insurance Association (“ALIA”) in 2016, one of the key challenges I faced was to reduce and stabilize the base levy, which historically had been the highest in Canada. To that end, we developed an overarching initiative—a root cause analysis - to examine each component that went into calculating the base levy. We started by examining of our own operations to ensure they were in line with best practices, and then set to looking at other opportunities to reduce the costs of operating the provincial mandatory indemnity program (the “Program”) without reducing the coverage we provide to the Alberta lawyers whom we indemnify (the “Subscribers”) or the members of the public who also benefit from the Program.

This year we undertook several more initiatives in furtherance of our goal to provide our Subscribers with high quality coverage at an affordable price.

These initiatives included:

1. Reducing the Cost of Compliance

As I mentioned in last year’s message, because the Alberta Lawyers Insurance Exchange (“ALIEX”), a reciprocal insurance company, was regulated by Alberta’s Superintendent of Insurance pursuant to Alberta’s *Insurance Act*, its compliance costs—designed as a one-size-fits-all for all Alberta insurance companies—were much higher than appropriate for the Program. Under a reorganization that was completed on June 30, 2019, (the “2019 Reorganization”), we restructured the Program, with the ALIA subsuming ALIEX. Having collapsed the reciprocal that brought part of the Program under the *Insurance Act*, we eliminated significant compliance costs and also restrictions on the investments on ALIEX’s surplus. This included payments of premium tax, actuarial reports, and IFRS 17 conversion costs, all of which contributed to the cost of the levy paid by Alberta lawyers.

ALIA did this while maintaining the same protection for Alberta lawyers and the public. Under the reorganization, the entire operation of the indemnity program was brought under Alberta’s *Legal Profession Act*, removing it from regulation under Alberta’s *Insurance Act*. ALIA’s board of directors (the “Board”), which includes representatives of the Law Society of Alberta (“LSA”), the profession, and independent directors, continues to oversee the Program and provide strong governance.

To reflect the fact that the indemnity ALIA has always provided is no longer through an insurance product, we changed the Program’s name from the Alberta Lawyers Insurance Association to the Alberta Lawyers Indemnity Association (still using the acronym “ALIA”), and introduced ALIA’s new logo, which is featured in this annual report. (Speaking of cost savings, we used a global online design competition to create our new logo for under \$400, several thousand dollars less expensive than we had been quoted by a design firm!)

2. Enhanced Surcharge Protocol

ALIA's largest costs are the defence of Subscribers and the payment of claims. Accordingly, loss prevention and risk management are key strategic goals of ALIA. ALIA continues to look for ways to reduce and prevent claims. Although all Subscribers pay the same base levy, our data indicates that a small percentage of Alberta's Subscribers who had claims (1.6%) were responsible for more than 16% of the Program's indemnity payouts! To address this, effective July 1, 2019, ALIA rolled out an Enhanced Surcharge Protocol. The Enhanced Surcharge Protocol was implemented to shift more of the costs of multiple paid claims onto the relatively few Subscribers who incur them. As before, each Subscriber's first paid claim in a rolling five-year period, and all claims that include only defence costs, do not attract any surcharges.

3. Rule 4.31 and 4.33 Claims

Unfortunately, the fallout from the Court of Appeal decision in *Humphreys v. Trebilcock* continues to impact the Program. Since this decision, which many Subscribers saw as instantly changing the rules respecting dismissal for delay, ALIA has seen an increase in the number of claims reported based on dismissal for delay pursuant to Rule 4.31. Along with similar Rule 4.33 claims, these claims now make up 18% of the Program's losses for the past five years. To assist with addressing this, ALIA formed a working group with ALIA defence counsel to consider how to lessen 4.31 and 4.33 losses to the Program, including a submission to the Rules of Court Committee.

4. Customer Service

ALIA continues to maintain its focus on providing high-quality coverage and claims adjudication to Subscribers, and in 2019 closed-file survey results from Subscribers confirmed the success of these efforts, with a 93.5% satisfaction rate.

5. Ensuring Ongoing Excellence of Defence Counsel

ALIA continues to ensure that outstanding counsel are appointment to represent Subscribers who have claims against them. ALIA and its Subscribers are fortunate that those outstanding counsel often work for rates well below market as a way of giving back to their profession and the public. ALIA continues to audit the counsel/firms who do work on its behalf to ensure excellent representation is maintained. Further, in 2019, ALIA undertook a Request for Information ("RFI") process to ensure that it maintained a full roster of excellent defence counsel. Through this successful RFI process, ALIA added four new defence firms to the approved ALIA defence counsel roster.

Similarly, ALIA continues to retain excellent in-house Claims Counsel and Claims Specialists who are directly responsible for each Subscriber's claim, retaining external defence counsel as required.

6. Levy Reduction

In 2019, we again successfully lowered the levy (by 7% percent), despite the increase in frequency and severity of negligence claims against Alberta lawyers and a significant increase in the incurred losses due to lawyer misappropriation.

In conclusion, as we roll out our new strategic plan in 2020—which I look forward to sharing with you next year—we will continue to focus on the balance of providing our Subscribers with high quality coverage at a reasonable price.

David Weyant, Q.C.

President and Chief Executive Officer

ABOUT ALIA

Established in 1988, ALIA is the member-funded, non-profit corporation that manages Alberta's indemnity program for participating lawyers, providing economic and reputational protection to them and compensation to members of the public who have suffered certain financial losses due to the actions of participating lawyers, including professional errors and misappropriation.

ALIA operates as a separate financial entity from the LSA, ALIA's sole shareholder, which regulates Alberta's legal profession in the public interest and has established the Program in accordance with Section 99(1) of Alberta's *Legal Profession Act*.

ALIA manages the Program and handles all covered claims against Alberta lawyers in private practice. This includes receiving and examining all claims, resolving claims by providing compensation when appropriate, and retaining external lawyers (ALIA defence counsel) to litigate claims, when required.

As a result of the 2019 Reorganization, ALIA underwrites the Alberta Lawyers' Professional Liability and Misappropriation Indemnity Group Policy (the "**Group Policy**") for the Program from and after July 1, 2019 and is responsible for all claims under all policies that were previously written by ALIEX.

Each lawyer in private practice in Alberta (approximately 6,750 in 2019) must purchase a base level of professional liability and misappropriation coverage through ALIA.

ALIA BOARD OF DIRECTORS

The Board is comprised of up to 10 Directors, each serving terms of up to three years, with the option for reappointment. LSA's board (the "**Benchers**") appoints each Director, and the Board reports to the Benchers through the Board's Chair and ALIA's President and CEO. In 2019, the Board consisted of 10 Directors made up of representatives of LSA, the profession, and independent directors and was continued from ALIEX to ALIA as part of the 2019 Reorganization.

The Board is responsible for ensuring that ALIA (and prior to the 2019 Reorganization, ALIEX) operates in accordance with the Rules of LSA and all other relevant legislation governing documents and internal policies.

The Board oversees and provides financial oversight for the Program. This includes approving ALIA's budget and financial statements and supervising the management, administration and investments of ALIA's funds.



ALIA Board of Directors 2019

Steve Raby, Q.C., Chair

Larry Ohlhauser, M.D., Vice-Chair

Dale Spackman, Q.C., Corporate Secretary

Rob Armstrong, Q.C.

Diane Brickner, CIP, ICD.D

Sheri Epp, B.A., LL.B

Zoe Harrison, B.Comm., CRM,

Elizabeth Osler, B.A., M.A., LL.B, ICD.D

Michael Thompson, LL.B, MBA, ICD.D

Linda Vennard, CA, CPA

President and Chief Executive Officer

David Weyant, Q.C.

Chief Financial Officer

Nadine Meade, CPA, CGA

Auditors

PricewaterhouseCoopers

Program Investment Manager

Mawer Investment Management Ltd.

Program Actuary

Nicolas Beaudoin, Willis Towers Watson

FINANCIALS

By a Management Arrangement between ALIA and LSA, LSA'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. The financial statements are then approved by the Board.

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 Board appoints 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 2019 Financial Statements and past statements, can be found on [ALIA's website](#).

CLAIMS OVERVIEW

The Program covers errors in professional services by a Subscriber (“Part A”) and misappropriation by a Subscriber (“Part B”), subject to the terms of the Group Policy.

The number of total claims reported by Subscribers continues to increase. In 2019, this was driven by an increase in reported Part A professional liability claims, which rose from 787 to 890, a 13% increase. The highest number of claims reported comes from the civil litigation area of law which increased by 18%, from 283 reported claims in 2018 to 333 reported claims in 2019. Civil litigation claims over the past five years represented 37.40% of reported claims and 43.95% of the Program’s incurred losses (claims paid plus reserves).

The total paid on Part A claims also saw a 9% increase from \$20,078,048 in 2018 to \$21,896,681 in 2019.

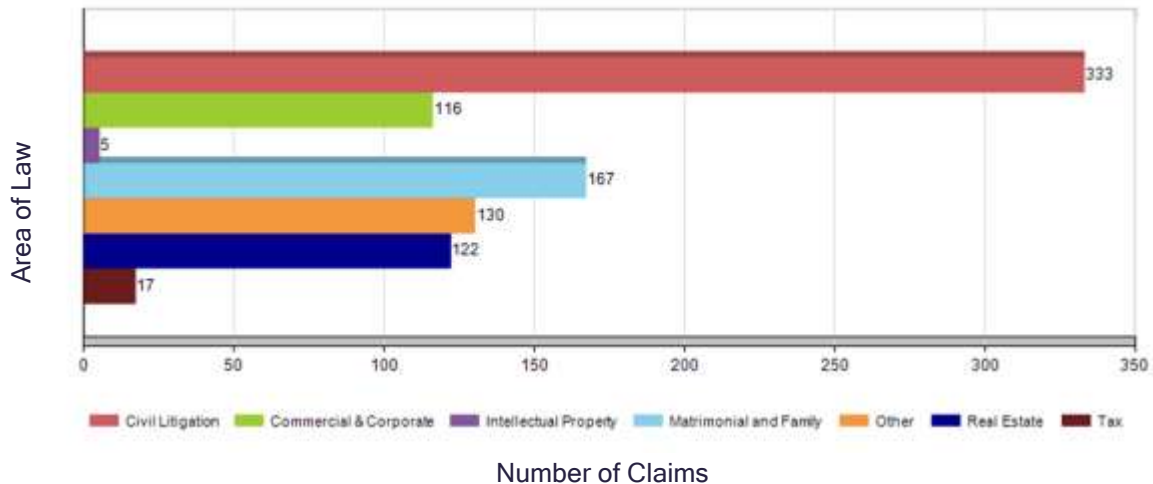
The Program also experienced an increase in the total paid on Part B claims from \$51,487 in 2018 to \$118,316 in 2019.

PART A PROFESSIONAL LIABILITY CLAIMS

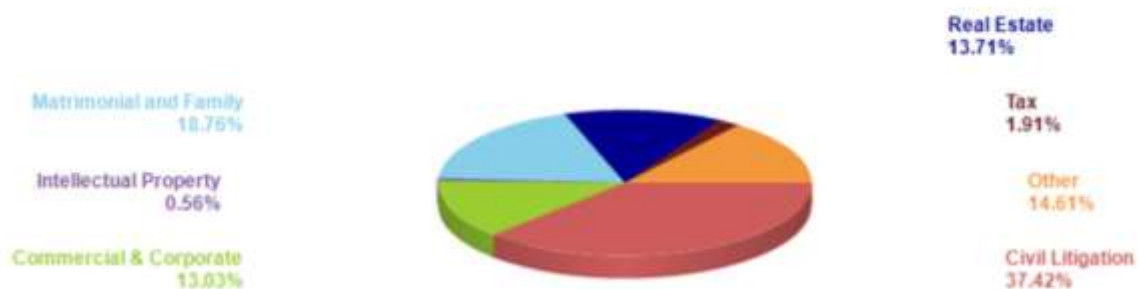
Subscribers are human and, from time to time, make mistakes. Some of those mistakes result in clients suffering financial losses. One of the primary reasons the Program exists is to compensate clients or other members of the public for such losses.

Distribution of Professional Liability Claims by Area of Law (2019)

Number of Part A Claims Reported by Area of Law



Percentage of Part A Claims Reported by Area of Law



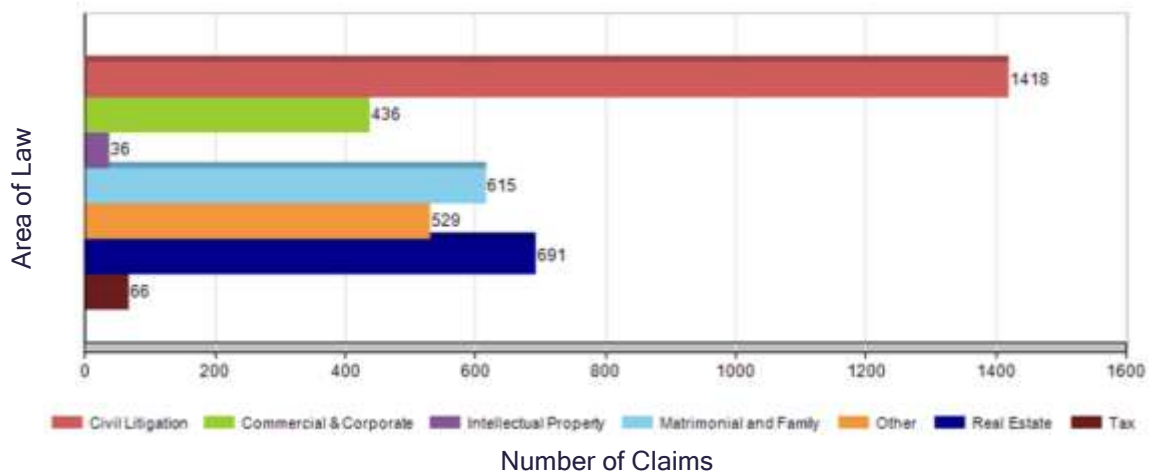
The total paid out by the Program in 2019 for Part A professional liability claims was \$21,896,681, a 9% increase from the \$20,078,048 paid out in 2018.

Historical Number of Part A Claims Reported by Area of Law (2010-2019)

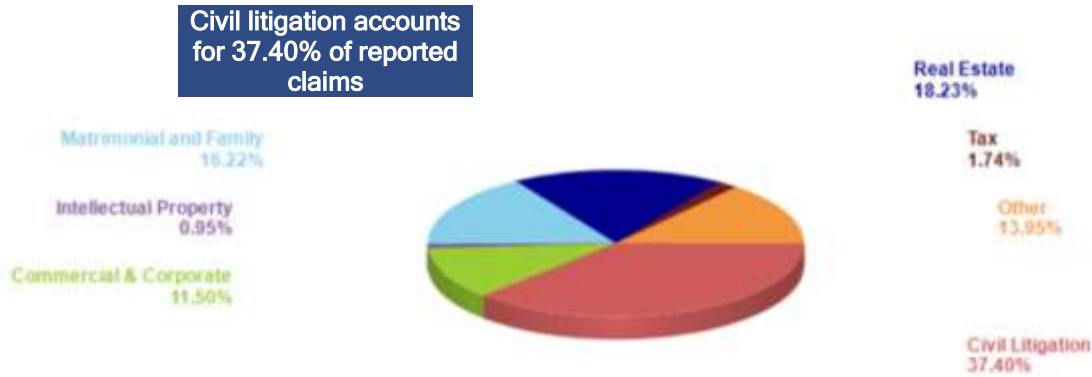
Policy Year Ending	Civil Litigation	Commercial and Corporate	Intellectual Property	Matrimonial and Family	Real Estate	Tax	Other
2010	292	112	4	99	336	7	103
2011	269	110	9	84	204	16	82
2012	260	121	6	96	231	10	79
2013	227	86	8	75	124	13	90
2014	283	87	3	90	166	11	100
2015	257	59	7	88	154	12	84
2016	280	88	10	96	143	9	99
2017	266	82	5	118	135	15	111
2018	282	91	9	146	137	13	105
2019	333	116	5	167	122	17	130

Distribution of Professional Liability Claims by Area of Law (2015-2019)

Number of Part A Claims Reported by Area of Law

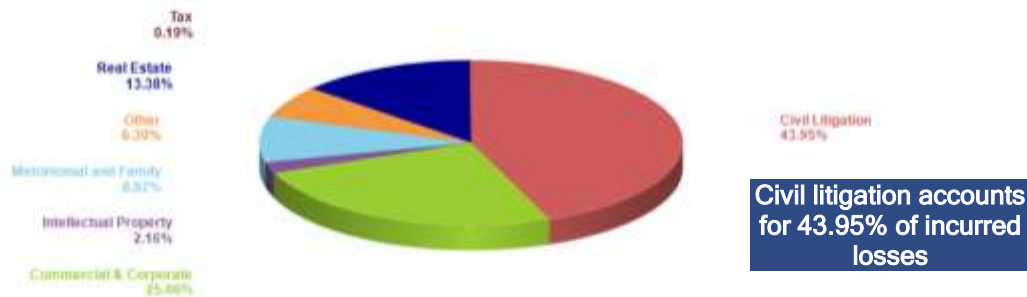


Percentage of Part A Claims Reported by Area of Law



Incurred Damages and Defence Costs by Area of Law (2015-2019)

Percentage of Part A Incurred Damages and Defence Costs by Area of Law



Reason/Cause for Professional Liability Indemnity 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 Subscribers and satisfy claims against them and the total amount of the levy assessed on Subscribers.

ALIA is committed to helping Subscribers reduce the number of avoidable claims that impact the levy charged to Subscribers each year and to avoid the need for clients to make claims against their Subscriber. Accordingly, one of the goals of the Program is to enhance loss prevention in various ways, including highlighting the avoidable causes of indemnity claims.

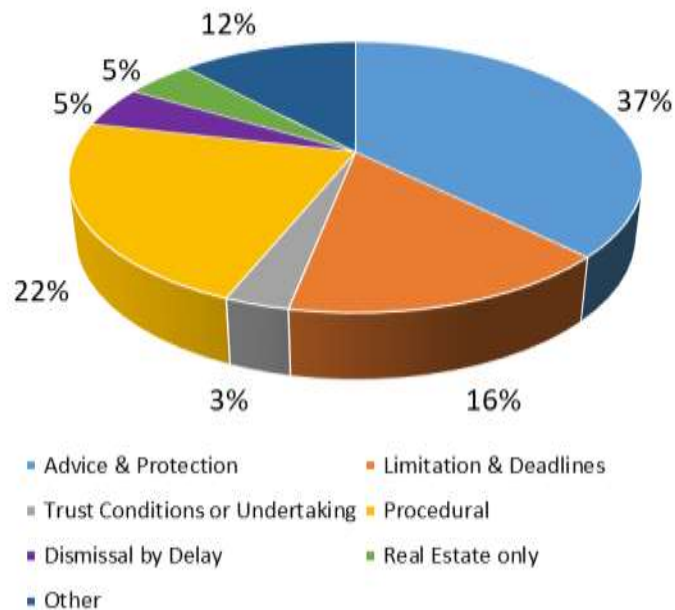
Historical trending indicates professional liability claims primarily are attributed to communications (e.g. failure to follow client instructions, disputed instructions and client remorse after settlement), practice management (e.g. clerical errors, diary system errors,

inadequate office systems) and issues related to law (e.g. failure to know the law or properly apply the law and failure to know limitations/deadlines). Claims related to failure to advance an action in a timely manner (dismissal for delay), resulting in actions being struck pursuant to Rules 4.31 and 4.33 of the Alberta Rules of Court, have generated significant losses in recent years. Over the past five years they have made up 5% of the Program's claims and generated 18% of incurred losses. This was exacerbated by the Court of Appeal decision in *Humphreys v. Trebilcock*, 2017 ABCA 116, which resulted in an increased number of 4.31 claims.

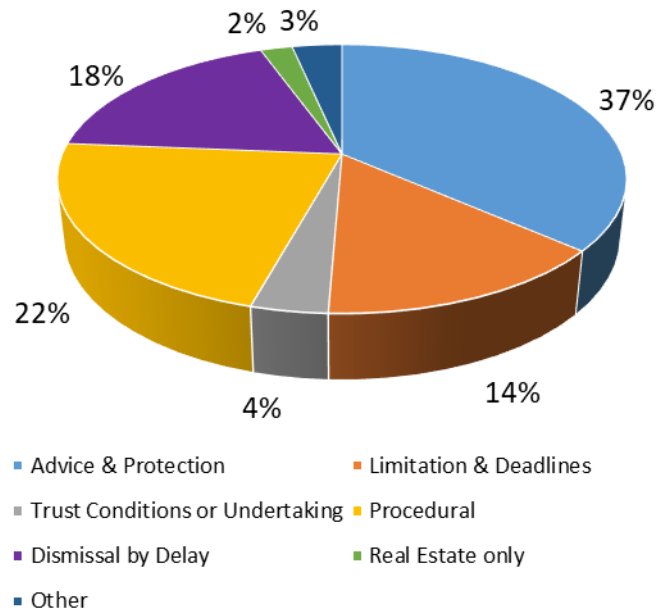
The causes behind these issues often can be addressed easily, and the Subscribers involved generally could avoid these costly claims. Subscribers can use LSA resources, such as Practice Advisors, to learn more about how to establish processes to address administrative, procedural and system issues. ALIA funds some of these resources through a management fee paid to LSA, which forms part of the annual base levy paid by Subscribers.

Type of Error for Part A Claims (2015-2019)

Percentage of Part A Claims Reported by Error



Percentage of Part A Incurred Damages and Defence Costs by Error



Reason/Cause of Errors-Part A Claims

Reason / Cause for Each Claim	2019	2018	2017
Communication	37%	34%	33%
Systems/Procedures/Administrative	28%	27%	32%
Law	20%	21%	16%
Conflict	8%	8%	12%
Fee Dispute	4%	4%	4%
Delegation/Supervision	2%	4%	3%
Mortgage Fraud	0%	1%	0%
Fraud by Client/Other Party Dispute	0%	1%	0%

PART B MISAPPROPRIATION CLAIMS

Misappropriation coverage is not just for theft from trust accounts. ALIA is frequently asked why Subscribers who do not maintain trust accounts are still required to have “trust safety” indemnity coverage. 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 Subscriber in their capacity as a barrister or solicitor.

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

A small number of Subscribers breach their clients' trust and misappropriate money, securities or other property each year. The impact is felt by all Subscribers 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 Subscribers.

The Program received four misappropriation claims against four Subscribers in 2019; although this was a decrease in the number of claims received compared to 2018, the total paid increased by 129.79%. In 2019, ALIA incurred \$118,316 on misappropriation claims versus \$51,487 in 2018.

From its inception in 2014 to June 2019, ALIA returned \$455,277 to 102 victims as a result of misappropriation insurance claims.¹

2019 PROGRAM INITIATIVES

ALIAAlerts

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

ALIA uses its ALIAAlert urgent notices to share tips and information to help Subscribers identify, avoid and report schemes and scams targeting Subscribers. ALIA delivers these to its Subscribers by email throughout the year and posts them on its website. In 2019, ALIA brought awareness to a number of fraud-related schemes, some examples of which are as follows:

March 14, 2019	Recent Loss due to Hacking and False Bills
September 11, 2019	Alberta Firm Hit by Ransomware Attack
December 4, 2019	Dog Bite Scam Attacks Alberta Lawyers

ALIAdvisory Communications

An ALIAdvisory is a nonurgent communication, generally educational in nature. ALIA posts these on its website and delivers them to its Subscribers by email throughout the year. The following are examples of communications sent out this year:

¹ These numbers do not include any legacy claims and payments under LSA's Assurance Fund.

June 6, 2019	Enhanced Surcharge Protocol Starts July 1, 2019
June 20, 2019	New Name, Same ALIA
July 18, 2019	Employee Theft: Are you Covered?

ALIA Outreach Sessions

As part of ALIA's efforts to help prevent claims, the ALIA team delivers educational programs to Subscribers and firms.

Over the past year, ALIA has presented on a variety of claim prevention topics including: real estate, corporate/commercial law, cybercrime, misappropriation and the ALIA claims process.

Cybercrime Product Made Available to Subscribers

Because losses resulting from cybercrime are excluded from the Group Policy, ALIA recommends that all Subscribers in Alberta obtain cybercrime coverage.

To make purchasing cybercrime coverage easier for Subscribers, ALIA arranged with its Broker, Aon Reed Stenhouse, to make available a robust cyber policy called the Beazley Breach Response Policy that Subscribers may purchase. The coverage was specifically enhanced for ALIA Subscribers to include social engineering coverage. This was rolled out to Subscribers on November 21, 2018. Again, in light of the proliferation of cybercrime and loss due to social engineering, ALIA strongly recommends that all Subscribers/firms purchase cybercrime and social engineering coverage.

Enhanced Surcharge Protocol

A small percentage of Alberta's Subscribers who had claims (1.6%) were responsible for more than 16% of the Program's indemnity payouts, which is a highly disproportionate weighting. To address this, effective July 1, 2019, ALIA rolled out an Enhanced Surcharge Protocol. The Enhanced Surcharge Protocol was implemented to shift more of the costs of multiple paid claims onto the relatively few Subscribers who incur them. As before, each Subscriber's first paid claim in a rolling five-year period, and all claims that include only defence costs, do not attract any surcharges. For more information on the [Enhanced Surcharge Protocol](#), click the link.

Satisfaction Rating from Subscribers

As part of the ongoing effort to continually improve its practices and services, ALIA regularly surveys Subscribers upon the closing of their claim files. ALIA recognizes that having a claim can be stressful for a Subscriber 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. Survey results in 2019 saw a claims satisfaction rating of 93.5%.

ALIA encourages all Subscribers 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 Subscribers participating in the Program. Subscriber participation and support are both important and appreciated, as ALIA continually strives to improve its services for Subscribers in private practice.

ALIA Reorganizes to Enhance Efficiency and Effectiveness

Under the 2019 Reorganization, the Program was reorganized from a reciprocal insurance exchange operating as ALIEX to an indemnity program to capture cost savings and free up internal resources for new initiatives, all while maintaining the same protection for Alberta lawyers and the public. Under the reorganization, the Program's entire operation was brought under Alberta's *Legal Profession Act*, removing it from regulation under Alberta's *Insurance Act*. The ALIEX Board was continued to ALIA and continues to oversee the Program.

ALIA's name was changed from the Alberta Lawyers Insurance Association to the Alberta Lawyers Indemnity Association to reflect that the indemnity ALIA has always provided is no longer through an insurance product.

Defence Counsel RFI

ALIA's defence counsel services are an essential aspect of providing high-quality claims adjudication to Subscribers. ALIA held a comprehensive RFI process in 2019 and received approximately 30 responses. As a result of the RFI, ALIA added four new defence counsel firms to its roster of excellent approved defence counsel.

Operations and Compliance Calendar Development

The Board is responsible for ensuring that ALIA operates in accordance with the Rules of LSA and all other relevant legislation, governing documents and internal policies. To enhance compliance and governance support and allow ALIA to track ALIA governance tasks efficiently, an internal tracking tool was designed and implemented: the Operations and Compliance Calendar.

2020 Initiatives and Projects

- △ Loss Prevention Initiatives
 - Forming a 4.31 and 4.33 Working Group to consider how to lessen 4.31 and 4.33 losses to the Program
 - Establishing of formal Loss Prevention Committee
- △ Finalizing the of Protecting Confidentiality/Information Sharing Protocol Project
- △ Alternative Revenue Sources
 - Implementing the Civil Litigation Filing Levy (CLFL)
- △ Developing and approving the new Strategic Plan (2020-2024)
- △ Instituting and conducting the In-house Defence Counsel Project

Report a Claim

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

Contact

If you have any questions or comments about ALIA, please contact us as follows:

Email: alia@lawsociety.ab.ca

Telephone: 403.229.4716 or toll free: 1.800.661.1694

Address: 700, 333 - 11th Avenue SW, Calgary, Alberta, T2R 1L9