



ALBERTA LAWYERS INSURANCE ASSOCIATION  
AND ALBERTA LAWYERS INSURANCE EXCHANGE  
**ANNUAL REPORT**

2016

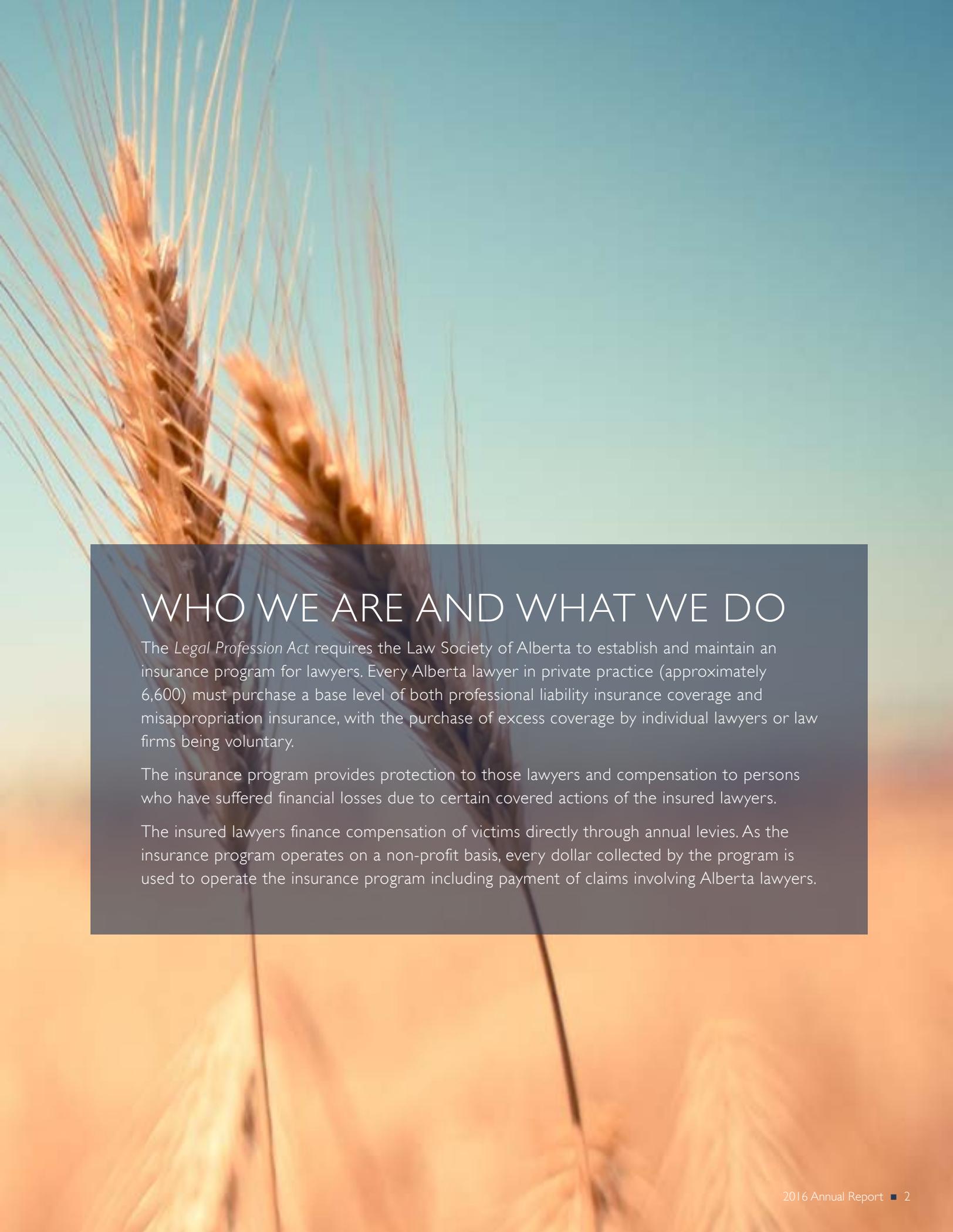




**Click** to watch the **2016 ALIA & ALIEX Annual Report video**, featuring:

- David Weyant, QC, Principal Attorney for ALIEX and Chief Operating Officer and Director of Insurance for ALIA, and
- Steve Raby, QC, ALIEX Advisory Board Chair and ALIA President, Chief Executive Officer and Chairman.

“ 2016 WAS A CHALLENGING YEAR FOR THE INSURANCE PROGRAM, WITH ITS INVESTMENT INCOME DOWN AND CLAIMS AGAINST INSURED LAWYERS UP. ”



## WHO WE ARE AND WHAT WE DO

The *Legal Profession Act* requires the Law Society of Alberta to establish and maintain an insurance program for lawyers. Every Alberta lawyer in private practice (approximately 6,600) must purchase a base level of both professional liability insurance coverage and misappropriation insurance, with the purchase of excess coverage by individual lawyers or law firms being voluntary.

The insurance program provides protection to those lawyers and compensation to persons who have suffered financial losses due to certain covered actions of the insured lawyers.

The insured lawyers finance compensation of victims directly through annual levies. As the insurance program operates on a non-profit basis, every dollar collected by the program is used to operate the insurance program including payment of claims involving Alberta lawyers.

# ABOUT ALIA

Established in 1988, the Alberta Lawyers Insurance Association (ALIA) is a subsidiary corporation of the Law Society of Alberta.

It is the member-funded, non-profit corporation that manages the insurance program including the receipt and examination of claims, settlement of claims, and hiring of external lawyers to litigate claims, when required.

ALIA also acts as the Principal Attorney of the Alberta Lawyers Insurance Exchange (ALIEX).

Built on the pillars of risk management and loss prevention, the insurance program provides insurance coverage comprised of two primary components:

- Part A: professional liability insurance (similar to malpractice insurance); and
- Part B: “trust safety” or misappropriation insurance that may provide compensation to members of the public whose money or other property has been misappropriated or wrongfully converted by insured lawyers during their practice as barristers and solicitors.

Excess coverage is voluntary and is available through various providers, including the [Canadian Lawyers Insurance Association](#), for those lawyers desiring more than the minimum mandatory \$1 million in professional liability insurance provided through ALIEX.

# ABOUT ALIEX

In 2014, ALIEX was established by ALIA, the Law Society of Alberta, and the insured members of the Law Society of Alberta.

ALIEX is a reciprocal insurance exchange created pursuant to the *Insurance Act* (Alberta), and is licensed and regulated by the Alberta Superintendent of Insurance. The Superintendent of Insurance regulates reciprocal insurance exchanges as if they were provincial insurance companies and requires the operations of the reciprocal to be overseen by a board that must conduct itself as if it were a corporate board. ALIEX has a fully-functional board that operates in a corporate governance capacity.

ALIEX now underwrites the insurance policy administered by ALIA.



ALIA and ALIEX subscribe to and honour the Law Society of Alberta's values:

- **Integrity** – honest and ethical behavior.
- **Transparency** – open and clear processes and communications.
- **Fairness** – fair and consistent treatment of people.
- **Competency** – best practices, high standards and pursuit of excellence.
- **Independence** – independent and independently regulated legal profession.
- **Respect** – inclusion, diversity and equity in the profession and in the Law Society.

## MISSION

Provide the best form of financial protection to lawyers and the public, at the optimum cost.

## VISION

The Law Society of Alberta's indemnity programs will be recognized as a leading model for protecting lawyers and the public.

## STRATEGIC GOALS

1. **Model Indemnity Program.** Create and maintain indemnity programs with stable assessment levies that,
  - provide coverage for lawyers and fairly compensate clients and others if lawyers are found liable for negligence; and
  - provide protection to the public if there is misappropriation by a lawyer of trust property;
2. **Loss Prevention & Risk Management.** Work collaboratively with the Law Society to build and deliver a robust loss prevention and risk management program for Alberta lawyers.
3. **Confidence.** Reinforce the confidence of the public, profession and other stakeholders in the Law Society's indemnity programs.
4. **Organizational Culture & Capacity.** Ensure ALIA / ALIEX has the required organizational infrastructure, business supports and high-performance culture in place to achieve its mission and strategic goals.

# NEW COO WELCOME

In August of 2016, ALIA had the pleasure of welcoming David Weyant, QC as its Director of Insurance and its first Chief Operating Officer. David also became the Principal Attorney for ALIEX.

David is responsible for ensuring the availability of an affordable, reliable and sustainable insurance program for lawyers in Alberta, and fostering relationships with government, legal stakeholders and the insurance industry.

David has extensive experience in leadership and risk management as well as professional liability insurance from his 26 years' combined experience as Senior Vice President and General Counsel at Alberta Health Services, where he was responsible for the insurance program of one of Canada's largest corporations, and as a lawyer in private practice (including working as a sole practitioner, in a boutique and in a large international firm). He has strong financial acumen and a strong background in governance. He is a certified Director (ICD.D) and has previously served on a healthcare insurance reciprocal board in Alberta. He is currently the Chair of the Banff Centre's Board of Governors.

David obtained his Bachelor's Degree from the University of Calgary before receiving his JD from the University of Saskatchewan and MBAs from Queen's and Cornell universities. He received his QC in 2004.

## MEET THE ALIEX ADVISORY BOARD

The ALIEX Advisory Board is comprised of nine Directors, each serving terms of up to three years with the option for reappointment.

Each of the Directors is appointed by the Benchers 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 of Alberta, the ALIEX Subscribers Agreement, the policies of the Alberta 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 programs and provides financial oversight for the insurance program, including approval of ALIEX's budget and financial statements, and supervises the management, administration and investments of the insurance program fund.

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:**

- Nancy Dilts, QC
- Carsten Jensen, QC
- Anne Kirker, QC, (Claims Committee Chair)
- Doug McKenzie, CA (Audit Committee Chair)
- Larry Ohlhauser, MD (Board Vice-Chair)
- Steve Raby, QC (Board Chair and Executive Committee Chair)
- Dale Spackman, QC
- Don Thompson, QC
- Kathleen Waters

### **Principal Attorney**

ALIA acting through David Weyant, QC

### **Auditors of the Exchange**

PricewaterhouseCoopers

### **Investment Manager**

Mawer Investment Management Ltd.

### **Actuary**

André Normandin



## MEET THE ALIA BOARD

The ALIA Board is comprised of four *ex officio* Directors.

The ALIA Board is responsible for overseeing the operations of the insurance program, to the extent that such responsibility has not been transferred to the ALIEX Advisory Board.

### **ALIA Board Members:**

- Steve Raby, QC, Chair
- Don Thompson, QC
- Drew Thomson
- David Weyant, QC

## FINANCIALS

By a Management Arrangement between ALIA and the Law Society of Alberta, the Law Society's management is responsible for the preparation and fair presentation of annual financial statements on behalf of ALIA/ALIEX 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 ALIEX Advisory Board and submitted to the Superintendent of Insurance Alberta for review.

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

Our 2016 Financial Statements, as well as past statements are on our [website](#).

# CLAIMS OVERVIEW

ALIA's insurance program covers certain intentional and unintentional acts of insured lawyers that cause losses to clients or other members of the public. When a client or other member of the public feels that the actions of an insured lawyer have caused a financial loss to them, the client (or other member of the public) may seek compensation by reporting it to ALIA in the form of a "claim". Similarly, lawyers are obliged to report such potential losses to ALIA as a claim on behalf of their client (or other member of the public).

In 2016\*, there were a total of 762 claims reported to ALIA compared to our actuary's projection of 700 claims. ALIA paid out \$22,904,205 total claims dollars incurred in 2016, which is a 4.33 per cent decline from 2015.

(\*Numbers are based on Policy Year – July 1, 2015 – June 30, 2016)

## REASON/CAUSE FOR CLAIMS

Communication and practice management issues between lawyers and clients continue to be a primary cause of claims in 2016, which is a trend we have seen over the last five years.

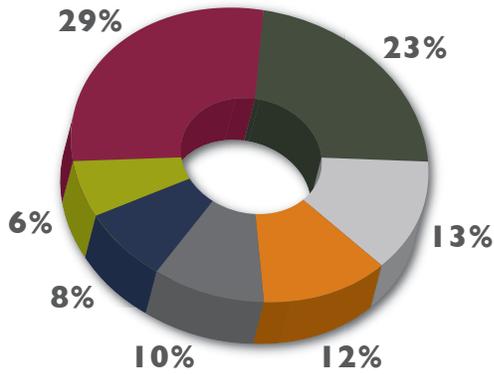
The number of claims arising out of lawyers missing limitation periods and/or delay in an action (failing to significantly advance an action in a timely manner) continues to rise. This is particularly troubling as these costly errors are often easily avoidable by the lawyer with carriage of the matter.

Part A or "Professional Liability Insurance" claims from 2014 to 2016.

REASON / CAUSE FOR EACH CLAIM (EXAMPLE IN BRACKETS)	2016	2015	2014
Communication (failure to follow client instructions)	36%	38%	42%
System/Procedures/Administrative (clerical errors)	30%	35%	31%
Law (failure to know or apply the law)	18%	14%	12%
Conflict (issues involving client representation)	9%	5%	5%
Delegation/Supervision (inadequate oversight of legal team)	3%	5%	5%
Investment Schemes	0%	0%	2%
Mortgage Fraud	0%	1%	6%
Fee dispute	3%	1%	1%
Fraud by client/other party dispute	1%	1%	1%

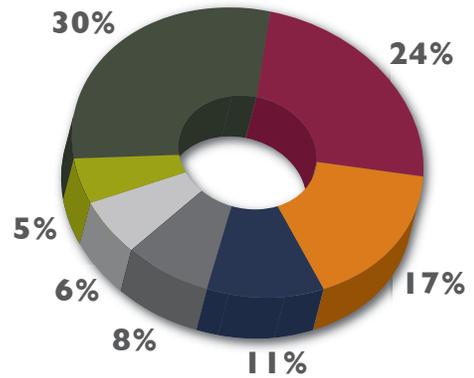
DISTRIBUTION OF CLAIMS BY AREA OF LAW, AS WELL AS INCURRED DAMAGES & DEFENCE COSTS.

Number of Claims Reported  
(Fund Years 2012 – 2016)



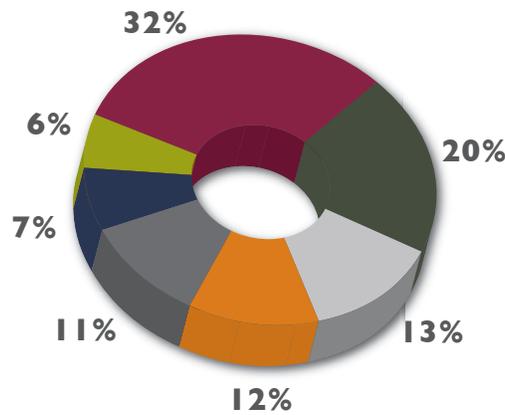
- Civil Litigation (excluding Auto) (1,014)
- Real Estate (818)
- Matrimonial & Family (444)
- Commercial & Corporate (439)
- Civil Litigation Auto (292)
- Estate Planning & Admin (196)
- Other (343)

Incurred Damages & Defence Costs  
(Fund Years 2012 – 2016)



- Civil Litigation (excluding Auto) (\$22,808,322)
- Real Estate (\$27,919,889)
- Matrimonial & Family (\$5,304,316)
- Commercial & Corporate (\$15,933,503)
- Civil Litigation Auto (\$10,227,316)
- Estate Planning & Admin (\$4,327,565)
- Other (\$8,032,457)

Number of Claims Reported  
(Fund Year 2016)



- Civil Litigation (excluding Auto) (228)
- Real Estate (143)
- Matrimonial & Family (96)
- Commercial & Corporate (87)
- Civil Litigation Auto (49)
- Estate Planning & Admin (41)
- Other (77)

# TRUST SAFETY INSURANCE (PART B)

Although most Alberta lawyers are honest and deserving of their clients' trust, there are a small number of lawyers each year who violate that trust and misappropriate money, securities or other property, thereby causing financial losses to other persons. Such actions result in payments under the insurance program.

Misappropriation and trust defalcation claims after July 1, 2014 fall under ALIA's professional liability insurance model, known as Part B or "Trust Safety Insurance". Misappropriation claims prior to July 1, 2014 fall under the old Assurance Fund model. Because claims on average take four to six years to come to fruition, there is not yet any meaningful trend data on Part B claims.

In 2016, our insurance program received 39 Part B claims against six lawyers.

## TOTAL NUMBER OF CLAIMS IN 2016

When a client feels the actions of their lawyer were negligent and resulted in financial loss or damage, they may report it to ALIA in a "claim".

In 2016, 723 Part A claims were reported in accordance with the terms of ALIEX's General Insurance Policy, a 9.55 per cent increase from 2015.

BREAKDOWN OF CLAIMS BY AREA OF LAW							
FUND YEAR	REAL ESTATE	CIVIL LITIGATION	MATRIMONIAL & FAMILY	COMMERCIAL & CORPORATE	TAX	INTELLECTUAL PROPERTY	OTHER
2007	233	281	83	83	8	8	62
2008	269	259	65	100	6	13	63
2009	353	305	56	105	12	7	77
2010	336	292	98	113	7	4	103
2011	204	269	84	110	16	9	82
2012	231	261	95	121	10	6	79
2013	124	228	75	85	13	8	89
2014	166	283	90	87	11	3	100
2015	154	257	88	59	12	7	83
2016	143	277	96	87	9	10	99

In Alberta, lawyers in private practice share the burden of the incurred losses. To satisfy the incurred losses, ALIA and ALIEX maintain a surplus, as required by policy, the Superintendent of Insurance, and the *Insurance Act* (Alberta). The combined surplus of ALIA, ALIEX and ALIA's share of the Canadian Lawyers Insurance Association (CLIA) surplus is estimated at \$42.3 million as of December 31, 2016.

In its first few years of operations, ALIEX will need to fund more than its expected losses. As we move forward, the loss reserves will grow significantly, as we maintain (and invest) the funds necessary to satisfy the growing incurred losses and statutory/policy requirements.

## REPORT A CLAIM

To report a new claim, instructions are available on ALIA's website [www.lawsociety.ab.ca](http://www.lawsociety.ab.ca). or contact us at [alia@lawsociety.ab.ca](mailto:alia@lawsociety.ab.ca)

## CONTACT

To contact ALIA or ALIEX, email [alia@lawsociety.ab.ca](mailto:alia@lawsociety.ab.ca) or call 403-229-4706 or toll free 1-800-661-1694