



2017 Annual Report

ALBERTA LAWYERS INSURANCE ASSOCIATION and
ALBERTA LAWYERS INSURANCE EXCHANGE



Table of Contents

Who We Are and What We Do	4
About ALIA	5
About ALIEX	5
Meet the ALIEX Advisory Board	5
ALIEX Advisory Board Members	6
ALIEX’s Principal Attorney	6
The Program’s Auditors	6
The Program’s Investment Manager	6
The Program’s Actuary	6
Financials	6
Claims Overview	7
Distribution of Professional Liability Claims by Area of Law	7
Fund Year 2017	7
Fund Years 2013 – 2017	7
Incurred Damages and Defence Costs by Area of Law Fund Years 2013-2017	8
Reason / Cause for Professional Liability Insurance Claims	8
Part A Professional Liability Insurance	9
Reason/Cause for Claims – 2015 – 2017	9
Breakdown of Claims by Area of Law	10
Part B Misappropriation “Trust Safety” Insurance	10
Other Program Initiatives This Year	11
Successful GST Resolution	11
ALIAAlerts	11
Updating ERM	11
Aiming for More Consistent Levies	11
Program Initiatives for 2018 and Beyond	11
Service Evaluation Forms	11



Updating the Surcharge Protocol	11
Cyber Insurance	12
ALIAdvisory	12
Initiatives to Reduce Base Levy.....	12
Working with the Law Society	12
ALIA'S 30 th Anniversary	12
Report a Claim.....	12
Contact	13



Who We Are and What We Do

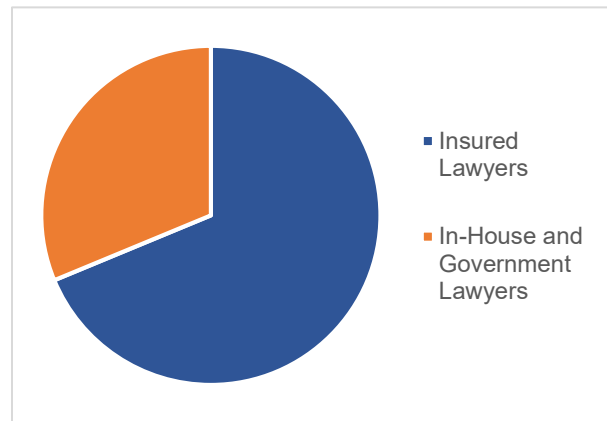
The indemnity program (“the Program”), managed by ALIA (a subsidiary of the Law Society of Alberta), provides protection to Alberta lawyers in private practice and compensation to persons who have suffered financial losses due to certain actions of those insured lawyers.

The Program is mandated by Alberta’s *Legal Profession Act*, which requires the establishment and maintenance of a mandatory indemnity program for lawyers in private practice. The Program addresses financial losses resulting from negligence or theft by the approximately 6,600 Alberta lawyers in private practice¹.

The goals of the Program are to:

- a) help lawyers avoid and reduce claims;
- b) resolve claims in a fair and reasonable manner; and
- c) operate the Program in a reasonably cost-effective way.

For claims arising subsequent to July 1, 2014, the first \$500,000 of each occurrence is paid by ALIA and amounts in excess of \$500,000 are paid by ALIEX, subject to individual lawyer’s \$5,000 deductible.



The lawyers who participate in the Program fund it through their annual levies. As the Program operates on a non-profit basis, every dollar collected by the Program is used for its operations, which includes:

- risk management / loss prevention activities;
- claim specific repair costs, where applicable;
- professional defence costs;
- payment of compensation claims to victims who have suffered financial losses due to the actions of insured Alberta lawyers;
- purchasing reinsurance;
- maintaining an appropriate surplus to address expected future claims; and
- other day-to-day operations.

¹ In Alberta, the approximately 3,000 lawyers who work in-house or for the government are not part of the Program.



About ALIA

Established in 1988, ALIA is the member-funded, non-profit corporation that operates the Program. 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. Although ALIA is a wholly-owned subsidiary corporation of the Law Society, its financial operations are actually larger than those of the Law Society.

Each of the approximately 6,600 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 against insured Alberta lawyers. 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.

Meet the ALIEX Advisory Board

The ALIEX Advisory Board ("the 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, 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 program 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 funds of both ALIA and ALIEX (collectively, "the Program").



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

- Steve Raby, QC, Chair
- Larry Ohlhauser, MD, Vice-Chair
- Nancy Dilts, Director
- Carsten Jensen, Director
- Anne Kirker, Director
- Doug McKenzie, Director
- Dale Spackman, QC, Corporate Secretary
- Kathleen Waters, Director
- Don Thompson, QC, Chief Executive Officer

ALIEX's Principal Attorney

ALIA acting through David Weyant, QC

The Program's Auditors

PricewaterhouseCoopers

The Program's Investment Manager

Mawer Investment Management Ltd.

The Program's Actuary

Nicolas Beaudoin, Willis Towers Watson

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 the ALIA's board of directors 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 2017 Financial Statements, as well as past statements are on ALIA's [website](#).



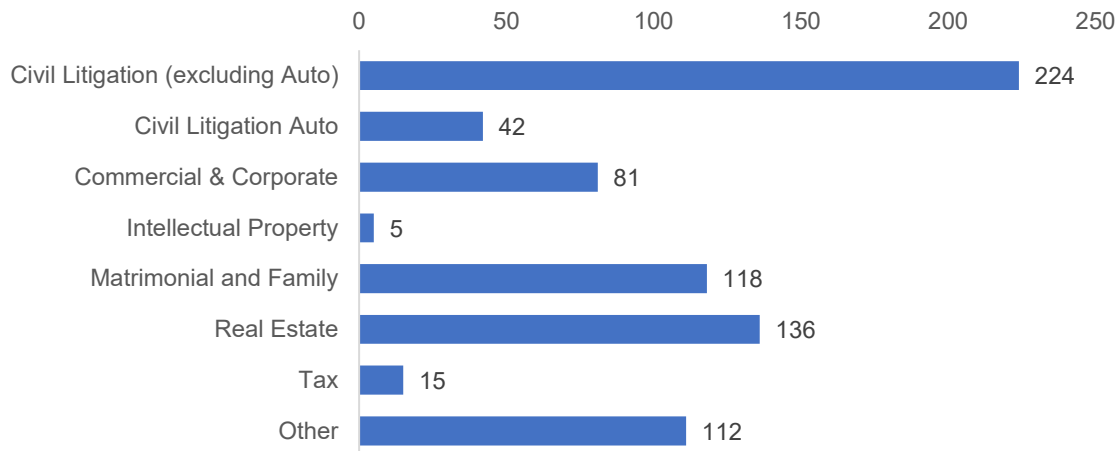
Claims Overview²

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.

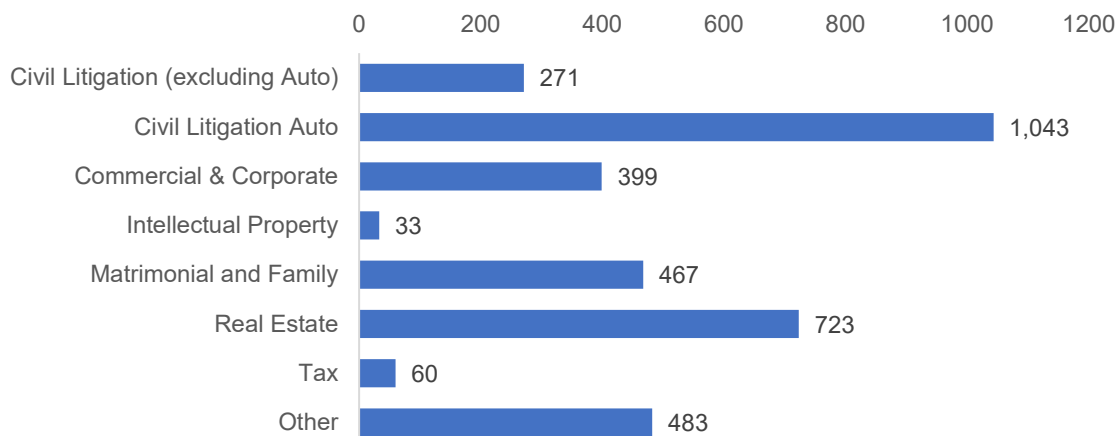
The number of total claims incurred by insured Alberta lawyers continues to rise. In 2017 this was driven by an increase in the number of Part A (negligence) claims that rose from 723 to 733. There were also 35 Part B insurance claims (misappropriation).

768
Total Claims

Distribution of Professional Liability Claims by Area of Law Fund Year 2017



Fund Years 2013 – 2017



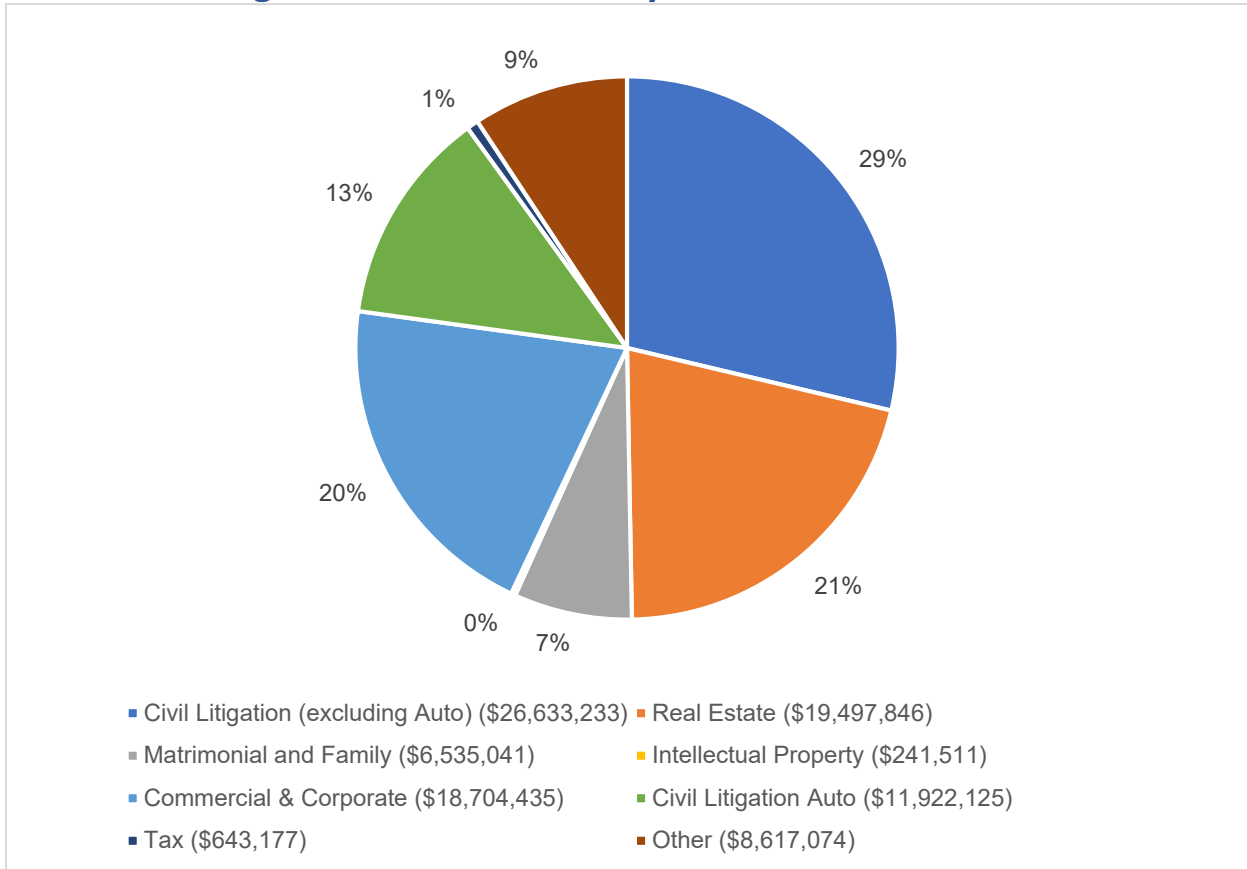
² Numbers are based on Fund Year – July 1, 2016 to June 30, 2017.



The total paid out by the Program this year for professional liability claims was \$20,097,999, a decrease from the 22,904,205 paid out in 2016. The incurred losses on misappropriation claims decreased by 63%, from \$208,931 in 2016 to \$76,543 in 2017.

\$20,097,999
Total claims paid out in 2017

Incurred Damages and Defence Costs by Area of Law Fund Years 2013-2017



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 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.



The primary reasons for professional liability claims are related 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.

65% of claims
Due to Communications or Practice Management

The causes behind these issues can often be easily addressed, and the lawyers involved could avoid these costly claims. To learn more about dealing with files in a timely manner, visit [Dismissal for Long Delay and Prejudice](#).

Lawyers can also use LSA resources, such as [Practice Advisors](#), to learn more about how to establish processes to address administrative, procedural and system issues.

Part A Professional Liability Insurance

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 member of the public for such a loss.

Reason/Cause for Claims – 2015 – 2017

Reason/Cause for each claim (example in brackets)	2017	2016	2015
Communication (failure to follow client instructions)	33%	36%	38%
System/Procedures/Administrative (clerical errors)	32%	30%	35%
Law (failure to know or apply the law)	15%	18%	14%
Conflict (issues involving client representation)	12%	9%	5%
Delegation/Supervision (inadequate oversight of legal team)	3%	3%	5%
Investment Schemes	0%	0%	0%
Mortgage Fraud	0%	0%	1%
Fee dispute	4%	3%	1%
Fraud by client/other party dispute	1%	1%	1%



Breakdown of Claims by Area of Law

Fund Year	Real Estate	Civil Litigation	Matrimonial & Family	Commercial & Corporate	Tax	Intellectual Property	Other
2008	269	259	65	100	6	13	63
2009	353	305	56	105	12	7	77
2010	336	292	99	112	7	4	103
2011	204	269	84	110	16	9	82
2012	231	260	96	121	10	6	79
2013	124	228	75	86	13	8	89
2014	166	283	90	87	11	3	100
2015	154	257	88	59	12	7	83
2016	143	280	96	86	9	10	99
2017	136	266	118	81	15	5	112

Part B Misappropriation “Trust Safety” Insurance

“Trust Safety Insurance” 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 that 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 2017, the Program received 35 Trust Safety insurance claims against 15 lawyers.

From its inception in 2014 to December 2017, ALIA returned \$245,330 to 85 victims as a result of misappropriation insurance claims.³

³ These numbers do not include any legacy claims and payments under the Law Society of Alberta’s Assurance Fund.



Other Program Initiatives This Year

Successful GST Resolution

For a number of years, ALIA has challenged an interpretation from the Canada Revenue Agency (“CRA”) respecting ALIA’s GST status. In 2017, ALIA was successful in obtaining a beneficial resolution of its challenge, which will result in a full refund of approximately \$4 million to ALIA in 2018. ALIA used some of these funds to offset what would otherwise have been an increase in the levy that would have resulted from the increased claims against insured lawyers.

ALIAAlerts

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

ALIA uses its [ALIAAlert](#) program to share tips and information to help lawyers identify, avoid and report schemes and scams targeting Alberta lawyers.



Updating ERM

The program also has its own enterprise risk management (or ERM) policy to help guide the Board in its risk oversight role. This year, as one of the many governance and oversight actions taken by the Program, the Board reviewed that policy and updated the risks contained in it.

Aiming for More Consistent Levies

The Program adopted a surplus management tool that provides guidelines to help the Board determine an appropriate amount of surplus for the program to maintain and support consistency in setting the annual levy.

Program Initiatives for 2018 and Beyond

Service Evaluation Forms

ALIA seeks to continually enhance the Program, making it better for all stakeholders. One important tool in this process is to receive feedback from those who interact with the Program.

ALIA welcomes all feedback, and specifically elicits feedback from lawyers who have been the subject of claims in the Program. In the coming year, ALIA will be rolling out a revised service evaluation form which should enhance the type of feedback received, and accordingly enhance the service provided by the Program.

Updating the Surcharge Protocol

The current surcharge protocol has been largely unchanged for approximately 30 years. In 2018, ALIEX’s Board will be reviewing the surcharge protocol with a view to shifting some of the costs of the Program to those insureds who have multiple paid claims for indemnity (as opposed to just defence costs, which has never been subject to surcharge in Alberta).



This will reduce the financial burden on those insured lawyers who have a clean claims record, or a single claim.

Cyber Insurance

We will be rolling out communications on ways to make it easier for insured Alberta lawyers to purchase insurance in addition to basic mandatory coverage. Our first area of focus will be cybercrime and the need for lawyers to look at purchasing cyber insurance.

ALIAdvisory

We will continue to seek to adopt cost-effective ways to enhance risk management and loss prevention. Our fraud alert service, ALIAlerts, will be augmented with other educational content under the banner of ALIAdvisory, designed to boost lawyers' awareness of the issues that lead to the most frequent and costly claims impacting the indemnity program.

Initiatives to Reduce Base Levy

We are examining several other opportunities that, combined with proactive risk management actions on the part of participating lawyers, will help to offset the costs of claims.

In the coming years, we will be examining the opportunity of using transaction fees to lower the base levy, as has been successfully done in other jurisdictions.

Working with the Law Society

Because claims drive the levy, ALIA and the Law Society are working to avoid or reduce claims in various ways, including:

- **Offering** online resources ([Red Flags](#), [Loss Prevention](#) and [Client ID & Verification](#)) that will raise lawyers' awareness of fraud and provide tools to help them avoid scams. By using these resources and the support systems available, lawyers can reduce the risk of falling victim to fraud which will result in fewer claims and less money paid out each year. Ultimately, this may also reduce the levy.
- **Auditing** new law firms to ensure responsible practices are put in place.
- **Enhancing** our electronic trust transaction review capabilities and ongoing risk assessments to identify and address unacceptable practices.
- **Supporting** the Legal Education Society of Alberta and Alberta Lawyers' Assistance Society to help Alberta lawyers through educational and supportive resources.

ALIA'S 30th Anniversary

Next year will be ALIA's 30th year of operation and, although we do not plan to have any major celebrations, we would like to acknowledge and thank everyone who has participated in ALIA over the years, including staff, Benchers, board members, defence counsel, and those lawyers who manage their practices with a view to avoiding claims.

Report a Claim

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



Contact

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

Email alia@lawsociety.ab.ca

Call 403.229.4716 or toll free 1.800.661.1694