



TABLE OF CONTENTS

2018 Management Report	1
The Nature of Claims Filed in 2018	3
Erratum	4

2018 MANAGEMENT REPORT

30th Year

As at December 31, 2018, the Barreau du Québec insured the professional liability of 15,862 members (15,580 in 2017) through its Professional Liability Insurance Fund. Another 11,485 lawyers (11,214 in 2017) had sought and obtained an exemption from the insurance requirement on the ground that they worked exclusively for the public service or did not perform any of the acts reserved exclusively for lawyers in Québec.

On April 1, 2018, the insurance premium was reduced to \$950 per insured (\$970 in 2017). The premium shortfall recorded as a liability was increased from \$208,000 in 2017 to \$220,000 in 2018.

Notwithstanding the reduction in the premium, we continued to solidify the Fund's solvency, thereby increasing the flexibility required to properly satisfy the coverage needs of the profession's members.

Investment income was \$5.5 million (\$3.9 million in 2017). The Fund managed to maintain a favourable rate of return notwithstanding the drop in bond rates over the past few years, in particular, by adding exchange-traded equity index funds, preferred shares and private debt funds to its portfolio.

The Professional Liability Insurance Fund of the Barreau du Québec ended its thirtieth fiscal year as at December 31, 2018 with an annual surplus of \$10.5 million (\$1.9 million in 2017). Equity amounted to \$90.8 million, compared with \$81.6 million in 2017.

The \$27.5 million deficits suffered during the 2011 and 2012 fiscal years are a reminder that the Fund's performance essentially depends on the claims brought against its insureds.

Prevention

In the interests of our members and the public, better control of the risks associated with the practice of law continues to be crucial. In 2018, the

Fund once again presented a number of prevention activities aimed at reducing these risks.

The Fund presented 39 free training workshops throughout Québec and online through Web-pro. These training activities drew 1,627 members (1,999 in 2017).

The *Praeventio* bulletin, always highly valued by our insureds, continued to be published in 2018 and provided practical advice on how to avoid malpractice claims.

Claims

The number of claim notices (including preventive notices) decreased slightly, dropping from 656 in 2017 to 643 in 2018. At the end of the year, there were still 659 active cases (683 in 2017), representing a total of 20,273 notices since the Fund began its operations.

Third parties who had well-founded claims against our insureds were indemnified at the fair value of their claims by way of amicable settlements. Among the cases closed in 2018, the Fund entered into 116 transactions (77 in 2017), of which 88 involved a payment (61 in 2017).

Moreover, the Fund fully satisfied its obligation to defend unfounded claims. The Fund obtained 73 discontinuances (27 in 2017) and entered into 28 out-of-court settlements which involved no payment (16 in 2017).

The lawyers retained by the Fund were successful in having 42 cases dismissed (29 in 2017), with only two final judgments for modest amounts having been rendered against our insureds (1 in 2017). We continue our efforts to ensure the Fund implements the best strategies and makes the best decisions regarding whether or not to proceed to trial.

Claim Liabilities

The Fund's actuary evaluated the claim liabilities (actuarial provisions for unsettled claims) at \$59.8 million on a gross basis, down from \$61.4 million in 2017, but up from \$54.3 million in 2016.

Given the general coverage of \$10 million per Loss available to insureds, the Fund continues to manage its financial risk through reinsurance coverage of \$8 million for claims exceeding \$2 million. The reinsurers' share of provisions increased from \$4.3 million in 2017 to \$6.5 million in 2018.

Claim and Settlement Expenses

Claim and settlement expenses (provisions and payments) amounted to \$7 million (\$13.7 million in 2017), after deducting the portion assumed by the reinsurers. The decrease is due to favourable developments related to claims presented prior to 2018.

During the fiscal year, for the files of all years combined, the Fund paid out \$5 million in defence costs, excluding internal costs, and \$3.7 million as indemnities, for a total of \$8.7 million (\$6.9 million in 2017).

Defence costs continued to increase (from \$3.9 million in 2016 to \$4 million in 2017 and \$5 million in 2018). The year 2018 saw a 39% increase in court cases compared with 2017. We continue to hope that the Fund's strategies will allow us to further reduce these costs.

Operations

Operating risks, including continuity of business, fraud and reputation, continue to be managed in accordance with strict internal control policies that comply with the requirements of the Autorité des marchés financiers.

General overhead expenses amounted to \$2.1 million (\$1.9 million in 2017).

Satisfied Insureds

Our insureds once again expressed their satisfaction with the Fund. Our surveys of members after the processing of claims covered by the insurance policy revealed that our insureds expressed full satisfaction with the services rendered by the Fund.

Board of Directors

During the 2018 fiscal year, there were 5 statutory meetings of the Board of Directors of the Insurance Fund and 14 committee meetings.

In addition to its regular activities, the Board discussed the premium for the insurance period beginning April 1, 2019.

New Legislation

The Board of Directors also considered the impact of the *Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*, S.Q. 2008, c. 23.

Work is ongoing in connection with the provisions of this Act that deal with the governance and operation of insurance funds. These provisions are expected to come into force on June 13, 2019 and provide for the following:

- the elimination of a fund's board of directors that is independent from the order's board of directors;
- the creation of a committee referred to as the "Professional Liability Insurance Decision-Making Committee" which reports to the board and is in charge of the processing of notices of loss;

the transmission by the Decision-Making Committee of certain information to the order's other units (Board of Directors of the Barreau, Syndic of the Barreau or Professional Inspection Committee), for the purpose of ensuring the protection of the public.

Guidance is expected from the Autorité des marchés financiers and the Office des professions du Québec with respect to the implementation of these changes.

Conclusion

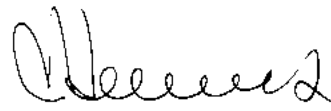
We conclude this thirtieth year by thanking our directors, each of whom

participated in the guidance, sound governance and longevity of the Insurance Fund.

We would also like to thank all the lawyers who are employees of the Fund and all administrative staff for their dedication and professionalism in dealing with each stage of a claim file. It is through them that the Fund has earned the ongoing trust of its insureds.

We will continue to work with the Barreau du Québec, including as regards the implementation of the new Act. We hope to be an ongoing source of pride for the Barreau and its members.

Montreal, February 20, 2019 ☂



Madeleine Lemieux, Ad. E., ASC
Chair of the Board



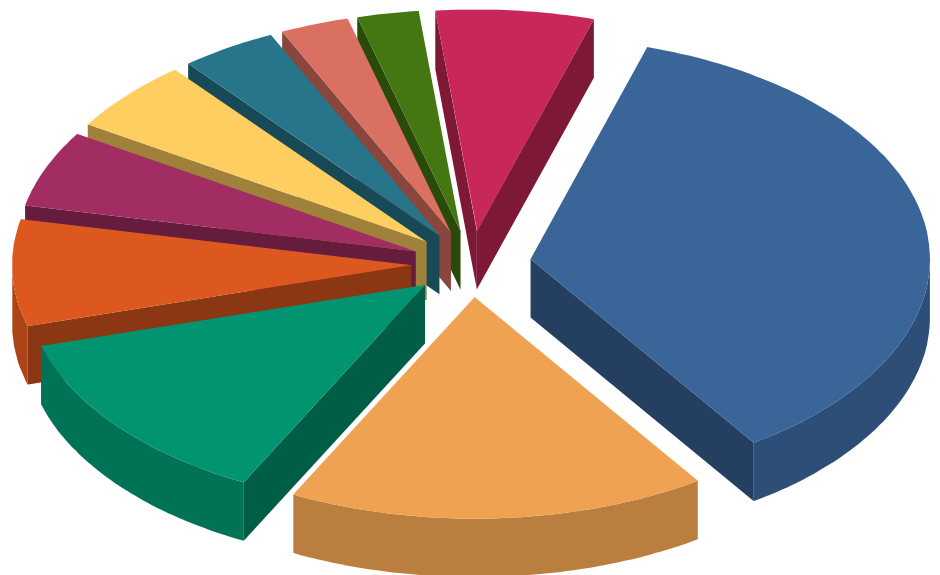
Maria De Michele, Lawyer, ASC
Executive Director

THE NATURE OF CLAIMS FILED IN 2018

The following is a portrait of the 643 claims filed with the Insurance Fund in 2018, the majority of which were filed by clients of the Fund's insureds.

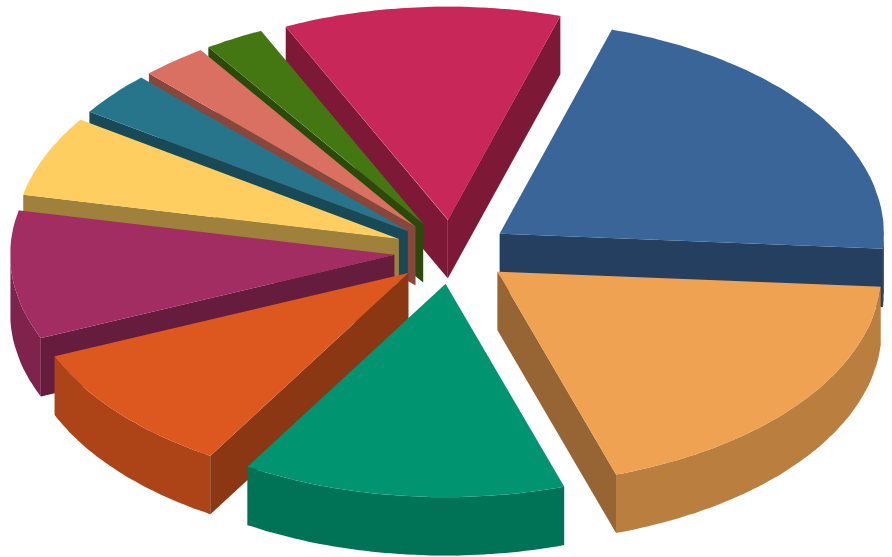
TYPES OF ERRORS – January 1, 2018 to December 31, 2018

Improper performance of the mandate	35.8%
Missed deadlines	17.1%
Abuse of process	12.8%
Improper advice	7.8%
Instructions not followed	5.6%
Failure to know the law	5.3%
Libel or slander	3.8%
Undertakings not fulfilled	3.0%
Professional secrecy	2.3%
Other	6.4%
Total:	100.0%



CAUSES OF CLAIMS – January 1, 2018 to December 31, 2018

Inadequate monitoring of the file	21.4%
Communications with the client	18.9%
Vindictive attitude	13.5%
Inadequate investigation	10.2%
Knowledge of the law	9.7%
Fees	6.1%
Conflicts of interest	3.3%
Office organization	2.7%
Insured's personal difficulties	2.5%
Other	11.7%
Total:	100.0%



For 30 years, the errors alleged and the causes of claims filed have remained substantially the same, despite changes in the profession.

The improper performance of the mandate, a lack of organization, in particular regarding the agenda and deadlines, abuse of process or statements made without sufficient restraint, and poor lawyer/client communications continue to be the source of too many complaints.

Let's set objectives for 2019:

- Better organization of one's work;
- Better monitoring of files;
- Moderation in the proceedings filed and the statements made; and
- Better communication.

All of these could appreciably reduce the number of complaints filed against lawyers each year.

Remember that the Insurance Fund offers free training activities to help lawyers prevent such complaints. Don't hesitate to register for these activities. ☂

ERRATUM

In the January 2019 edition of the *Praeventio* bulletin, the reference to the ruling in *El-Hachem c. Decary*, in the article "Abuse of Procedure and a Lawyer's Duty to Advise" should have been: 2012 QCCA 2071 (page 4 of the bulletin). ☂

NOTICE

Service de prévention

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This Loss Prevention Bulletin is published by the Professional Liability Insurance Fund of the Barreau du Québec.