

Exempt lawyers are still at risk

Many lawyers believe that claims are not as much of an issue once they are retired or otherwise exempted from paying the insurance premium. They also (mistakenly) believe their \$250,000 Run-Off Coverage provides adequate protection for any claims that may be made against them.

For many lawyers, the opposite is true.

LAWPRO has recently seen several cases where retired lawyers have exhausted their \$250,000 Run-Off Coverage limit. As well, our statistics tell us that one in 50 claims against lawyers exceeds the \$250,000 mark; and one in 100 claims tops \$500,000. Thus, a single claim could easily exceed your \$250,000 Run-Off Coverage limits.

Moreover, the standard Run-Off Coverage provides you with limited protection over time: The \$250,000 per claim/in the aggregate limit is a one-time limit and applies to all of the claims made against you while on exemption.* A common misconception is that this limit is renewed every year. On the contrary, \$250,000 is the total of all coverage you will have for all claims made against you (and your estate) in the past, present and future while exempt. Once the \$250,000 limit is used up, you are personally liable for any additional costs. As a result, a series of smaller claims over time can exhaust your coverage.

In addition, your exposure to claims may be higher than you think:

- Legal services which you or former partners or associates provided in the past may give rise to a claim, now or in the future.
- Lawsuits arise from many quarters – past clients, your former employer(s) and their officers or directors, shareholders, employees and any others who have relied on your legal advice.
- Many claims do not surface for several years after legal services were provided; up to 10 per cent of claims are not reported until five years after the service that gave rise to the claim was provided.
- Although legislative changes such as the *Limitations Act, 2002*, may provide greater defences, they do not address all areas of exposure.

If you are concerned that claims arising out of past legal activities could exceed your \$250,000 Run-Off Coverage limits, you can apply to buy up these limits (as well as your Innocent Partner Coverage limits) for an additional premium. Run-Off Buy-Up Coverage can be tailored to your particular needs, as is more fully described on the previous page.

For a more detailed discussion of the issues that those on exemption should consider in assessing their potential exposure to claims and for information on Run-Off Coverage and options to increase your coverage limits, please see the LAWPRO Web site at www.lawpro.ca, or contact our Customer Service Department at 416-598-5899 or 1-800-410-1013 or by e-mail at service@lawpro.ca and ask for a copy of the Insurance Matters brochure that applies to your category of exemption.

* This does not apply to lawyers who qualify for mobility or a temporary leave of absence exemption.

When your past haunts your present (a fictitious scenario based on composite claims information)

BACKGROUND

Mr. W retired from his small-town Ontario real estate and wills/estates practice two years ago with a claims-free track record, so he never saw the need to buy up his Run-Off Coverage beyond the \$250,000 per claim/aggregate coverage limits. Notice that he was being sued for upwards of \$1 million by the children of one of his former clients because of an alleged oversight in the drafting of their father's will 10 years ago therefore came as a complete shock.

INSURANCE ISSUES

Even more unsettling was the exposure that this claim represented. The value of the estate had increased considerably over the intervening years. Disputing heirs also made a quick resolution to the claim more difficult, resulting in increased defence costs. No matter what the outcome, Mr. W. knew his potential exposure was significant – and beyond his Run-Off Coverage limits.

Had Mr. W bought up his Run-Off Coverage limits, his personal exposure would have been significantly less. For example, if he had increased his coverage to the full \$1 million per claim/\$2 million aggregate available, chances are virtually all of the defence, judgment or settlement costs associated with his claim could have been covered by LAWPRO. As well, had he applied for increased Run-Off Coverage when he first retired, his risk-rated premium would have reflected his claims-free track record. For Mr. W to secure increased Run-Off Coverage for the future will be difficult, and certainly costly.