

2015: Fifth year of premium stability

LAWPRO celebrates 20 years operating primary program

Quick summary:

- base premium for 2015: \$3,350 (unchanged since 2011)
- expanded range of programs approved for LAWPRO Risk Management Credit (RMC)
- paralegal partners now eligible for RMC savings
- expanded policy definitions for “employee” and “prescribed penalties”
- clarification of coverage for the work of non-licensee professionals in Multidisciplinary partnerships (MDPs)

Five years of premium stability

As we prepare for the 20th anniversary of the LAWPRO program in 2015, we are pleased to announce that, for the fifth year in a row, the LAWPRO base premium will be \$3,350.

The depth of our underwriting experience, good investment returns and plateauing claims have allowed LAWPRO to keep premiums stable despite annual claims costs of nearly \$100 million (including internal claims handling expenses).

While we cannot escape external pressures (such as changes coming to our solvency test, the Minimum Capital Test), we remain committed to the prudent claims management, cost containment and risk-rating approaches that have supported our financial stability over the last 20 years.

LAWPRO Risk Management Credit eligibility expanded

The LAWPRO Risk Management Credit (RMC) program has proven successful in encouraging lawyers’ participation in continuing professional development (CPD) programs with a risk-management focus. Because maintaining good mental health and coping well with stress helps lawyers avoid claims, LAWPRO contributes financially

to the Law Society’s Member Assistance Program (MAP) administered by Homewood Human Solutions (HHS). As of 2015, certain e-learning courses offered on the HHS site will now be approved for the RMC credit. Approved programs address issues including managing stress, managing alcohol and substance consumption, coping with financial pressures, and managing working relationships.

Also, paralegal licensees who work in partnership with lawyers are eligible, as of September 16, 2014, to earn the RMC for approved CPD programs they attend, which will allow them to save up to \$100 on their 2016 premiums.



Lawyers employed part-time for one employer now also “employees”

To support consistent and fair coverage of claims based on the work of employee lawyers, the definition of “employee” under the policy has been expanded to include all employees who provide professional services for one employer, whether they do so on a full-time or part-time basis.

Fines for non-disclosure under s. 237.3 of *Income Tax Act* now “prescribed penalties”

Section 237.3 of the *Income Tax Act* (ITA) has some potential to impose penalties on lawyers for non-disclosure of transactions alleged to offend the General Anti-Avoidance Rule (GAAR). As with certain other penalties, to ensure that effective investigation and defence cost protection of up to \$100,00 is available to lawyers who successfully defend such penalties assessed (upon final resolution), the definition of “prescribed penalties” under the policy has been expanded to include penalties charged under s. 237.3 of the ITA.

Clarification of coverage for non-licensee professionals in multidisciplinary partnerships (MDPs)

The policy has been amended for greater clarity to describe the scope of work performed by non-licensee professionals in multidisciplinary

partnerships (MDPs) that is covered by the LAWPRO policy. Coverage is limited to:

- the practice of the non-licensee's profession, trade, or occupation that supports or supplements the practice of the Law of Canada
- services performed for, or on behalf of, the MDP
- services provided or which ought to have been provided within Canada, and

- claims or civil suits brought on their merits in Canada.

New cancellation and extended notice period provisions

Cancellation and extended notice period provisions regarding paralegal partners in combined licensee partnerships are also being added to comply with the mandatory insurance provisions for paralegals under the Law Society's *By-Law No. 6*.

Exemption eligibility for “employed” lawyers

A common fallacy is that all lawyers who work in a corporate, government, education or municipal setting will be entitled to an exemption from the requirement to pay LAWPRO premiums for the Law Society's mandatory insurance program. Depending on the employment relationship and the nature of the work, this may not be true.

To qualify for one of the “single employer” exemptions under the Law Society insurance program (Exemptions D and E), the lawyer must be employed by a single employer **and** not engage in the practice of law in Ontario other than for and on behalf of that employer.

Employed by a single employer

While the situation for a lawyer who is engaged in the practice of law as an employee of a corporation and doing work only for and on behalf of that corporation is clear (they would be exempt), the circumstances in which lawyers do work for their employer or clients vary widely.

For example, the following do not meet the exemption requirements:

- **Independent contractor relationships** – the essence of an independent contractor relationship is that the contractor is not an employee.
- **Crown attorney work on a contract** to the provincial or federal government – once again, the contractor is not an employee. (This is different from a crown attorney employed by the government, who would meet the first part of the exemption test).
- **Employed lawyers who do work for different units in a corporate group** that don't fall within the definition of “employer” in Law Society *By-law No. 6*: unless that definition is met, the lawyer cannot claim exemption because he/she does not have a single employer. The by-law specifies that “employer” includes a corporation, any affiliated, controlled and subsidiary company of the corporation and any other entity employing the lawyer, and “affiliated,” “controlled,” and “subsidiary” have the same meanings given them in the *Securities Act*.
- **Lawyer employed by a single employer, but duties include performing legal services for others** (such as customers of the employer or fellow employees) – the lawyer is also engaged in the practice of law on behalf of someone else.

Engaged in the practice of law

Why is this relevant? To qualify for the “single employer” exemption, the lawyer cannot engage in the practice of law in Ontario other than for and on behalf of that employer. The nature and type of work undertaken by lawyers in corporate or other non-law firm settings will vary widely, and will often include legal and non-legal tasks. So, if the work you are doing for others (i.e., anyone other than your sole employer) isn't the practice of law, you may still qualify for the exemption.

Generally speaking, if a lawyer uses his or her legal knowledge, judgment and/or skill when working on a matter, and a solicitor/client relationship is established, it can be expected that the lawyer has engaged in the practice of law for the purposes of the LAWPRO exemptions. Job titles, task descriptions, ultimate supervision of the work and the existence of other types of insurance are not determinative of exemption eligibility.

Consider a lawyer doing document review work for litigation matters. A lawyer who is reviewing documents for relevance and production obligations, assessing documents for privilege, or identifying documents to support legal arguments and defences, would be seen to be engaged in the practice of law in determining eligibility for LAWPRO exemptions. On the other hand, a lawyer who is summarizing or condensing volumes of information for publishing purposes would not be seen to be engaged in the practice of law because that type of task doesn't require the skill or knowledge of a lawyer.

Call us if you have questions

We recognize that the employment and work circumstances of lawyers will vary widely. If you need help determining if you qualify for an exemption as an employed lawyer or if you are engaged in the practice of law, please contact the LAWPRO Customer Service Department at service@lawpro.ca or by phone at 1-800-410-1013 or 416-598-5899. We will review your situation and give you direction based on the provisions of the LAWPRO policy.

The “Not engaged in the practice of law exemption” – a separate ground of exemption

The discussion of whether a lawyer is engaged in the practice of law in this article is also relevant for lawyers claiming the “not engaged in the practice of law” exemption. If you are not engaged in the practice of law you are exempt from paying LAWPRO premiums, regardless of where you work. Once again, feel free to contact the LAWPRO Customer Service Department to discuss your specific circumstances.