

# What does your malpractice policy cover:

**Individual  
lawyers**



**law firm?**



or the

Have you ever wondered why LAWPRO's policy for the Law Society of Upper Canada insurance program (the "primary policy") insures lawyers on an individual basis while excess insurance is issued on a firm-wide basis?

Most Ontario lawyers have probably never considered this question. And while it may seem to be a rather subtle distinction, the reasons for this difference are many and varied.

Some of the reasons that LAWPRO insures lawyers individually under the primary policy include:

- (i) Avoiding gaps in coverage: By issuing policies with coverage on an individual lawyer basis, it can better avoid gaps in coverage that can arise once firms have closed, or when lawyers change firms, provide legal services outside of their firm practice, work for more than one firm at a time, etc.;
- (ii) Allowing tailored coverage and payment options: Providing lawyers individually
- (iii) Comprehensive rating: Ensuring that claims against lawyers are assessed and tracked on an individual basis, instead of on a firm-wide basis. While allowing for more precision in recording individual lawyers' claims histories, this also allows for a better understanding of claims and claim trends, through modelling of risks that face the profession generally and

with some choices, so they can tailor their insurance coverage and payment options to meet their particular practice needs, while maintaining reasonably consistent coverage and options amongst all insured lawyers (see below in terms of the areas where even in the primary program firm-wide consistency is required);

lawyers in different types of practice circumstances (e.g., by years of practice, size of practice, area of practice, location of practice, etc.). Very important use is made of this type of data by the practicePRO program, LAWPRO's leading-edge risk management program that assists lawyers in identifying and reducing practice risks.

*With all of these benefits, why do insurance companies sell insurance on a firm-wide basis at the excess level?*

Many of the benefits from insuring lawyers individually under the primary Law Society program are only possible because LAWPRO provides the insurance for all lawyers called and in private practice in Ontario. If within

a given firm lawyers could purchase their excess insurance from different insurance companies, a number of inefficiencies in the claims-handling process would almost certainly arise. This is because multiple excess insurance policies might respond to the same claim, which would give rise to:

- (i) Duplication in investigating and defence costs by excess insurers in respect of the same claim;
- (ii) The potential for inadvertent stacking of excess limits (as “other insurance” clauses are interpreted as cancelling each other out) when more than one excess policy responds to a claim, possibly driving up damages claimed;
- (iii) More lawyers facing negative effects of a claim, as each excess insurer considers surcharging and other implications for the same claim and error;
- (iv) Costs being incurred by excess insurers in resolving disputes as to which excess policy should respond; and
- (v) Excess insurers seeking recovery from others they don't insure, possibly leading to subrogation or other recovery proceedings being brought against firm lawyers insured by other excess insurers.

Of course, the added costs associated with these activities would ultimately be passed on to lawyers, perhaps by way of increased premiums, deductible amounts or surcharges.

### Other benefits of insuring on a firm-wide basis

There are also administrative efficiencies to consider. Through investment in its online facilities and automated application process for individual lawyers, LAWPRO is able to deal with policy issuance and coordinate lawyer coverage across firms and the profession, with an effectiveness that most excess insurers could not expect to achieve. Given limitations in market share and the substantial amount of communication and activity necessary in dealing with insurance, it is more efficient and cost-effective for excess insurers to deal with insurance on a firm-wide basis than with lawyers individually.

Importantly, lawyers practising within a firm environment share risks. A single error giving rise to a claim can involve several members of the same firm. If lawyers within firms did not have uniform coverage and share the same limit, it would be open for claimants to formulate their claims based upon the broadest coverage and highest available limit. By offering insurance on a firm-wide basis, excess insurers are well protected against this possible concern.

### Some of the ways lawyers are treated as part of a firm under the primary policy

Under the Law Society program, a number of coverage options must be coordinated amongst firm members, given the inherent sharing of risk in a firm environment. These include:

- (i) **Deductible options:** Sole practitioners, provided they qualify, can choose whether they want to pay lower premiums and accept a higher deductible, or enjoy the benefits of a lower deductible but with a higher annual premium. Lawyers in a firm setting, however, are required to each choose the same deductible option.
- (ii) **Innocent party sublimits:** Under the Law Society program policy there is an exclusion for claims relating to or arising out of a lawyer's dishonest, fraudulent, criminal or malicious act or omission. Lawyers who are in practice with other lawyers are required to carry the innocent party coverage which provides limited coverage for claims arising from a lawyer's malfeasance. There is a standard sublimit of \$250,000 per claim/aggregate which can be bought up to \$500,000 or \$1,000,000 to provide wider coverage for the firm. In order to buy-up the sublimit all lawyers in the firm would have to apply for the same level of coverage.
- (iii) **Restricted area of practice:** Criminal and immigration law practices have been found over time to give rise to fewer claims and lower claims costs than most other areas of practice. Lawyers

who qualify can apply under the Law Society program for the restricted area of practice premium option which provides for a discount equal to 50 per cent of the base rate. However, all members of the firm have to qualify and apply for this option, for it to be made available.

### How non-lawyers can be treated as part of a firm under the primary policy

The need for uniform coverage is true for lawyers practising in any kind of partnership. Lawyers who partner with non-lawyers, such as paralegals in combined licensee partnerships or non-licensees in multi-discipline partnerships (MDPs), are required (or will be as of January 1, 2014 in the case of combined licensee partnerships) to purchase liability insurance for all partners from LAWPRO. Partnerships, by their very nature, invite vicarious liability claims. Just like any other type of law firm, if the partners in a combined licensee partnership or MDP were purchasing their insurance from different carriers there would potentially be inconsistency in the coverage provided (such as innocent party coverage) and there would always be a benefit to claimants to name many firm members in order to access multiple policies.

So, wherever possible, insurance for parties practising in association, partnership or in a law corporation should be coordinated to ensure consistent coverage amongst all firm members. Under the Law Society program this is possible even when insuring lawyers individually. But for excess and optional coverage it can only be efficiently done on a firm-wide basis.

If you have any questions about LAWPRO excess insurance, innocent party protection, deductible options or practising with non-lawyers, please visit our website at [lawpro.ca](http://lawpro.ca) for more information on these and other topics, or contact our customer service department at (416) 598-5899 or 1-800-410-1013, or by email at [service@lawpro.ca](mailto:service@lawpro.ca). ■

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