

# LAWPRO policy exclusion for investment advice/services

Under the Law Society's insurance program, specifically Part III Exclusion (d) of the policy, there is an investment advice/services exclusion which specifically provides that the policy does not apply:

*"to any CLAIM\* in any way relating to or arising out of an INSURED\* providing investment advice and/or services, including without limitation, investment advice and/or services relating to or arising out of a business, commercial, or real property investment, unless as a direct consequence of the performance of PROFESSIONAL SERVICES."*

As a result, any investment advice or services which you provide are not insured under the program, unless provided as a direct consequence of the performance of legal services.

It is clear that the practice of law may involve some incidental investment advice or ancillary financial service. This is particularly the case for those lawyers involved in establishing trusts for clients and in estate law, where you may have some limited investment or banking authority concerning trust or estate funds which is incidental and related to your legal services mandate.

So, for example, as part of your law practice, you may act as estate trustee or assist a client in his or her role as estate trustee, which will involve taking inventory of the assets and debts of the estate. You may be responsible for safe



guarding and valuing the assets, dealing with banks, brokerage and insurance companies, and arranging for investment or liquidation of investments. The investment advice and/or services that you provide in this context, as a lawyer and as part of your law practice, would be covered in the ordinary course and would not be excluded under Part III Exclusion (d).

On the other hand, if you provide investment advice or services that are not related to and are not a direct consequence of the performance of legal services, you can expect that coverage will not be extended to you for such services under the policy. Investment advice or services which are not incidental to your

law practice require a different type and level of investment expertise, which most lawyers are not trained or educated in, nor are they in a position to readily provide.

Providing investment advice or services which are not provided as a direct consequence of your performance of legal services would represent an inordinate exposure to the program when compared with the exposure associated with incidental investment advice provided as part of your ordinary practice, or compared to the exposure associated with most lawyers' law practices generally.

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*Duncan Gosnell is vice-president, underwriting with LAWPRO.*

\*defined terms under the Policy