

2016: Base premium holds steady, REPCO reduced

Insurance program enters third decade on strong, positive footing

Quick summary:

- base premium for 2016: \$3,350 (unchanged since 2011)
- Real Estate Practice Coverage Option (REPCO) \$100 for 2016 (down from \$250)
- Run-off coverage now stands behind mentoring efforts of exempt lawyers
- LAWPRO coverage for paralegal shareholders in combined licensee (incorporated) firms

Base premium stable

The base premium for 2016 will be \$3,350 – unchanged since 2011.

While LAWPRO anticipates growing pressure on premiums from continued high claims costs and regulatory changes, those pressures do not yet warrant an increase to the base premium. Claims management and cost containment efforts are expected to support our efforts, in 2016, to handle projected claims without increasing premiums.

REPCO premium reduced to \$100

For the third time since the coverage was introduced in 2008, LAWPRO has reduced the premium for the Real Estate Practice Coverage Option. REPCO will cost \$100 in 2016, down from \$250 in 2015.

REPCO was introduced in 2008 to support changes to the procedures for the registration of interests in land in Ontario. As the risk “picture”

for the new land registration regime has come into focus, and as the pool of premium reserved to manage those risks has grown, LAWPRO analysts have adjusted the premium downward twice to date: once in 2010 (from \$500 to \$400) and again in 2012 (from \$400 to \$250). Results of the most recent round of analysis have given us confidence that a further reduction, for the 2016 policy year, is warranted; this time from \$250 down to \$100. For further



20 years of the primary program: a great beginning

The year 2015 is the 20th anniversary of LAWPRO's delivery of the primary insurance program prescribed by the Law Society of Upper Canada. As many will remember, LAWPRO was established during a period of considerable strategic and financial uncertainty. But the fund deficit discovered in 1994 was successfully overcome, and LAWPRO has achieved impressive financial stability and a reputation as one of the world's most innovative and sophisticated legal professional indemnity insurers.

details of the REPCO program and the 2016 reduction, see the article “REPCO reduction reflects commitment to risk-rating” below.

Run-off protection now available for mentoring activities by exempt lawyers

In recognition of the role that lawyers who are exempt from the payment of premium levies can play as mentors, as of 2016, qualifying mentoring activities* by exempt lawyers will generally be covered under the run-off policy applicable to those lawyers, subject to availability.

There would be no coverage for the exempt lawyer under the program policy in its pre-2016 form, since the run-off coverage afforded to exempt lawyers generally precludes coverage for claims arising out of professional services provided by the lawyer while exempt from the requirement to pay insurance premium levies. As

of 2016, however, mentoring services provided by lawyers while exempt will be deemed to be professional services provided by the lawyer while still a practising lawyer insured under the program, for the purposes of run-off coverage.

LAWPRO coverage for paralegal shareholders in law corporations

In recent years, licensed paralegals have begun, in some instances, practising in partnership with lawyers. To harmonize coverage as between lawyer and paralegal partners in those arrangements, LAWPRO introduced coverage for paralegal partners in 2014. Beginning with the 2016 policy year, that coverage will also be required for paralegal shareholders in “combined licensee” (lawyer and paralegal) professional law corporations. Paralegal shareholders in these combined licensee firms (CLFs) can continue with their existing professional indemnity coverage until the date it expires in 2016, moving to LAWPRO coverage when it comes time to renew. ■

* To qualify for coverage under the policy, mentoring activities must comply with LAWPRO requirements designed to protect both mentor and mentee. Read about these requirements in our online FAQs, available at lawpro.ca/faqs

REPCO reduction reflects commitment to risk-rating

Real estate and civil litigation continue to be the areas of practice with the highest claims, both in terms of count and cost. However, real estate claims based on the registration of fraudulent instruments under the *Land Titles Act* where the claim would otherwise be excluded from coverage due to the dishonesty of the insured lawyer – the risk targeted by the Real Estate Practice Coverage Option (REPCO) – have turned out to be rare.

When the Ontario bar opted, in 1995, to address the insurance crisis of that era by having LAWPRO as an independent, regulated insurance company provide the primary professional liability program, it became clear that success depended on developing a program in which premiums were generally matched to risk (risk-rating).

The essence of REPCO coverage is to compensate for a specified type of fraud by the insured lawyer. REPCO coverage is a special protection to support the introduction of changes in the procedures for the registration of interests in land. Since the introduction of REPCO in

2008, LAWPRO has paid one claim. However, these types of claims often take several years to develop, and the fund created by the program must maintain enough in reserve for the payment of future claims not yet discovered. As the claims picture with respect to lawyer electronic registration fraud has unfolded, LAWPRO has responded with two reductions in the premium: from \$500 down to \$400 in 2010, and from \$400 to \$250 in 2012. The latest review of claims trends in this area has made it clear that a third reduction is possible. As of the 2016 policy year, the premium for REPCO coverage – a pre-requisite for practising real estate law in Ontario – will decrease by \$150: from \$250 down to \$100. This savings will be available to approximately 7,800 real estate practitioners.

Of course, updated risk-rating or a change in coverage terms could result in the REPCO premium being increased in a future year. Real estate lawyers provide a vitally important service. LAWPRO is proud to support the work of the real estate bar with this REPCO premium reduction. ■

Rule 48.14 Transition Toolkit helps you prevent administrative dismissal of actions

The administrative dismissal of actions for delay has caught many lawyers by surprise, and has led to several hundred claims and almost \$10 million in claims costs in just three and a half years.

On January 1, 2015, a welcome amendment to the administrative dismissal rule – Rule 48 – came into force.

The amended rule puts off the dismissal of stalled actions until the later of January 1, 2017 or the five-year anniversary of commencement of the action. While this change buys lawyers time, it also opens the door to claims related to misunderstanding of the transition provisions, or to waiting for a future notice of dismissal that never comes: under the new version of the rule, actions will be dismissed without notice.

A resource to help bring your files up to speed

To help lawyers avoid these new pitfalls, the practicePRO program has developed a “Rule 48.14 Transition Toolkit” for lawyers. The toolkit is available at practicepro.ca/Rule48, and includes:

- A summary of significant changes under Rule 48.14
- Why lawyers let files stall, and tips on how to prevent dismissals
- Firm Transition Checklist
- Individual File Checklist
- File Progress Plan
- Rule 48 Transition Training PowerPoint

We invite you to download this useful resource and take the time to review your files, updating your tickler systems to match the new regime.

Wondering what's new?

Here's a summary of the dismissal regime in light of the amendments:

- For actions commenced on or after January 1, 2012, automatic dismissal will occur for cases not set down for trial, without notice to parties or their counsel, five years after the commencement of the action, unless a court orders otherwise.
- Any action struck from the trial list after January 1, 2015, and not restored by the second anniversary of being struck off, will be dismissed on that date, without notice to parties or their counsel, unless a court orders otherwise.

- New actions must include the following warning in the preamble of the Statement of Claim and/or Notice of Action, above the registrar's issuance date and signature: “TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.”
- The registrar must serve 48.14 dismissal orders (Form 48D) on all parties and any lawyer served with such an order must promptly give a copy to his or her client.
- A dismissal can be avoided if a party, with the consent of all other parties, files a timetable and draft order, at least 30 days prior to the relevant dismissal deadline. The timetable and draft order must set out the dates by which outstanding steps necessary for set-down will be completed and a date (no more than two years after the automatic dismissal deadline for the action) by which the action will be set down or restored to the trial list.
- Where the parties do not consent to a timetable, one party can bring a motion for a status hearing. At that hearing, the plaintiff must show cause why the matter should not be dismissed for delay. The court can dismiss the matter, adjourn the matter, make a Rule 77 case management order, or set deadlines for completion of the steps necessary prior to set-down and/or impose a deadline for set-down for trial (or restoration to the trial list).
- The dismissal of an action under Rule 48.14 may be set aside under Rule 37.14.

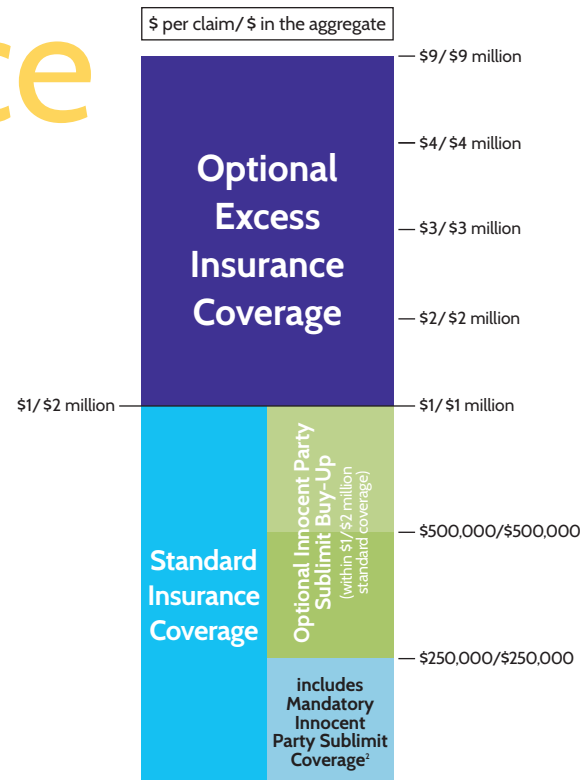
The transition provisions provide that:

- Any action commenced before January 1, 2012 that has not been dismissed or scheduled for a status hearing by January 1, 2015 will be dismissed January 1, 2017 without notice to parties or their counsel.
- Any action struck from the trial list before January 1, 2015 that has not been restored by January 1, 2017 will be dismissed on that date, without notice to parties or their counsel.
- Any status hearings scheduled, but not held, before January 1, 2015, will proceed under the old Rule 48.14.
- Old Rule 48.14 and 48.15 status notices received by parties prior to January 1, 2015 will cease to have effect on that date, unless a status hearing has already been scheduled or the action has already been dismissed. ■

2016 insurance coverage

for lawyers in private practice

sole practitioners and lawyers in association or partnership¹



Standard insurance coverage

The base program

Eligibility:

Required of all lawyers¹ providing services in private practice.³

Coverage limit:

\$1 million per claim/\$2 million in the aggregate (i.e., for all claims made in 2016), applicable to claim expenses, indemnity payments and/or costs of repairs together.

Reminder – Cybercrime coverage sublimit:

The 2016 insurance program includes a sublimit coverage of \$250,000 per claim/in the aggregate for eligible cybercrime claims, applicable to claim expenses, indemnity payments, and/or costs of repairs together.

Defining cybercrime

CYBERCRIME(S) means an incursion, intrusion, penetration, impairment, use or attack of a COMPUTER SYSTEM(S) by electronic means by a third party, other than the INSURED or the INSURED'S LAW FIRM.

Standard deductible:

\$5,000 per claim, applicable to claim expenses, indemnity payments and/or costs of repairs together.

An increase in deductible of \$10,000 applies for claims based on administrative dismissals not set aside through steps taken by or under the direction of LAWPRO. The deductible will be deemed to apply to claim expenses, indemnity payments and/or costs of repairs together in respect of such claims.

Base premium:

\$3,350 per insured lawyer (plus PST).

Mandatory innocent party sublimit coverage⁴

Eligibility:

Required of all lawyers practising in partnership (including in MDPs or LLPs), as shareholders in law corporations, or as sole practitioners practising with employed lawyers. Also required of licensed paralegals practising in partnership with lawyers or as shareholders in combined licensee firms (CLFs).

¹ Includes paralegals practising as partners or shareholders in combined licensee firms.

² Optional for sole practitioners.

³ Lawyers who are on temporary leave and qualify for exemption (c) are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program.

⁴ Coverage for dishonest (as defined), fraudulent, criminal or malicious acts or omissions.

Coverage sublimits:

\$250,000 per claim/in the aggregate, applicable to claim expenses, indemnity payments and/or costs of repairs together.

Premium:

\$250 per lawyer or eligible paralegal licensee (plus PST).

Mandatory Real Estate Practice coverage (for real estate practitioners)**Eligibility:**

Required of all lawyers practising real estate law in Ontario in 2016.

Lawyers not eligible for the Real Estate Practice Coverage Option are:

- those who are in bankruptcy
- those who have been convicted or disciplined in connection with real estate fraud and/or
- those under investigation, where the Law Society obtains: an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practising real estate; or an undertaking not to practise real estate

Coverage limit:

\$250,000 per claim/\$1 million in the aggregate, applicable to claim expenses, indemnity payments and/or costs of repairs together.

Premium:

\$100 per lawyer (plus PST).

Optional insurance coverages

Innocent Party Sublimit Buy-Up⁵**Eligibility**

Optional for all lawyers and eligible paralegal licensees practising in association or partnership (including MDPs, licensee firms, LLPs, and lawyer/paralegal partnerships), law corporations (with more than one lawyer or paralegal shareholder) and sole practitioners practising with employed lawyers.

Coverage sublimits & premiums:

Innocent Party Sublimit Coverage can be increased as follows:

- to \$500,000 per claim/aggregate for an additional \$150 per insured (\$400 total Innocent Party premium) or
- to \$1 million per claim/aggregate for an additional \$249 per insured (\$499 total Innocent Party premium)

Optional Innocent Party Sublimit coverage⁵**Eligibility:**

Optional for sole practitioners, licensee firms with only one lawyer, and lawyers practising alone in a law corporation. Provides protection for ongoing liability that these practitioners can have in situations such as the following:

- if you've acted as back-up counsel or had others act as back-up counsel for you
- if you've taken a temporary leave of absence from your practice and have delegated your work to others
- if you've practised as a partner or associate in the past
- if your practice once included employee lawyers
- if you've practised in any situation in which you could be seen as lending your name to others
- as an assurance to others if involved in electronic registration and escrow closings
- if acting as a *locum*, you must carry at least the same amount of innocent party sublimit coverage as is carried by lawyers in the firm that has hired you

Coverage sublimits:

LAWPRO offers optional Innocent Party sublimits of:

- \$250,000 per claim/aggregate
- \$500,000 per claim/aggregate
- \$1 million per claim/aggregate

Premiums:

Underwritten on an individual basis, based on a risk assessment of information provided in the Innocent Party Sublimit Buy-Up application.

Excess insurance coverage

Eligibility:

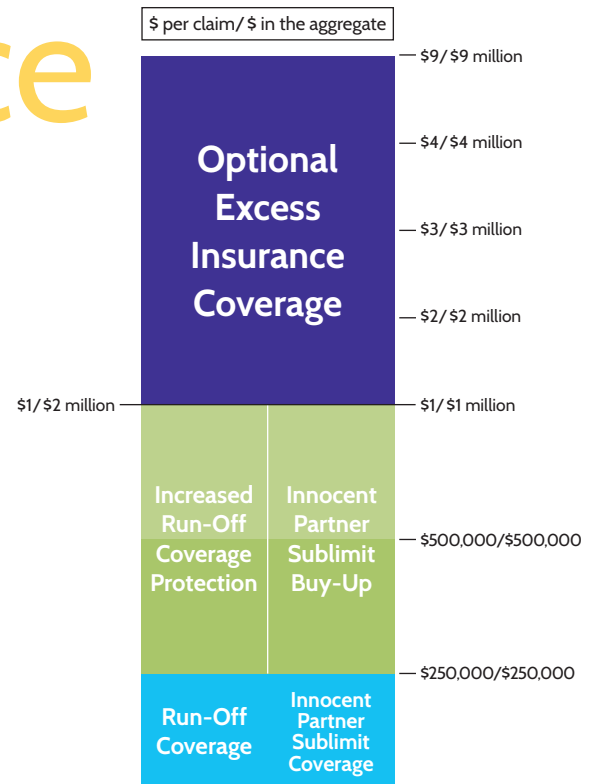
Available to law firms (including MDPs and CLFs,) and to lawyers with topped-up Run-Off Coverage. **See page 7 for details of the Excess program.**

⁵ LAWPRO strongly recommends that lawyers increase their optional coverage protection to the maximum sublimit offered, to avoid gaps in coverage.

2016 insurance coverage

for exempt lawyers

- in-house corporate counsel
- government lawyers, educators and others not in active private practice
- retired lawyers, estate trustees, emeritus lawyers, judges and others no longer practising law
- legal aid clinic lawyers (not directly employed by Legal Aid Ontario)
- lawyers who engage in only occasional practice in Ontario and are resident in a Canadian jurisdiction other than Ontario



The standard Run-Off coverage

Eligibility:

Provided at no charge to all lawyer members of the Law Society who are not in active private practice who qualify for exemption¹ from payment of insurance premiums and levies.

Coverage limits:

\$250,000 per claim/in the aggregate, not re-instated annually, subject to the following:

- applies to claims arising out of services provided while the lawyer was in private practice or otherwise maintained the full ongoing practice coverage
- does not provide coverage for claims arising out of any services a lawyer provides while exempt from paying the insurance premium. The only exceptions to this are with respect to *pro bono* legal services provided through an approved *pro bono* legal services program associated with Pro Bono Law Ontario, with respect to qualifying mentoring activities, or where the lawyer has applied for and purchased additional coverage specifically for certain services yet to be performed as estate trustee, trustee for *inter vivos* trust, or attorney for property, as described further

- applies to claim expenses, indemnity payments and/or costs of repairs together
- includes a sublimit coverage of up to \$250,000 per claim/in the aggregate for Innocent Partner claims
- includes a sublimit coverage of up to \$250,000 per claim/in the aggregate for cybercrime claims

Premium:

None for standard Run-Off coverage.

Deductible:

Deductible for Run-Off coverage is \$5,000 per claim applicable to claim expenses, indemnity payments and/or costs of repairs together.

While there is no premium for basic Run-Off coverage, run-off claims are subject to a deductible of \$5,000 per claim. For more details about the deductible and for answers to other common questions about Run-Off coverage, please see page 29 of the "2013 Annual Review" issue of LAWPRO Magazine available at lawpro.ca/MagazineArchives

¹ Lawyers who are on temporary leave and qualify for exemption (c) are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program. Lawyers eligible for the "mobility" exemption have insurance coverage as described on the website at lawpro.ca

Optional insurance coverages

Increased Run-Off coverage protection

Eligibility:

- optional for lawyers with only the basic Run-Off coverage who are concerned that claims now and in the future may exceed \$250,000 per claim/aggregate; or
- optional for lawyers named or acting as estate trustee, trustee for *inter vivos* trust, or attorney for property as residual work from their former law practice who wish to purchase expanded coverage for these services yet to be performed.

Coverage limits:

Exempt lawyers can apply to increase Run-Off coverage limits to:

- \$500,000 per claim/aggregate or;
- \$1 million per claim/\$2 million in the aggregate.

Terms ranging from two to five years are available.

Lawyers acting as estate trustee, trustee for *inter vivos* trust, or attorney for property:

Exempt lawyers can apply to increase Run-Off coverage protection to include protection for services yet to be performed as estate trustee, trustee for *inter vivos* trust, or attorney for property, as follows:

- apply for and purchase expanded protection for these services within the standard \$250,000 Run-Off coverage limit and/or
- apply for and purchase expanded protection for these services within the Increased Run-Off coverage limits, as described above

Through a deeming provision, ongoing activities of this type may be included under the Run-Off coverage protection provided to you.

Premiums:

Underwritten on an individual basis, depending on the years practised, areas of law practised, the amount of time since the applicant was in private practice, and other risk-based factors.

Innocent Partner Sublimit Buy-Up²

Eligibility:

Optional for exempt lawyers who have applied for increased Run-Off coverage and who may be concerned about their innocent partner exposure.

Coverage limits & premiums:

Innocent Partner Sublimit coverage can be increased as follows:

- to \$500,000 per claim/aggregate for an additional five per cent of the increased Run-Off coverage premium or
- to \$1 million per claim/aggregate for an additional eight per cent of the increased Run-Off coverage premium

Excess insurance for law firms and lawyers with topped-up Run-Off coverage

Eligibility:

Available to law firms (including MDPs and CLFs), and to lawyers with topped-up Run-Off coverage.

Coverage limits:

The following Excess limits are above the \$1 million per claim/\$2 million in the aggregate limits of the primary program. Coverage is provided on a firm basis (i.e., for all firm lawyers for services on behalf of the firm):

- \$1 million per claim/\$1 million in the aggregate
- \$2 million per claim/\$2 million in the aggregate
- \$3 million per claim/\$3 million in the aggregate
- \$4 million per claim/\$4 million in the aggregate
- \$9 million per claim/\$9 million in the aggregate

Premiums:

Underwritten on a firm-wide basis, based on a risk assessment of information provided in the Excess insurance application, marketing materials of the firm and supporting documentation.

Have you visited our FAQ pages?

Did you know that LAWPRO maintains an extensive collection of Frequently Asked Questions (FAQs) and answers on its website at lawpro.ca/faqs? If you have a question, we invite you to visit our FAQs to find an answer. We'll also be highlighting some of our FAQ content in upcoming issues of the magazine - look out for it under the "LAWPRO FAQ" header.

More information

For detailed information on the insurance programs and insurance options, or for application forms, please visit lawpro.ca

Information is also available from the LAWPRO Customer Service Department at 416-598-5899 or 1-800-410-1013 or via email: service@lawpro.ca

² LAWPRO strongly recommends that lawyers increase their optional coverage protection to the maximum sublimit offered, to avoid gaps in coverage.

Get proof of coverage with a click of your mouse

Have you been asked to provide a Certificate of Insurance to a client, a law society, or anyone else? You can now request and print an individual or a firm-wide Certificate of Insurance via the My LAWPRO online portal.

While in many cases the Declarations Page of your insurance coverage confirmation will suffice as proof of coverage, should you need to provide a dedicated Certificate of Insurance you can now do so without having to contact LAWPRO customer service.

Access My LAWPRO at any time, 24 hours a day by clicking on “My LAWPRO” from lawpro.ca and entering your Law Society number and confidential online password (follow online instructions to reset or request a password).

Once logged into My LAWPRO, scroll down until you see the “Request Certificate of Insurance” link, and follow the simple instructions. For further details and a screenshot showing exactly where to look, download our simple Individual and Firm instruction forms from our FAQ page: lawpro.ca/faqs under the “about certificates of insurance” link. ■

Welcome Carol Hartman

Carol Hartman was appointed to the LAWPRO Board of Directors on September 2, 2015. Carol has focused much of her career in the area of family law. She is a partner at Miller Maki LLP, based in Sudbury and is a leader in the legal community including serving as Vice-Chair of the Law Society Strategic Planning Group, former Chair of the Law Society Finance Committee, and former President of the Sudbury and District Law Association. Her extensive volunteer work has benefited the Sudbury Regional Hospital, CKLU radio, and the Women’s Law Association of Ontario.

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