

## 2014 LAWPRO policy responds to changes in the profession and related risks

### Quick summary:

- Base premium for 2014: \$3,350 (unchanged since 2011)
- \$10,000 increase in deductible applied to certain administrative dismissal claims
- \$250,000 sublimit coverage for eligible cybercrime losses
- Coverage for Ontario lawyers also called in Quebec, in support of full mobility
- Paralegal licensees practising in partnership with lawyers must move to LAWPRO insurance

### LAWPRO maintains base premium stability with help from the Errors & Omissions Insurance Fund (E&O Fund)

The LAWPRO base premium for 2014 will be \$3,350, unchanged since 2011.

Our mandate, established in 1994 by the Insurance Committee Task Force Report, requires that the cost of malpractice insurance generally reflect the risk of claims. Over the last four years, claims costs (when internal claims handling expenses are considered) have hovered near the \$100 million mark. We predict that 2014 will be no different.

In the face of escalating claims costs, how is it commercially reasonable to maintain premium stability? Our decision to hold the premium at \$3,350 was made possible by a decision to draw \$5 million in premium funding from the E&O Fund. This amount has accumulated as a result of transaction levies exceeding budget by varying amounts over the last several years.

For the 2014 policy year, we have elected to use the fund to allow for a steady base rate as we consider other factors that may affect the program in time for 2015.

What's the bottom line for lawyers? By drawing from the E&O Fund for 2014, we can spare lawyers the approximately \$200 increase in premium that would otherwise have been required to operate the program for the policy year.

### \$10,000 increase in deductible applied to certain administrative dismissal claims

Escalating numbers of preventable administrative dismissal claims have prompted us to introduce a \$10,000 increase in deductible for these claims under certain circumstances. See page 2 for details.

### Sublimit coverage for eligible cybercrime losses

For the 2014 policy year, LAWPRO has introduced sublimit coverage of \$250,000 per claim and in the aggregate for eligible cybercrime claims. See page 3 for an explanation of this coverage sublimit.

### 2014 policy supports Ontario/Quebec lawyer mobility consistent with NMA 2013

The 2014 LAWPRO professional indemnity policy provides the insurance framework for full permanent mobility for Quebec and Ontario lawyers. Read about the new insurance requirements on page 2.

### Paralegal licensees practising in partnership with lawyers must move to LAWPRO insurance

In 2013, the Law Society passed a by-law requiring that paralegal licensees practising in partnership with lawyers purchase their mandated practice insurance from LAWPRO commencing in 2014. This new requirement is reflected in the terms of the 2014 policy; for details, see page 3.

# \$10,000 increase in deductible for certain administrative dismissal claims

In our efforts to control escalating claims, we have circulated repeated warnings, tips, and resources about the risk of having a claim administratively dismissed for delay or by reason of abandonment under Rule 48 of the *Rules of Civil Procedure*. The article “Know how administrative claims happen, and take 8 steps to immunize against them,” which appeared in the September 2013 issue of *LAWPRO Magazine*, represents the eighth article we have published on this topic since 2009 – and that’s not including the many other efforts our spokespeople – and other writers and presenters – have made to educate the bar about the topic in the context of presentations, speeches, and CPD programming.

Nevertheless, these highly preventable claims continue to occur, and are becoming more challenging than ever to defend. Having opened our battle against administrative dismissals with a bushel of lawyer resource “carrots”, we are now forced to resort, in certain circumstances, to a less palatable approach. Starting with the 2014 policy year, where an administrative dismissal is not set aside through steps taken by or under the direction of LAWPRO, in regard to a resulting claim, the deductible for that claim will be deemed to apply to claim expenses, indemnity payments and/or repair costs and be \$10,000 more than the deductible chosen by the insured

and/or listed on the declarations page of the policy. (There is an exception to this, for claims arising out of certain *pro bono* work.)

We know that the possibility of an increased deductible has the power to deter oversights and misjudgments that lead to claims. When, in an effort to target claims based on conflicts of interest, a “double deductible” was introduced for claims arising from circumstances in which a lawyer represented parties adverse in interest, the proportion of LAWPRO claims based on conflicts of interest decreased in the years that followed. It is our hope that the introduction of an increased deductible for claims arising from non-rectifiable administrative dismissals will have a similar influence on lawyers’ practice habits.

Often these types of claims can be repaired if early notice is provided, so we urge lawyers to continue to report actual and potential claims as soon as they are discovered, to permit LAWPRO counsel every opportunity to have the proceeding reinstated and to avoid the application of the increased deductible. For this reason the increased deductible will apply only to claims resulting from administrative dismissals that are not set aside through steps taken by or under the direction of LAWPRO.

## 2014 policy supports Ontario/Quebec lawyer mobility consistent with NMA 2013

This October, the National Mobility Agreement 2013 (NMA 2013) is expected to be executed by representatives from Canadian law societies.

One of the key issues that required resolution to pave the way for this agreement was how to co-ordinate insurance requirements for lawyers called to both the Barreau du Québec and to one or more of the common law jurisdictions in Canada. While insurance requirements are consistent with respect to coverage limits across common law Canada, there are significant differences between the insurance

programs in these provinces/territories and the Quebec insurance program. Notably, lawyers called and practicing in Quebec are required to carry insurance with much higher limits of liability.

Lawyers called in both Quebec and Ontario will be required to carry two policies of insurance (the Law Society of Upper Canada and the Barreau du Québec’s programs of insurance). If the lawyer is called in more common law jurisdictions in Canada, he or she may be eligible to claim exemption from payment of the law society premiums in all but Quebec and one of the common law provinces, in accordance with the established exemption criteria.

# Sublimit coverage for eligible cybercrime claims

Cyber attacks pose a growing threat to business livelihoods. While large-scale attacks on technology companies, government, and big businesses are more likely to feature in the headlines, smaller businesses and individuals are also being targeted.

Because law practices have access to confidential client information and often maintain substantial balances in trust accounts, lawyers and law firms are appealing targets to cyber criminals. Law firms may in fact be easier targets than larger businesses, because they may employ less sophisticated information security systems.

At LAWPRO, we believe that preventing breaches in confidentiality and financial losses due to these cyber attacks is a responsibility we all share. Law firms and individual staff members and lawyers who work in them must educate themselves about cyber risks and take all reasonable steps to ensure that data and funds are securely protected. Insurance against resulting losses should be viewed as a worst-case remedy, and not a replacement for preventive and protective steps.

In late 2012, LAWPRO learned of a high-value cyber attack on an Ontario firm. The attack was highly sophisticated and complex, and was designed to permit the fraudster to gain direct access to a firm's trust account using online banking privileges. For details about this attack and how to avoid being the victim of a similar fraud, see our December 21, 2012, post on the AvoidAclaim blog: [avoidaclaim.com/2012/ontario-law-firm-victim-of-large-fraud-due-to-infection-by-trojan-banker-virus/](http://avoidaclaim.com/2012/ontario-law-firm-victim-of-large-fraud-due-to-infection-by-trojan-banker-virus/). This is in addition to instances reported in the media involving cyber attacks against several law firms to access confidential client information.

Most Canadian law society insurance programs explicitly exclude coverage for cyber attack-related claims and exposures, whereas LAWPRO has refrained from excluding such issues. With the

demonstrated exposure of the insurance program to large losses arising out of cybercrime, and the potential for clusters of such claims across law firms, it is appropriate that further consideration now be given to how this risk is addressed under the insurance program and what additional steps might best be taken by lawyers to better protect their client data and trust funds, as well as themselves.

The increasing importance of cybercrime has led LAWPRO, for the 2014 policy year, to create a sublimit of coverage in the amount of \$250,000 for losses related to cybercrime as defined in the policy. This approach is consistent with that of certain other insurers which, like LAWPRO, are members of the National Association of Bar Related Insurance Companies (NABRICO).

In establishing this sublimit, we hope to balance the provision of some security for law practices facing a risk not wholly within lawyers' control with the need to encourage law firms to adopt cyber security best practices. **We strongly encourage lawyers to take every precaution reasonably available to prevent falling victim to a cybercrime.**

Lawyers should also understand that the sublimit provided, like all areas of the policy, applies to losses arising from lawyers providing professional services as lawyers. Losses that a firm might experience that go beyond this type of insurance coverage include reputational loss, physical damage or business interruption. Speak with your insurance broker to find out more about coverage for all types of cyber liability.

Over the next several months, including in the next issue of *LAWPRO Magazine*, we will be publishing information about cybercrime and how to protect your practice.

## Paralegal licensees practising in partnership with lawyers must move to LAWPRO insurance

For consistency and efficiency in coverage it has been found that coverage is best provided by a single insurer for all partners in a partnership. Accordingly, earlier this year, the Law Society amended its by-laws to require, as of 2014, paralegal licensees practising in partnership with one or more lawyers to obtain their mandated insurance from LAWPRO. (This requirement does NOT apply to paralegals who work in law firms, but are not in partnership with lawyers.)

The premium that will be charged to paralegal partners for this coverage, which will be introduced as the paralegal partners' commercial insurance comes due for renewal on or after January 1, 2014, will be based upon risk and, like the premium charged to

lawyers, will be subject to change as risk and other factors change. Factors that will be considered in assessing practice risk will include whether or not the paralegal licensee is involved in handling claims for statutory accident benefits, how many years the paralegal licensee has been in practice, whether he or she is in part-time practice, and his or her claims history. Paralegal licensees practising in partnership with lawyers will also, like their lawyer partners, be subject to transaction levies for certain civil litigation transactions.

Finally, like all-lawyer firms, paralegal partners will need to select the same deductible and innocent party sublimit option as other insureds in the firm.