

Base premium holds steady for 2012

Quick summary:

- The base premium will be \$3,350
- Real Estate Practice Coverage Option premium reduced to \$250 from \$400
- Deeper discounts off the base premium for new practitioners (50 per cent discount in first year)
- Premium discount equal to 50 per cent discount off of the base premium for qualifying lawyers who work part-time or who practise exclusively criminal and/or immigration law

Base premium remains stable at \$3,350 for 2012

Recent challenges facing LAWPRO have not abated: we continue to see steadily growing claim costs, and market conditions mean modest investment returns. Nevertheless, LAWPRO is able to keep the base premium for 2012 at \$3,350 per lawyer – the result largely of cost-effective management of the program and the company's solid financial footing arising out of the 2011 adjustment to the LAWPRO base premium.

Claims costs continue to grow

In our recent Annual Review issue of *LAWPRO Magazine*, we reported that the annual cost of claims reported between 2007 and 2011 ranges from \$83 million to \$91 million. That trend shows no sign of abating in 2012: Our projected claims costs for the coming year are close to \$89 million.

Also unchanged are the factors driving claims growth: There are more lawyers in practice than ever before; the frequency of claims (claims per lawyer per year) has been increasing; and, perhaps most importantly, the cost per individual claim has increased substantially.

More \$100,000 claims than ever before

In the insurance industry, the term “cost severity” refers to the dollar value of individual claims. Over the past decade, LAWPRO has seen an increase not only in claims numbers and claims frequency, but also, an increase in cost severity.

As compared to claims experience in 2002, we saw at least 50 per cent more claims valued over \$100,000 in each of the years 2009 and 2010. The year 2011 is on track for similar results.

Why are claims becoming more expensive?

One of the factors driving the increase in claims severity is growth in property values. Real estate is currently the practice area with the highest rate of claims. As property values increase, so does the value of claims related to the purchase and sale of those properties.

However, real estate is not the only area in which growing property values affect claims costs. We see the effect of property value growth on claims in many other areas, notably wills and estates, but also in family law, corporate/commercial law, and litigation.

For more on the impact of communication errors on claims, and for tips on how to prevent these areas and provide excellent customer service to clients, see the following articles in *LAWPRO Magazine's* September 2011 issue: “Is anyone listening?” (www.practicepro.ca/LawPROmag/Communications-claims-causes.pdf); and “Let's get talking” (www.practicepro.ca/LawPROmag/Communications-Lets-Start-Talking.pdf). To read about cases in which the courts have described the client's role in promoting good communications, see the September 2011 edition of our casebook “Communication is a two-way street” at (www.practicepro.ca/LawPROmag/Casebook-Communication-Two-Way-Street.pdf).

While economic influences come and go, certain claims features seem to remain stubbornly unchanged year over year. The most notable such feature is the proportion of claims – in all areas of practice – that are attributable in whole or in part to problems with communication between lawyers and their clients.

A final factor that drives cost severity is claim complexity. As claims become more complex, they tend to become more expensive both with respect to the losses alleged by the claimant(s), and the resources required to effect resolution of the claims (for example, defence costs).

Stability despite current challenges

These challenges prompted the need to increase premiums for 2011. That increase brought our funding in line with our costs, and the stability we have achieved makes us confident that we can continue on that basis for 2012, without the need for a further increase in the base premium in the coming year.

The 2012 base premium of \$3,350 represents the average premium paid by lawyers over the past 15 years.

Low interest rates affect investments and require greater reserves

Recovery in the Canadian economy in the last two years has been fairly slow: Investment markets continue to be volatile, and predictions about future growth remain conservative.

Last year, we reported that rates of return on fixed income securities had dropped significantly. So far, results for 2011 suggest that our investments are performing in line with our forecast; however, predictions about increases in interest rates remain very conservative, and we project a gross return on our investments of 3.75 per cent for 2012, lower than the 5 per cent we saw before the credit crisis that began in 2008.

When LAWPRO estimates how much capital in today's dollars we should reserve to meet future claims costs, we take into account the potential for growth in the value of that capital between the time that it is reserved and the time that it is needed to pay the claims.

When interest rates are low, capital grows slowly. This means that we must increase the level of the reserves we set aside to adjust for the lower potential for growth in our capital. To calculate reserve levels, we make reference to a number called the claims provision discount rate. That rate *decreases* (an unfavourable effect) along with interest rates.

We have analyzed and adjusted for the impact of a decreasing claims provision discount rate, and we are able to make provision for the needed reserves without increasing the base premium.

No contribution sought from Law Society E&O fund for 2012

In previous years, LAWPRO drew an annual contribution from the Premium Stabilization Fund (PSF): A sub-fund within the Law Society's Errors & Omissions Insurance Fund (E&O Fund) created specifically to mitigate against major premium increases in any given year.

The PSF was depleted by the end of 2009. In 2011, LAWPRO received a contribution from the general E&O Fund, but no such contribution will be sought in 2012. This means that LAWPRO will now forego a premium supplement equivalent to approximately \$100 per insured lawyer for 2012.

LAWPRO's capacity to make provision for increased reserves while reducing its dependence on the Law Society E&O Fund and maintaining the base premium at the 2011 level is the result of careful planning in the midst of a challenging economic climate.

Real Estate Practice Coverage Option premium reduced

Each year, LAWPRO conducts an extensive analysis of claims costs and trends. This analysis is required to assist the company in complying with its mandate to risk-rate the program and to ensure that insurance premiums generally reflect the cost of claims.

The analysis conducted of the performance of the Real Estate Practice Coverage Option (REPCO) program to date suggests that it is appropriate for LAWPRO to reduce the premium for this program. In 2012, the REPCO premium will be reduced to \$250 from \$400. This represents the second such reduction since the coverage was introduced in 2008. The reduced premium will benefit an estimated 7,000 lawyers.

For more on how LAWPRO designs its insurance programs and makes coverage decisions, see "Balancing risk and fairness: How LAWPRO considers new insurance program coverages" (www.practicepro.ca/LawPROmag/InsuranceBiz-Balancing-Risk-Fairness.pdf), published in the InsuranceBiz section of the September 2011 edition of *LAWPRO Magazine*.

Deeper discounts for new practitioners

LAWPRO offers a declining discount off the base premium for lawyers new to practice. This discount reflects the typical claims pattern which sees the chance of a claim escalate the longer a lawyer is in practice (with costs peaking at about 26-30 years in practice).

The new practitioner discount also helps to reduce operating costs for lawyers establishing their practices.

In 2011, the maximum discount for new lawyers was equal to 40 per cent of the base premium in the first year of practice, declining to a discount equal to 10 per cent of the base premium in the fourth year in practice. For 2012, the new lawyer discount will be increased to 50 per cent of the base premium in the first year declining to 20 per cent in the fourth year.

Part-time lawyers, restricted area of practice lawyers to pay less

Lawyers who practise law part-time and who meet the LAWPRO part-time practice criteria are eligible for a discount off the base

premium. In 2012, that discount will be increased to 50 per cent from 40 per cent to reflect claims trends for part-time practice.

LAWPRO's analysis of claims trends also suggests that it is appropriate to offer an increased premium discount for those whose practice is restricted to criminal and/or immigration law. Lawyers eligible for this restricted area of practice option will be entitled to an increased premium discount equal to 50 per cent of the base premium (compared to 40 per cent last year).*

The increased discounts being offered to new lawyers, qualifying part-time practitioners, and lawyers practicing criminal or immigration law will benefit an estimated 6,000 Ontario lawyers in 2012.

* Note: The maximum available premium discount, even where a lawyer is eligible under more than one of the discount categories – part-time practice, restricted area of practice, or new-to-practice – is 50 per cent.

Have you considered Excess insurance?

Why should you consider buying Excess insurance this year? Consider these facts:

- One out of every two lawyers who read this article will report a claim or potential claim against them in their career. Of these, one in 100 claims will top the \$500,000 mark.
- Think you're immune to claims because you're an experienced lawyer? Think again: 67 per cent of lawyers who reported a claim or potential claim had 15 years of experience or more. In other words, of the approximately 11,000 claims reported in the past five years, approximately 7,400 were reported by experienced lawyers.

Traditionally, lawyers begin to take on more complex cases with more experience which increases the chance of a claim. Lawyers also take on greater workloads and enter into fields they might not have much experience in, such as dabbling in real estate or corporate law. This increases the likelihood of mistakes.

- Further, keep in mind the work of your partners, associates and employed lawyers, which can potentially expose you to a claim. While you might be diligent, your associates might make a mistake. You could be personally liable for any costs over and

above the \$1 million per claim provided by the primary liability insurance program.

With claims costs on the rise, the time may be right for you to consider purchasing Excess insurance. It only takes one claim to seriously dent your coverage limits, and Excess insurance acts as a backstop should you hit the policy limit under your mandatory plan.

Applying for Excess insurance is easy: Contact our Customer Service department at (416) 598-5899 or 1-800-410-1013. They will send you a no obligation quote. If you chose to increase your coverage limits, you need only apply once. Your Excess insurance is renewed each year without the need for a new application.

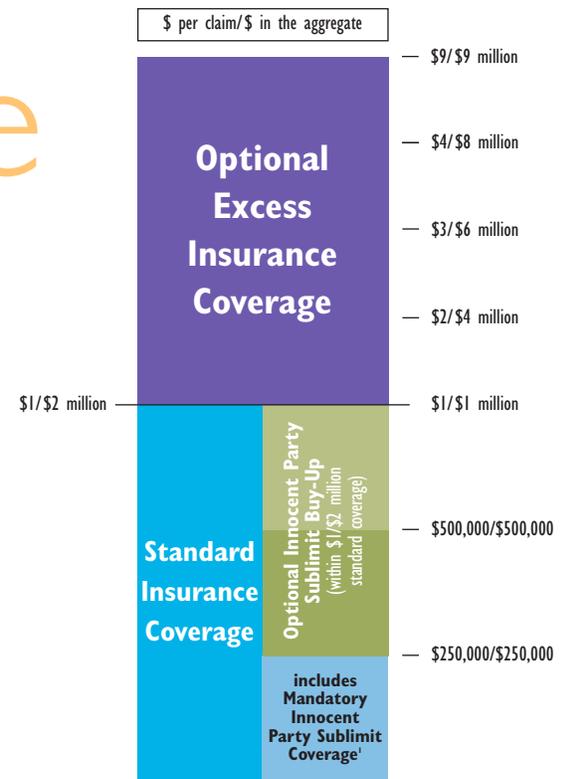
Placing your Excess coverage with LAWPRO also simplifies your reporting obligations if you have to report a claim: You report only once – as your primary and Excess insurer are one and the same.

The comfort of knowing you're covered is priceless. Call LAWPRO today to get your no obligation quote.

2012 insurance coverage

for lawyers in private practice

Sole practitioners and lawyers in association or partnership



Standard Insurance Coverage

The base program

Eligibility:

Required of all lawyers providing services in private practice.²

Coverage limit:

\$1 million per claim/\$2 million in the aggregate (i.e., for all claims reported in 2012), applicable to claim expenses, indemnity payments and/or costs of repairs together.

Standard deductible:

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

Base premium:

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

Mandatory Innocent Party Sublimit Coverage³

Eligibility:

Required of all lawyers practising in association or partnership (including general, MDP and LLP partnerships), law corporations (with more than one lawyer) and sole practitioners practising with employed lawyers.

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 (plus PST).

Mandatory Real Estate Practice Coverage (for real estate practitioners)

Eligibility:

Required of all lawyers practising real estate law in Ontario in 2012.

Lawyers not eligible for the Real Estate Practice Coverage are:

- Those who are in bankruptcy;
- Those who have been convicted or disciplined in connection with real estate fraud;
- 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:

\$250 per lawyer (plus PST).

Optional Insurance Coverages

Innocent Party Sublimit Buy-Up⁴

Eligibility

Optional for all lawyers practising in association or partnership (including MDPs and LLPs), law corporations (with more than one lawyer) 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 lawyer (\$400 total Innocent Party premium); or
- to \$1 million per claim/aggregate for an additional \$249 per lawyer (\$499 total Innocent Party premium).

Optional Innocent Party Sublimit Coverage⁴

Eligibility:

Optional for sole practitioners and lawyers practising alone in a law corporation. Provides protection for ongoing liability that sole 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 lawyers in private practice, and to lawyers with Run-Off Coverage protection, bought up to the \$1 million/\$2 million level.

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/\$2 million in the aggregate;
- \$2 million per claim/\$4 million in the aggregate;
- \$3 million per claim/\$6 million in the aggregate;
- \$4 million per claim/\$8 million in the aggregate;
- \$9 million per claim/\$9 million in the aggregate.

Premiums:

Underwritten on a firm basis, based on a risk assessment of information provided in the Excess Insurance application.

For information

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

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

¹ Optional for sole practitioners.

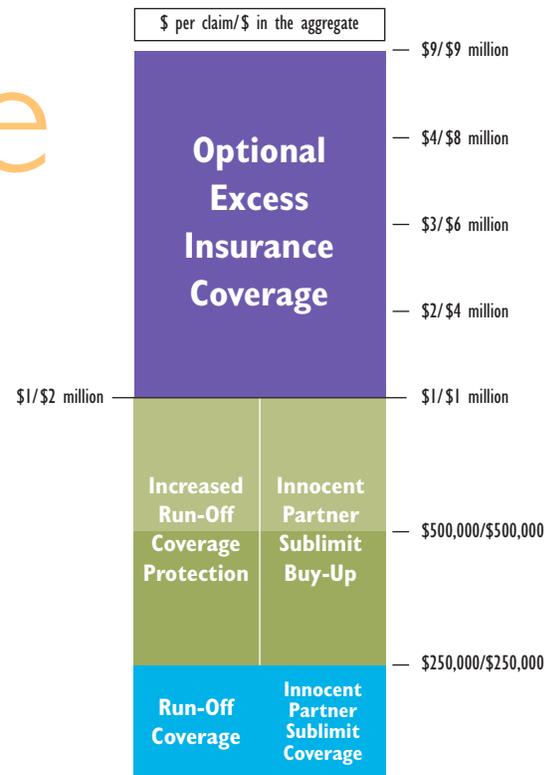
² Lawyers who are on temporary leave and qualify for exemption (c) are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program.

³ Coverage for dishonest, fraudulent, criminal or malicious acts or omissions.

⁴ LAWPRO strongly recommends that lawyers increase their optional coverage protection to the maximum sublimit offered, to avoid gaps in coverage.

2012 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, 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 claims 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.

Premium:

None for standard Run-Off Coverage.

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;

for terms ranging from two to five years.

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.

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 www.lawpro.ca.

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

Excess Insurance

Eligibility:

Available to lawyers in private practice, and to lawyers with Run-Off Coverage protection.

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/\$2 million in the aggregate;
- \$2 million per claim/\$4 million in the aggregate;
- \$3 million per claim/\$6 million in the aggregate;
- \$4 million per claim/\$8 million in the aggregate;
- \$9 million per claim/\$9 million in the aggregate.

Premiums:

Underwritten on a firm basis, based on a risk assessment of information provided in the Excess Insurance application.

Exempt lawyers are at risk

Many lawyers believe that claims are not as much of an issue once they are retired or otherwise exempted from paying the insurance premium. They also (mistakenly) believe their \$250,000 Run-Off Coverage provides adequate protection for any claims that may be made against them.

For many lawyers, the opposite is true.

LAWPRO has recently seen several cases where retired lawyers have exhausted their \$250,000 Run-Off Coverage limit. As well, our statistics tell us that one in 40 claims against lawyers exceeds the \$250,000 mark, and one in 100 claims tops \$500,000. Thus, a single claim could easily exceed your \$250,000 Run-Off Coverage limits.

Moreover, the standard Run-Off Coverage provides you with limited protection over time. The \$250,000 per claim/in the aggregate limit is a one-time limit and applies to all of the claims made against you while on exemption.* Once the \$250,000 limit is used up, you are personally liable for any additional costs. As a result, a series of smaller claims over time can exhaust your coverage.

In addition, your exposure to claims may be higher than you think:

- Legal services which you or former partners or associates provided in the past may give rise to a claim, now or in the future.

- Lawsuits arise from many quarters – past clients, your former employer(s) and their officers or directors, shareholders, employees and any others who have relied on your legal advice.
- Many claims do not surface for several years; up to 10 per cent of claims are not reported until five years after the service that gave rise to the claim was provided.
- Although legislative changes such as the *Limitations Act, 2002*, may provide greater defences, they do not address all areas of exposure.

If you are concerned that claims arising out of past legal activities could exceed your \$250,000 Run-Off Coverage limits, you can apply to buy up these limits (as well as your Innocent Partner Coverage limits) for an additional premium.

For more information on Run-Off Coverage, please see the LAWPRO website at www.lawpro.ca, or contact our Customer Service Department at 416-598-5899 or 1-800-410-1013, or by e-mail at service@lawpro.ca, and ask for a copy of the Insurance Matters brochure that applies to your category of exemption.

* This does not apply to lawyers who qualify for the mobility exemption or exemption for temporary leave of absence.

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6. Review your e-filing history. You can now review a summary of all your

e-filings on the LAWPRO website within the last five years.

7. Find everything related to your firm's LAWPRO Excess Liability Insurance policy in one convenient location.

You can access My LAWPRO either through the yellow sign-in box on the upper right-hand side, or through the My LAWPRO link at the top of every page on the LAWPRO website.

In order to sign in, you must have a Law Society number or firm account number and your confidential password. You can set up or change your individual password online when you sign in.

You can set up a firm password by completing the Master Password Request form available online at My LAWPRO and returning it to LAWPRO by fax or mail. LAWPRO Customer Service will contact your firm's managing partner/lawyer to set up your firm's password.



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