

LAWPRO™

A publication to help lawyers

Volume 2, Issue 3

Fall 2003

option

2004 insurance program:

information on
program changes
& your coverage
and filing options

E-filing by Nov. 3
saves you \$50

Servicing snowbirds:
Are you covered?

Shielding lawyers from
the insurance crunch

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Base premium set at \$2,500
per lawyer for 2004

2004 insurance program

Lawyers will be paying a base premium of \$2,500 per lawyer for their professional liability insurance coverage in 2004 – consistent with 2003 premium levels despite difficult investment and commercial insurance markets.

Since assuming responsibility for the administration of the insurance program in 1995, LAWPRO has consistently reduced rates from a high of \$5,600 in 1995 to the current \$2,500 base premium.

Many lawyers will pay lower premiums still, depending on variables such as options selected, years in practice and practice areas. For example, part-time practitioners, those who restrict their practice to criminal and/or immigration law, and lawyers newly called to the bar could pay a premium of \$1,500 or less in 2004.

Premiums for other insurance coverages, transaction levies and discounts will remain the same as they were in 2003.

The decision to maintain the premium at the \$2,500 mark is based on a number of factors: Claims numbers and costs are expected to increase slightly in 2004, the result of more complex

claims files and higher defence costs; premium income from transaction levies is lower, reflecting an increase in the use of title insurance in real estate transactions; and because interest rates are at historic lows, investment returns will not be available to significantly subsidize premiums in 2004.

By holding the line on premiums for 2004, LAWPRO has been able to buck a trend in the insurance industry. Double and even triple digit premium increases for liability coverage have been reported for some commercial programs. As well, the professional liability marketplace continues to experience reduced capacity, the result of significant losses post 9/11 that prompted some insurers to abandon product lines, merge or consolidate or leave the markets altogether.

Policy coverage changes for 2004

A number of changes have been made to the policy for 2004, in keeping with the need to ensure the program is risk-rated and provides appropriate coverage for lawyers' legal services.

Investment advice/services excluded

Lawyers who provide investment advice or services may find that claims arising out of these services are excluded from coverage under the LAWPRO policy, unless the advice or services were a direct consequence of providing legal services.

Business ventures, investments excluded

Similarly, lawyers who become involved in business ventures or investments outside their legal practice will find claims arising out of these services are excluded from coverage; specifically, the 2004 insurance policy has been modified to exclude from coverage claims relating to or arising out of any business ventures or investments which do not directly relate to the lawyer's practice of law.

Criteria for applying claims history levy surcharge modified

In the past, this surcharge has applied only to lawyers who have had one or more claims in which an indemnity payment was made as a result of a judgment or by way of repair or settlement of a claim. Starting in 2004, the claims history levy surcharge will apply to claims in which the whole of the \$1 million per claim policy limit has been exhausted by costs and expenses incurred to investigate and defend the claim, even though no indemnity payment or repair has been made under the policy. The surcharge would be removed if the lawyer subsequently shows that no judgment, settlement or repair has yet been made outside of the policy limits.

As well, in the past this surcharge applied to lawyers who had a claim paid in the last five years; starting in 2004, the surcharge will apply if any claims were paid in the last five-year period during which the lawyer maintained practice coverage under the program. This change addresses situations in which lawyers with a claim or claims went on exemption for a period of time and then returned to practice after the five-year window had elapsed, negating the need to pay this surcharge.

Civil litigation criteria updated

As well, the \$50 per transaction civil litigation transaction levy surcharge has been updated so that the transaction levy surcharge does not apply to divorces and adoption proceedings which are not opposed on any issue.



Filing 2004 insurance application or exemption forms

Application filing deadlines

NOVEMBER 3: E-FILE DEADLINE

File your 2004 insurance application by November 3, 2003, and you'll receive a \$50 premium discount on your next year's insurance premium. Last year, close to 75 per cent of lawyers opted to take advantage of this discount and completed their applications via the File Online option on our Web site – www.lawpro.ca

NOVEMBER 7: APPLICATION FILING DEADLINE

To avoid paying a late filing surcharge of 30 per cent of the base premium, applications must be filed with LAWPRO by November 7, 2003. Applications can be filed in one of three ways: electronically (e-file), by fax or mail.

Who must file an application?

- Any lawyer insured under the LAWPRO program in 2003 who intends to continue in private practice in 2004.
- Any lawyer who was exempt under the program in 2003 but intends to return to private practice in 2004.
- Any in-house counsel, government or education lawyer, or legal aid clinic lawyer who, in the course of employment or otherwise, provides legal services to third parties.
- Any lawyer who, although retired from active private practice, occasionally provides legal services.
- Any Law Society member who, although not resident in Ontario, engages in more than "occasional practice" in Ontario, as defined under the Rules for Exemption Eligibility.

Fewer lawyers receive paper application packages for 2004

To streamline application processing and reduce both paper and administration costs, LAWPRO delivered most of its 2004 insurance materials electronically this fall: Insurance applications, invoices and other relevant information were delivered primarily via our Web site rather than in printed form through the mail.

In early October, the more than 14,000 lawyers who e-filed last year were notified electronically that the LAWPRO Web site is open for e-filing 2004 insurance applications. Printed paper application packages were mailed only to lawyers who did not e-file last year, and to those for whom LAWPRO did not have a valid and current e-mail address on file.

The Web-based process not only streamlines lawyers' interactions with LAWPRO, but also saves the company more than \$40,000 in printing and mailing costs (previously, we mailed applications and program guides to each insured lawyer and her/his law firm under the Law Society insurance program).

Lawyers who e-filed on an individual lawyer basis in 2002 for the 2003 insurance program: You should have received e-mail notification that your pre-populated 2004 insurance application was available online in early October 2003. The application is available in two formats:

- as a PDF document that is to be used for reference purposes only, and replaces the paper version that was mailed to you in the past. This document is a snapshot of your coverage and options as of October 1, 2003, and cannot be altered. It will not reflect any updates or changes you make to the live, online form.
- as a Web-based electronic application form pre-populated with information from our database on you and your current coverage and payment options. You can review, update and submit the application online in only minutes. Filing online by November 3, 2003, will qualify you for a \$50 per lawyer online filing discount that will be applied to your 2004 insurance premium.

Law firms of five or more lawyers: The managing partner, firm administrator and/or insurance contact identified on your most recent online filing should have received e-mail notification that your firm's pre-populated 2004 insurance materials are available online. The online firm application/summary will be pre-populated with information from our database on all lawyers in your firm.

The online firm form has been simplified to make it easy for law firms to add the names and other relevant information for new lawyers in their firm. Rather than complete an online or paper form for each new lawyer, the insurance contact will provide

only some basic information such as the new firm member's Law Society number, name, status and specific practice options that apply (e.g. part-time practice).

Filing online will qualify the firm for a \$50 per lawyer e-file discount that will be applied to the firm's 2004 insurance premium, if the filing is received by November 3, 2003.

E-file in minutes by following these simple steps

WHAT YOU'LL NEED

Before you e-file, make sure you have the following at hand:

- your Law Society (LSUC) member number; and
- your unique, confidential password.

ABOUT YOUR PASSWORD

- If you have completed any online LAWPRO filings in the past, the password you used will still be valid.
- If you have forgotten your password, you may be able to reconfirm it using the "Forgot your password" function on the LAWPRO Web site at www.lawpro.ca
- If you do not have a password you can set up a password online or complete our online password request form (a Customer Service representative will then contact you to establish your password), or you can call 416-598-5899 or 1-800-410-1013 during regular business hours and request a password. To minimize your wait time, we suggest you call and arrange your online filing password as soon as possible. **DO NOT WAIT UNTIL NOVEMBER 3rd.**

E-FILE IN 4 EASY STEPS

1. Go to the LAWPRO Web site at www.lawpro.ca and click on **File Online**.
2. You will be prompted to enter your Law Society member number and your unique, confidential password.
3. Select **2004 Professional Liability Insurance Application (renewals)** from the list of options. Your application form will appear, pre-populated with your information pulled from our database.
4. Follow the on-screen instructions for completing your application – in minutes! All of the information on the 2004 insurance program and options is available online.

RECEIVE YOUR \$50 PREMIUM DISCOUNT

- Complete the online filing by November 3, 2003, and you will receive a \$50 per lawyer e-file discount on your 2004 insurance premium.

Lawyers who completed paper/fax applications in 2002 for the 2003 insurance program: You can complete your application online, via the LAWPRO Web site and qualify for the \$50 online filing discount. As well, you should have received a package containing your pre-populated paper application and the printed instruction booklet. However, filing by mail or fax will not entitle you to the \$50 discount available to those who file electronically by November 3, 2003.

Invoice and policy packages for all lawyers: If you or your law firm file the 2004 application electronically, you will automatically be eligible to receive your 2004 insurance premium invoice online. You will be informed via e-mail later this fall that your electronic invoice is available, in a secure, password-protected portion of our Web site. Lawyers and law firms have the option of indicating, on their application, a preference for a printed invoice.

As in the past two years, only those lawyers who do not e-file, and/or for whom we do not have an e-mail address, will receive printed packages of the 2004 policy and the booklet containing forms for transaction levy filings. Printed copies also are available on request.

Updated Personal Information Statement addresses privacy legislation

Included in the 2004 insurance program materials is an updated LAWPRO Personal Information Statement for Ontario Lawyers which outlines how we collect, use and disclose information related to our optional programs. The Warranty & Signature section of all insurance forms includes a reference to this Personal Information Statement, and to the fact that the consent provided by the lawyer (or law firm on behalf of all lawyers in the firm) is ongoing, thus eliminating the need to revisit this issue annually.

The full text of the Statement is available on our Web site via a link in the Warranty & Signature section of your online application.

Our LAWPRO Privacy Code is available on our Web site at www.lawpro.ca/privacy or in hard copy from our Customer Service Department at 416-598-5899 or 1-800-410-1013, e-mail service@lawpro.ca. The Code describes how LAWPRO will exercise its commitment to the privacy of information related to our optional insurance programs.

Mobility protocol prompts exemption changes

The introduction this past July of the National Mobility Agreement, which paves the way for increased inter-jurisdictional mobility of lawyers, has prompted a change to the criteria

under which lawyers can exempt themselves from paying the insurance premium.

MOBILITY EXEMPTION ADDED

Law Society of Upper Canada members who are also called in other reciprocating jurisdictions may apply for exemption in those reciprocating jurisdictions in which they are called and not resident. Lawyers called in Ontario, but who are also called and resident in another reciprocating jurisdiction can apply for exemption "g" under the Ontario program.

To qualify, you must have coverage under the reciprocating jurisdiction's law society program that is comparable in terms of both coverage and limits to the insurance coverage required by Law Society members.

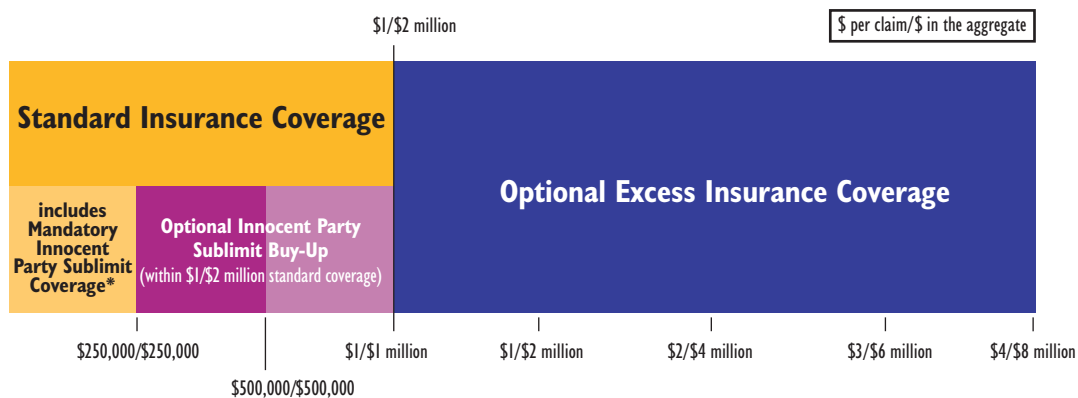
If a claim subsequently arises for those who qualify for exemption "g," the policy of the reciprocating jurisdiction in which the lawyer is resident and paying the premium will generally apply to the claim. However, if their practice was previously located in another reciprocating jurisdiction, such as Ontario, and a claim arises out of earlier legal services there, the insurance policy of that earlier reciprocating jurisdiction will apply.

Once a lawyer stops practising in a reciprocating jurisdiction, or ceases to maintain insurance coverage in that jurisdiction for ongoing private practice, he or she is no longer eligible for the "g" exemption under the Ontario program.



2004 insurance coverage for lawyers in private practice

Sole practitioners and lawyers in association or partnership



Standard insurance coverage

The base program

Eligibility: Required for all lawyers providing services in private practice.**

Coverage limit: \$1 million per claim/\$2 million in the aggregate (i.e. for all claims reported in 2003), applicable to claim expenses, indemnity payments and costs of repairs together.

Standard deductible: \$5,000 per claim, applicable to claim expenses, indemnity payments and costs of repairs together.

Base premium: \$2,500 per insured lawyer.

Mandatory Innocent Party Sublimit Coverage***

Eligibility: Required for all lawyers practising in association (including MDP Association) or partnership (including general and 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 costs of repairs together.

Premium: \$250 per lawyer.

Optional Insurance Coverages

Innocent Party Sublimit Buy-Up****

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 Coverage****

- 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 includes or once included employees;
 - 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.

- Coverage sublimits:*
- LAWPRO offers Optional Innocent Party sublimits of:
 - \$250,00 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 application.

Excess Insurance Coverage

- Eligibility:* Available to all lawyers in private practice, and to all lawyers with Run-Off Insurance 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/\$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.

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

FOR INFORMATION

For information on any of these insurance options, or for application forms, please contact the LAWPRO Customer Service Department at 416-598-5899 or 1-800-410-1013 or via e-mail: service@lawpro.ca.

You can also find detailed information on the insurance program and your insurance options on the LAWPRO Web site – www.lawpro.ca.

* Optional for sole practitioners.

** 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.

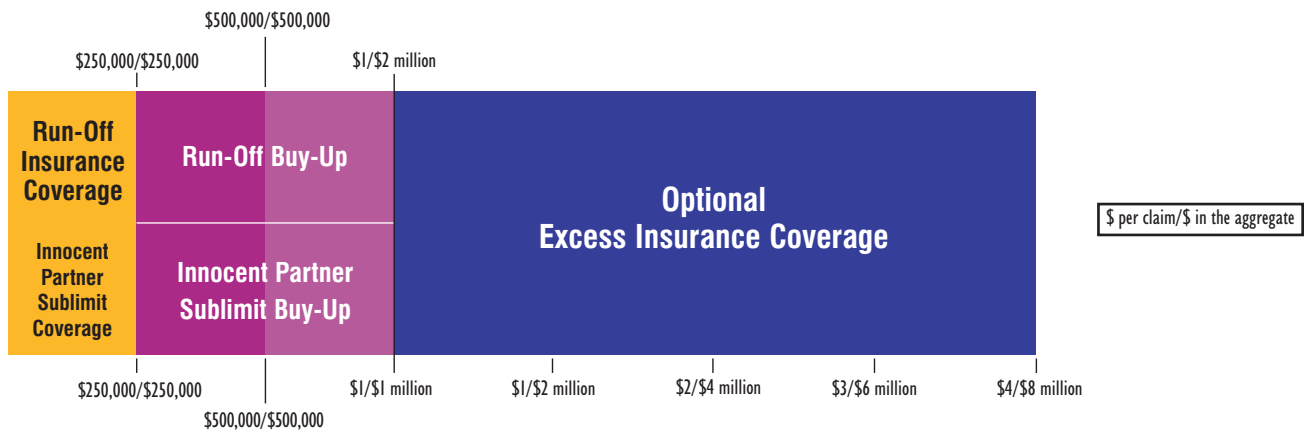
*** Coverage for dishonest, fraudulent, criminal or malicious acts or omissions.

**** LAWPRO strongly recommends that lawyers buy up their optional coverage limits to the maximum offered, to avoid gaps in coverage.

2004 insurance coverage for exempt lawyers*



- In-house corporate counsel
- Government lawyers, educators and others not in active private practice
- Retired lawyers, judges and others no longer practising law
- Legal aid clinic lawyers (not directly employed by Legal Aid Ontario)



The standard Run-Off Coverage

Eligibility: Provided at no charge to all members of the Law Society who are not in active private practice who qualify for exemption** 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 exception to this is with respect to *pro bono* legal services provided through an approved *pro bono* legal services program associated with Pro Bono Law Ontario;
- applies to claims expenses, indemnity payments and costs of repairs together.
- includes a sublimit coverage of up to \$250,000 per claim/in the aggregate for Innocent Partner claims.

Premium: None.

Optional Insurance Coverages

Run-Off Coverage Buy-Up

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.

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.

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-Up***

Eligibility: Optional for exempt lawyers who have applied to increase their Run-Off Coverage through Run-Off Coverage Buy-Up and who may be concerned about their innocent partner exposure.

Coverage sublimits Innocent Partner Sublimit Coverage can be increased as follows:

- & premiums:**
- to \$500,000 per claim/aggregate for an additional five per cent of the Run-Off Coverage Buy-Up premium; or
 - to \$1 million per claim/aggregate for an additional eight per cent of the Run-Off Coverage Buy-Up premium.

WHY CONSIDER BUYING UP YOUR INSURANCE COVERAGE LIMITS?

Although you may believe that claims are not as much of an issue for you, now that you are on exemption, the opposite is in fact true. Your exposure to claims is ongoing:

- Legal services which you or former partners or associations provided in the past may give rise to a claim, now or in the future.
- Lawsuits arise from many quarters - past clients, former employers 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 after legal services were provided; 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.*

LIMITED PROTECTION:

Yet, as is detailed on the previous page, the standard Run-Off Coverage provides you with only limited protection

- The \$250,000 per claim/in the aggregate limit applies to ALL of the claims made against you while on exemption (for reasons other than mobility or a temporary leave of absence). In other words, this is all the coverage

you have for ALL claims made against you this year, in the past while you were exempt, and in future years while you are exempt.

- The \$250,000 limit applies to claim expenses, costs of repairs, pre-judgment interest and indemnity payments together for each claim made against you. Any amounts incurred to resolve a claim reduce the funds available to respond to any other claims.

Statistics tell us that 1 in 50 claims against lawyers exceeds the \$250,000 mark; and 1 in 100 claims tops \$500,000. Thus, a single claim, or series of small claims, could easily exceed your \$250,000 Run-Off Coverage limits, leaving you personally liable for any additional costs.

RUN-OFF COVERAGE BUY-UP (RBU) INSURANCE

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 RBU limits (as well as your Innocent Partner Coverage limits) for an additional premium. RBU Coverage Buy-Up can be tailored to your particular needs, as is more fully described on this page.

* For a more detailed discussion of the issues that those on exemption should consider in assessing their potential exposure to claims, and for information on Run-Off Coverage and options to increase your coverage limits, please see the LAWPRO Web site 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.

Excess Insurance Coverage

Eligibility: Available to all lawyers in private practice, and to all lawyers with Run-Off Insurance 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/\$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;

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

* Lawyers eligible for the "mobility" exemption have insurance coverage as described on page 5.

** 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.

*** LAWPRO strongly recommends that lawyers buy up their personal coverage limits to the full limit provided to all lawyers in coverage.

Weathering the insurance storm

How LAWPRO has shielded Ontario lawyers from the insurance crunch

If you've had to renew car or home insurance in the last 12 months, you know all too well that significant rate increases are the norm, not the exception.

The situation is no different in the professional liability insurance market.

Although the first signs of trouble were on the horizon even before September 11, 2001, that day was a turning point. By the next day, reinsurers – companies that assume a portion of the risk for insurers such as LAWPRO – had posted losses of \$25 billion; as equity markets plunged and stock values fell, a further \$50

billion was withdrawn from reinsurance markets.* Faced with declining capital, major international players abandoned market sectors or stopped writing some lines of business entirely. Consolidations, mergers, retrenching were – and still are – the order of the day among insurers and reinsurers. Since 2002, 47 of North America's 157 top reinsurance have been downgraded by Standard & Poors,* raising concerns about the long-term financial viability of some companies. Double and even triple-digit premium increases have become the norm in many insurance sectors, including – for lawyers – the excess insurance markets.

* Canadian Underwriter, July 2003
© 2003 Lawyers' Professional Indemnity Company. This article originally appeared in LAWPRO Magazine "2004 Insurance Program", Fall 2003. It is available at www.lawpro.ca/magazinearchives

Most errors and omissions insurers have also felt the pinch. Securing reinsurance protection in these “hard” markets where the options are fewer and the pricing has gone through the roof has been a challenge for many of Canada’s professional liability providers.

But under LAWPRO’s insurance program, Ontario lawyers have been largely insulated from these pressures. At \$2,500 per lawyer, they are paying some of lowest premiums seen in close to a decade. Moreover, premiums have declined steadily for the past seven years – and for 2004 will stay at the same low levels they were in 2003.

How is it that Ontario lawyers are doing so well when others in other parts of the continent are faring far worse?

The answer lies in some key decisions that the Ontario bar made in the mid- and late 1990s about the structure, focus and operations of the Law Society’s insurance program – decisions that today are paying off for Ontario lawyers.

Mandatory insurance with an element of risk rating

The Law Society’s requirement that all lawyers in practice in Ontario carry a minimum of \$1 million in professional liability insurance coverage with LAWPRO is a major factor contributing to the stability and security of the Ontario insurance program.

LAWPRO currently insures about 19,400 lawyers – making this company the largest bar-related malpractice insurer in Canada (and one of the largest in North America).

Our size however, works for, not against us, providing us with the opportunity to spread out the risk across the whole of the insured bar. This ability to spread out the risk across many lawyers, and our ability to project with some measure of certainty the future size of our insured base, lets us plan in the long term and adds an important measure of predictability to the program. As well, we are less susceptible in the short term to external forces and pressures.

Thus, the mandatory nature of the program enables us to provide affordable and stable base premiums for all, and ensures equal access to malpractice insurance for all practising lawyers, regardless of practice area. In other words, the mandatory nature of the program insulates lawyers from the vagaries of the insurance market in which premiums in some years can be low, only to be followed by major spikes in premiums and decisions by insurers to abandon high risk practice areas (and practitioners) entirely. Insurance is affordable, and it can be afforded by all.

Another benefit of our size is the wealth of data we have in our possession about lawyers’ practices and their practice risks. Our extensive database, which now incorporates many years of data on the demographics, claims experience and practice areas of Ontario lawyers, allows us to predict and project with a high measure of accuracy. We can spot practice and risk issues before they become a major issue for the bar, and develop appropriate risk management tools and information campaigns to help the bar address these potential exposures. The introduction of TitlePLUS, our participation in DIVORCEmate, and the many tools and resources developed by our risk management program practicePRO, are good examples. We can make longer term projections about the impact of environmental and economic factors on the bar and on our insurance program.

The reliability and scope of this data also enables us to structure the program to risk rate segments of the bar that represent a disproportionately high or low risk. For example, those who qualify for the part-time practice or restricted area of practice criteria, or who are newly called to the bar, benefit from a 40 per cent premium discount because, statistically, they represent a lower risk to the insurance program. Similarly, civil litigation and real estate lawyers – both of whom practise in statistically higher risk areas of law – pay a premium surcharge of \$50 per transaction. As well, lawyers with one or more claims pay an annual levy surcharge of \$2,500 or more, depending on their number of claims. These measures ensure that the premium paid by lawyers who practise in high-risk areas of law closely matches their claims experience.

The bottom line: LAWPRO’s mandatory program has ensured that insurance is affordable, and that it can be afforded by all over the long term – without the displacement that can result when whole segments of the bar cannot secure affordable insurance, or cannot insure themselves at all.

Financial strength means independence

When LAWPRO first assumed management of the insurance program, we typically reinsured up to 50 per cent of the program, in part because we did not have sufficient capital within LAWPRO to assume all of the risk ourselves.

By 2001, as reinsurance markets were hardening, we were reinsuring just over 30 per cent of the program. Our sound financial position – as confirmed for three successive years by the Excellent (A) rating from the A.M.Best Co – has enabled us to retain all of the primary program ourselves for the last two years, without having to rely on volatile reinsurance markets. In 2003, for example, we estimate that reinsuring the primary program would have added 10 per cent to the base premium.

Proactive, claims and risk management that looks at the big picture

One benchmark of our success is our ability to manage the claims portfolio, both from a cost and strategic point of view. The claims resolution approach we've implemented takes into consideration both the individual lawyer, as well as the impact of our strategy on the bar as a whole. We will not pay out frivolous or vexatious claims to simply make them disappear. Similarly, when a claim and our approach to resolving that claim could have far-reaching implications for the bar, we will go to bat for the bar (and the lawyer). Good examples are appeals of *Wong v. 407527 Ontario Ltd.*, *Vaz-Oxlade v. Volkenstein*, and *Silaschi v. 1054473 Ontario Ltd.*; if upheld, these decisions could have had serious implications for the real estate bar. (See *Averting havoc for the real estate bar*, LPIC News Fall 2000).

Complementing our claims management approach is a high-profile risk management program that focuses on the long term – specifically on the need to help lawyers understand the root causes of claims and improve their client communication, conflict management systems and other aspects of practice that can result in claims. LAWPRO's practicePRO program provides a myriad of tools and resources that address the risk issues associated with law practice – all of them free of charge – because of our belief that effective risk management equates with lower claims frequency and costs over the long term.

These measures are making a difference. The number of claims reported in each of the last few years has remained relatively stable – at under the 2,000 mark – an indication, perhaps, of the higher awareness among lawyers of the risks associated with law practice. As well, we've seen the first signs of a correlation between increased knowledge of risk issues, and lower incidence of claims. As is more fully discussed in the article **CLE Premium Credit program makes its mark** on page 17 of this issue of LAWPRO Magazine, lawyers who participate in CLE programs that include a risk management component appear to be less likely to have claims than those who do not.

TitlePLUS – the lawyer's title insurance program

One of the most advanced practice and risk management tools under the LAWPRO umbrella is TitlePLUS, our title insurance product. Like other title insurance programs, TitlePLUS moves some of the title-related risks inherent in real estate practice out of the mandatory program into the title insurance program. Unlike other products, TitlePLUS covers both the title-related aspects and the legal services provided by the lawyer in the transaction – thus providing lawyers and clients with more comprehensive coverage and further reducing the potential for real estate losses within the insurance program. Where real estate once accounted for 50 per cent and more of LAWPRO's claims costs, in 2002 only about 30 per cent of losses were attributed to real estate practice.

Strict underwriting standards and a Web-based application process that supports TitlePLUS' underwriting requirements help ensure that losses within the TitlePLUS program – which are paid out of the TitlePLUS revenue stream – also are kept to a minimum. Less than one half of one percent of TitlePLUS policies written to date have reported claims; most of these claims have a value of less than \$1,000.

But for the bar – real estate lawyers and others – TitlePLUS comes with one other major advantage: It is the lawyer's title insurance program, developed to help ensure that lawyers continue to play a central role in the real estate transaction. It reflects a fundamental aspect of LAWPRO's mission: To provide lawyers with programs and services that enhance their viability and competitive position.

"It is in tight insurance markets such as the one we're currently experiencing that LAWPRO really comes into its own and provides value to the profession," says LAWPRO President & CEO Michelle Strom. "We can provide a stabilizing influence and help insulate the legal profession from the cyclical ups and downs of the insurance marketplace, and from the many external pressures that are brought to bear on commercial insurers."

The natural ups and downs of insurance markets

Like so many factors that affect us every day, insurance markets have their own rhythm known as the insurance cycle: Every seven to 10 years, the insurance market cycle turns, from a “soft” market in which it is relatively easy to secure insurance at very competitive rates, to a “hard” market such as we are currently experiencing, in which insurance carriers retreat and retrench, premiums rise and insurers pick and choose who they will underwrite or who they will reinsure. In some hard markets, companies exit specific markets, such as the professional liability insurance market, altogether.

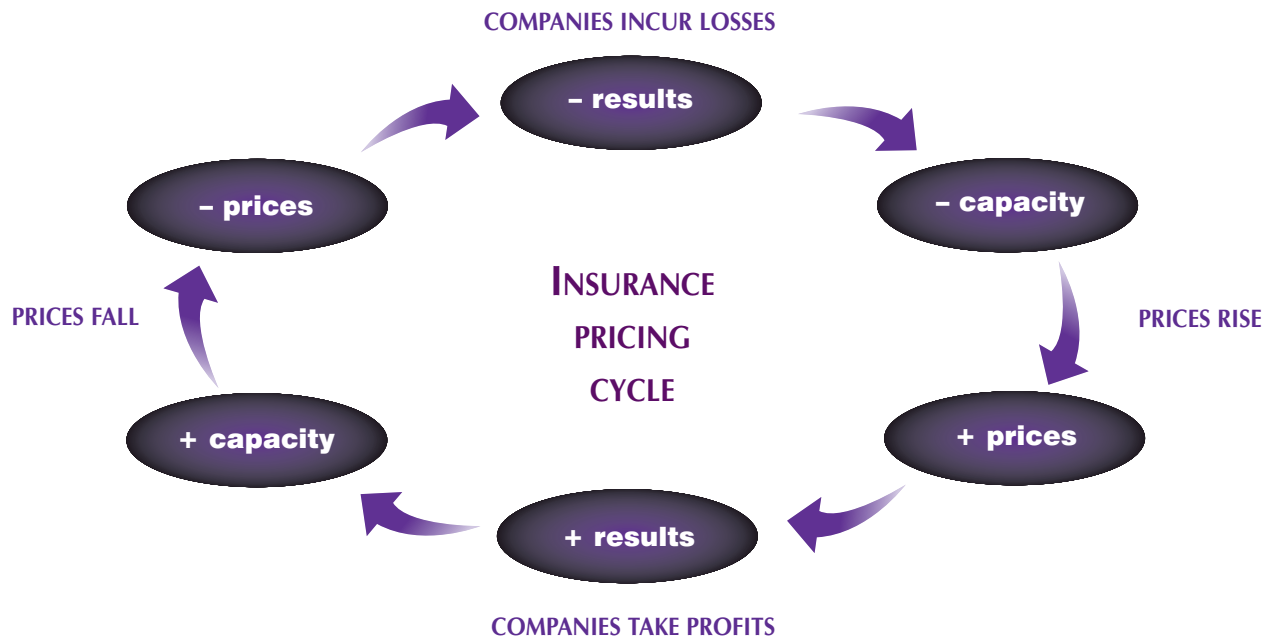
In insurance circles, the mid to late 1990s were considered “soft.” Investment income was excellent, driven in part by a growing economy; booming equity markets drove up insurers’ share values, adding significant amounts of capital to insurers’ and reinsurers’ books. Competition for business was significant, especially in the professional liability reinsurance market where rates fell 40 per cent between 1995 and 2000.

Inevitably, the cycle shifts: Increased losses, lower investment income, a surplus of supply – any and all of these factors prompt a retreat to more profitable lines of business as insurers

look to maintain a high level of returns for their stockholders. Premiums rise, insurers become more selective in who and what they underwrite, coverage becomes more restrictive. Complex lines of business, such as professional liability insurance, are particularly hard hit because they involve claims that can remain unresolved for long periods of time. Insurers start to abandon high-risk sectors, or exit markets entirely.

The events of September 11 accelerated this retreat: Global insurance losses of over \$200 billion, plunging global stock markets and resulting lower investment income prompted the insurance market “correction” that we’re experiencing today. Premiums in all lines of insurance business are again on the rise. At some point, once premium income becomes attractive enough to lure more players back into various markets, the cycle will again turn “soft.”

Although LAWPRO is not completely immune to this cycle, the structure and financial strength of the mandatory program – as described on pages 10-12 – enables us to insulate lawyers from the full impact of these cycles and major upward pressure on insurance premiums.



representing the snowbird client



You receive a voicemail message at your law office from a long-time client who is calling from his temporary home in Florida. He is one of many retired or semi-retired Canadians who prefer to spend extended periods of time in warmer climates over the winter months. This species of Canadians who migrate south for the winter is so common that they are given their own nickname: snowbirds.

Before returning the snowbird client's call, you should be aware that the professional services you provide to this client may not be covered under your professional liability insurance policy with LAWPRO.

In the ordinary course, your professional liability insurance policy provides coverage to lawyers for the performance of professional services (as defined in the policy), anywhere in Canada, where such services are performed with respect to the laws of Canada, its provinces and territories.

So, for example, if your snowbird client is calling you to retain your firm to sell his Florida condo, you must be aware that there would not be coverage for professional services performed with respect to U.S. law or other foreign laws.

If you currently represent or are considering providing professional services to snowbird clients with respect to U.S. or other foreign laws, you may wish to investigate separate coverage for these activities, as LAWPRO's primary policy does not cover the practice of U.S. or other foreign law.

With regard to your practice of Canadian law, you should also be aware that the scope of coverage under the policy for professional services provided while you are outside of Canada is limited. If you happen to be outside

Canada while providing legal services, the territory provisions found in Part II, A. SPECIAL PROVISIONS, of the policy, states that the Lawyers' Professional Indemnity Company will indemnify you with respect to the performance of Professional Services *where such services are performed outside of Canada, with respect to the laws of Canada, its provinces and territories, provided that:*

- (a) such services occupy less than ten percent (10%) of your docketed time or gross billings for professional services for the year; or
- (b) the claim or civil suit against you, and the issues including liability and damages are adjudicated on their merits in Canada pursuant to the laws of Canada, its provinces and territories.

Therefore, if you are providing legal services with respect to the laws of Canada, and are performing and docketing more than ten percent (10%) of your professional services outside of Canada, you would not be covered by your professional liability insurance, unless the claim or civil suit is adjudicated on its merits in Canada.

Nanette O'Connor is Legal Counsel, Underwriting and Customer Service with LAWPRO.

New DIVORCEmate

software addresses family law risks

As the practice of family law grows increasingly complex, the number of claims in this area has experienced a corresponding growth. Errors in the drafting of separation agreements are a primary cause of many of these claims.

Family law practitioners now have a new software program to help navigate these tricky waters: DIVORCEmate Software Inc. has just released its latest software product, Precedents+. This plain English, easy-to-use software is based on the Law Society's 2002 CLE book, "Separation Agreement Annotated" (Epstein, Grant, Sadvari) which has been substantially updated. It allows family law professionals to create a better and more comprehensive separation agreement "draft" in less time. The "draft" agreement is then reviewed, completed and customized using the lawyer's experience and skills.

Precedents+ will appeal to both family law specialists and lawyers who handle the occasional family law case. One of its unique features are the extensive annotations which alert the users to risk management issues.

Using the software is straightforward; it contains features which make it easy for the lawyer to choose and add appropriate clauses, preview the agreement and merge information from the Forms+ client file. Gerald Sadvari, a specialist in family law and one of the authors of "Separation Agreement Annotated", has previewed the software, and says: "Precedents+ should be on the computer of anyone who practises family law."

"From a risk management perspective, this is an extremely useful tool," says Michelle Strom, president and CEO of LAWPRO, which contributed expertise and resources to the Precedents+ project. The software reflects LAWPRO's commitment to promoting the use of technology to help lawyers practise more efficiently and effectively, and deliver better service to their clients. "Many of the claims in family law arise from mistakes in drafting separation agreements. Precedents+ uses the expertise of senior family law practitioners to help lawyers draft better agreements, and in turn reduce their exposure to risk."

"The Precedents+ Separation Agreement project is a huge opportunity for DIVORCEmate to bring timely knowledge and information 'off the page' and into the lawyer's mind and electronic environment," says Mark Harris, president, DIVORCEmate Software Inc. "We believe that proactive software solutions, which guide and educate the user, complement LAWPRO's loss prevention initiatives for the family law profession."

Additional Precedents+ product and order information can be found at www.divorcemate.com.



A better way to jump

practice

PRO

from one program to another

Switching between open programs is probably one of the most frequent things we all do as we work on our computers. To do this, most of us use the mouse to select an icon on the Task bar.

There is a faster way.

Remember that using a mouse to switch programs will likely mean taking your hands off the keyboard. Keeping them on the keyboard by using a keyboard shortcut will allow you to more quickly switch between programs. Two keyboard shortcuts allow you to do this.

Alt+Tab will open a small grey pop-up window in the centre of your screen. It has an icon for each program that is open. Hold down the Alt key, and then hit Tab to jump from one icon to the next. A brief description of each icon appears in a text box at the bottom of the pop-up (it is actually the text that appears in the titlebar of the window for that program). Simply release both keys when you get to the program you want.

Alt+Esc will cycle you through all open program windows. Hold down the Alt key, and repeatedly hit Esc to move through the open programs. With this shortcut each program appears on the screen. Simply release the Alt key when you get to the program you want.

You can also use a variation of this to change from one document to another within a single program. For example, to switch between two or more letters that you have open within Word, use Ctrl+F6 to cycle you through all open document windows within any single program. Hold down the Ctrl key, and repeatedly hit F6. Again, release both keys when you get to the document you want. This works on many, but not all Windows programs.



Old habits will die hard. To switch programs you will find yourself reaching for your mouse without thinking about it. To help you remember to use these shortcuts, put a Post-it or other small reminder on the edge of your monitor.

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CLE Premium Credit program makes its mark



LAWPRO's CLE Premium Credit program has closed the books on a second successful year during which the number of programs eligible for the credit and attendance at approved programs almost quadrupled from 2002.

Over the last 12 months, close to 7,500 lawyers attended 46 programs that were eligible for the credit, which entitles lawyers to a \$50 per program credit, to be applied to insurance premiums (to a maximum credit of \$100 per lawyer). In 2002, the first year of the program, 2,300 attended the 12 programs eligible for the credit.

LAWPRO has worked closely with the Law Society, the Ontario Bar Association, the County and District Law Presidents' Association (CDLPA), The Advocates' Society, the Carleton County Law Association and others to expand the roster of programs that qualify for the CLE credit.

Qualifying programs must include content that addresses areas of law where there are claims, reviews the types of claims that are happening, explains why those claims are happening, and most importantly, provides lawyers with information to help them reduce or eliminate the risks of a claim. Programs can be offered either

in lecture/seminar format, or can be video replays of qualifying programs, provided they are offered in a classroom setting with a knowledgeable moderator, and include a question-and-answer session. Lawyers who chair or speak at a qualifying program are eligible for the credit, provided they attended the entire session. CLE providers must submit program outlines to LAWPRO for review before being allowed to attach the CLE Premium Credit "seal of approval" to their literature.

As well as attending a CLE program, lawyers can obtain a premium credit by completing three modules of the Online Coaching Centre self-coaching tool accessible on the Web at www.practicepro.ca/occ/.

Privacy concerns and logistics preclude LAWPRO from being able to obtain attendance lists from CLE providers. To claim a credit lawyers must complete the online CLE Declaration Form at www.lawpro.ca/cledec. Credits for programs taken between September 16, 2002, and September 15, 2003, will be applied to the 2004 insurance premium, for all lawyers who filed Declarations by the September 15, 2003 deadline. Credits for programs taken between September 16,

2003, and September 15, 2004, will be applied to the 2005 insurance premium. Unclaimed credits cannot be carried forward from one year to the next. The September 15 deadline allows LAWPRO time to prepare invoices for the 2004 premium that will reflect the credit.

LAWPRO is already working with CLE providers to further increase the number of programs that qualify for the credit. Eligible programs carry the LAWPRO "seal of approval." An updated list of qualifying programs is posted on the LAWPRO Web site at www.lawpro.ca/clelist.



The Online COACHING CENTRE

Workshop: *powerful communications*
Module: *#20 - Better client service by . . . knowing what your clients want*

Coaching

Today's clients are more sophisticated and expect more than ever with regards to professional services and personal attention. Law firms with a strong client service focus know what their clients want. They know client expectations must be understood before they can be met, managed and exceeded.

Law firms with a strong client focus:

- Design services to maximize client satisfaction.
- Knock themselves out to be easy to do business with.
- Repeat and repeat again that client service is the responsibility of everyone in the firm.

Mentoring

Try to think like your clients would. What would be most important to you? What would catch your attention? What would make you feel good about the services being provided?

Answer as if you are one of your own clients.

The kind of service I want includes...

-
-

My main concerns with regard to service are...

-
-

Three extra client service actions I want are...

-
-

Actions that could be taken to achieve these three client service desires.

-
-

About the OCC

The Online COACHING CENTRE (OCC) is LAWPRO's innovative online education tool. It lets you quickly and easily enhance a variety of "soft skills" that not only help you survive and thrive, but also help reduce malpractice claims.

The OCC is entirely Web-based, allowing lawyers across Ontario to use it at a time and place convenient to them. It is organized into six workshops, each of which contains approximately 25 learning modules, such as the one profiled on this page. Modules encourage self-teaching and self-evaluation; answers you provide when working in the modules should be saved for review at a later time.

To access the OCC, go to www.practicepro.ca/occ

Lawyers who claim LawPRO CLE premium credit have lower claims rate

Lawyers who participate in CLE programs are less likely to have claims than those who do not, according to an analysis of the claims track record of lawyers who claimed the CLE Premium Credit and those who did not.

During the 2000-2002 time period, only eight percent of lawyers who obtained the credit reported a claim, while more than 12 percent of those who did not receive the credit reported a claim. This correlation reinforces LAWPRO's belief that it is critical for lawyers to incorporate risk management strategies into their practices, and that the use of risk management tools and strategies can reduce claims.

Beware the dangers



of acting for family and friends

At one time or another, every practising lawyer has been approached by a friend or family member for legal advice. For most, the natural inclination is to help. However, acting for friends and family is risky business: You should think twice before doing so.

Due to the closeness of the relationship, the help offered by lawyers acting for family or friends tends to be informal, or is at a level that is less formal than it would be for a regular client. This lack of formality can result in the cutting of corners, or a failure to obtain consents or written instructions. Misunderstandings as to the scope and nature of the services to be provided are more likely due to the informal handling of the matter. Lastly, standard procedures may not be followed, including completing a conflicts check, opening a file, signing a retainer agreement, sending correspondence, etc. All these standard procedures occur for good reason, and should occur on every matter that you handle, regardless of your relationship to a client.

For several reasons family and friends can be the most difficult and awkward of clients:

- They can be extremely demanding clients. They can (and will) ask you questions 24 hours a day.
- It is more difficult to give them honest, objective, independent and professional

advice. No matter how hard you and they try, your personal relationship will cloud your judgment, and their ability to listen to the advice that you are giving.

- They can be the most unreasonable of clients. An inability to properly listen to and accept the advice you are giving makes for unreasonable expectations.
- Family members and fees don't mix. The discussion of fees is more difficult with family members, and often you will find yourself doing the work on a *pro bono* basis, or at a reduced hourly rate.
- If the matter doesn't go as expected, the consequences for the relationship can be disastrous. A malpractice claim is often the result, notwithstanding the family or personal relationship. The inevitable hurt feelings may affect your relationship with that person, and with other family members.
- Similarly, changes in family relationships or circumstances – such as separation or divorce – can also colour how family members view your earlier legal advice or services.

Be aware that dabbling is also dangerous. In our claims files we often see lawyers getting in trouble when they try to handle a matter that is outside their normal area of practice. This frequently occurs when lawyers are trying to help a family member or friend. In all cases you should avoid

acting on a matter that is outside of your area or areas of expertise, and this is especially true in the case of matters for family or friends. Don't be a dabbler!

You should also keep in mind the related entity or business enterprise exclusion under your LAWPRO policy. It can have the effect of limiting coverage in cases where you, your spouse or others related to your firm have an interest in the claimant. See the LAWPRO policy for more details.

What do you do when a family member or friend approaches you for help on a legal matter? Politely and firmly explain to them that it would be better to have someone else in the firm or an even an outside lawyer handle the matter for them. Explain that by doing this they can better ensure that the lawyer acting on their behalf has the right expertise and is able to offer independent and objective advice. Using outside counsel ensures that errors do not affect personal relationships, things are more likely to be documented, family members are more likely to be more realistic in their expectations, and the acting lawyer can more easily give the client the advice they would prefer not to hear (e.g. "you don't have a case").

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Reminder: Transaction levies due October 31

Real estate and civil litigation transaction levies and forms for the third quarter of 2003, ending on September 30, 2003, are due and payable on October 31, 2003. All real estate and civil litigation lawyers must file a transaction levy form indicating the number of civil or real estate transactions undertaken for the period from July 1 to September 30, 2003. A filing must be made even if there were no transactions to report for this period. Transaction levy filing forms are available on the LAWPRO Web site at www.lawpro.ca. To complete your transaction filings electronically, click on **File Online**; to access blank forms in PDF format, click on **Insurance Forms**.

Mark your calendar: Nov. 27-28 for lawyers' technology conference

What technology tools are the best litigation lawyers depending on these days? How can technology help you reduce the paper flood in your office? How can you harness technology for online research and more?

These are but some of the questions that will be addressed at the 2003 LSUC/OBA Technology for Lawyers Conference and Vendor Expo, being held November 27-28, 2003, at the OBA Conference Centre in Toronto. The conference will feature 27 unique sessions presented by a faculty

of practitioners and legal technology experts. The Vendor Track (new this year) will feature product demonstrations. The Vendor exposition will feature at least 25 vendors. Because of the conference's risk management focus, LAWPRO is a principal conference sponsor.

The CLE sessions are organized in four tracks. The Litigation Track will highlight the practical technology tools that most successful litigators are using, including case strategy, e-discovery, and practice management software. A "mock motion" in Toronto's new electronic courtroom will demonstrate the latest courtroom technology.

The Tools and Tips Track will provide practical information that will help you reduce the paper in your office; work away from your office; protect yourself from viruses and hackers; and comply with the new privacy legislation.

The Strategies Track will help you increase your efficiency and better manage the finances of your practice; work more closely with your clients with various collaboration tools; and help you more successfully acquire, implement and support legal technology.

The Tech University Track will feature hands-on teaching sessions aimed at increasing your Web and electronic research, word processing and document automation skills.

The conference is designed to help lawyers make technology an integral part of their law practices, and demonstrate how technology offers lawyers a competitive advantage.

To register, visit the Law Society Web site at <http://ecom.lsuc.on.ca> or contact the Law Society.

Prepare for new Limitations Act which comes into effect January 1, 2004

On January 1, 2004, the new *Limitations Act, 2002*, will come into force. This legislation represents a huge reform of the existing law of limitations. To help lawyers quickly familiarize themselves with the provisions of the new Act, LAWPRO recommends two useful tools:

- Graeme Mew of Gowling Lafleur Henderson LLP has written extensively on Ontario's limitations legislation, and has prepared a review of the Act and its implications for lawyers. This article was first published in the March 2003 issue of LAWPRO Magazine and is available online at www.practicepro.ca/practice/Limitations_Act.asp
- Section 24 of the Act contains transition rules which apply to claims based on acts or omissions that took place before January 1, 2004, and in respect of which no proceeding has been commenced before that date. (Note that assaults and sexual assaults are treated differently.) Pat Peloso and Jennifer Arrigo, both of Gowling Lafleur Henderson LLP have prepared a chart that summarizes the transition rules set out in s.24. The chart, which was adapted from a chart that originally appeared in the materials distributed on June 11, 2003, at the Law Society of Upper Canada/Ontario Bar Association's Continuing Legal Education Program titled "The Limitations Act, 2002: Learn the New Rules before Time Runs Out," is available online at: www.practicepro.ca/practice/limitation.asp

Events calendar

2003 – 2004



The following is a listing of events at which LAWPRO representatives, including staff from TitlePLUS and practicePRO, will be presenting and/or participating in the coming months.

October 22-25

TLOMA 15th Annual Educational Conference

TitlePLUS sponsoring
White Oaks Conference Centre,
Niagara-on-the-Lake

October 27

LSUC New Lawyer Experience
You and Your LAWPRO Policy –
Cynthia Martin, LAWPRO

*Managing your Clients and your Time:
Servicing and Communicating with your
Client* – Dan Pinnington, practicePRO
LSUC, Toronto

October 28

LSUC Practice Workshop: *Opening Your
Practice*

20 Technology Tips in Twenty Minutes –
Dan Pinnington, practicePRO
LSUC, Toronto

October 31

practicePRO Technology Breakfast: *The
Courtroom of the Future Has Arrived*
Come to this session for a hands-on
demonstration of the new electronic
courtroom.

Courtroom #807, 8th Floor, 393
University Ave., Toronto

November 4

e-reg Program – LSUC
TitlePLUS sponsoring
LSUC, Toronto

November 5-7

Credit Union Professionals' Association
conference (CUPA)

TitlePLUS participating
Fairmont Royal York Hotel, Toronto

November 17 & 20

Newfoundland Bar Ads

TitlePLUS presenting
Newfoundland Law Society, St John's

November 23-25

CIMBL National Conference & Expo

TitlePLUS exhibiting
Metro Toronto Convention Centre, Toronto

November 26

6 Minute Real Estate Lawyer

Kathleen Waters and Maurizio Romanin,
Title PLUS
Tim Clark, LAWPRO
LSUC, Toronto

November 26

Provincial Alliance Annual Information
Meeting

TitlePLUS sponsoring
Thunder Bay

November 28

London & St. Thomas Real Estate
Board's Christmas Gala

TitlePLUS sponsoring
Hilton hotel, London

November 27-28, 2003

LSUC/OBA Technology for Lawyers
Conference

practicePRO sponsoring & exhibiting
TitlePLUS exhibiting
OBA Conference Centre, Toronto

December 9

Carlton County Law Association Title
Insurance CLE

Tim Clark, LAWPRO
TitlePLUS exhibiting
Ottawa

December 10

York Region Real Estate Board's
General Meeting
TitlePLUS exhibiting

January 23, 2004

practicePRO Technology Breakfast:
PCLaw Tips and Tricks

At this breakfast a PCLaw trainer will
review practical tips and tricks for working
better, smarter and faster with this product.
LAWPRO, Toronto

January 29-20

OBA Institute

LAWPRO, practicePRO and TitlePLUS
sponsoring and exhibiting
Metro Toronto Convention Centre, Toronto

February 27, 2004

practicePRO Technology Breakfast:
Summation – Making It Work For You

This breakfast will highlight the basics of
using this powerful litigation tool, includ-
ing how to structure your approach to
maximize your productivity.
Alan Butcher, Gowlings LLP
LAWPRO, Toronto

For more information on practicePRO
events, contact Susan Carter at 416-596-
4623 or 1 800 410-1013, or by e-mail at
susan.carter@lawpro.ca.

For more information on TitlePLUS events,
contact Marcia Brokenshire at 416-598-5882
or e-mail marcia.brokenshire@lawpro.ca.



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