

LAWPRO holds insurance premium increase to 3% for 2006

The base liability insurance premium for Ontario lawyers will be \$2,700 per lawyer in 2006, up \$75 from \$2,625 in 2005.

Premiums for many lawyers in 2006 will be significantly below the base premium of \$2,700, with some lawyers paying as little as \$1,217, depending on the practice and coverage options selected. Premiums for other insurance coverage, transaction levies and discounts will remain the same as they were in 2005.

Stable claims costs have helped LAWPRO hold the premium increase for 2006 to less than three per cent. The \$75 increase will help offset a projected decrease in revenues from real estate transaction levies resulting from the increased use of title insurance and a projected decline in residential real estate sales.

Revenue to meet the forecasted \$78.5 million in total costs for the insurance program in 2006 will come from three sources: \$51.4 million from base premiums (based on 20,400 insured lawyers); \$21.0 million from transaction and claims history surcharge levies; and \$6.1 million from the premium stabilization fund.

Two notable changes will be made to the insurance program in 2006:

- **Exemption for Legal Aid Clinic volunteers:** LAWPRO has made a number of changes to the insurance program over the past few years to support lawyers wishing to provide *pro bono* legal services in Ontario. The program will be expanded further to allow lawyers who are otherwise retired to volunteer their time without incurring insurance premiums for work in clinics, societies or corporations funded by Legal Aid Ontario.

- **Mortgage brokering exclusion:** Mortgage brokering activities of lawyers have been excluded from LAWPRO insurance coverage since 1995. However, the Ontario government has tabled legislation that would govern mortgage brokering and lending activities; it requires those involved in mortgage brokering activities to be accredited and insured, but specifically exempts specific legal services provided by lawyers from the provisions of the legislation.

Once the new legislation is passed, LAWPRO will modify its insurance coverage in this area to insure lawyers for specific legal services that fall within the exemption provisions for lawyers in the proposed legislation. Other services regulated by the proposed *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* (and for which lawyers are not exempt from regulation) would not be insured under the LAWPRO policy.

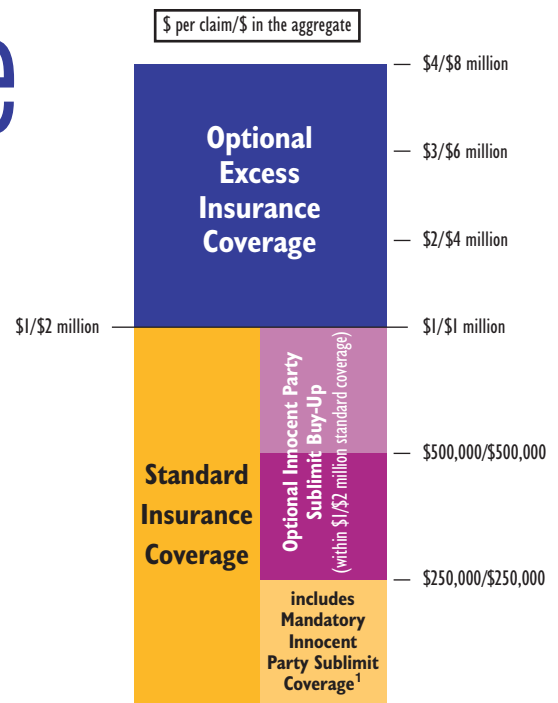
Expanded online transactions

LAWPRO continues to expand its e-business capabilities to better serve lawyers insured under the program. Many of the more than 17,000 lawyers who are expected to file insurance applications online this fall will have instant access to their 2006 policy documentation and invoice. In 2006, LAWPRO will roll out a new Web site that will provide a variety of new self-service, online features, including access to a personalized, detailed summary of the status of a lawyer's insurance account, as well as the ability to change payment instructions.

2006 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.²

Coverage limit:

\$1 million per claim/\$2 million in the aggregate (i.e. for all claims reported in 2006), 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:

\$2,700 per insured lawyer.

Mandatory Innocent Party Sublimit Coverage³

Eligibility:

Required for 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 costs of repairs together.

Premium:

\$250 per lawyer.

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 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.

FOR INFORMATION

For detailed information on the insurance programs and insurance options, or for application forms, please visit the LAWPRO Web site 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.

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 limits⁴ 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.

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 buy up their optional coverage limits to the maximum offered, to avoid gaps in coverage.

Filing insurance forms

Application filing deadlines:

NOVEMBER 1: E-FILE DEADLINE

File your 2006 insurance application by November 1, 2005, and you'll receive a \$50 premium discount on your next year's insurance premium. Last year, more than 80 per cent of lawyers completed their applications via the File Online option on our Web site – www.lawpro.ca

NOVEMBER 8: 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 8, 2005. 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 2005 who intends to continue in private practice in 2006.
- Any lawyer who was exempt under the program in 2005 but intends to return to private practice in 2006.
- Any in-house counsel, government or education 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, for example, to friends or relatives.
- 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 and does not qualify for the mobility exemption.

Excess Insurance:

More necessary than you may believe

Who should be thinking about the need for excess insurance? Everyone.

As the complexity of claims increases, more lawyers are recognizing that their potential exposure to risk may be larger than they anticipated. To protect themselves and their law practices, they are turning to excess insurance to provide an extra layer of malpractice insurance protection.

Excess coverage gives lawyers peace of mind knowing that if the cost of their claims exceed the limits of the primary program, they have additional resources to draw on. In the eight years since LAWPRO introduced its excess insurance program, the program has grown to 1,600 firms in 2005 from 80 firms in 1998.

Based on our statistical analysis, lawyers in practice for the typical length of a law career will have at least three claims made against them over the course of their law practice. One out of every two lawyers reading this article will have to report a claim in the next eight years. Four out of five lawyers in practice for 20 years have already had at least one claim made against them.

IT TAKES JUST ONE CLAIM

A single claim is all it takes to erode coverage limits to the point where there are insufficient funds left to resolve that claim.

How can this happen?

- Defence costs alone could quickly mount to \$500,000 or more if the claim requires a substantial defence.

- Significant prejudgment interest likely will be assessed on a claim that arises out of services provided years ago.
- The stakes, and the cost of claims, are significantly higher in some areas of law, such as securities, tax, pensions, real estate, and estate work.

As well, many claims today are more complex than in the past – resulting, for example, in an increase in the average cost of claims on which we incur defence or indemnity costs over the past decade.

Lawyers need to consider that it is not only their own work and clients that they have to worry about: You can also be held accountable for the work of partners, associates, employed lawyers, others with whom they have worked, and those to whom they've subcontracted work, in the past and present. In fact, anyone who provides services in connection with the firm, or whose work or expertise that you rely on, could become the root cause of a claim.

Without excess insurance coverage, you could be personally liable – with potentially devastating personal and professional consequences – for any costs that exceed the \$1 million per claim/\$2 million in the aggregate coverage limits provided by the LAWPRO primary liability insurance program.

To assess your potential exposure to claims and the need for excess insurance, take the Test Your Exposure test on page 5 of this magazine.

LAWPRO Excess Insurance

LAWPRO's Excess Insurance program offers limits that range from \$1 million per claim/\$2 million in the aggregate to \$4 million per claim/\$8 million in the aggregate above the primary program coverage limits.* Note that this is a firm limit that applies to all lawyers in your firm collectively.

Premiums are competitively priced, based on information provided by applicants in the Excess Insurance Application.

To apply for LAWPRO Excess Insurance, please complete the online Excess Insurance Application at www.lawpro.ca. Select File Online, then Excess Insurance Application.

For more information on Excess Insurance, watch your mail or contact the LAWPRO Customer Service Department at:
Tel: (416) 598-5899 or 1-800-410-1013;
Fax: (416) 599-8341 or 1-800-286-7639;
E-mail: service@lawpro.ca.
www.lawpro.ca.

* LAWPRO primary program provides coverage limits of \$1 million per claim/\$2 million in the aggregate.

Test your exposure

Take this test to quickly assess your potential exposure to claims – and your need for Excess Insurance coverage.

How to score

Give yourself one point for each “Agree” that you record.

What do you know about the law practices of others – tenants, associated law practices, co-counsel, back-up or previous counsel, ‘of counsel’, and others, past and present – for whom you may be held responsible.

AGREE 1. I am familiar with their file practices, procedures, and communications, including in-take procedures, documenting retainers, reviewing opinions, docket control and diary systems, completeness of documentation and file storage.

AGREE 2. I am satisfied that the letterhead, office signage, reception and telephone, Web site, advertisement and promotional materials, as well as retainers and billing arrangements of my practice and others affiliated with me, consistently and clearly communicate the nature of the relationship of my practice to that of others.

How carefully have you assessed the exposure relating to the areas of law in which you – and those affiliated with you – practise or practised?

AGREE 3. I have not practised and do not expect to practise in the more claims-prone areas, such as litigation, real estate, corporate and commercial, tax and securities law. My past and/or present partners, associates, employees or others for whom I may be held responsible, have not practised and do not expect to practise in these areas either.

AGREE 4. When I or members of my firm have become involved in these more claims-prone areas of practice, the work has been focused in the hands of a few with the right expertise, or with others under the appropriate supervision or guidance.

What checks and balances are in place for your firm’s trust accounts?

AGREE 5. Neither I nor members of my firm maintain large trust accounts or trust accounts with much activity.

AGREE 6. When it comes to trust accounts, our firm has careful controls in place to govern activity in these accounts; our trust accounts are overseen by more than one lawyer, and two signatures are required for each cheque or withdrawal.

Have you assessed the exposure that comes from potentially high-stakes transactions?

AGREE 7. My firm does not handle major financial transactions and /or represent clients where the stakes are high, such as class action suits, pensions, securities, tax or patents and trademarks.

AGREE 8. I appreciate that the modest beginnings of past clients may have grown, and that the stakes, and any interest accruing, associated with past services, may have grown. As well, I am satisfied that I have plenty of coverage to deal with this exposure.

AGREE 9. My colleagues and I do not rely on the same research, or general or past opinion when we provide opinions to different clients – a situation that could significantly compound our exposure to claims.

What other excess insurance may be in place for your benefit?

AGREE 10. I have arrangements in place with my former firm(s) to ensure that they continue to maintain excess insurance or advise me if they fail to do so, and have reviewed the excess policy and am satisfied that it covers me for my past activities with them.

Total points

Your score and need for Excess Insurance

10 points: You are doing a good job of keeping on top of the practice issues that could result in claims. But that does not mean you are home free. Remember that no matter how well you assess your exposure, claims often arise from the least-expected quarters and Excess Insurance could provide you with that peace of mind that comes with knowing you have sufficient liability insurance coverage in place.

0 points: Your exposure to claims is very likely significant. LAWPRO encourages you to carefully consider your exposure and apply for Excess Insurance coverage. As well, we encourage you to revisit each of the issues raised in this test of your potential claims exposure.

Any other score: The lower your score, the greater your potential exposure to claims. Consider especially those areas where you were unable to “agree” to the test comments. A careful assessment of your and your firm’s practice habits, internal systems and the exposure that your current and past clients represent is always helpful – and a good start in determining your firm’s needs for additional insurance coverage.

2006 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 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:

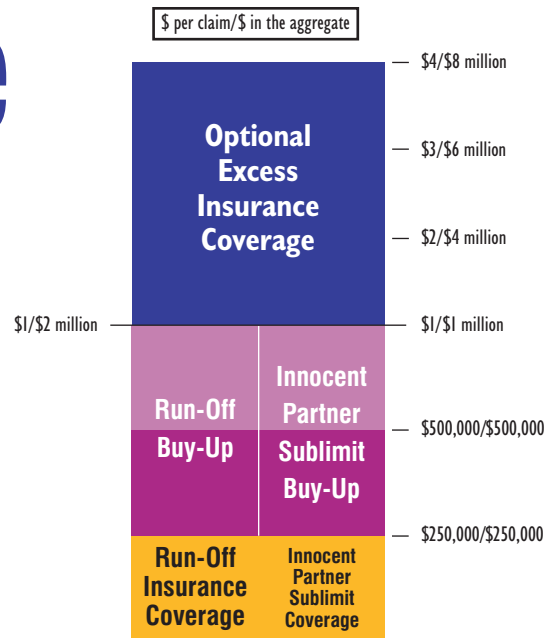
- applies to claims arising out of services provided while the lawyer was in private practice or otherwise maintained the full, ongoing practice coverage;
- does not provide coverage for claims arising out of any services a lawyer provides while exempt from paying the insurance premium; the only exception 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.

Excess Insurance

(see page 3)



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-Up²

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 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 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.

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 Web site at www.lawpro.ca.

² LAWPRO strongly recommends that lawyers buy up their optional coverage limits to the maximum offered, to avoid gaps in coverage.

Exempt lawyers are still 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 50 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.* A common misconception is that this limit is renewed every year. On the contrary, \$250,000 is the total of all coverage you will have for all claims made against you (and your estate) in the past, present and future while exempt. 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 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.

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. Run-Off Buy-Up Coverage can be tailored to your particular needs, as is more fully described on the previous 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.

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

When your past haunts your present (a fictitious scenario based on composite claims information)

BACKGROUND

Mr. W retired from his small-town Ontario real estate and wills/estates practice two years ago with a claims-free track record, so he never saw the need to buy up his Run-Off Coverage beyond the \$250,000 per claim/aggregate coverage limits. Notice that he was being sued for upwards of \$1 million by the children of one of his former clients because of an alleged oversight in the drafting of their father's will 10 years ago therefore came as a complete shock.

INSURANCE ISSUES

Even more unsettling was the exposure that this claim represented. The value of the estate had increased considerably over the intervening years. Disputing heirs also made a quick resolution to the claim more difficult, resulting in increased defence costs. No matter what the outcome, Mr. W. knew his potential exposure was significant – and beyond his Run-Off Coverage limits.

Had Mr. W bought up his Run-Off Coverage limits, his personal exposure would have been significantly less. For example, if he had increased his coverage to the full \$1 million per claim/\$2 million aggregate available, chances are virtually all of the defence, judgment or settlement costs associated with his claim could have been covered by LAWPRO. As well, had he applied for increased Run-Off Coverage when he first retired, his risk-rated premium would have reflected his claims-free track record. For Mr. W to secure increased Run-Off Coverage for the future will be difficult, and certainly costly.

How to save on 2006 insurance premiums

E-file to save \$50 per lawyer

E-file in 4 easy steps:

1. Go to the LAWPRO Web site at www.lawpro.ca and click on **File Online**.
2. On the Sign-in page, enter your Law Society member number and your unique, confidential password. New applicants can follow the online instructions for setting up a password.
3. Select 2006 **Professional Liability Insurance Application** ("Renewals" or "New Applicant" as applicable) from the list of online filing options. If you are renewing coverage, your online application will be pre-populated with information on your current insurance coverage, as per information in our database.
4. Follow the on-screen instructions for completing your application – in minutes! All of the information on the 2006 insurance program and options is available online.

Pay your premium in a lump sum and save \$150 per lawyer

You can choose to pay your 2006 premium in a lump sum, or by quarterly or monthly instalments. But only lump sum payments,

made by cheque or pre-authorized bank account withdrawals, qualify you for the \$162 (\$150 discount plus \$12 for GST) per lawyer lump sum payment discount. For more information, see question #16 on your 2006 insurance application and program guide.

Instant access to your 2006 invoice and policy documents

Many lawyers and law firms will see their applications processed instantly and will have immediate online access to their 2006 premium invoice and policy documents in a secure section of the LAWPRO Web site.

Lawyers who prefer to receive their printed invoice and policy documents in the mail will be able to indicate this preference on the application form.

As in past years, (unless otherwise requested) only those lawyers who do not e-file, and for whom we do not have an e-mail address will receive printed packages of the 2006 policy and the booklet containing forms for transaction levy filings. PDF copies of the 2006 insurance policy will also be available for downloading and printing from the LAWPRO Web site at www.lawpro.ca.



LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LAWPRO®)

President & CEO: Michelle Strom

LAWPRO news is published by the Lawyers' Professional Indemnity Company (LAWPRO) to update practitioners about LAWPRO's activities and insurance programs, and to provide practical advice on ways lawyers can minimize their exposure to potential claims.

Editor: Dagmar Kanzler
dagmar.kanzler@lawpro.ca

Contributing editor: Stephanie Wei
stephanie.wei@lawpro.ca

Design & Production: Freeman Communications

Tel: (416) 598-5800 or 1-800-410-1013
Fax: (416) 599-8341 or 1-800-286-7639
www.lawpro.ca

Disclaimer:

This publication includes techniques which are designed to minimize the likelihood of being sued for professional liability. The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.