

Lower premium, new real estate practice coverage for 2008

A base premium that, at \$2,300 per lawyer, is the lowest it has been since before 1995, and a new real estate practice coverage, introduced in direct response to the provincial government's plan to combat mortgage and title fraud, are principal features of the 2008 LAWPRO insurance program.

Base premium decreases by \$300

For 2008, the base premium will fall \$300 to \$2,300 per lawyer compared to \$2,600 in 2007. Many lawyers will pay significantly less than this base premium, with some paying as little as \$1,007, depending on practice and coverage options selected. Premiums for other insurance coverages, transaction levies and discounts will remain the same as they are in 2007.

Strong investment returns, positive development on older claims, and the continuing strength of the real estate market enabled LAWPRO to reduce premiums.

Revenue to meet the forecasted \$80.4 million in total costs for the insurance program in 2008 will come from three sources: \$49.6 million from base premiums (based on 21,600 insured lawyers); \$22.5 million from transaction and claims history surcharge levies; and \$8.3 million from the premium stabilization fund.

New mandatory real estate practice coverage

Following the passage of Bill 152 in 2006, the Ontario government announced that it would be implementing a number of

fraud-prevention reforms which will reshape real estate practice, including a new set of criteria for those registering documents through the electronic land registry system. To satisfy the government requirements, it is expected that lawyers will be required to have a prescribed form of insurance coverage that would respond in the event of fraud. This coverage will be available under the LAWPRO policy, starting in 2008, for an annual premium of \$500.

Recognizing that this coverage may not be required of Ontario real estate practitioners until some time in the first quarter of 2008, LAWPRO will charge only \$375 of the \$500 annual premium. In so doing, LAWPRO is opting to not charge any premium for this real estate practice coverage for the first three months of 2008, even if the coverage may first be required of Ontario lawyers at some point during this period.

This premium adjustment, combined with the \$300 decrease in the base premium, means real estate lawyers will be paying only \$75 more in 2008 compared to 2007, for expanded coverage that addresses a growing area of risk.

This mandatory sub-limit coverage of \$250,000 per claim and \$1 million in the aggregate will be required of any lawyer intending to practise real estate law in Ontario. It will provide protection only for the registration of fraudulent instruments under the *Land Titles Act*, and not to any other situations involving fraud; as well it will not apply to claims for which title insurance would apply. For details on this new real estate practice coverage, see page 5.

How to save on 2008 insurance premiums

E-file to save \$50 per lawyer

E-file in 4 easy steps:

1. Go to the LAWPRO website at www.lawpro.ca and enter your Law Society number and your confidential password in the **My LAWPRO** box located in the upper right side of our home page.
2. If you do not remember (or do not have) a password, select **File Online** in the **Quick Links** box and follow the online instructions to obtain a password.
3. Select **2008 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. All of the information on the 2008 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 2008 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 PST) per lawyer lump sum payment discount. For more information, see question #16 on your 2008 insurance application and program guide.

Instant access to your 2008 invoice and policy documents

Many lawyers and law firms will see their applications processed instantly and will have immediate online access to their 2008 premium invoice and policy documents in a secure section of the LAWPRO website.

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.

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 2008 policy and the booklet containing forms for transaction levy filings. PDF copies of the 2008 insurance policy will also be available for downloading and printing from the LAWPRO website at www.lawpro.ca.

Filing insurance forms

Application filing deadlines:

NOVEMBER 1: E-FILE DEADLINE

File your 2008 insurance application by November 1, 2007, and you'll receive a \$50 premium discount on your next year's insurance premium. Last year, more than 90 per cent of lawyers completed their applications via the **File Online** option on our website – www.lawpro.ca

NOVEMBER 8: APPLICATION FILING DEADLINE

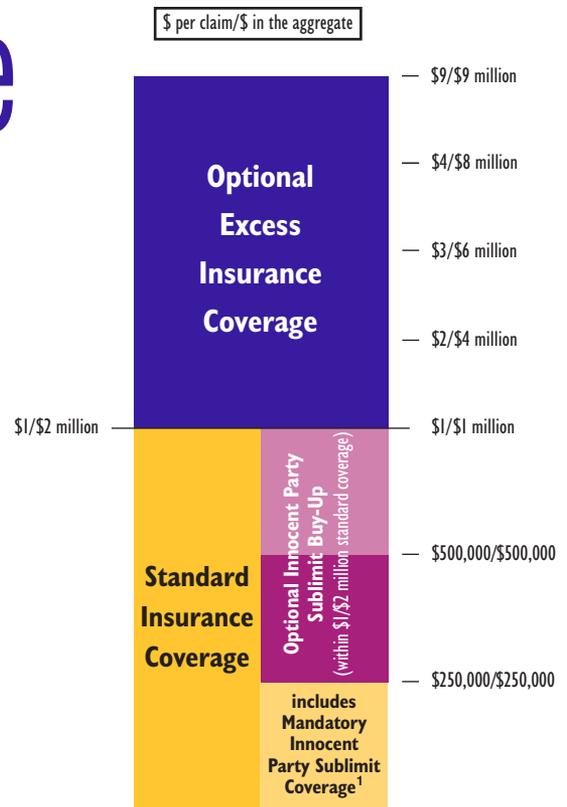
To avoid paying a late filing surcharge of 30 per cent of the base premium, applications must be filed with LAWPRO by November 8, 2007. Applications can be filed in one of three ways: electronically (e-file), by fax or mail.

Who must file an application?

- Any lawyer insured under the LAWPRO program in 2007 who intends to continue in private practice in 2008.
- Any lawyer who was exempt under the program in 2007 but intends to return to private practice in 2008.
- Any in-house counsel, government or education lawyer, who, in the course of employment or otherwise, provides Professional Services to third parties.
- Any lawyer who, although retired from active private practice, occasionally provides Professional Service, for example, to friends or relatives.
- Any lawyer member of the Law Society not resident in Ontario who engages in more than "occasional practice" in Ontario, as defined under the Rules for Exemption Eligibility and does not qualify for the mobility exemption.

2008 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 2008), 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:

\$2,300 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.

Mandatory Real Estate Practice Coverage (for real estate practitioners)

Eligibility:

Required by all lawyers practising real estate law in 2008.

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.

Base premium:

\$500 per lawyer, HOWEVER, due to the fact that this coverage may not be required until some time in the first quarter of 2008, LAWPRO will only charge \$375 of the \$500 annual premium.

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.

Coverage sublimits:

LAWPRO offers Optional Innocent Party sublimits of:

- \$250,00 per claim/aggregate;
- \$500,000 per claim/aggregate;
- \$1 million per claim/aggregate.

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.

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 all lawyers in private practice, and to all 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.

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.

Real Estate Practice Coverage

required for all real estate practitioners

At some point in 2008 (likely in the first quarter of the year), all real estate practitioners will have to demonstrate to the government that they have in place a prescribed form of insurance coverage that would respond in the event of certain instances of fraud. Proof of this coverage will be required for lawyers to be able to access Ontario's electronic registration system.

This new coverage modifies LAWPRO's existing Innocent Party Coverage to ensure there is coverage for claims arising out of the registration of fraudulent instruments under the *Land Titles Act*. The new Real Estate Practice Coverage Option provides for a sublimit coverage of \$250,000 per claim/\$1 million in the aggregate, applicable to claim expenses, indemnity payments and/or costs of repairs together.

The annual premium for this new coverage has been set at \$500 per lawyer.

However, as this coverage may not be required of Ontario real estate practitioners until some time in the first quarter of 2008, **LAWPRO will charge only \$375** of the \$500 annual premium. In so doing, LAWPRO is opting to not charge any premium for this real estate practice coverage for the first three months of 2008, even if the coverage may first be required of Ontario lawyer licensees at some point during this period.

LAWPRO will provide real estate lawyers with this coverage subject to a number of criteria:

Eligibility

The Law Society has determined that some lawyers will not be eligible to practise real estate law and therefore would not be eligible for this coverage. Lawyers not eligible for this 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.

Applying for this coverage

The 2008 insurance application package includes information on this new coverage option. As well, all lawyers applying for

insurance coverage in 2008 will have to complete a new question on the application form that deals with whether or not they intend to practise real estate law in Ontario in 2008.

Definition of real estate law

Under the 2008 LAWPRO insurance policy, "real estate law" is a broadly defined term that is not limited to specific types of transactions, such as transfers or charges. Rather, the term is defined as follows:

"REAL ESTATE LAW means the practice of the law of Canada, its provinces and territories, that concerns:

- i) the registration of any instrument under the LAND TITLES ACT; and/or
- ii) the actual or contemplated transfer, charging, insuring, or otherwise affecting, an estate, right or interest in land;

and may include, without limitation, any one or more of the following services by a solicitor: the receipt of instructions, preparation of documents, searches and/or the providing of one or more opinions or certificates with respect to the title, transfer or charge, and/or with respect to the issuance of any title insurance policy."

Lawyers changing area of practice

Lawyers who stop practising real estate law at some point in 2008, or who start to practise real estate law part way through the year, will qualify for a premium adjustment for this option, pro-rated for the period during which they practise (practised) real estate law, subject to the following criteria:

- a 60-day minimum premium; and
- only one premium adjustment per lawyer for this option for the year.

Lawyers who start to practise real estate law part way through the year should provide LAWPRO with a completed Application for Mid-Term Changes Form at least 10 days prior to the date that the requested change is to take effect.

Lawyers who cease to practise real estate law part way through the year and prefer not to continue to carry this coverage option, should provide LAWPRO with a completed Application for Mid-Term Changes Form within **30 days**, for any available reduction in premium to be applied.

Self-Assessment Tool

for Real Estate Practice Coverage Option

Not sure if you need to apply for the new Real Estate Practice Coverage Option? Take our self-assessment test to determine your obligations.

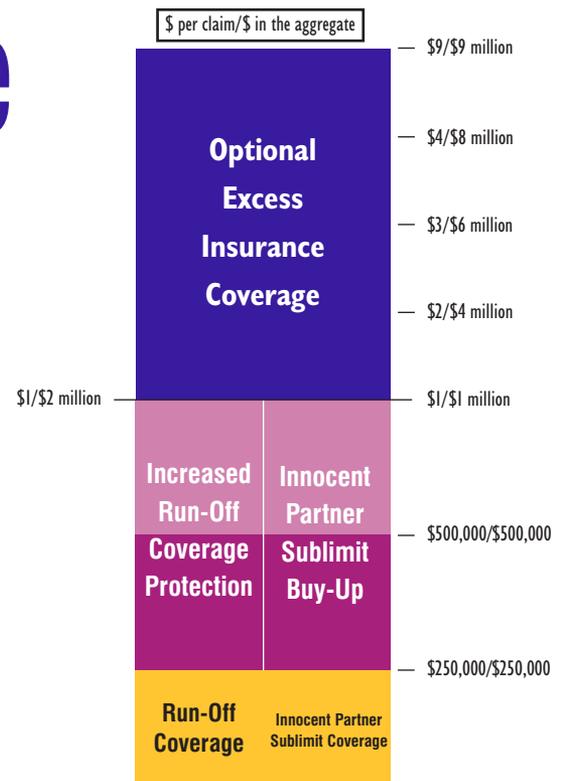
As soon as you answer “yes” to any of the questions where there is a “✓” in the “Yes” column, you will have to apply for the Real Estate Practice Coverage Option.

For more information see www.lawpro.ca/insurance/Practice_Type/REPO_coverage.asp

Do you...	Yes – you need to buy the endorsement	No – this alone does not require the endorsement	Comments
Register or deposit any instrument(s) under the Land Titles Act or Registry Act?	✓		
Act on transfers (whether purchases, sales or transfers to or from trusts), charges or discharges of charges?	✓		
Arrange title insurance or give opinions/certificates on real estate interests?	✓		
Prepare documents for or undertake searches for real estate transactions?	✓		
Prepare or opine on leases or related documents for residential or commercial tenancies or other leasehold interests?	✓		
Prepare or opine on documents for the development or re-development of land?	✓		
Undertake advocacy before a court or tribunal where a real property interest may be affected by the outcome, or relevant in the course of the litigation, but make no registrations or deposits on title to real estate yourself?		✗	This could include mortgage enforcement, construction lien, zoning or related municipal administrative proceedings, bankruptcy & insolvency, residential rental terminations, residential rent control, human rights, matrimonial or aboriginal/First Nations, environmental, property & casualty insurance litigation. In these cases, the court or tribunal is ultimately “affecting” the “estate, right or interest in land”, not yourself.
Prepare wills?		✗	The “estate, right or interest in land” will not be affected simply by your drafting of the will; steps will be taken at a later date by the Estate Trustee or a beneficiary that will affect title.
Administer estates, but make no registrations or deposits on title yourself?		✗	The “estate, right or interest in land” will not be affected simply by your acting for the Estate, provided that you are not dealing with the real estate assets.
Give opinions on environmental, municipal or tax law compliance?		✗	You are not opining on or affecting the ownership of, or priorities in, the underlying real estate interest, but instead commenting on the application of legal principles to a given state of affairs.
Register security interests under the PPSA or equivalent personal property regime, but make no registrations or deposits on title to real estate?		✗	
Act on purchase or charging of shares of a company, where the company owns real estate, but make no registrations or deposits on title to real estate yourself?		✗	

2008 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)



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, and 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 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.

Excess Insurance

Eligibility:

Available to all lawyers in private practice, and to all 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.

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:

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.

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 10 of this magazine.

LAWPRO Excess program marks 10th anniversary in 2008

LAWPRO's Excess Insurance program was launched in 1998 to address a clearly identified need: Small practice (firms of up to 15 lawyers) and solo practitioners needed to be better informed of their potential claims exposure – and needed access to competitively priced excess insurance that would provide an extra layer of malpractice insurance protection for those who decided they needed this coverage.

That first year, 80 firms – many of them first-time buyers of excess insurance – opted for the LAWPRO program. By 2007, 1,350 firms had chosen LAWPRO as their excess provider, most of which did not have excess coverage in place before joining LAWPRO's Excess program. Our consistent drive to raise lawyers' awareness of liability issues clearly continues to hit home. As well, those who have placed their excess coverage with us in the past clearly feel they are well-served: Consistently, 95 per cent or more of firms renew their excess coverage with LAWPRO from year to year.

In response to changing market conditions, our Excess program has also continued to evolve. In 2007, for example, we expanded the program to selectively underwrite firms of up to 50 lawyers; and to respond to the need for higher limits for firms of this size and smaller, we introduced a new \$9 million limit option.

Today, LAWPRO's Excess program provides limits that range from \$1 million per claim/\$2 million in the aggregate to \$9 million per claim/\$9 million in the aggregate (note these are firm limits that apply to all lawyers in the firm collectively, and are above the primary program limits of \$1 million per claim/\$2 million in the aggregate provided each lawyer in the firm).

Excess Insurance applications are available at our website (www.lawpro.ca) in the File Online section of the site.

Information is available from our Customer Service Department at: (416) 598-5844 or 1-800-410-1013; or by e-mail to: service@lawpro.ca

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 retention and storage.
- AGREE** 2. I am satisfied that the letterhead, office signage, reception and telephone, website, blog, 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.

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 Professional 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. Increased Run-Off Coverage protection can be tailored to your particular needs, as is more fully described on the previous pages.

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 protection, 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.

Events calendar

November 2

TitlePLUS Presentation to Royal LePage
Connect Realty
Scarborough

November 8

TitlePLUS Presentation to Thunder Bay
Institute of Professionals
Advisors' Dinner
Thunder Bay

November 8

Newfoundland Bar Admission Course
St. Johns, Newfoundland
TitlePLUS presenting

November 14

Law Society of Upper Canada
The Six Minute Real Estate Lawyer
LSUC Offices
TitlePLUS sponsoring

November 14

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