

# What's new for 2009?

## Few changes to LAWPRO program

An emphasis on delivering the program in a more environmentally friendly way, and a modest increase in the base premium are the only changes to the LAWPRO insurance program for 2009.

### Premiums set at \$2,450 per lawyer

The base premium will increase \$150 per lawyer to \$2,450 – reflecting a continued deterioration in claims experience (both the number of claims reported and the cost per claim have trended upwards over the last two years) and increased economic uncertainty.

However, the 2009 premium will still be lower than it has been at any point in the last 14 years, with the exception of 2008 when superior investment results from the previous year and improvements in claims from earlier years enabled LAWPRO to reduce premiums to \$2,300 per lawyer.

### Sustainability program

A company-wide sustainability program and the success of LAWPRO's campaign to encourage lawyers to complete their LAWPRO filing and payment transactions electronically, via our secure website, lead us to believe the time is right to make a significant change in the way we deliver the insurance program.

Starting with the 2009 program, LAWPRO has scaled back the amount of information materials we automatically make available in print.

Specifically, this means that:

- Renewal application packages were mailed out only to lawyers for whom we do not have a valid e-mail address, and to those who specifically request information in print.
- These renewal packages included only an instruction sheet, insurance application, exemption form and payment authorization forms, but no program guide.

- Policy packages will be mailed only to lawyers who have requested them or for whom LAWPRO has no valid e-mail address.
- Policy packages will include only a payment instruction sheet, the policy declarations page and the premium invoice.

All other documents, such as the program guide (for reference in completing the renewal application form), the actual policy wording, and the booklet containing transaction levy filing forms are available on the LAWPRO website for reference and printing. Materials will be mailed if specifically requested and lawyers will continue to be able to file insurance applications by paper this year.

These measures mean we will print an estimated 650,000 fewer pieces of paper and reduce the environmental impact of the renewal process. Cost savings in printing costs alone are estimated at \$40,000 to \$50,000.

Part and parcel of this initiative to reduce paper is a significant enhancement to the LAWPRO website. The **MY LAWPRO** secure section of the site now provides one-stop access to all your specific insurance-related transactions: A streamlined page makes it easy to find the specific online application or levy filing form you may be looking for; from the same **MY LAWPRO** page you can also review filings completed and payments made and/or owing, and access your specific policy documentation (including past and present invoices and policy and declarations pages).

### Real Estate Practice Coverage

A reminder that all lawyers who intend to practise real estate law in 2009 must apply for, be eligible for and be granted this coverage option which first came into effect on April 1, 2008. The premium for this coverage will be \$500 for 2009 (note in 2008 the \$500 annual premium had been pro-rated to \$375 per lawyer as the coverage was not required until part way into the program year). For further details on who is eligible for this coverage, and who must have this coverage to practise, please see page 6.

# How to save on 2009 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](http://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. a) *If you are renewing your insurance coverage for 2009:* Select "**Renew My 2009 Professional Liability Insurance**" from the list of online filing options. Your online application will be pre-populated with information on your current insurance coverage, as per information in our database.  
b) *If you are not currently paying the insurance premium but intend to practise in private practice in 2009:* Select "**Apply for Professional Liability Insurance**" from the list of online filing options.
4. Follow the on-screen instructions for completing your application. All of the information on the 2009 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 2009 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 2009 insurance application and program guide.

## Instant access to your 2009 invoice and policy documents

Many lawyers and law firms will see their applications processed instantly and will have immediate online access to their 2009 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.

PDF copies of the 2009 insurance policy and the booklet containing forms for transaction levy filings are available for downloading and printing from the LAWPRO website at [www.lawpro.ca](http://www.lawpro.ca).

# Filing insurance forms

## Application filing deadlines:

### NOVEMBER 3: E-FILE DEADLINE

File your 2009 insurance application by November 3, 2008, and you'll receive a \$50 premium discount on your next year's insurance premium. Last year, more than 92 per cent of lawyers completed their applications via the **File Online** option on our website – [www.lawpro.ca](http://www.lawpro.ca)

### NOVEMBER 10: 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 10, 2008. 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 2008 who intends to continue in private practice in 2009.
- Any lawyer who was exempt under the program in 2008 but intends to return to private practice in 2009.
- 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 Services, 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.

# A letter to Why you need to be LAWPRO insureds worried about fraud

Over the past year, LAWPRO has worked hard to alert the profession about the many types of fraud being perpetrated. By e-mail, through articles in LAWPRO Magazine, at CLE programs and law firm presentations, we have provided information on new fraud schemes and tips on how to identify fraud and how to avoid being duped by a fraudster.

Lawyers from all areas of practice – litigators, corporate/ business lawyers and of course real estate lawyers – continue to be targets. Firms of all sizes – including large firms – continue to be victimized.

**You** are key to helping us put a stop to this growing trend: We ask you to make an extra effort to educate yourself, your colleagues and your firm staff on fraud. Make sure you, your lawyers and staff are well informed about fraud, and able to spot unusual elements in a transaction that could be a clue to fraud. Ensure your firm and accounting department have in place processes and procedures that would help your staff spot a fraudulent transaction before it is too late. Be very cautious when asked to do work on a contingent basis – request a retainer if you don't know the client. Trust your instincts: Ask extra questions or do some additional research if something "doesn't add up." Being alert to fraud is the surest way to avoid being its next victim.

Two fraud scenarios we are seeing currently involve business loan fraud and debt collection fraud.

## Business loan fraud

In this type of fraud your firm will be retained by a new client that is setting up a business and is borrowing money to

buy inventory or materials. The loan documentation will look legitimate. Your firm will complete the work required and deposit the certified cheque or bank draft in a trust account. Funds will then be disbursed from the trust account as directed. Several days later there will be a call from the bank advising that the cheque was counterfeit and that there is a shortfall in your trust account.

The lesson? Beware of new clients who are in a rush. Be extra vigilant during holiday weekends. When banks are closed for a day and offices are short staffed, the fraudsters have a bit more time to complete their plans.

## Debt collection fraud

This type of fraud targets litigators. A new client will contact your firm seeking representation on a debt collection matter. On a contingent basis there will be a promise of payment of a larger than usual portion of the recovered proceeds. All of the documentation will look legitimate, and it will include copies of invoices, demand letters, etc. Phone calls to the creditor will be answered and messages returned. It will be the easiest collection your firm will ever do.

After just a single call or letter, a certified cheque (or bank draft) will be delivered to your firm. The cheque will look authentic and have all the normal security features. The instructions will be to send the funds, minus legal fees, to an offshore account. And a few days after doing so, the bank will call advising that the cheque was counterfeit and that there is a shortfall in your firm trust account.

The lessons here? If it seems too good to be true **it is likely too good to be true**. Do some independent checking on the debtor and creditor. Use Google to cross-check street addresses, e-mail addresses and phone numbers. Try a reverse phone search of the company phone number shown on the cheque, and check the bank's website to determine if the bank address listed as a branch on the debtor cheque is correct. Get your local bank manager to check with the bank whose transit number was shown on the cheque to confirm the certification and the details on the cheque. Lastly, before you issue a cheque on your trust account, ask your bank manager to confirm that the funds deposited to your trust account are "good" – that is, that they are final and irrevocable.

The LAWPRO website has an extensive list of articles and tips on fraud at [www.practicepro.ca/fraud](http://www.practicepro.ca/fraud) that you are encouraged to use in your internal fraud prevention education efforts.

Finally, please help us help you: If one of our resources helps prevent a fraud at your firm, please let us know. If a matter that your firm is handling appears to be a fraud, please call or e-mail LAWPRO promptly so that we are always fully aware of current fraud scams, and can in turn take measures to ensure that the profession is alert to fraud scams as they emerge. Feel free to contact Dan Pinnington, our practicePRO Director at 416-598-5863 or by e-mail [dan.pinnington@lawpro.ca](mailto:dan.pinnington@lawpro.ca).

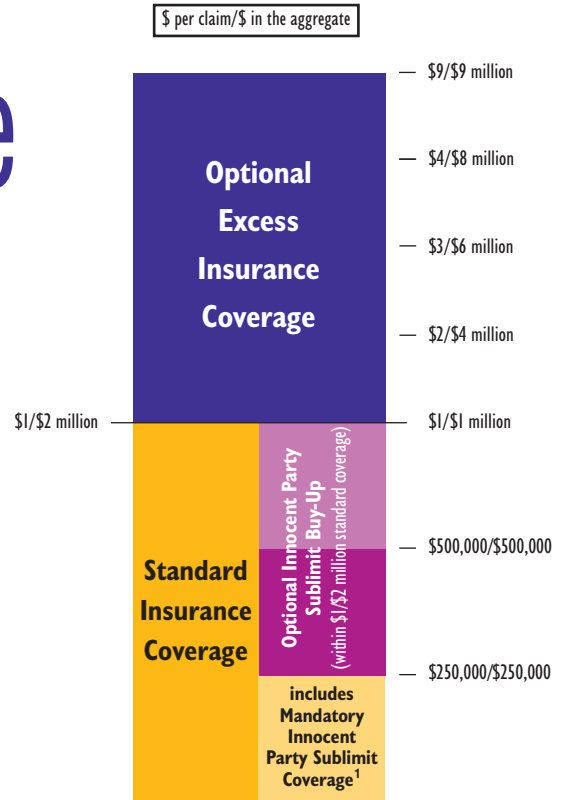
Thank you for your co-operation.

Kathleen A. Waters  
President & CEO  
LAWPRO

# 2009 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.<sup>2</sup>

**Coverage limit:**

\$1 million per claim/\$2 million in the aggregate (i.e. for all claims reported in 2009), 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:**

\$2,450 per insured lawyer.

### Mandatory Innocent Party Sublimit Coverage<sup>3</sup>

**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 2009.

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 costs of repairs together.

**Premium:**

\$500 per lawyer.

## Optional Insurance Coverages

### Innocent Party Sublimit Buy-Up<sup>4</sup>

#### **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<sup>4</sup>

#### **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](http://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](mailto: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.

<sup>1</sup> Optional for sole practitioners.

<sup>2</sup> 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.

<sup>3</sup> Coverage for dishonest, fraudulent, criminal or malicious acts or omissions.

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

# Real Estate Practice Coverage FAQs

## Who has to apply for this real estate practice coverage?

Any lawyer who intends to practise real estate law in Ontario in 2009 must be eligible for, apply for, and be granted this additional coverage before being able to practise real estate law.

"Real estate law" is a broadly defined term and 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.

## Is everyone eligible for this coverage?

Only lawyers who are eligible to practise real estate law in Ontario as permitted by the Law Society of Upper Canada are allowed to maintain the Real Estate Practice Coverage Option (subject to Part IV N. Cancellation and Exemption provisions of the policy).

Categories of lawyers that are not eligible for this coverage include, but may not be limited to:

- 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.

You are not permitted to practise real estate law in Ontario for any period during which you do not meet the eligibility criteria according to Law Society records even though the Real Estate Practice Coverage Option may continue in force for a period of time.

## Given that title insurance provides coverage for fraud, and that most transactions are now title-insured, why do we need this new Real Estate Practice Coverage?

Fraud may take many forms, and may take place regardless of the type of transaction or whether any or all of the parties acquiring an interest in the land happen to be title insured.

With the requirement that all eligible lawyers who intend to practice real estate law in Ontario purchase this coverage, the public and Land Titles Assurance Fund are assured of protection against the effecting of registration of fraudulent instruments under the *Land Titles Act* where there is no title insurance to respond.

Consider, for example:

- the involvement of lawyers on either side of a transaction, in instances involving opinions on title;
- lawyers acting for the vendor or transferor on title insured transactions; and
- transactions that are entirely fraudulent in nature, with no opinion or title insurance having been provided.

The Real Estate Practice Coverage responds where the registration causes damages that arise out of any dishonest, fraudulent, criminal or malicious act or omission of the lawyer.

The coverage is specific in its nature, in that:

- It does not apply to other types of circumstances involving fraud;
- It applies regardless of whether there was a retainer between the wronged party and the lawyer;
- It assures a greater aggregate sub-limit protection than what is purchased by most lawyers for innocent party protection; and
- It affords protection even in the instance of sole practitioners, who may not carry any amount of innocent party protection.

## If only one lawyer in our firm assumes responsibility for registering all transfers handled by our firm, do I and the others also have to have this real estate practice coverage in place?

Yes – all lawyers who practise real estate law must apply for this coverage.

*continued on page 12*

# 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.

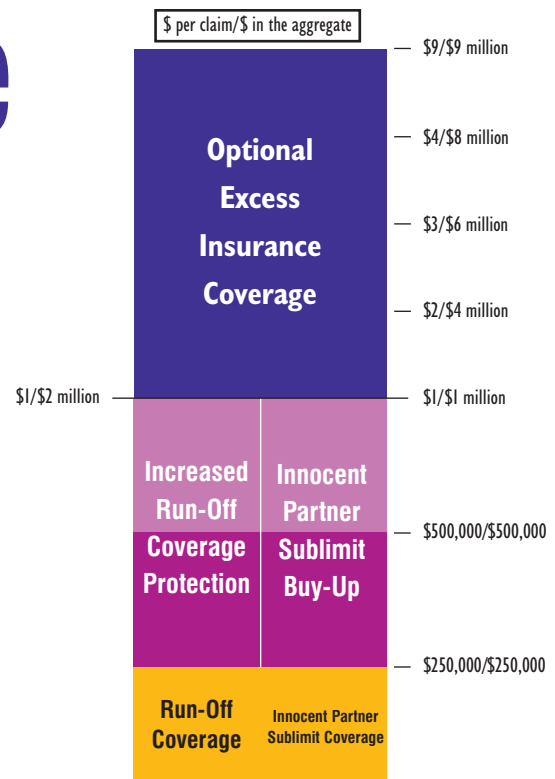
As soon as you answer “yes” to any of the questions where there is a “✓” in the “Yes” column, you will have to apply for the Real Estate Practice Coverage Option.

For more information see [www.lawpro.ca/insurance/Practice\\_Type/REPO\\_coverage.asp](http://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?		✗	

# 2009 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 exemption<sup>1</sup> 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-Up<sup>2</sup>

**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.

<sup>1</sup> 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](http://www.lawpro.ca).

<sup>2</sup> LawPRO strongly recommends that lawyers increase their optional coverage protection to the maximum sublimit offered, to avoid gaps in coverage.

# Why Excess Insurance?

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 LAWPRO's 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 11 of this magazine.

# Exempt lawyers are at risk

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

For many lawyers, the opposite is true.

LAWPRO has recently seen several cases where retired lawyers have exhausted their \$250,000 Run-Off Coverage limit. As well, our statistics tell us that one in 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](http://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](mailto: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.

# 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.

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### **If I practise real estate on a part-time basis, can I get the 40 per cent premium discount for part-time practitioners?**

No. This coverage provides specific protection against real estate fraud. Statistics indicate that the risk of fraud in real estate practice is not proportional to the volume of work processed. In other words, a lawyer who practises on a part-time basis – or a lawyer who does only very little real estate work as part of his or her overall practice – is not less likely to generate a claim with a fraud component than a lawyer who specializes in real estate on a full-time basis.

A better indicator of the risk of real estate fraud is the absence of systems and controls in place in the real estate practice. Therefore, all lawyers conducting any real estate law in Ontario must purchase this real estate practice coverage.

### **What if I decide to change practice at some point during the year and stop practising any real estate law?**

The premium will be pro-rated and adjusted to reflect the amount of time you engaged in real estate practice, subject to:

- a 60-day minimum premium for this option; and
- only one premium adjustment per lawyer for this option for the year (beyond this, the full \$500 annual premium would apply).

If you cease to practise real estate law part way through the year and prefer not to continue to carry this coverage, you should provide LAWPRO with a completed Application for Mid-Term Changes Form within 30 days for any available reduction in premium to be applied, subject to the criteria above and Return of premium provision described on page 13 of the insurance Program Guide available in the Insurance Forms section of the LAWPRO website ([www.lawpro.ca](http://www.lawpro.ca)). This form is available from our Customer Service department at [service@lawpro.ca](mailto:service@lawpro.ca), tel. 416-598-5899 or 1-800-410-1013.

If you commence practising real estate law part way through the year, you will qualify for a pro rata premium adjustment to reflect the amount of time not practising real estate law, subject to the criteria listed above.

For additional information on the Real Estate Practice Coverage, please see [www.lawpro.ca/repro](http://www.lawpro.ca/repro).



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## **LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LAWPRO®)**

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