

LAWPRO®

Lawyers' Professional Indemnity Company
Assurance LAWPRO®



Office sharing

Solo and Small Firm Conference
Raymond G Leclair
Vice President, Public Affairs
June 12, 2014

Types of structures to practice law

Sole proprietorship/practitioner

- personal liability for “everything”

Professional law corporations (since 2001)

- traditional protections against personal liability associated with the use of a corporate entity DO NOT exist

Practicing in association / Multi-discipline practices (since 1999)

- need to manage the “ostensible partner” exposure

General partnership

- Each partner faces unlimited liability on a joint and several basis for the acts of all partners, employees and agents

Limited partnership

- LLP, not partner, faces unlimited liability, but each partner liable for his/her own negligence, negligence of those under his/her direct supervision & for the negligent or wrongful act or omission of another partner or employee not under his/her direct supervision, if: act or omission was criminal or constituted fraud; or he/she knew or ought to have known of the act or omission and did not take the action that a reasonable person would have taken to prevent it

Structures and their insurance implications

Sole Practitioner / Partnerships

- Not the subject of our discussion – Individual or group liability

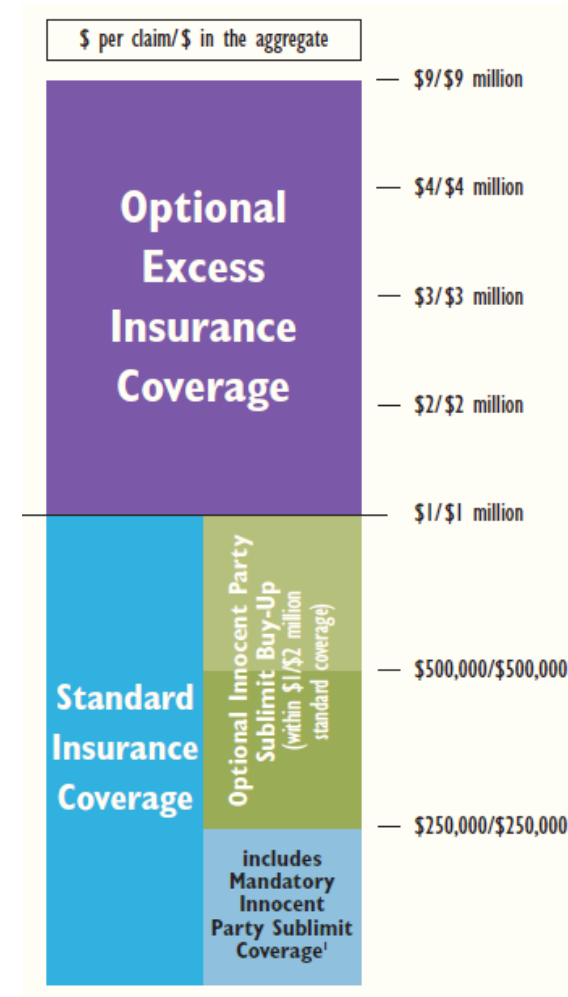
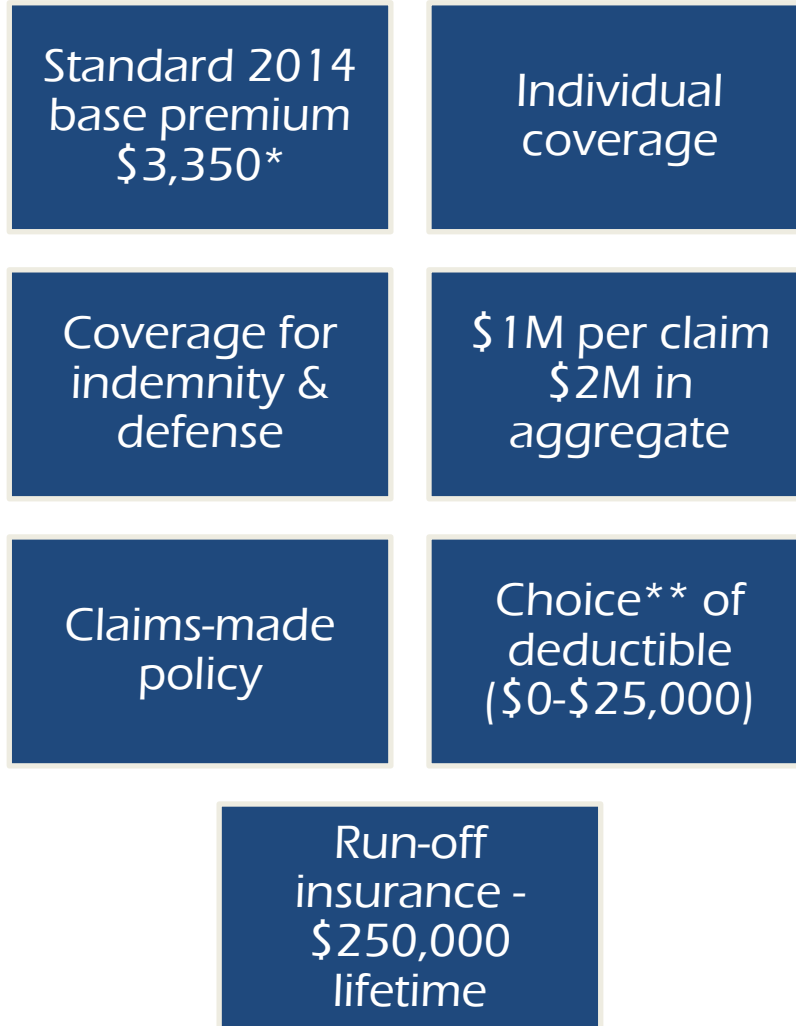
Management companies and other service corporations (e.g. I.P. or ADR)

- Not the subject of our discussion

Association!!!

- Be mindful of real or perceived arrangements – what do others think they see!
- Primary coverage liability based on supervision, vicarious liability or agency law determined re: working relationship of lawyer at the time legal services were performed
- Excess coverage liability goes to excess (claims-made) policy in force, if any, when claim is first made, of the firm where the lawyer was at the time legal services were performed
- If former firm lawyer is retired and run-off coverage is insufficient, then supervising partner's policy may be engaged if damages exceed available run-off limits
- All lawyers who practice in association or partnership with other lawyers are required to purchase basic innocent party coverage – Endorsement No. 5 - \$250k/\$250k sublimit

Your LAWPRO policy coverage



- Same base premium unchanged since 2011 / ** some restrictions apply

Apparent partnership

Partnership Act, R.S.O. 1990, s. 15

...every person who represents themselves by spoken or written word or suffers to be represented as a partner ... is liable as a partner...

Name on firm letterhead	Public announcements and advertising
Wording on business cards	Shared premises and resources
Promotional materials / website	Signage on firm's door or elsewhere
Use of firm name in pleadings	Shared or separate bank accounts
How client referrals are handled	How files and billings are treated
How reception answers telephone or greets clients	What you and staff say and how conduct yourselves with clients
Course of dealings with clients	Signage on firm's door or elsewhere

Negligent referrals - Beware



Little seen in Canada but widely discussed in U.S.A.

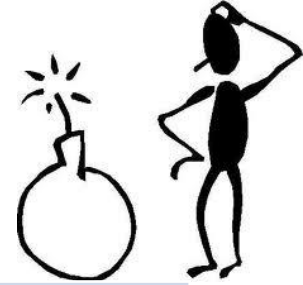
U.S. courts reluctant to impose liability on referring lawyer IF minimal care taken

Ethically responsible and lawyer's obligation to seek a specialist and refer clients to appropriate counsel

Factors courts consider:

- due diligence of referring lawyer in selection
- fee arrangement for referring lawyer, if any
- referring lawyer maintains joint responsibility (general counsel / supervisory role)
- indemnity agreement, if any
- conflicts of interest because of relationship between referring and recipient lawyers
- whether innocent lay victim will be compensated for damages by recipient lawyer's professional liability insurance

Assessing your exposure



Does the work of my present and former partners, associates and employees in my current firm, and any past firms, expose me to claims now and in the future?

Do I share exposure for the work of others outside the firms?

Have present/former partners and associates handled matters which potentially expose me to a claim for damages if it exceeds their existing insurance coverage limits?

What checks and balances are in place for trust accounts?

Do I have multiple file or client exposures?

What would be the commercial impact of an error in the matters I handled?

Am I concerned about my personal exposure if a claim or claims exceed my present coverage limits?

Am I covered under my former firm's excess policy?

Follow up tips

Annual review of indicia which might lead others to believe there is a holding out

- File collaboration/supervision / shared office space or resources (reception, waiting room, equipment) / shared letterhead/website/business cards

Buy-up innocent party coverage - \$250,000 sublimit to \$1M (and consider excess)

Ensure referrals done with:

- full transfer of carriage of entire matter;
- with client's knowledge and approval; and
- client understands referring lawyer and recipient lawyer are not collaborating

Insist upon a written office-sharing agreement and have a system to monitor compliance

All in a shared office should use retainer or engagement letters which clearly indicate they are a sole practitioner

Resources



Structuring Firms to Manage Risk, LAWPRO magazine article, Summer 2003*



Here Today and Gone Tomorrow
LAWPRO magazine article
January 2012



A Claim for Negligent Referral, LAWPRO magazine article, December 2010

Available at practicePRO.ca

*Update at: <http://www.practicepro.ca/LawPROmag/FullShieldLLPGosnell.pdf>

Thank you

Ray Leclair

Vice President, Public Affairs

(416) 598-5890

ray.leclair@lawpro.ca

lawpro.ca | practicepro.ca | avoidaclaim.com | titleplus.ca | 1-800-410-1013

Connect....

