

Practice locums:

E&O insurance issues to consider

Recognizing that a positive professional life depends on a healthy lifestyle, and that periodic breaks from work are essential to maintain work-life balance, the Law Society recently adopted a recommendation¹ to support practice locums. Locums enable you to take a break from your practice by arranging for another lawyer to provide legal services to your clients while you are away.

Locum, short for the Latin phrase *locum tenens*, is a person who temporarily fulfils the duties of another. The term is commonly used for professionals (e.g. doctors, clergy, lawyers), who are still governed by their respective regulatory bodies despite the temporary nature of their position as locum.

In the case of the legal profession, a locum is a lawyer who stands in for another practitioner while he or she is away from his or her practice, whether for a maternity or parental leave, vacation, sickness leave, or any other type of leave. Typically, the locum will be retained to work in the contracting firm/lawyer's office and deal with every type of file handled by the practice. The locum may also be brought in to handle specific matters. The locum could be full-time or part-time, depending on the arrangement.

The insurance issues that a lawyer planning to act as a locum needs to consider are many, as you are standing in for another lawyer to cover or run his/her law practice while away. In this replacement capacity you are considered by clients and others to be part of that lawyer's law firm.

Fundamentally, it is **your responsibility – as locum** – to ensure that you have in place E&O coverage under the Law Society program that properly accommodates your locum work, as well as any law practice of your own that you may be conducting.

Issues to consider if you are acting as locum

One of the first questions to ask yourself is if the practice and coverage options in

place for you under the insurance program still apply. For example, if you opted for the restricted area of practice coverage option but your locum work will not be confined to only criminal and/or immigration law, you need to notify LAWPRO of this coverage change.

Similarly, if you had qualified for the part-time practice option, but now will be working full-time, (whether as a locum for a single lawyer, or for more than one lawyer, or combined with your own personal law practice), you would no longer meet the criteria for this practice option and would first need to have that coverage option removed before practising on a full-time basis.

If your locum work is to include the practice of real estate law, you would first need to ensure that the required real estate practice coverage is in place for you under the program.

Innocent Party Coverage needs

If as locum you are standing in for a lawyer in an association, partnership or law corporation with more than one lawyer, you would be required to carry at least the minimum \$250,000 per claim/aggregate Innocent Party sub-limit protection. This is even if you otherwise maintain a personal law practice as a sole practitioner.

If lawyers in the contracting firm have opted to buy-up their Innocent Party protection, then as a locum in the contracting firm you would need to carry at least that same amount of increased Innocent Party protection.

Note that LAWPRO strongly recommends that the locum, as well as lawyers in the contracting firm, apply for the full amount of Innocent Party protection available to ensure that they are well protected against claims that may arise out of dishonest acts.

If a claim does arise in relation to locum work, it is the locum's policy coverage under the Law Society program that would respond.

Issues for the contracting firm to consider

Lawyers in the contracting firm also should pay attention to the insurance implications of a locum, as the locum is considered to be acting as a member of the firm.

The firm therefore should ensure that the locum maintains E&O protection with coverage options that are consistent with both the locum work and the coverage of the firm's other lawyers.

Firm lawyers should keep in mind the following: Limit protection for a claim made against the locum would not be increased by virtue of the program coverage maintained by other lawyers in the contracting firm; partners in the firm could find themselves responsible for paying the locum's program deductible; and no protection is available in respect of allegations of damage to the goodwill and reputation of the firm. As well, the aggregate limit protection provided to locums could also be eroded by claims that are not related to locum work.

Excess insurance considerations

Another question to ask is: What excess insurance protection would apply? Although under LAWPRO's optional Excess program, locums and their locum work are automatically covered under the excess policy issued to the contracting firm, not all excess insurers may do so.

Firms purchasing excess insurance from other insurers are **strongly encouraged** to obtain written confirmation from their excess insurer that the locum and contracting firm are **both** insureds under any excess policy issued, and that coverage is fully afforded in relation to locum work that has or may be done.

For more information on retaining a locum and establishing oneself as a locum, a contract checklist, sample contract clauses, and ethical and practice management considerations, visit the Resource Centre on the LSUC website at <http://rc.lsuc.on.ca/jsp/locum/index.jsp>.

¹ This recommendation has its genesis in the work of the Law Society's Retention of Women in Private Practice Working Group. It recommended that the LSUC develop a five-year pilot project to promote and support practice locums that address the challenges women face in finding competent and available lawyers to maintain their practice during leaves of absence, and in particular, maternity leaves. Practice locums are available to all eligible Ontario lawyers.