

What's new for 2010?

The continued rise in the number and cost of claims, a decline in investment income caused by the global economic downturn, and the Ontario government's plan to harmonize its provincial sales tax ("PST") with the federal government's goods and services tax ("GST") are the key factors that make an increase in the LAWPRO base premium necessary in 2010.

Enhancements to the standard LAWPRO program coverage for 2010 include some overdraft protection for frauds against Ontario lawyers involving the deposit of counterfeit certified cheques and bank drafts in a lawyer's trust account, protection against misappropriation by Ontario lawyers temporarily practising elsewhere in Canada, coverage for Ontario lawyers working as special Canadian legal advisors in Quebec, and ensuring clarity of coverage for locum work.

The \$500 premium for the Real Estate Practice Coverage Option (REPCO) will fall to \$400 in 2010, while the real estate transaction levy will increase from \$50 to \$65 per transaction.

Quick Summary:

- The base premium will increase from \$2,450 to \$2,950.
- The premium for REPCO will decrease from \$500 to \$400.
- The real estate transaction levy will increase from \$50 to \$65.
- The e-filing discount will decrease from \$50 to \$25 per lawyer.
- The lump sum payment discount (available with some restrictions) for premiums paid by Feb. 9, 2010, will decrease from \$150 to \$50 per lawyer.

\$2,950	\$200 claims development
	\$150 decline in investment income
	\$150 additional annual cost for HST
\$2,450	2009 Base Premium

Premiums set at \$2,950 per lawyer

The base premium will increase \$500 per lawyer to \$2,950 in 2010. The combination of the rising number and cost of claims, a decline in investment income, and the expected impact of the introduction of a harmonized sales tax (HST) make this increase necessary.

The chart on this page explains the components that comprise the \$500 increase.

CLAIMS DEVELOPMENT

Claims-related costs account for more than 85 per cent of LAWPRO's annual budget. The number of claims reported annually has been steadily increasing, topping the 2,000 mark for each of the last two years. Results to date for 2009 indicate the number of claims reported this year may be at the highest level since 1995.

The cost of resolving claims has been increasing steadily. Where the total cost of resolving claims reported in a given year was once in the \$55 to \$60 million range, it now regularly tops \$85 million. We expect the overall cost for claims made in 2010 to be about \$88.4 million.

For a detailed discussion of the worsening claims picture and its effect on premiums, see the September 2009 issue of LAWPRO Magazine, available online at www.practicepro.ca/LawPROmag. The issue was emailed to all Ontario lawyers in private practice on September 9, 2009, as the LAWPRO Webzine.

DECLINING INVESTMENT RETURNS

Over the last five years, LAWPRO has benefited from a strong investment market that in 2007, for example, generated more than \$26 million in investment income. Given the current economic climate, we're not likely to see results like that for some time. Equity markets appear to be uncertain after dropping to very low levels, and rates of return on fixed income securities have dropped significantly. As a result, LAWPRO has less investment income to help pay claims and operating costs.

HST

Approximately \$150 of the \$500 premium increase is the result of the added costs of operating in an HST environment.

The planned introduction of the HST on July 1, 2010, will affect the program in two principal ways: First, it will increase costs for rent, utilities, consulting work and general services that previously were only subject to the five per cent GST but now will be subject to the 13 per cent HST – i.e., eight per cent more – by about \$125,000 for the last six months of 2010. (Since insurance is an “exempt supply,” LawPRO is not able to recover GST/HST paid while conducting its business.)

More significant is its impact on claims costs – specifically on legal, expert and other fees we pay in defending lawyers, and on claimants’ legal and other fees that factor into indemnity payments made by LawPRO. We estimate HST will add \$3.2 million to the costs of resolving claims made in 2010, as most of these costs will be incurred by LawPRO well after the introduction of the HST.

Adding \$3.2 million and \$125,000 and dividing by the number of lawyers we expect to insure in 2010 – 22,440 – we get a figure of \$148. We expect that the HST will add about \$150 to the base premium for 2010.

Real Estate Practice Coverage Option premiums

REPCO protection only applies to services provided since April 2008 when it was introduced. No claims have yet been reported to LawPRO. However, as this coverage specifically covers fraud by the lawyer and it takes time for claims to develop, given the growing inventory of covered services, it is particularly important to maintain a healthy reserve for potential REPCO claims that may have occurred but not yet been reported. It is therefore too early to make major changes to this premium.

Filing deadlines:

NOVEMBER 2: E-FILE DEADLINE

File your 2010 insurance application by November 2, 2009, and you’ll receive a \$25 premium discount on your next year’s insurance premium. Last year, more than 95 per cent of lawyers completed their applications via the **My LawPRO** option on our website – www.lawpro.ca

NOVEMBER 9: 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 9, 2009. Applications can be filed in one of three ways: electronically (e-file), by fax or mail.

However, to acknowledge the positive results to date, this premium has been reduced by \$100 to \$400 for the 2010 program. We will continue to assess this particular environment and fraud-related claims to determine the appropriate premium for this unique form of coverage

Increase in real estate transaction levy

Real estate transaction levy revenues are down significantly – and in fact are below budget by more than \$2 million for the first six months of 2009. That’s not surprising given the plunge in resale and new home markets in Ontario over the past nine months and the widespread use of title insurance in residential transactions.

But the number and cost of real estate-related claims have been climbing steadily, despite the common use of title insurance. Since 2004, costs in this area of practice have increased by more than 65 per cent. They consistently account for more than 30 per cent of total claims costs.

This is partly due to significant increases in real estate property values. Average house prices in Ontario rose 20 per cent between 2005 and 2009, for example. So, when problems arise, losses can be significant – whether in the case of claims for which no or limited coverage is available under the title insurance policy issued, claims on residential or commercial deals for which no title insurance was purchased, or claims against vendor’s counsel.

These increased real estate-related claims costs, coupled with a decline in real estate levy revenues that help to offset the exceptional claims costs associated with this area of practice, make it necessary to increase the real estate transaction levy to \$65, for files opened on or after January 1, 2010.

Lawyers should update their office procedures to incorporate the increased \$65 real estate transaction levy amount for real estate files opened on or after January 1, 2010. Those disbursing the transaction levy to clients would pay \$68.25 (i.e., \$65.00 surcharge + \$3.25 GST), while those not doing so would pay \$65.00 (i.e., \$60.19 surcharge + \$4.81 PST). The civil litigation transaction levy remains unchanged. If the HST is enacted, information about its application to transaction levy surcharges will be posted on the LawPRO website (www.lawpro.ca).

Special levy to cover HST impact on past claims

If the HST is enacted, and in the absence of any transitional relief, it is expected that a special levy of \$450 will have to be implemented to pay for a one-time revaluation of existing claims liabilities.

As of June 30, 2009, LawPRO held \$364.5 million of unpaid claims liability on its books. Some of those claims will be resolved prior to July 1, 2010, but most will not. We estimate the HST impact on this unpaid claims liability to be about \$10.2 million – or \$450

per lawyer. This is a one-time levy that would be imposed once LAWPRO is obliged to make provision for this liability following second reading of this legislation.

Limited overdraft protection for counterfeit certified cheques and bank drafts

Effective January 1, 2010, as part of the standard program coverage, LAWPRO will provide some overdraft protection for frauds against practising Ontario lawyers while they are providing professional services that involve the deposit of counterfeit certified cheques and bank drafts into lawyers' trust accounts. This protection will be subject to a number of restrictions:

- A sub-limit of coverage of \$500,000 per claim/aggregate per lawyer and per firm, applicable to indemnity payments, claim expenses and/or costs of repairs, within the standard program coverage of \$1 million/\$2 million.
- A minimum deductible of \$5,000, applicable to indemnity payments, claim expenses and/or costs of repairs, unless the lawyer elected a higher deductible as evidenced in his or her policy declarations. (This provision will also apply to frauds involving the deposit of counterfeit certified cheques or bank drafts into lawyers' trust accounts that do not result in an overdraft but instead result in a loss to a client.)
- Before funds are drawn, the lawyer must either (1) wait eight full business days after the date when the counterfeit certified cheque or bank draft was deposited without notice or advice of the possible true nature of the instrument, or (2) if waiting fewer than eight full business days, receive confirmation from either the lawyer's or the drawee financial institution, as documented in writing between the lawyer and the financial institution, of verification by the drawee financial institution that the instrument is valid and it is safe to withdraw funds based upon the deposit.
- The counterfeit certified cheque or bank draft must have been received by the lawyer for inspection and deposit, and the institution on which the counterfeit instrument is drawn must be a Canadian financial institution;
- This coverage does not apply to retainer deposits, untransferred fees, or other amounts relating to legal fees, accounts or fee arrangements.

These restrictions encourage lawyers to adopt best practices and to think twice before carrying out instructions from a client to quickly move funds out of the lawyer's trust account.

Protection against lawyer misappropriations during mobility

Effective January 1, 2010, LAWPRO will provide coverage for misappropriations by Ontario's practising insured lawyers arising from temporary practice in or with respect to the law of

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another Canadian jurisdiction, as part of the standard program. The coverage will be limited to \$250,000 per claimant and the program policy's aggregate limit of \$2 million in the aggregate per lawyer per firm. This coverage is needed to satisfy new requirements under the National Mobility Agreement.

Mobility with Quebec

The Barreau du Québec, the regulator of lawyers in Quebec, is now authorized to grant special Canadian legal advisor (CLA) permits to members of other Canadian law societies, as full members of the Barreau with restricted practice status.

Subject to necessary changes by others concerning CLAs, the LAWPRO program will:

1. afford coverage to Ontario's practising insured lawyers for their services as a CLA; and
2. allow CLAs who are otherwise dual calls and insured under another law society program policy as home jurisdiction to exempt themselves from paying the LAWPRO premium, if called in Ontario.

Locums

In its application materials, LAWPRO offers guidance on the insurance issues that lawyers and law firms should consider if hiring or acting as a locum. The policy wording now specifically refers to locum work to ensure that lawyers fully understand the basis on which they are insured for their locum work.

For more information, see the article "Practice locums: E&O insurance issues to consider" in the LAWPRO Magazine, July 2009 at www.practicepro.ca/LawPROmag/PracticeLocums.pdf.