

Increased run-off insurance: A critical issue often overlooked in lawyers' estate planning

When a lawyer passes away while still in active private practice, LAWPRO's run-off coverage kicks in. While standard run-off may be enough coverage for lawyers who have been retired for several years (since potential claims will have had time to develop), it may not be sufficient for a lawyer who was practising full-time at the time of his or her death.

Carol's husband, a lawyer, passed away in 2010. When Carol reported her husband's death to LAWPRO customer service, the program coordinator who responded advised her of the option to purchase increased run-off insurance above the standard \$250,000 limit set out in the policy. Carol opted to increase the run-off coverage insurance to \$1 million. Two years later, Carol was served with a Statement of Claim in relation to legal services performed by her husband. Damages in that litigation may well reach \$1 million. LAWPRO is defending the action.

Subject to exclusions or other policy provisions, the LAWPRO policy provides coverage limited to \$1,000,000 per claim and is subject to an aggregate limit of \$2,000,000 per policy period (i.e., per year.). However, upon retirement or death, standard run-off coverage is limited to \$250,000 *in total*, regardless of the number of claims made against the insured or the time period in which they are made. Given that we see claims reported, on average, 2-3 years after legal services have been provided (and nearly half of wills and estates claims take *at least five years* to develop) there is no question that a lawyer or the lawyer's estate remains exposed to liability even after retirement or death. For many lawyers, \$250,000 in coverage, inclusive of defence costs, will simply not be enough.

Unfortunately, few lawyers leave instructions for their spouse or other estate representative to purchase increased run-off insurance after they die – thus leaving the estate with the total maximum coverage of \$250,000 for all future claims against the lawyer. Consider the type of work you do: the subject matter of your litigation files, the transactions you have closed, the wills you have drafted. Would \$250,000 be enough coverage? Unless your estate or next of kin purchases increased run-off insurance, your coverage will indeed be limited to the standard \$250,000 run-off coverage outlined in Endorsement 9 of the policy. We highly recommend that you prepare instructions for your estate representative to ensure that run-off coverage is considered and the estate is adequately protected.

For complete details of the Run-off Buy-up coverage offered by LAWPRO, please visit lawpro.ca.

Martine M. Morin is Senior Claims Counsel at LAWPRO.

This article first appeared in LAWPRO's April 2015 wills and estates webzine "Ask questions! Have answers." An electronic copy can be found at <http://www.practicepro.ca/information/doc/Run-off-buy-up-to-protect-estates.pdf>

© 2015 Lawyers' Professional Indemnity Company. The practicePRO and TitlePLUS programs are provided by LAWPRO.