

partners and shareholders (including paralegals) in a combined licensee firm. These individuals also have the option to buy up additional levels of coverage.

Forecasting claims under this coverage is complicated. Some fund years see few to no claims, while others are plagued by a series of high-value claims. Careful actuarial analysis of past experience supports a reduction in the premium charged for all levels of innocent party coverage.

The availability and pricing of the optional coverages remain subject to underwriting of individual risks for the “buy up” categories. Pricing for the optional levels of coverage is generally projected at \$75 to buy up the coverage to \$500,000, and \$50 to further buy up the coverage to \$1 million.

### Civil litigation transaction levies waived for family litigation

Family law matters make up a significant proportion of lawyer files in Ontario each year.

LAWPRO analysis of claims trends has shown that, from a professional indemnity perspective, family law litigation is significantly less risky than other kinds of litigation. In response to this observation,

beginning in the 2018 policy year, lawyers who initiate family law proceedings will no longer be required to pay civil litigation transaction levies. See the article below for further details.

### Transaction levies for non-family litigation matters increased to \$100

Maintaining an effective and responsive insurance program requires a continual process of risk-rating. Risk-rating in the context of insurance simply means striving to have appropriate coordination between the cost of insurance coverage and the likelihood and magnitude of the risks to which that coverage relates. While all insurance programs require a certain amount of cost-spreading across the spectrum of program participants, demanding higher premiums from very high-risk insureds is necessary in the interests of fairness. The results of our risk-rating analysis over the past several years have made it clear that fairness now demands that the civil litigation bar be asked to shoulder more of the costs of the program. On or after January 1, 2018, transaction levies for non-family civil litigation matters will be \$100, an increase from \$50 in 2017. The transaction levy is triggered at the commencement of a proceeding or the defence of a proceeding. The rationale for this increase is presented in the article below. ■

# Civil litigation levies evolve to reflect risks

No lawyer in private practice is immune to professional indemnity claims. However, over 20 years’ experience insuring the Ontario bar has made it clear to LAWPRO analysts that claims risk varies with area of practice. Lawyers who practise real estate or civil litigation face a significantly higher risk of claims than those who practise in other areas.

Like most insurers, LAWPRO strives to promote a reasonable degree of fairness in the setting of premiums. We do this, in part, by offering discounts to lower-risk practitioners (criminal law, immigration, part-time practitioners, new lawyers) and by charging transaction levies for higher-risk work (real estate, civil litigation). Transaction levies offer the additional benefit of tying premium collection to practice volume. These discounts and levies are some of the main tools by which we “risk-rate” coverage.

The analysis that underlies risk-rating is a continual process. Practice habits evolve, the economy changes, and new methods of dispute resolution emerge. These and other factors influence claims trends. Each year, LAWPRO staff track claims patterns and apply actuarial methods to re-evaluate the assumptions underlying risk-rating decisions.

In preparation for the design of the 2018 insurance program, risk-rating analysis confirmed two patterns we have been monitoring: the first is that the rate and cost of civil litigation claims is becoming too high compared to the premiums recovered from those practitioners; and the second is that family law litigation is not a part of that trend.

## Risks relatively low for family law litigation

When claims are reported to LAWPRO, they are “coded” based on area of practice and the nature of the error alleged. This coding system has evolved over the years, allowing analysts to identify claims patterns with increasing precision. In recent years, LAWPRO’s actuarial analysis of risk-rating results has shown that total premiums attributable to the family law bar meet the expected loss costs.

Furthermore, within the broader category of family law-based claims, analysis shows that litigation-related errors are responsible for fewer claims than are other types of family law errors. In other words, while civil litigation broadly defined is a high-risk practice area from a claims point of view, family law litigation, as a subcategory of litigation, is not.

In addition to supporting risk-rating objectives, elimination of the civil litigation transaction levy for family law matters may help improve access to justice. By reducing coverage costs for lawyers, we hope that costs for family law litigants will also be reduced.

## Premiums not keeping up with non-family litigation claims costs

Observation of the non-family litigation claims experience reveals a different story.

In recent years, the growth in civil litigation claims has outstripped the overall growth in claims. For example, from 2006 through 2010, LAWPRO received an average of 708 civil litigation claims each year. During 2011 through 2015, the average increased to 948 each year. This growth of 34 per cent vastly exceeds the 7 per cent total growth of claims for all other areas of law over the same time period.

In the years 2007 through 2014, the average cost of these claims was \$5,935 per civil litigation practitioner. This amount is significantly more than the amount collected in premiums – including civil litigation transaction levies – from the lawyers practising in this area.

## Risk-rating requires a transaction levy increase

The discrepancy between the cost of claims generated by civil litigation lawyers and the premium collected from those lawyers means that an adjustment to LAWPRO’s risk-rating methods is appropriate at this time. Accordingly, beginning with the 2018 program year, the civil litigation transaction levy is increased from \$50 to \$100.

As provided in paragraph A of Endorsement No. 3 of the policy, a “civil litigation transaction” is defined as the commencement of a proceeding or a defence to a proceeding (see the full definition in the endorsement). The new levy amount will apply to proceedings commenced, as defined, on or after January 1, 2018.

# Key dates

## On or about October 2, 2017

LAWPRO online filing of Professional Liability Insurance renewal applications for 2018 is expected to begin. If you wish to file a paper application instead of filing online, please note that paper renewal applications will not be automatically mailed out, but it is expected that you will be able to download a 2018 pre-populated paper renewal application from our website starting on or about October 2, 2017.

## October 31, 2017

Real estate and civil litigation transaction levy filing and payments are due for the quarter ended September 30, 2017.

## November 7, 2017

E-filing deadline: Renewal applications filed online on or before November 7 qualify for a \$25 per lawyer e-filing discount applied to the 2018 insurance premium.

## November 14, 2017

Renewal Application filing deadline: 2018 LAWPRO renewal applications filed after this date will be subject to a surcharge equal to 30 per cent of the base premium.

At the same time, transaction levies will no longer be payable in respect of proceedings that entirely pertain to family law issues.

All exclusions from the application of transaction levies program in place before this change will continue to apply. Those exclusions are defined in paragraph C of Endorsement No. 3 and include: Small Claims court matters, residential landlord and tenant matters, and matters funded by Legal Aid Ontario and certain other agencies.

## Looking ahead

Although some moderation in civil litigation claims costs can be expected over time with the recent changes to Rule 48, the continued relationship between civil litigation costs and premium revenue by lawyers’ primary area of practice will need to be monitored to determine whether any further action should be taken on this category in future years. ■