

Are your pro bono legal services covered by LAWPRO?

The announcement this spring by Ontario Attorney General Michael Bryant of a provincial Pro Bono Law Task Force designed to encourage government lawyers to provide *pro bono* legal services, has prompted inquiries to LAWPRO about the liability insurance coverage for these types of services.

In 2003 changes were made to insurance coverage to further encourage Ontario lawyers to provide *pro bono* legal services. The changes apply specifically to *pro bono* legal services provided by lawyers after January 1, 2003, for LAWPRO-approved programs associated with Pro Bono Law Ontario.

Coverage summary

Whether or not a lawyer has coverage for *pro bono* legal services depends on the lawyer's current insurance status as well as on the type of *pro bono* legal services to be provided.

If you are purchasing the standard professional liability insurance coverage through LAWPRO, you generally have coverage for professional services that are performed, whether they are paid services or provided *pro bono*.

If you are claiming exemption under the policy, but wish to provide *pro bono* legal services through an approved *pro bono* legal services program, you may have reduced limit coverage for such services.

What is Pro Bono Law Ontario?

Pro Bono Law Ontario (PBLO) was established in 2002. Its objective is to foster the development of *pro bono* projects in Ontario for low- and modest-income individuals and voluntary organizations. This includes creating and promoting opportunities for lawyers to provide free legal services, to foster *pro bono* projects and to act as a resource centre for PBLO programs. PBLO will provide a coordinated approach to the delivery of *pro bono* legal services in Ontario. For a list of *pro bono* legal programs under PBLO, and approved by LAWPRO, see www.lawpro.ca/probono. For further information on PBLO, visit <http://www.probononet.on.ca/main.cfm>.

Providing pro bono legal services through a LAWPRO-approved program associated with Pro Bono Law Ontario

Exempt lawyers

Lawyers who claim an exemption, and also provide approved *pro bono* legal services through a LAWPRO-approved *pro bono* legal services program associated with Pro Bono Law Ontario (PBLO), have insurance coverage as follows:

- They are provided with the standard run-off insurance coverage of \$250,000 per claim/in the aggregate for their approved *pro bono* legal services, even though the services are provided while exempt under the program; and
- They are NOT required to pay any deductible amount for claims relating solely to such services.

This coverage applies to legal services provided through approved programs associated with Pro Bono Law Ontario, and does not include legal services beyond the following:

- (a) those rendered to low income persons in civil matters or in criminal matters for which there is no government obligation to provide counsel;
- (b) services that simplify the legal process for, or increase the availability and quality of legal services to persons of limited means; and/or
- (c) those rendered to charitable, non-profit and public interest organizations with respect to matters or projects to address the needs of low-income and disadvantaged individuals.

It is important to note that if a lawyer otherwise engages in the private practice of law, she or he would be considered to be providing legal services in private practice and would not qualify to maintain their exempt status, and would have to pay the LAWPRO insurance premium and levies, as required by the Law Society.

For a listing of PBLO programs approved by LAWPRO, see www.lawpro.ca/probono.

Lawyers who buy the standard insurance program coverage

If you purchase the standard insurance program coverage and provide *pro bono* legal services through a LAWPRO-approved program associated with Pro Bono Law Ontario, you are insured for claims arising out of these services.

As well, to encourage lawyers to provide these types of *pro bono* services, LAWPRO implemented the following insurance program enhancements:

- You are not required to pay any deductible amount or claims history levy surcharge for claims relating solely to such services;
- Those applying for the part-time practice option are not required to consider any hours of professional time or past claims relating solely to these services in their application for this part-time practice option.

Providing pro bono legal services to a non-profit organization not associated with Pro Bono Law Ontario

Exempt lawyers

Generally, lawyers who provide professional services (even on a *pro bono* basis), must obtain the standard insurance program coverage.

However, this does not necessarily mean that exempt lawyers are unable to provide *pro bono* legal services. Provided you meet the following criteria, you may be able to maintain your exempt status **and** lend your legal expertise on a no-charge basis to non-profit organizations not associated with PBL0. In so doing, you will not be insured for these *pro bono* services

1. You must obtain pre-approval from LAWPRO: Contact Customer Service for a copy of the *pro bono* application for exempt lawyers. You must complete and return this application prior to providing the *pro bono* legal services.
2. The organization must meet specific conditions to be approved by LAWPRO, as follows:
 - The organization benefiting from the *pro bono* work must be a not-for-profit organization; and
 - The lawyer must be providing *pro bono* legal services specifically for the organization, and not for any individual(s) in that organization or its clients.

NO INSURANCE FOR THESE PRO BONO SERVICES

If you receive approval from LAWPRO to maintain your exempt status while providing *pro bono* legal services for an organization not associated with Pro Bono Law Ontario, you will NOT have any liability insurance coverage for any legal services provided while exempt. You will have only basic Run-Off Insurance coverage (with limits of only \$250,000 per claim and in the aggregate) for services that you provided before becoming exempt.

In other words, the LAWPRO insurance program would provide no coverage if a claim were to arise relating to your *pro bono* legal services. You would be responsible for all defense and indemnity costs associated with the claim.

Lawyers who are exempt should note that if they provide *pro bono* legal services for an organization that is not approved by LAWPRO, they would no longer qualify for an exemption as they will be considered to be practising law in private practice. So, if you provide professional services but are simply not billing for them, (e.g. providing legal services to family, friends, or organizations on a *pro bono* basis), you would not qualify for an exemption and must pay the insurance premium and levies.

Lawyers who buy the standard insurance program coverage

Lawyers who purchase the standard insurance program coverage and provide *pro bono* legal services through programs or to organizations not associated with Pro Bono Law Ontario, are insured for claims arising out of these services.

However, you are required to pay any deductible amount or claims history levy surcharge associated with that claim. Furthermore, those applying for the part-time practice option are required to consider any hours of professional time or past claims relating solely to these services in their application for this part-time practice option.

For more information

If you have further questions regarding the provision of *pro bono* legal services as it relates to professional liability insurance issues, please visit the LAWPRO Web site at <http://www.lawpro.ca/probono> or contact LAWPRO Customer Service at (416) 598-5899 or 1-800-410-1013 or by e-mail at service@lawpro.ca.

Nanette O'Connor is Legal Counsel, Underwriting and Customer Service at LAWPRO.