

Is there coverage under LAWPRO's policy for fraud?



Although the LAWPRO policy insuring the Law Society's insurance program excludes coverage for claims arising out of fraud-related activities, the policy does respond in many instances to claims with a fraud component.

Among the considerations in determining coverage is whether the lawyer purchased Innocent Party Coverage, whether the lawyer was a participant or complicit in the fraud, and how promptly the matter was reported as a claim or potential claim under the policy.

Of course, as a liability insurance policy, the LAWPRO policy only protects you from the claims of others. No protection is provided for a loss of your own or that of your firm such as, for example, the theft of your firm assets. Other types of insurance are available for that type of exposure.

What does the LAWPRO policy say about fraud?

Part III – Exclusions – specifically states that claims relating to or arising out of “any dishonest, fraudulent, criminal or malicious act or omission” of an insured lawyer are excluded from coverage.

How then is there coverage for fraud-related claims?

By Endorsement No. 5 to the policy – *Innocent Party Coverage* – practising lawyers who purchase Innocent Party Coverage are protected against vicarious liability for the dishonest, fraudulent, criminal, or malicious acts or omissions of other lawyers; as well, clients are assured of protection against the dishonest, fraudulent, criminal, or malicious acts or omissions of their own lawyer.

Innocent Party protection, however, is provided on a **sublimit** basis under the program – generally in the

amount of \$250,000 per claim/aggregate. This means that the Innocent Party protection is provided within the overall policy limits of \$1 million per claim/\$2 million aggregate, and not in addition. As a result, fraud-related payments under the policy reduce the amount then available with which to pay claims under this sublimit as well as the overall policy limit.

Like the general policy limit, this sublimit applies to both claim expenses and indemnity payments together. Therefore, one claim with substantial defence costs could quickly erode the amount of funds available for indemnity.

Does every lawyer carry Innocent Party Coverage?

Innocent Party protection is mandatory for many lawyers. Those practising in association or partnership (including general, MDP and LLP partnerships) or in a Law Corporation with more than one lawyer, as well as sole practitioners practising with employed lawyers, must purchase the minimum Innocent Party Coverage of \$250,000 per claim/aggregate.

What if I feel the minimum \$250,000 level is not enough coverage?

You can also apply to increase your Innocent Party sublimit coverage to \$500,000 per claim/aggregate or \$1 million per claim/aggregate for a relatively small additional premium. LAWPRO strongly encourages lawyers and law firms to consider buying up their Innocent Party Coverage limits, and to thus close the gap between the \$250,000 Innocent Party Coverage limits and the \$1 million mark, at which their excess insurance (if secured) would kick in.

Can I get Innocent Party insurance if I am a sole practitioner?

Innocent Party Coverage is also available as an optional coverage to sole practitioners. These lawyers must apply for this coverage, and will be underwritten on an individual basis, based on a risk assessment of information provided in their Innocent Party Sublimit Buy-Up application. Successful applicants can choose from three sublimit levels: \$250,000 per claim/in the aggregate; \$500,000 per claim/in the aggregate; or \$1 million per claim/in the aggregate.

But what happens if a fraud is perpetrated because the lawyer is negligent?

If you are negligent in failing to detect a fraud of another, you are generally protected up to the full amount of the \$1 million per claim/\$2 million aggregate overall policy limit. This applies whether or not the individual perpetrating the fraud was a member of your law firm staff or whether the fraudster is a client, broker, real estate agent or some other party. Where, however, the fraud is committed by a lawyer in your firm, your protection is limited to the amount of Innocent Party protection in place.

Why is it so important to report a claim or potential claim promptly?

You can jeopardize the amount of coverage available to you if you fail to report promptly. If LAWPRO misses an opportunity to recover funds simply because of your delay, LAWPRO will not indemnify you for that loss or portion of the loss which would have been recoverable.

For more information on Innocent Party Coverage and options to increase the sublimits available under this coverage, visit our Web site at www.lawpro.ca/insurance or call our Customer Service Department at 416-598-5899 or 1-800-410-1013, email service@lawpro.ca.