

## Base premium holds steady for 2012

### Quick summary:

- The base premium will be \$3,350
- Real Estate Practice Coverage Option premium reduced to \$250 from \$400
- Deeper discounts off the base premium for new practitioners (50 per cent discount in first year)
- Premium discount equal to 50 per cent discount off of the base premium for qualifying lawyers who work part-time or who practise exclusively criminal and/or immigration law

### Base premium remains stable at \$3,350 for 2012

Recent challenges facing LAWPRO have not abated: we continue to see steadily growing claim costs, and market conditions mean modest investment returns. Nevertheless, LAWPRO is able to keep the base premium for 2012 at \$3,350 per lawyer – the result largely of cost-effective management of the program and the company's solid financial footing arising out of the 2011 adjustment to the LAWPRO base premium.

### Claims costs continue to grow

In our recent Annual Review issue of *LAWPRO Magazine*, we reported that the annual cost of claims reported between 2007 and 2011 ranges from \$83 million to \$91 million. That trend shows no sign of abating in 2012: Our projected claims costs for the coming year are close to \$89 million.

Also unchanged are the factors driving claims growth: There are more lawyers in practice than ever before; the frequency of claims (claims per lawyer per year) has been increasing; and, perhaps most importantly, the cost per individual claim has increased substantially.

### More \$100,000 claims than ever before

In the insurance industry, the term “cost severity” refers to the dollar value of individual claims. Over the past decade, LAWPRO has seen an increase not only in claims numbers and claims frequency, but also, an increase in cost severity.

As compared to claims experience in 2002, we saw at least 50 per cent more claims valued over \$100,000 in each of the years 2009 and 2010. The year 2011 is on track for similar results.

### Why are claims becoming more expensive?

One of the factors driving the increase in claims severity is growth in property values. Real estate is currently the practice area with the highest rate of claims. As property values increase, so does the value of claims related to the purchase and sale of those properties.

However, real estate is not the only area in which growing property values affect claims costs. We see the effect of property value growth on claims in many other areas, notably wills and estates, but also in family law, corporate/commercial law, and litigation.

For more on the impact of communication errors on claims, and for tips on how to prevent these areas and provide excellent customer service to clients, see the following articles in *LAWPRO Magazine's* September 2011 issue: “Is anyone listening?” ([www.practicepro.ca/LawPROmag/Communications-claims-causes.pdf](http://www.practicepro.ca/LawPROmag/Communications-claims-causes.pdf)); and “Let's get talking” ([www.practicepro.ca/LawPROmag/Communications-Lets-Start-Talking.pdf](http://www.practicepro.ca/LawPROmag/Communications-Lets-Start-Talking.pdf)). To read about cases in which the courts have described the client's role in promoting good communications, see the September 2011 edition of our casebook “Communication is a two-way street” at ([www.practicepro.ca/LawPROmag/Casebook-Communication-Two-Way-Street.pdf](http://www.practicepro.ca/LawPROmag/Casebook-Communication-Two-Way-Street.pdf)).

While economic influences come and go, certain claims features seem to remain stubbornly unchanged year over year. The most notable such feature is the proportion of claims – in all areas of practice – that are attributable in whole or in part to problems with communication between lawyers and their clients.

A final factor that drives cost severity is claim complexity. As claims become more complex, they tend to become more expensive both with respect to the losses alleged by the claimant(s), and the resources required to effect resolution of the claims (for example, defence costs).

### Stability despite current challenges

These challenges prompted the need to increase premiums for 2011. That increase brought our funding in line with our costs, and the stability we have achieved makes us confident that we can continue on that basis for 2012, without the need for a further increase in the base premium in the coming year.

The 2012 base premium of \$3,350 represents the average premium paid by lawyers over the past 15 years.

### Low interest rates affect investments and require greater reserves

Recovery in the Canadian economy in the last two years has been fairly slow: Investment markets continue to be volatile, and predictions about future growth remain conservative.

Last year, we reported that rates of return on fixed income securities had dropped significantly. So far, results for 2011 suggest that our investments are performing in line with our forecast; however, predictions about increases in interest rates remain very conservative, and we project a gross return on our investments of 3.75 per cent for 2012, lower than the 5 per cent we saw before the credit crisis that began in 2008.

When LAWPRO estimates how much capital in today's dollars we should reserve to meet future claims costs, we take into account the potential for growth in the value of that capital between the time that it is reserved and the time that it is needed to pay the claims.

When interest rates are low, capital grows slowly. This means that we must increase the level of the reserves we set aside to adjust for the lower potential for growth in our capital. To calculate reserve levels, we make reference to a number called the claims provision discount rate. That rate *decreases* (an unfavourable effect) along with interest rates.

We have analyzed and adjusted for the impact of a decreasing claims provision discount rate, and we are able to make provision for the needed reserves without increasing the base premium.

### No contribution sought from Law Society E&O fund for 2012

In previous years, LAWPRO drew an annual contribution from the Premium Stabilization Fund (PSF): A sub-fund within the Law Society's Errors & Omissions Insurance Fund (E&O Fund) created specifically to mitigate against major premium increases in any given year.

The PSF was depleted by the end of 2009. In 2011, LAWPRO received a contribution from the general E&O Fund, but no such contribution will be sought in 2012. This means that LAWPRO will now forego a premium supplement equivalent to approximately \$100 per insured lawyer for 2012.

LAWPRO's capacity to make provision for increased reserves while reducing its dependence on the Law Society E&O Fund and maintaining the base premium at the 2011 level is the result of careful planning in the midst of a challenging economic climate.

### Real Estate Practice Coverage Option premium reduced

Each year, LAWPRO conducts an extensive analysis of claims costs and trends. This analysis is required to assist the company in complying with its mandate to risk-rate the program and to ensure that insurance premiums generally reflect the cost of claims.

The analysis conducted of the performance of the Real Estate Practice Coverage Option (REPCO) program to date suggests that it is appropriate for LAWPRO to reduce the premium for this program. In 2012, the REPCO premium will be reduced to \$250 from \$400. This represents the second such reduction since the coverage was introduced in 2008. The reduced premium will benefit an estimated 7,000 lawyers.

For more on how LAWPRO designs its insurance programs and makes coverage decisions, see "Balancing risk and fairness: How LAWPRO considers new insurance program coverages" ([www.practicepro.ca/LawPROmag/InsuranceBiz-Balancing-Risk-Fairness.pdf](http://www.practicepro.ca/LawPROmag/InsuranceBiz-Balancing-Risk-Fairness.pdf)), published in the InsuranceBiz section of the September 2011 edition of *LAWPRO Magazine*.

### Deeper discounts for new practitioners

LAWPRO offers a declining discount off the base premium for lawyers new to practice. This discount reflects the typical claims pattern which sees the chance of a claim escalate the longer a lawyer is in practice (with costs peaking at about 26-30 years in practice).

The new practitioner discount also helps to reduce operating costs for lawyers establishing their practices.

In 2011, the maximum discount for new lawyers was equal to 40 per cent of the base premium in the first year of practice, declining to a discount equal to 10 per cent of the base premium in the fourth year in practice. For 2012, the new lawyer discount will be increased to 50 per cent of the base premium in the first year declining to 20 per cent in the fourth year.

### Part-time lawyers, restricted area of practice lawyers to pay less

Lawyers who practise law part-time and who meet the LAWPRO part-time practice criteria are eligible for a discount off the base

premium. In 2012, that discount will be increased to 50 per cent from 40 per cent to reflect claims trends for part-time practice.

LAWPRO's analysis of claims trends also suggests that it is appropriate to offer an increased premium discount for those whose practice is restricted to criminal and/or immigration law. Lawyers eligible for this restricted area of practice option will be entitled to an increased premium discount equal to 50 per cent of the base premium (compared to 40 per cent last year).\*

The increased discounts being offered to new lawyers, qualifying part-time practitioners, and lawyers practicing criminal or immigration law will benefit an estimated 6,000 Ontario lawyers in 2012.

\* Note: The maximum available premium discount, even where a lawyer is eligible under more than one of the discount categories – part-time practice, restricted area of practice, or new-to-practice – is 50 per cent.

# Have you considered Excess insurance?

Why should you consider buying Excess insurance this year? Consider these facts:

- One out of every two lawyers who read this article will report a claim or potential claim against them in their career. Of these, one in 100 claims will top the \$500,000 mark.
- Think you're immune to claims because you're an experienced lawyer? Think again: 67 per cent of lawyers who reported a claim or potential claim had 15 years of experience or more. In other words, of the approximately 11,000 claims reported in the past five years, approximately 7,400 were reported by experienced lawyers.

Traditionally, lawyers begin to take on more complex cases with more experience which increases the chance of a claim. Lawyers also take on greater workloads and enter into fields they might not have much experience in, such as dabbling in real estate or corporate law. This increases the likelihood of mistakes.

- Further, keep in mind the work of your partners, associates and employed lawyers, which can potentially expose you to a claim. While you might be diligent, your associates might make a mistake. You could be personally liable for any costs over and

above the \$1 million per claim provided by the primary liability insurance program.

With claims costs on the rise, the time may be right for you to consider purchasing Excess insurance. It only takes one claim to seriously dent your coverage limits, and Excess insurance acts as a backstop should you hit the policy limit under your mandatory plan.

Applying for Excess insurance is easy: Contact our Customer Service department at (416) 598-5899 or 1-800-410-1013. They will send you a no obligation quote. If you chose to increase your coverage limits, you need only apply once. Your Excess insurance is renewed each year without the need for a new application.

Placing your Excess coverage with LAWPRO also simplifies your reporting obligations if you have to report a claim: You report only once – as your primary and Excess insurer are one and the same.

The comfort of knowing you're covered is priceless. Call LAWPRO today to get your no obligation quote.