

Program changes for 2017

Quick summary:

- Base premium for 2017: \$2,950 (reduced from \$3,350)
- Your coverage while working on secondment
- Lawyers employed by designated government agencies
- Reports to the Law Society of Upper Canada
- Auto-renewed policies to reinstate certain coverage options

Base premium reduced

For 2017, the base premium will be set at \$2,950 per member, a reduction of \$400 from the previous year. The \$2,950 premium has been deemed appropriate in light of moderating claims growth (compared to significant upward projections in earlier years), as well as LAWPRO's overall solid fiscal performance during the last couple of years. LAWPRO is satisfied that this base premium appropriately recognizes any uncertainties in emerging claims experience and economic conditions, and allows the Program to continue to operate on a self-sustaining basis while protecting LAWPRO's overall financial position. It should be noted that a base premium of \$2,950 per lawyer in 2017 is significantly lower than premiums charged at points in the past. In fact, if inflation were removed, this premium would be the equivalent to about \$1,950 in 1995 dollars.

Lawyers working on secondment

Sometimes lawyers (whether members of a traditional firm or associated with an agency) are seconded to a corporate client for

a period. Seconded lawyers face different risks than either employed corporate counsel or lawyers in traditional private practice and the Program requires clarification to reflect this.

For 2017, the Program Policy has been clarified to explicitly exclude claims brought by corporate clients against seconded lawyers for professional services provided while under secondment with them, where notwithstanding the form of the relationship, the claimant meets the definition of a "corporate employer" under the Program Policy. The policy will also now extend the \$250,000 per claim and in the aggregate defence-only coverage under the endorsement for "Claims Brought by CORPORATE EMPLOYERS" to include coverage for seconded lawyers in those circumstances.

On the other hand, if the corporate client does not meet the test for a "corporate employer" and the normal employment laws don't arise that would stop it from recovering against an employee, the normal coverage terms will apply.

Lawyers employed by designated government agencies

Lawyers employed by government in certain agencies provide services to members of the public, typically to enhance access to justice. These lawyers do not qualify for exemption because their practice is not restricted to services provided "for and on behalf of the employer." However, our analysis of the claims history for this work reveals that it is low risk compared to general private practice. Accordingly, for 2017, a new premium discount equal to 75 per cent of the base rate has been introduced to lawyers employed by Designated Agencies where the lawyers only provide professional

services to third parties pursuant to their employment and on a no-fee basis. These lawyers will also be exempt from payment of the civil litigation transaction levy provided the services that would normally give rise to the levy are provided in the course of the lawyer's employment with a Designated Agency.

Reports to the Law Society of Upper Canada

For many years LAWPRO has had the power to report insureds' conduct to the Law Society in certain circumstances set out in the Program policy. Reports of this nature made by LAWPRO lawyers have been infrequent, averaging four or fewer each year in recent years. The reporting terms have not changed in approximately 20 years. Consistent with recent significant changes to Rule 7.1-3 of the *Rules of Professional Conduct*, LAWPRO may notify the Law Society in any circumstances in which a Law Society licensee would be required to report another licensee.

When no renewal application is received

Some lawyers each year fail to submit an application for the renewal of their coverage by the renewal deadline. To ensure that those lawyers continue to be insured as required, LAWPRO will still issue the Program coverage. In the past, this coverage was issued without the reinstatement of non-standard coverage options such as the Real Estate Practice Coverage Option (REPCO), non-standard deductible choices, or premium discounts related to restricted or part-time practice. As of 2017, the Program renewal process will be amended so that LAWPRO is able to reinstate most Program options previously elected by insureds that would otherwise have been removed when no fully completed renewal application for Policy coverage was received when due. ■

Rule 48 Transition Toolkit

There are four tools in the toolkit:

1. A Firm Transition Checklist containing a list of the steps firms should take to update ticklers and other firm systems and processes to ensure Rule 48 requirements are met on all files.
2. An Individual File Checklist containing a list of the steps to be taken and ticklers to be updated for an individual file.
3. A File Progress Plan that can be used to help actively manage and monitor the status and progress of work on an individual file.
4. A Rule 48 Transition Training PowerPoint to help train lawyers and staff on Rule 48 and file management best practices.

Available at practicepro.ca/Rule48



Rule 48 dismissal FAQs

In the last year we have received inquiries regarding the new Rule 48. Here are the questions we most frequently hear:

1 The main action is administratively dismissed under Rule 48. What happens to related counterclaims, crossclaims and third party claims?

Counterclaims, crossclaims, and third party claims are dealt with under Rule 48.14(9), which refers to Rules 24.03 to 24.05. This requires us to cross-reference Rules 24.03 to 24.05. When the main action is administratively dismissed under Rule 48 (remember to set appropriate tickler dates):

- A defendant's counterclaim to the main action will be dismissed without costs within 30 days absent a notice of election to proceed (Rule 24.03);
- A defendant's (to the main action) crossclaim or third party claim is deemed to be dismissed (Rule 24.04(1)); and
- A defendant to the crossclaim can have the crossclaim deemed to be dismissed by sending a copy of the dismissal order to the crossclaimant (Rule 24.02(1.1)).

2 My case is approaching the Rule 48 dismissal date and I have not set the matter down for trial. I have consent of all parties to a new dismissal date. Can I simply file a new timetable with the registrar or must I bring a motion for a status hearing?

You can file a consent timetable with the registrar, but must do so at least 30 days before the dismissal date. The timetable must identify the steps needed to set the matter down for trial, set the deadlines for each step, AND set a dismissal date no more than two years from the current dismissal date. Remember to attach a draft order. See Rule 48.14(4). If the conditions above cannot be met, you must bring a motion for a status hearing. If the status hearing will not go on consent, notify LawPRO as this is now a potential claim.

3 What are the cost consequences when an action is administratively dismissed under Rule 48?

While Rule 48 does not address costs, a Rule 48 administrative dismissal is an action dismissed for delay. Under Rule 24.05.1, if an action is dismissed for delay, any party may, within 30 days of the dismissal, make a motion respecting the costs of the action (Rule 24.05.1). UPDATE: See AvoidAClaim post on Daniels v. Grizzell, 2016 ONSC 7351 endorsement.

4 I have a court order setting a date by which I have to set the matter down for trial. Which dismissal date applies to my case, the 5-year dismissal date under Rule 48, or the date set by the court order?

The date set by the court order (see Rule 48.14(1)).

5 I have settled a case which has not been set down for trial. Should one of the parties bring a motion to dismiss the action, or can we wait for the case to be administratively dismissed under Rule 48.14?

While it is possible to let an action that has settled sit dormant until it is administratively dismissed under Rule 48.14, there is a risk that one of the parties may renege on the settlement and suddenly take steps in the action. This may occur, for example, if one of the parties has "buyer's remorse" or if the settlement is not executed properly or in a timely manner. Typically, when an action is settled, one of the parties brings a motion to dismiss the action to help achieve closure.

(As with any settlement, remember that if it involves a party under disability, the settlement must be approved by a judge under Rule 7.08.)

6 Does Rule 48 apply to a family law action?

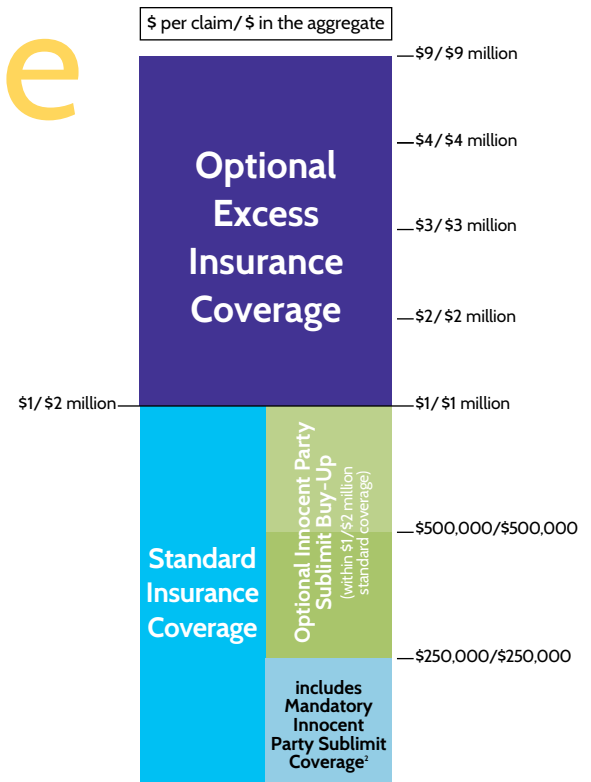
Rule 48 of the *Rules of Civil Procedure* applies to civil proceedings in the Court of Appeal and in the Superior Court of Justice. Under Rule 1.02, the *Rules of Civil Procedure*, including Rule 48, do not apply to proceedings governed by Ontario Regulation 114/99 *Family Law Rules*, except as provided. If there is a combined proceeding where both the *Rules of Civil Procedure* and the *Family Law Rules* may apply, the parties may agree, or obtain a court order, that the *Family Law Rules* apply to a part or all of the combined proceeding – in this circumstance parties may consider whether Rule 48 should apply to the combined proceeding or not, and take appropriate steps.

Remember, under the *Family Law Rules*, Rules 39, 40 and 41 provide for the dismissal of actions by the clerk, after service of a notice of approaching dismissal if no case conference or settlement conference is arranged before the 365th day after the date the case was started. ■

2017 insurance coverage

for lawyers in private practice

sole practitioners and lawyers in association or partnership¹



Standard insurance coverage

The base program

Eligibility:

Required of all lawyers¹ providing services in private practice.³

Coverage limit:

\$1 million per claim/\$2 million in the aggregate (i.e., for all claims made in 2017), applicable to claim expenses, indemnity payments and/or costs of repairs together.

Standard deductible:

\$5,000 per claim, applicable to claim expenses, indemnity payments and/or costs of repairs together.

An increase in deductible of \$10,000 applies for claims based on administrative dismissals not set aside through steps taken by or under the direction of LAWPRO. The deductible will be deemed to apply to claim expenses, indemnity payments and/or costs of repairs together in respect of such claims.

Base premium:

\$2,950 per insured lawyer (plus PST).

Mandatory innocent party sublimit coverage⁴

Eligibility:

Required of all lawyers practising in partnership (including in MDPs or LLPs), as shareholders in law corporations, or as sole practitioners practising with employed lawyers. Also required of licensed paralegals practising in partnership with lawyers or as shareholders in combined licensee firms (CLFs).

On secondment?

The 2017 insurance program clarifies coverage for lawyers working on secondment to corporate clients. Claims brought by parties that meet the policy definition of "corporate employer" against seconded lawyers for professional services provided while under secondment with them are excluded from coverage. However, the policy now extends the \$250,000 per claim and in the aggregate defence-only coverage under the endorsement for "Claims Brought by CORPORATE EMPLOYERS" to seconded lawyers in these circumstances.

¹ Includes paralegals practising as partners or shareholders in combined licensee firms.

² Optional for sole practitioners.

³ Lawyers who are on temporary leave and qualify for exemption (c) are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program.

⁴ Coverage for dishonest (as defined), fraudulent, criminal or malicious acts or omissions.

Coverage sublimits:

\$250,000 per claim/in the aggregate, applicable to claim expenses, indemnity payments and/or costs of repairs together.

Premium:

\$250 per lawyer or eligible paralegal licensee (plus PST).

Mandatory Real Estate Practice coverage (for real estate practitioners)**Eligibility:**

Required of all lawyers practising real estate law in Ontario in 2017.

Lawyers not eligible for the Real Estate Practice Coverage Option are:

- those who are in bankruptcy;
- those who have been convicted or disciplined in connection with real estate fraud; and/or
- those under investigation, where the Law Society obtains: an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practising real estate; or an undertaking not to practise real estate.

Coverage limit:

\$250,000 per claim/\$1 million in the aggregate, applicable to claim expenses, indemnity payments and/or costs of repairs together.

Premium:

\$100 per lawyer (plus PST).

Optional insurance coverages**Innocent Party Sublimit Buy-Up⁵****Eligibility**

Optional for all lawyers and eligible paralegal licensees practising in association or partnership (including MDPs, licensee firms, LLPs, and lawyer/paralegal partnerships), law corporations (with more than one lawyer or paralegal shareholder) and sole practitioners practising with employed lawyers.

Coverage sublimits & premiums:

Innocent Party Sublimit Coverage can be increased as follows:

- to \$500,000 per claim/aggregate for an additional \$150 per insured (\$400 total Innocent Party premium); or
- to \$1 million per claim/aggregate for an additional \$249 per insured (\$499 total Innocent Party premium).

Optional Innocent Party Sublimit coverage⁵**Eligibility:**

Optional for sole practitioners, licensee firms with only one lawyer, and lawyers practising alone in a law corporation. Provides protection for ongoing liability that these practitioners can have in situations such as the following:

- if you've acted as back-up counsel or had others act as back-up counsel for you;
- if you've taken a temporary leave of absence from your practice and have delegated your work to others;
- if you've practised as a partner or associate in the past;
- if your practice once included employee lawyers;
- if you've practised in any situation in which you could be seen as lending your name to others;
- as an assurance to others if involved in electronic registration and escrow closings;
- if acting as a *locum*, you must carry at least the same amount of innocent party sublimit coverage as is carried by lawyers in the firm that has hired you.

Coverage sublimits:

LAWPRO offers optional Innocent Party sublimits of:

- \$250,000 per claim/aggregate;
- \$500,000 per claim/aggregate;
- \$1 million per claim/aggregate.

Premiums:

Underwritten on an individual basis, based on a risk assessment of information provided in the Innocent Party Sublimit Buy-Up application.

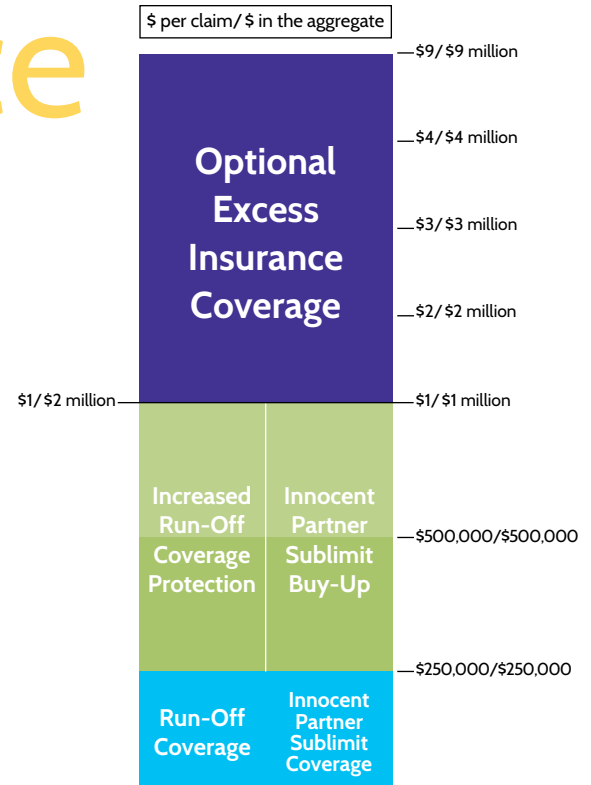
Excess insurance coverage**Eligibility:**

Available to law firms (including MDPs and CLFs,) and to lawyers with topped-up Run-Off Coverage. **See page 7 for details of the Excess program.**

⁵ LAWPRO strongly recommends that lawyers increase their optional coverage protection to the maximum sublimit offered, to avoid gaps in coverage.

2017 insurance coverage for exempt lawyers

- in-house corporate counsel
- government lawyers, educators and others not in active private practice
- retired lawyers, estate trustees, emeritus lawyers, judges and others no longer practising law
- legal aid clinic lawyers (not directly employed by Legal Aid Ontario)
- lawyers who engage in only occasional practice in Ontario and are resident in a Canadian jurisdiction other than Ontario



The standard Run-Off coverage

Eligibility:

Provided at no charge to all lawyer members of the Law Society who are not in active private practice who qualify for exemption¹ from payment of insurance premiums and levies.

Coverage limits:

\$250,000 per claim/in the aggregate, not re-instated annually, subject to the following:

- applies to claims arising out of services provided while the lawyer was in private practice or otherwise maintained the full ongoing practice coverage
- does not provide coverage for claims arising out of any services a lawyer provides while exempt from paying the insurance premium. The only exceptions to this are with respect to *pro bono* legal services provided through an approved *pro bono* legal services program associated with Pro Bono Ontario, with respect to qualifying mentoring activities, or where the lawyer has applied for and purchased additional coverage specifically for certain services yet to be performed as estate trustee, trustee for *inter vivos* trust, or attorney for property, as described further:

- applies to claim expenses, indemnity payments and/or costs of repairs together;
- includes a sublimit coverage of up to \$250,000 per claim/in the aggregate for Innocent Partner claims;
- includes a sublimit coverage of up to \$250,000 per claim/in the aggregate for cybercrime claims.

Premium:

None for standard Run-Off coverage.

Deductible:

Deductible for Run-Off coverage is \$5,000 per claim applicable to claim expenses, indemnity payments and/or costs of repairs together.

Your coverage when working pro bono

Interested in working pro bono? The September 2016 issue of LAWPRO Magazine focused on access to justice issues - including pro bono services. Look for it in your mailbox or visit lawpro.ca to read "What's my coverage when working pro bono?", "So you want to start an A2J initiative?" and "Lawyers: (Safely) make your own dent in the affordability barrier".

¹ Lawyers who are on temporary leave and qualify for exemption (c) are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program. Lawyers eligible for the "mobility" exemption have insurance coverage as described on the website at lawpro.ca

Optional insurance coverages

Increased Run-Off coverage protection

Eligibility:

- optional for lawyers with only the basic Run-Off coverage who are concerned that claims now and in the future may exceed \$250,000 per claim/aggregate; or
- optional for lawyers named or acting as estate trustee, trustee for *inter vivos* trust, or attorney for property as residual work from their former law practice who wish to purchase expanded coverage for these services yet to be performed.

Coverage limits:

Exempt lawyers can apply to increase Run-Off coverage limits to:

- \$500,000 per claim/aggregate; or
- \$1 million per claim/\$2 million in the aggregate.

Terms ranging from two to five years are available.

Lawyers acting as estate trustee, trustee for *inter vivos* trust, or attorney for property:

Exempt lawyers can apply to increase Run-Off coverage protection to include protection for services yet to be performed as estate trustee, trustee for *inter vivos* trust, or attorney for property, as follows:

- apply for and purchase expanded protection for these services within the standard \$250,000 Run-Off coverage limit; and/or
- apply for and purchase expanded protection for these services within the Increased Run-Off coverage limits, as described above.

Through a deeming provision, ongoing activities of this type may be included under the Run-Off coverage protection provided to you.

Premiums:

Underwritten on an individual basis, depending on the years practised, areas of law practised, the amount of time since the applicant was in private practice, and other risk-based factors.

Innocent Partner Sublimit Buy-Up²

Eligibility:

Optional for exempt lawyers who have applied for increased Run-Off coverage and who may be concerned about their innocent partner exposure.

Coverage limits & premiums:

Innocent Partner Sublimit coverage can be increased as follows:

- to \$500,000 per claim/aggregate for an additional five per cent of the increased Run-Off coverage premium; or
- to \$1 million per claim/aggregate for an additional eight per cent of the increased Run-Off coverage premium.

Excess insurance for law firms and lawyers with topped-up Run-Off coverage

Eligibility:

Available to law firms (including MDPs and CLFs), and to lawyers with topped-up Run-Off coverage.

Coverage limits:

The following Excess limits are above the \$1 million per claim/\$2 million in the aggregate limits of the primary program. Coverage is provided on a firm basis (i.e., for all firm lawyers for services on behalf of the firm):

- \$1 million per claim/\$1 million in the aggregate;
- \$2 million per claim/\$2 million in the aggregate;
- \$3 million per claim/\$3 million in the aggregate;
- \$4 million per claim/\$4 million in the aggregate;
- \$9 million per claim/\$9 million in the aggregate.

Premiums:

Underwritten on a firm-wide basis, based on a risk assessment of information provided in the Excess insurance application, marketing materials of the firm and supporting documentation.

Have you visited our FAQ pages?

Did you know that LAWPRO maintains an extensive collection of Frequently Asked Questions (FAQs) and answers on its website at lawpro.ca/faqs? If you have a question, we invite you to visit our FAQs to find an answer. We'll also be highlighting some of our FAQ content in upcoming issues of the magazine – look out for it under the "LAWPRO FAQ" header.

More information

For detailed information on the insurance programs and insurance options, or for application forms, please visit lawpro.ca

Information is also available from the LAWPRO Customer Service Department at 416-598-5899 or 1-800-410-1013 or via email: service@lawpro.ca

² LAWPRO strongly recommends that lawyers increase their optional coverage protection to the maximum sublimit offered, to avoid gaps in coverage.

On parental leave from your private practice? Relax, you're covered.

Lawyers about to become parents sometimes ask about their coverage while on parental leave. The answer is simple: if a lawyer was in private practice before taking the leave and was covered under the Program policy, and then suspends private practice for "family (or illness) reasons" (with intention to return) for up to five years, the lawyer is eligible for \$1 million per claim/\$2 million in the aggregate of run-off coverage during the leave.

While the standard LAWPRO run-off coverage is capped at a one-time limit of \$250,000, that coverage is designed for lawyers leaving practice permanently, whether due to retirement or a career change. Many retiring lawyers assess their risk and buy-up their coverage to a higher limit as part of their efforts to conclude outstanding work and wind down a practice. Lawyers on parental

leave are in a different position: they are more likely to be leaving a busy practice midstream, without having closed all of their active files. They may also be leaving behind work done as part of a team, the members of which could be exposed to financial risk if a claim arose after their colleague's coverage limit was reduced. For these reasons, run-off coverage up to the standard policy limits supports risk management continuity not only for the lawyer, but for colleagues. The lawyer on leave is responsible, of course, for making appropriate arrangements to transfer files to others in the firm, along with appropriate instructions. For a checklist to help with this process, see the textbox at the end of our article see "Taking parental leave? You have options!" on practicepro.ca.

For full details of eligibility, please see your LAWPRO policy. ■

Welcome Jerry B. Udell

LAWPRO is pleased to welcome Jerry B. Udell to its Board of Directors. Jerry is a lawyer and certified specialist in real estate law. He has over 40 years' experience in the practice of real estate and land development law. Practising with Windsor, Ontario's McTague LLP, Jerry became partner and head of the firm's Real Estate and Patent and Trademarks Department in 1998 after joining the firm in 1994. He is counsel to numerous banks and credit unions as well as the Office of the Public Guardian and Trustee.

Completing her service with our Board is Carol Hartman, who will continue her practice with Sudbury's Miller Maki LLP and as a Bencher of the Law Society of Upper Canada. We are grateful for Ms. Hartman's dedicated service to our Board.

Connect with LAWPRO:



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The comments in this publication are intended as a general description of the insurance and services available to qualified customers through LAWPRO. Your policy is the contract that specifically and fully describes your coverage and nothing stated here revises or amends the policy.

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