

Advice on foreign law not covered



With the Internet, international commerce and global travel, it is now much more common for the personal or business dealings of individuals and companies to involve foreign countries. And when legal problems or issues arise from these dealings, Ontario lawyers may find themselves with clients seeking advice on matters involving foreign law.

When foreign law issues arise on a matter, lawyers should tread carefully as advice with respect to foreign law is not covered under your professional liability insurance policy with LAWPRO.

The LAWPRO professional liability insurance policy provides coverage to lawyers for the performance of professional services (as defined in the policy), anywhere in Canada, where such services are performed with respect to the laws of Canada, its provinces and territories. The LAWPRO policy is available at www.lawpro.ca/insurance.

In many cases it will be readily apparent that foreign law is involved with a matter.

Examples include a trademark registration or patent application in the United States, a contract governed by the Uniform Commercial Code, or where a client is sued in a foreign country.

But in some cases, the foreign law issues may not be so obvious. On a real estate, matrimonial or will/estate planning matter there might be a vacation property in the United States or another country – the transfer or disposition of which will involve the law where the property is situated.

A commercial contract may have a clause specifying it is governed by foreign law. Sometimes it will be assumed from the outset that foreign law applies to the contract. In other cases, the law of the contract may be determined at the very end as a matter of negotiation.

When you are working on files, be aware of and watch for issues that involve or touch on foreign law. Do not give advice with respect to foreign law. You should advise your clients to seek an opinion from foreign counsel when a matter

requires advice on foreign law. Carefully document in correspondence to the client your advice with respect to the need to retain foreign counsel.

Do not provide professional services to clients with respect to U.S. or other foreign law unless you are called to the bar or otherwise qualified to give legal advice for that foreign jurisdiction. You may wish to investigate separate coverage for these activities as LAWPRO's primary policy will not cover this work.

If you have excess coverage from LAWPRO, note that advice with respect to foreign law is not covered under the terms of the LAWPRO Excess policy. If you have excess malpractice coverage from another insurer, talk to your broker or agent to determine if you are covered at the excess level for advice with respect to foreign law.