



Know your limits

Knowing your limits may sound like sobering advice, but for lawyers in private practice, knowing the limits of your insurance coverage can help you manage risk.

Limits per claim, and limits in the aggregate

There are two general types of limits: per claim (the maximum amount payable for any one claim within a policy year) and aggregate (the maximum amount payable for all claims over a period of time). For lawyers in Ontario, the standard practice limits for the primary professional liability program – the mandatory coverage required by the Law Society for lawyers in private practice – are \$1 million per claim and \$2 million in the aggregate over the year.

The standard per claim limit includes related claims in the firm. So if, for example, an associate's error leads to a client suing the associate

and the partners in the firm, the available limit for all of the lawyers in that scenario together will be capped at \$1 million.

Sublimits

Insurance policies will often have different limits for different types of claims based on the type of risk involved. Under the Law Society program there are six types of claims that are subject to sublimits: Innocent Party Coverage, Real Estate Practice Coverage, Limited Trust Account Overdraft, Claims Brought by Corporate Employers, Limited Cybercrime Coverage, and Prescribed Penalties.

Claims subject to a sublimit are treated differently in several ways. Perhaps the coverage isn't available to all lawyers, but only those who qualify (e.g. Real Estate Practice Coverage and Claims Brought by Corporate Employers). It can mean that the type of defence provided by LawPRO will differ (e.g. Prescribed Penalties and Claims Brought by Corporate Employers). And despite lower limits being generally offered, there may be the option to increase a sublimit (e.g. Innocent Party Coverage).

Below are three examples of how claims that are subject to a sublimit can be treated differently:

INNOCENT PARTY COVERAGE

When lawyers commit intentional wrongs (dishonest, fraudulent, criminal or malicious acts or omissions), no coverage is available under the basic practice coverage. But if there's an innocent lawyer who might also be sued, the policy addresses this exposure by endorsement. "Innocent Party Coverage" is

Lawyers who are no longer in private practice and are exempt from paying the Law Society program premiums are provided with \$250,000 in run-off coverage limits (per claim and in the aggregate) for no additional premium. Lawyers should be aware, however, that this is a one-time limit and unlike the limits for practising lawyers, is not reinstated annually. Lawyers can apply to increase this limit to \$500,000 per claim and in the aggregate or to \$1 million per claim with \$2 million in the aggregate.

required for lawyers (and paralegal partners/shareholders) who practise in circumstances where they can be vicariously responsible for the acts or omissions of other lawyers.¹ The basic \$250,000 sublimit can be bought up to \$500,000 or \$1,000,000 per claim and in the aggregate.

LIMITED CYBERCRIME COVERAGE

Lawyers have some relief from a general exclusion relating to claims arising from "Cybercrimes" (a defined term). Each year, lawyers are provided with \$250,000 (per claim/in the aggregate) coverage for described losses arising from a cybercrime, such as certain types of data theft or loss arising from an intruder gaining electronic access to funds held in trust by the lawyer and involving the lawyer's professional services. There is no option to buy a higher sublimit ("buy-up") than this sublimit, and firms are encouraged to investigate other insurance options such as dedicated privacy and network insurance.

PRESCRIBED PENALTIES

While coverage usually doesn't apply to claims for fines or penalties, lawyers are provided with limited coverage for defending certain types of penalties under the *Excise Tax Act* or *Income Tax Act*. Unlike the standard "duty to defend" that applies to most types of claims, lawyers are reimbursed up to the \$100,000 sublimit, after the lawyer has been successful in defending these types of claims upon final resolution.

the size of the firm, the amounts that underlie the files the firm works on, and the volume of work.

It is very important to know how a firm's excess insurance will respond to claims that have a sublimit under the Law Society primary insurance program. The LAWPRO optional excess program, for example, generally provides law firms with additional per claim and aggregate limits of between \$1 million and \$9 million, but there may be gaps in coverage if the underlying limits/sublimits are not bought-up. For this reason, we strongly encourage firms that carry LAWPRO excess coverage to buy-up the limits/sublimits for Run-off Coverage and Innocent Party (if applicable), in order to better avoid any gaps between the point under the primary program when a standard limit/sublimit would be exhausted and the threshold before the excess policy would be expected to respond.

If excess professional liability insurance won't respond to claims that are subject to a sublimit, it may be because those types of claims are better captured in other types of insurance products, such as fidelity, crime or cyber insurance policies. An experienced insurance agent or a broker should be able to help you with this.

For more information on limits or the optional LAWPRO excess professional liability insurance program, please contact our Customer Service and Underwriting Department to speak with a Program Coordinator at 416-598-5899 or 1-800-410-1013, by email at service@lawpro.ca, or you may visit our website at lawpro.ca. ■

Excess and other types of insurance

Lawyers and law firms who want more comfort than what the applicable Law Society primary program limits can provide should consider excess professional liability insurance. Deciding what excess limit amounts to purchase will often depend on the areas of practice,

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¹ Sole practitioners, licensee firms with only one lawyer, or lawyers practising alone in a law corporation may opt to purchase Innocent Party Sublimit coverage.

Has your firm grown?
Are you taking on
more risk?

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