

What's my coverage

when working
pro bono?



In Ontario there is a pressing need for legal services that can be accessed by low-income and disadvantaged persons. Many lawyers are stepping up and trying to address this gap through free services, discounted fees, or providing legal education to members of the public.

Whenever legal services are being provided to the public, however, it is important that you consider and know the risks you're facing: no matter how well-intentioned parties are, things can always go wrong. Knowing how your primary professional liability insurance is expected to respond should give you direction and peace of mind when giving back to your community.

The availability and terms of professional indemnity coverage for *pro bono* services vary depending on whether a lawyer is insured

by LAWPRO or not (i.e., whether he or she is in private practice or is exempt), on the context in which those services are provided (through Pro Bono Ontario or not), and finally, on the nature of those services (whether or not they fall within the LAWPRO definition of professional services). This article and the accompanying chart were prepared to help you understand your coverage status so that you can make informed choices about risk management when offering *pro bono* services.

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Insured (non-exempt) lawyers working *pro bono*

The mandatory program of professional indemnity insurance coverage from LAWPRO applies to the delivery of professional services to clients regardless of how much those clients pay for the services. This means that if you are a lawyer in private practice currently insured by LAWPRO, you are free to offer *pro bono* services to clients, and as long as you are within the terms of your coverage and comply with the policy conditions, you can expect to be covered for errors and omissions up to the limits of your coverage.

Insured lawyers are free to serve *pro bono* clients in any context they wish. However, in the interest of supporting *pro bono* work, LAWPRO has included certain special terms in its policy that apply to the delivery of *pro bono* services through Pro Bono Ontario (PBO – formerly *Pro Bono Law Ontario*) programs that have been approved by LAWPRO.

Special policy terms for services under PBO programs

PBO is a central and expert provider of *pro bono* legal services in Ontario, with sophisticated training, structure, risk-management protocols and technical support that reduces barriers for lawyers wishing to volunteer. These features of PBO programs mean that, after reviewing and approving a program for the purpose of our special policy terms, LAWPRO has confidence that claims risks associated with work done under the program are appropriately managed. This confidence, in turn, allows us to offer the following special policy terms for professional services offered under the program by insured lawyers:

- In the event of a claim flowing from services delivered under a LAWPRO-approved PBO program, LAWPRO waives the deductible that would otherwise be applied according to the terms of the lawyer's policy.
- Claims experience based on services delivered under such a program will not trigger a claims history levy surcharge.
- Where the lawyer is eligible for the part-time practice discount, professional legal services offered *pro bono* under such a program will not count toward the lawyer's annual practice hours (i.e., *pro bono* services will not put a lawyer "over" the part-time practice cut-off).

See the chart on page 8 for a summary of these terms.

The E&O article at page 21 of this magazine – "Lawyers: (Safely) make your own dent in the affordability barrier" has a detailed discussion of how LAWPRO and PBO work together. For a list of the LAWPRO-approved programs, please see lawpro.ca/PBolist.

Standard policy terms apply for non-PBO programs

LAWPRO recognizes that not all worthwhile opportunities to offer free or discounted services arise under programs that have obtained PBO support; however, it is beyond the reach of our program to individually risk-rate proposals to work *pro bono*. For that reason, lawyers who offer *pro bono* services outside the PBO umbrella of programs are subject to the standard terms of the policy. That means that in the event of a claim your insurance will respond in exactly the same way for a *pro bono* matter as for a full-fee paying client. For practising lawyers, this means that the deductible and claims history levy surcharge would still be expected to apply.

These same standard policy terms apply when you provide professional services through a clinic within the meaning of the *Legal Services Act, 1998*, a student legal aid society, or an Aboriginal legal services corporation funded by Legal Aid Ontario. In these contexts, however, you may have the benefit of additional coverage under a policy maintained by the organization – ask your supervisor for details of that coverage.

Want to take advantage of LAWPRO's special *pro bono* policy terms for insured lawyers? Consider helping obtain PBO status for the program in which you are working.

Impact of *pro bono* work on discounts for restrictions on practice

Under the Law Society program lawyers can choose to restrict their practise areas and enjoy certain premium discounts. Lawyers who don't practise real estate law don't have to pay the Real Estate Practice Coverage Option (REPCO) premium surcharge or the Real Estate Transaction Levies, for example. Lawyers in firms which restrict their practise to only criminal and/or immigration law can qualify for a premium discount equal to 50 per cent of the base premium under the Restricted Area of Practice (RAOP) option. Lawyers on the RAOP discount may want to help people in their communities, but have concerns that the work done may fall outside the technical definition of "criminal" or "immigration" law and that they will lose their premium discount. This is a serious issue for consideration before you embark on *pro bono* work that will cause you to lose a beneficial premium status under the LAWPRO insurance program.

LAWPRO receives questions about this, and it often has to do with representing people before administrative tribunals, such as licensing boards and for disciplinary hearings. Depending on the sanctions that may be imposed against the client, this may still qualify as "quasi-criminal." In these circumstances, we ask that you contact us about your plans. If LAWPRO confirms you can act, you can represent your client outside of a traditional criminal-law setting and still maintain your RAOP discount.

Exempt, and want to work *pro bono*?

As a lawyer exempt from the payment of LAWPRO premiums, you are likely aware that you do not have coverage for the delivery of professional services. While you may provide these services to an employer (including the government), or use your legal skills in a non-practising context (like education), you cannot carry on the private practice of law.

Increasingly, however, exempt lawyers are looking for ways to serve their communities by supporting access to justice. LAWPRO supports those efforts by offering limited coverage for exempts who do *pro bono* work through LAWPRO-approved PBO programs.

Exempt lawyers who volunteer through PBO

These are the terms of coverage for exempt lawyers delivering professional services through a LAWPRO-approved PBO program:

- Offering legal services through such a program will NOT jeopardize your exempt status.
- Because you are not required to pay a premium, you will not be subject to a claims history levy surcharge.
- You pay no deductible in the event of a claim.
- You will enjoy coverage under the LAWPRO Run-off coverage program, up to the limits of that coverage (an all-time limit of \$250,000, unless you apply and pay for increased coverage limits).

See a summary of these terms in the chart on page 9.

Run-off coverage was designed to cover claims arising out of an exempt lawyer's past private practice activities, and not services offered while exempt; however, *pro bono* services are the exception – services delivered *after* the lawyer has applied for and become eligible for exemption are covered. While this special coverage, available without payment of premiums, entails some risk for LAWPRO, that risk is reduced by the safeguards available through the PBO system. By offering coverage within the framework of our agreement with PBO, LAWPRO is able to balance support for access to justice with fairness to the insured lawyers who fund our program.

Exempts delivering *pro bono* services – but not through PBO

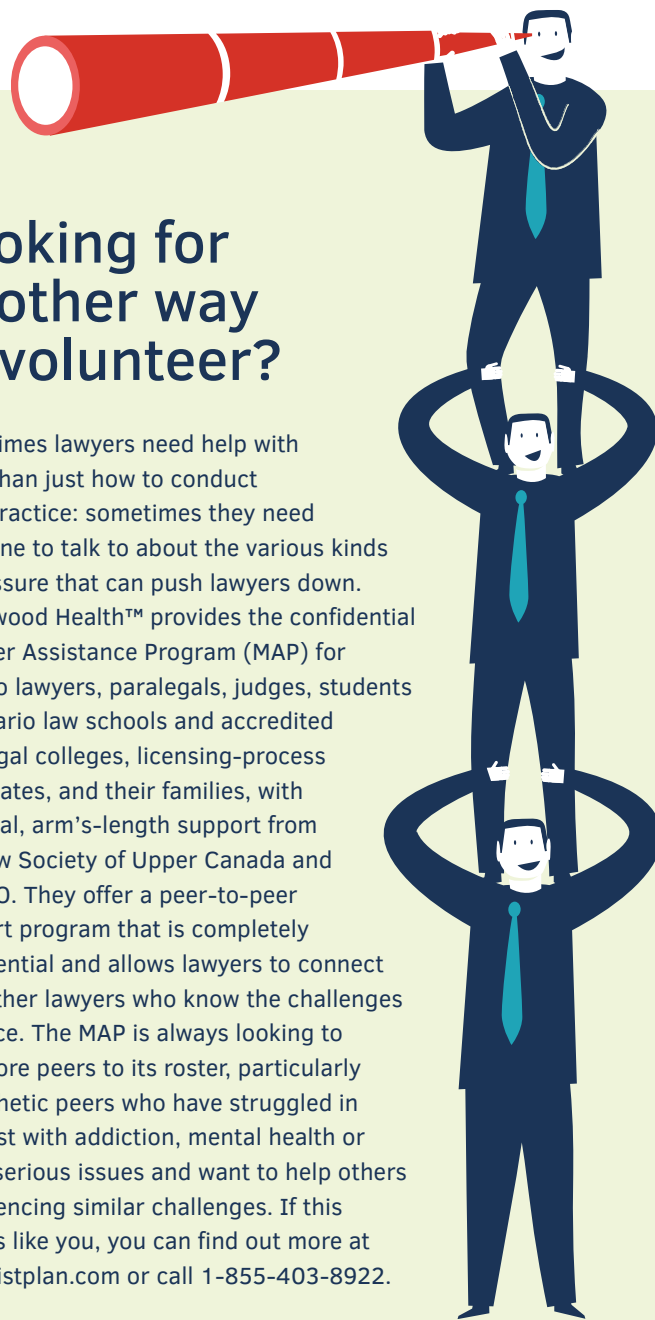
No professional legal services can normally be provided by lawyers on exemption to the public without paying for practice coverage. So, in general, you can't provide these types of services, even for free, unless you are either paying for practice coverage or providing them through an approved PBO program.

There is an exception possible for *pro bono* services for certain non-profit organizations themselves (i.e., as opposed to any members, clients, etc. thereof). If you receive LAWPRO's approval beforehand,

you can provide professional services to these non-profit organizations, but there will be no coverage under the Law Society insurance program in the event of a claim. This is a risk for lawyers (and clients) to consider. See the chart on page 9 for details of your exposure to uninsured claims.

Looking for another way to volunteer?

Sometimes lawyers need help with more than just how to conduct their practice: sometimes they need someone to talk to about the various kinds of pressure that can push lawyers down. Homewood Health™ provides the confidential Member Assistance Program (MAP) for Ontario lawyers, paralegals, judges, students at Ontario law schools and accredited paralegal colleges, licensing-process candidates, and their families, with financial, arm's-length support from the Law Society of Upper Canada and LAWPRO. They offer a peer-to-peer support program that is completely confidential and allows lawyers to connect with other lawyers who know the challenges you face. The MAP is always looking to add more peers to its roster, particularly empathetic peers who have struggled in the past with addiction, mental health or other serious issues and want to help others experiencing similar challenges. If this sounds like you, you can find out more at myassistplan.com or call 1-855-403-8922.



LAWPRO *pro bono* coverage summary charts

Coverage for *pro bono* “professional services” (as defined in the LAWPRO insurance policy¹) depends on your current insurance status as well as on the type of *pro bono* professional services you provide. Please refer to lawpro.ca/probono for additional information.

Currently **insured** for practice by LAWPRO

Type of <i>pro bono</i> work – Professional Services:	Coverage	Deductible	Claims history levy surcharge	Implications for part-time status
Through Pro Bono Ontario program approved by LAWPRO ²	Yes	No	No	These hours &/or past claims related thereto don't affect part-time eligibility
For Not-for-profit organization itself ³ (not through Pro Bono Ontario)	Yes	Yes	Yes	These hours and past claims related thereto will affect part-time eligibility
Exclusively through clinic within meaning of <i>Legal Services Act, 1998</i> , student legal aid society or Aboriginal legal services corp. funded by Legal Aid Ontario ⁴	Yes, but also subject to coverage under non-LAWPRO policy coverage	Yes, but also subject to coverage under non-LAWPRO policy coverage	Yes, but also subject to coverage under non-LAWPRO policy coverage	These hours and past claims related thereto will affect part-time eligibility

¹ Your LAWPRO policy is the contract that specifically and fully describes your coverage. In contrast, the description in this document gives a broad overview of coverages and programs and does not revise or amend a policy or program.

² In order for LAWPRO to approve a PBO program, and for your work to be covered, it must involve only legal work: (a) rendered to low income persons in civil matters or in criminal matters for which there is no government obligation to provide counsel; (b) that simplifies

the legal process for, or increases the availability and quality of services to, persons of limited means; and/or (c) rendered to charitable, non-profit and public interest organizations with respect to matters or projects to address the needs of low-income and disadvantaged individuals.

³ The services must be provided specifically for the organization itself, not for individuals within the organization or its clients. The organization benefiting from the services must be a not-for-profit organization.

Exempt status



Type of <i>pro bono</i> work – Professional Services:	Implications for Exempt Status	Coverage	Deductible
Through Pro Bono Ontario program approved by LAWPRO ²	None	Part of \$250K ⁵ per claim/ aggregate run-off	No
For Not-for-profit organization itself ³ (not through Pro Bono Ontario)	Obtain pre-approval from LAWPRO to maintain exempt status ⁶	None despite LAWPRO pre-approval	N/A
Exclusively through clinic within meaning of <i>Legal Services Act, 1998</i> , student legal aid society or Aboriginal legal services corp. funded by Legal Aid Ontario ⁴	None	None from LAWRO, but subject to coverage under non-LAWRO policy coverage (see footnote 6)	N/A

⁴ Only applies where the lawyer is NOT directly employed by Legal Aid Ontario, does not engage in the practice of law in Ontario other than for the individuals or communities served by the clinic, student legal aid services society or Aboriginal legal services corporation, and demonstrates proof of coverage under a policy of insurance as described in para. 6 of s. 9(1) of By-law 6 of the Law Society of Upper Canada.

⁵ The \$250,000 Standard Run-Off Coverage limit is a one-time limit and is not re-instated annually. Increased run-off coverage protection may be available for eligible lawyers who apply to LAWPRO. Lawyers under a temporary leave of absence are provided with the standard practice policy coverage limits.

⁶ In the alternative, you may choose to purchase coverage from LAWPRO under the primary insurance program, in which case the normal terms of the policy will apply in terms of deductible, claims history levy surcharges and part time status eligibility.

Other forms of volunteering and your coverage

Whether or not you are exempt from paying LAWPRO premiums, you should be aware that you might find yourself exposed to losses flowing from volunteer activities that fall outside the LAWPRO policy. Remember, lawyers' professional indemnity insurance covers you for the risks inherent in providing professional services as defined by the LAWPRO policy. Volunteer assistance that is other than practising law is not covered; if you are concerned about the risk of being sued over the volunteer work you do, you should ask the organization through which you are volunteering about their insurance coverage and whether it protects you, or take other steps to minimize your risk.

Examples of activities that fall outside the LAWPRO policy include: providing financial or investment advice; depositing client money into your firm's trust fund for reasons unconnected with your legal services; teaching (including teaching law); providing volunteer director services (distinct from legal services) on a corporate board; and speaking to the media on behalf of a client (see practicepro.ca/speakingtomedial for more information). One must remember that LAWPRO is licensed to provide professional liability insurance, not education or media liability insurance.

So, another type of activity to be considered is the provision of free legal information. For many people in Ontario, the legal system seems confusing and hostile to non-licensees. By educating members of the public on practical ways the law intersects in their lives (landlord and tenant issues, wills and estates, family law, small business, etc.) and by providing basic legal information, lawyers can help individuals equip themselves with enough knowledge to be confident in approaching licensees for help, or to act for themselves in a legal matter.

But for the most part, legal seminars and education sessions don't require lawyers to provide any professional services and therefore, are not typically covered by the LAWPRO policy. There is usually no client, and the lawyer is providing only general information. However in rare circumstances, a member of the public may interpret the information provided as being individual legal services from the insured lawyer speaker. These situations are known as "phantom client" scenarios, and claims flowing from them may, depending on the facts, come within LAWPRO coverage.

"Phantom clients" and your coverage

While very rare, "phantom clients" can show up following a lawyer's public speaking engagement. These are people who may believe they have entered into a solicitor-client relationship without the lawyer being aware it was happening. They can be audience members who ask specific questions about their own circumstances and the lawyer uses legal knowledge and skill to give an answer that goes beyond legal information and is really legal advice. In this type of phantom client scenario, if a claim develops there could, depending on the circumstances, be coverage under an insured lawyer's program policy, with relevant terms regarding deductibles, claims history levy surcharges, and so forth potentially applying.

If you have any questions about whether there may be any insurance implications arising from your *pro bono* activities or the way in which you want to give people better access to justice, please contact a LAWPRO customer service representative at service@lawpro.ca, by phone at 416-598-5988/1-800-410-1013 or visit our website at lawpro.ca. We can answer your questions and will help you to help others. ■

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