

# What's new for 2010?

The continued rise in the number and cost of claims, a decline in investment income caused by the global economic downturn, and the Ontario government's plan to harmonize its provincial sales tax ("PST") with the federal government's goods and services tax ("GST") are the key factors that make an increase in the LAWPRO base premium necessary in 2010.

Enhancements to the standard LAWPRO program coverage for 2010 include some overdraft protection for frauds against Ontario lawyers involving the deposit of counterfeit certified cheques and bank drafts in a lawyer's trust account, protection against misappropriation by Ontario lawyers temporarily practising elsewhere in Canada, coverage for Ontario lawyers working as special Canadian legal advisors in Quebec, and ensuring clarity of coverage for locum work.

The \$500 premium for the Real Estate Practice Coverage Option (REPCO) will fall to \$400 in 2010, while the real estate transaction levy will increase from \$50 to \$65 per transaction.

## Quick Summary:

- The base premium will increase from \$2,450 to \$2,950.
- The premium for REPCO will decrease from \$500 to \$400.
- The real estate transaction levy will increase from \$50 to \$65.
- The e-filing discount will decrease from \$50 to \$25 per lawyer.
- The lump sum payment discount (available with some restrictions) for premiums paid by Feb. 9, 2010, will decrease from \$150 to \$50 per lawyer.

\$2,950	\$200 claims development
	\$150 decline in investment income
	\$150 additional annual cost for HST
\$2,450	2009 Base Premium

## Premiums set at \$2,950 per lawyer

The base premium will increase \$500 per lawyer to \$2,950 in 2010. The combination of the rising number and cost of claims, a decline in investment income, and the expected impact of the introduction of a harmonized sales tax (HST) make this increase necessary.

The chart on this page explains the components that comprise the \$500 increase.

## CLAIMS DEVELOPMENT

Claims-related costs account for more than 85 per cent of LAWPRO's annual budget. The number of claims reported annually has been steadily increasing, topping the 2,000 mark for each of the last two years. Results to date for 2009 indicate the number of claims reported this year may be at the highest level since 1995.

The cost of resolving claims has been increasing steadily. Where the total cost of resolving claims reported in a given year was once in the \$55 to \$60 million range, it now regularly tops \$85 million. We expect the overall cost for claims made in 2010 to be about \$88.4 million.

For a detailed discussion of the worsening claims picture and its effect on premiums, see the September 2009 issue of LAWPRO Magazine, available online at [www.practicepro.ca/LawPROmag](http://www.practicepro.ca/LawPROmag). The issue was emailed to all Ontario lawyers in private practice on September 9, 2009, as the LAWPRO Webzine.

## DECLINING INVESTMENT RETURNS

Over the last five years, LAWPRO has benefited from a strong investment market that in 2007, for example, generated more than \$26 million in investment income. Given the current economic climate, we're not likely to see results like that for some time. Equity markets appear to be uncertain after dropping to very low levels, and rates of return on fixed income securities have dropped significantly. As a result, LAWPRO has less investment income to help pay claims and operating costs.

## HST

Approximately \$150 of the \$500 premium increase is the result of the added costs of operating in an HST environment.

The planned introduction of the HST on July 1, 2010, will affect the program in two principal ways: First, it will increase costs for rent, utilities, consulting work and general services that previously were only subject to the five per cent GST but now will be subject to the 13 per cent HST – i.e., eight per cent more – by about \$125,000 for the last six months of 2010. (Since insurance is an “exempt supply,” LawPRO is not able to recover GST/HST paid while conducting its business.)

More significant is its impact on claims costs – specifically on legal, expert and other fees we pay in defending lawyers, and on claimants’ legal and other fees that factor into indemnity payments made by LawPRO. We estimate HST will add \$3.2 million to the costs of resolving claims made in 2010, as most of these costs will be incurred by LawPRO well after the introduction of the HST.

Adding \$3.2 million and \$125,000 and dividing by the number of lawyers we expect to insure in 2010 – 22,440 – we get a figure of \$148. We expect that the HST will add about \$150 to the base premium for 2010.

## Real Estate Practice Coverage Option premiums

REPCO protection only applies to services provided since April 2008 when it was introduced. No claims have yet been reported to LawPRO. However, as this coverage specifically covers fraud by the lawyer and it takes time for claims to develop, given the growing inventory of covered services, it is particularly important to maintain a healthy reserve for potential REPCO claims that may have occurred but not yet been reported. It is therefore too early to make major changes to this premium.

### Filing deadlines:

#### NOVEMBER 2: E-FILE DEADLINE

File your 2010 insurance application by November 2, 2009, and you’ll receive a \$25 premium discount on your next year’s insurance premium. Last year, more than 95 per cent of lawyers completed their applications via the **My LawPRO** option on our website – [www.lawpro.ca](http://www.lawpro.ca)

#### NOVEMBER 9: APPLICATION FILING DEADLINE

To avoid paying a late filing surcharge of 30 per cent of the base premium, applications must be filed with LawPRO by November 9, 2009. Applications can be filed in one of three ways: electronically (e-file), by fax or mail.

However, to acknowledge the positive results to date, this premium has been reduced by \$100 to \$400 for the 2010 program. We will continue to assess this particular environment and fraud-related claims to determine the appropriate premium for this unique form of coverage

## Increase in real estate transaction levy

Real estate transaction levy revenues are down significantly – and in fact are below budget by more than \$2 million for the first six months of 2009. That’s not surprising given the plunge in resale and new home markets in Ontario over the past nine months and the widespread use of title insurance in residential transactions.

But the number and cost of real estate-related claims have been climbing steadily, despite the common use of title insurance. Since 2004, costs in this area of practice have increased by more than 65 per cent. They consistently account for more than 30 per cent of total claims costs.

This is partly due to significant increases in real estate property values. Average house prices in Ontario rose 20 per cent between 2005 and 2009, for example. So, when problems arise, losses can be significant – whether in the case of claims for which no or limited coverage is available under the title insurance policy issued, claims on residential or commercial deals for which no title insurance was purchased, or claims against vendor’s counsel.

These increased real estate-related claims costs, coupled with a decline in real estate levy revenues that help to offset the exceptional claims costs associated with this area of practice, make it necessary to increase the real estate transaction levy to \$65, for files opened on or after January 1, 2010.

**Lawyers should update their office procedures to incorporate the increased \$65 real estate transaction levy amount for real estate files opened on or after January 1, 2010.** Those disbursing the transaction levy to clients would pay \$68.25 (i.e., \$65.00 surcharge + \$3.25 GST), while those not doing so would pay \$65.00 (i.e., \$60.19 surcharge + \$4.81 PST). The civil litigation transaction levy remains unchanged. If the HST is enacted, information about its application to transaction levy surcharges will be posted on the LawPRO website ([www.lawpro.ca](http://www.lawpro.ca)).

## Special levy to cover HST impact on past claims

If the HST is enacted, and in the absence of any transitional relief, it is expected that a special levy of \$450 will have to be implemented to pay for a one-time revaluation of existing claims liabilities.

As of June 30, 2009, LawPRO held \$364.5 million of unpaid claims liability on its books. Some of those claims will be resolved prior to July 1, 2010, but most will not. We estimate the HST impact on this unpaid claims liability to be about \$10.2 million – or \$450

per lawyer. This is a one-time levy that would be imposed once LAWPRO is obliged to make provision for this liability following second reading of this legislation.

### Limited overdraft protection for counterfeit certified cheques and bank drafts

Effective January 1, 2010, as part of the standard program coverage, LAWPRO will provide some overdraft protection for frauds against practising Ontario lawyers while they are providing professional services that involve the deposit of counterfeit certified cheques and bank drafts into lawyers' trust accounts. This protection will be subject to a number of restrictions:

- A sub-limit of coverage of \$500,000 per claim/aggregate per lawyer and per firm, applicable to indemnity payments, claim expenses and/or costs of repairs, within the standard program coverage of \$1 million/\$2 million.
- A minimum deductible of \$5,000, applicable to indemnity payments, claim expenses and/or costs of repairs, unless the lawyer elected a higher deductible as evidenced in his or her policy declarations. (This provision will also apply to frauds involving the deposit of counterfeit certified cheques or bank drafts into lawyers' trust accounts that do not result in an overdraft but instead result in a loss to a client.)
- Before funds are drawn, the lawyer must either (1) wait eight full business days after the date when the counterfeit certified cheque or bank draft was deposited without notice or advice of the possible true nature of the instrument, or (2) if waiting fewer than eight full business days, receive confirmation from either the lawyer's or the drawee financial institution, as documented in writing between the lawyer and the financial institution, of verification by the drawee financial institution that the instrument is valid and it is safe to withdraw funds based upon the deposit.
- The counterfeit certified cheque or bank draft must have been received by the lawyer for inspection and deposit, and the institution on which the counterfeit instrument is drawn must be a Canadian financial institution;
- This coverage does not apply to retainer deposits, untransferred fees, or other amounts relating to legal fees, accounts or fee arrangements.

These restrictions encourage lawyers to adopt best practices and to think twice before carrying out instructions from a client to quickly move funds out of the lawyer's trust account.

### Protection against lawyer misappropriations during mobility

Effective January 1, 2010, LAWPRO will provide coverage for misappropriations by Ontario's practising insured lawyers arising from temporary practice in or with respect to the law of

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another Canadian jurisdiction, as part of the standard program. The coverage will be limited to \$250,000 per claimant and the program policy's aggregate limit of \$2 million in the aggregate per lawyer per firm. This coverage is needed to satisfy new requirements under the National Mobility Agreement.

### Mobility with Quebec

The Barreau du Québec, the regulator of lawyers in Quebec, is now authorized to grant special Canadian legal advisor (CLA) permits to members of other Canadian law societies, as full members of the Barreau with restricted practice status.

Subject to necessary changes by others concerning CLAs, the LAWPRO program will:

1. afford coverage to Ontario's practising insured lawyers for their services as a CLA; and
2. allow CLAs who are otherwise dual calls and insured under another law society program policy as home jurisdiction to exempt themselves from paying the LAWPRO premium, if called in Ontario.

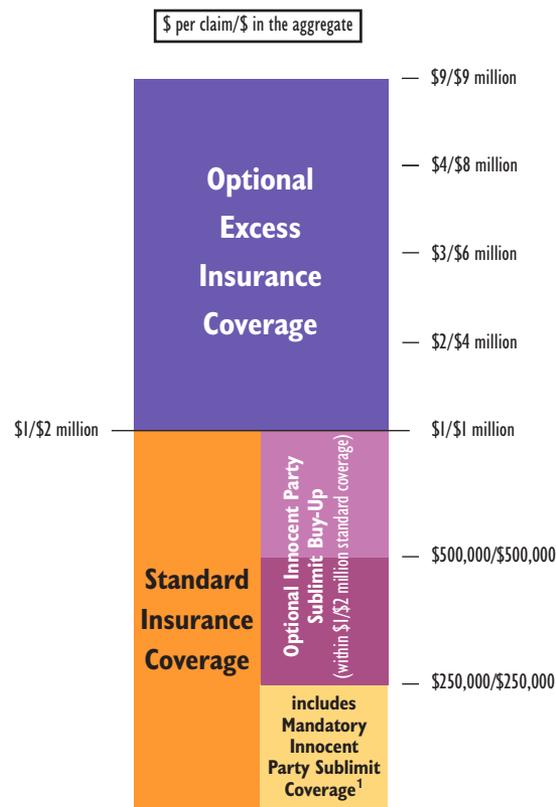
### Locums

In its application materials, LAWPRO offers guidance on the insurance issues that lawyers and law firms should consider if hiring or acting as a locum. The policy wording now specifically refers to locum work to ensure that lawyers fully understand the basis on which they are insured for their locum work.

For more information, see the article "Practice locums: E&O insurance issues to consider" in the LAWPRO Magazine, July 2009 at [www.practicepro.ca/LawPROmag/PracticeLocums.pdf](http://www.practicepro.ca/LawPROmag/PracticeLocums.pdf).

# 2010 insurance coverage for lawyers in private practice

Sole practitioners and lawyers in association or partnership



## Standard Insurance Coverage

### The base program

**Eligibility:**

Required for all lawyers providing services in private practice.<sup>2</sup>

**Coverage limit:**

\$1 million per claim/\$2 million in the aggregate (i.e., for all claims reported in 2010), applicable to claim expenses, indemnity payments and costs of repairs together.

**Standard deductible:**

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

**Base premium:**

\$2,950 per insured lawyer.

### Mandatory Innocent Party Sublimit Coverage<sup>3</sup>

**Eligibility:**

Required for all lawyers practising in association or partnership (including general, MDP and LLP partnerships), law corporations (with more than one lawyer) and sole practitioners practising with employed lawyers.

**Coverage sublimits:**

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

**Premium:**

\$250 per lawyer.

## Mandatory Real Estate Practice Coverage (for real estate practitioners)

**Eligibility:**

Required by all lawyers practising real estate law in Ontario in 2010.

Lawyers not eligible for the Real Estate Practice Coverage are:

- Those who are in bankruptcy;
- Those who have been convicted or disciplined in connection with real estate fraud;
- 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 costs of repairs together.

**Premium:**

\$400 per lawyer.

## Optional Insurance Coverages

### Innocent Party Sublimit Buy-Up<sup>4</sup>

#### **Eligibility**

Optional for all lawyers practising in association or partnership (including MDPs and LLPs), law corporations (with more than one lawyer) 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 lawyer (\$400 total Innocent Party premium); or
- to \$1 million per claim/aggregate for an additional \$249 per lawyer (\$499 total Innocent Party premium).

### Optional Innocent Party Sublimit Coverage<sup>4</sup>

#### **Eligibility:**

Optional for sole practitioners and lawyers practising alone in a law corporation. Provides protection for ongoing liability that sole practitioners can have in situations such as the following:

- 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;
- 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.

#### **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 all lawyers in private practice, and to all lawyers with Run-Off Coverage protection.

#### **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/\$2 million in the aggregate;
- \$2 million per claim/\$4 million in the aggregate;
- \$3 million per claim/\$6 million in the aggregate;
- \$4 million per claim/\$8 million in the aggregate;
- \$9 million per claim/\$9 million in the aggregate.

#### **Premiums:**

Underwritten on a firm basis, based on a risk assessment of information provided in the Excess Insurance application.

### FOR INFORMATION

For detailed information on the insurance programs and insurance options, or for application forms, please visit the LAWPRO website at [www.lawpro.ca](http://www.lawpro.ca).

Information is also available from the LAWPRO Customer Service Department at 416-598-5899 or 1-800-410-1013 or via e-mail: [service@lawpro.ca](mailto:service@lawpro.ca).

<sup>1</sup> Optional for sole practitioners.

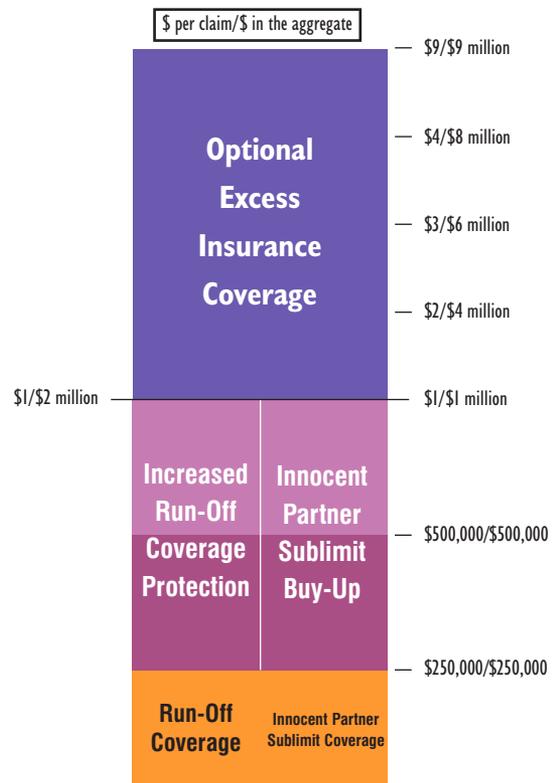
<sup>2</sup> Lawyers who are on temporary leave and qualify for exemption (c) are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program.

<sup>3</sup> Coverage for dishonest, fraudulent, criminal or malicious acts or omissions.

<sup>4</sup> LAWPRO strongly recommends that lawyers increase their optional coverage protection to the maximum sublimit offered, to avoid gaps in coverage.

# 2010 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)



## 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 exemption<sup>1</sup> 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 Law Ontario, and 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 claims expenses, indemnity payments and costs of repairs together;
- includes a sublimit coverage of up to \$250,000 per claim/in the aggregate for Innocent Partner claims.

### Premium:

None for standard Run-Off Coverage.

## 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;

for terms ranging from two to five years.

#### 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-Up<sup>2</sup>

**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.

<sup>1</sup> 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 [www.lawpro.ca](http://www.lawpro.ca).

<sup>2</sup> LawPRO strongly recommends that lawyers increase their optional coverage protection to the maximum sublimit offered, to avoid gaps in coverage.

## Excess Insurance

**Eligibility:**

Available to all lawyers in private practice, and to all lawyers with Run-Off Coverage protection.

**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/\$2 million in the aggregate;
- \$2 million per claim/\$4 million in the aggregate;
- \$3 million per claim/\$6 million in the aggregate;
- \$4 million per claim/\$8 million in the aggregate;
- \$9 million per claim/\$9 million in the aggregate.

**Premiums:**

Underwritten on a firm basis, based on a risk assessment of information provided in the Excess Insurance application.

# Exempt lawyers are at risk

Many lawyers believe that claims are not as much of an issue once they are retired or otherwise exempted from paying the insurance premium. They also (mistakenly) believe their \$250,000 Run-Off Coverage provides adequate protection for any claims that may be made against them.

For many lawyers, the opposite is true.

LawPRO has recently seen several cases where retired lawyers have exhausted their \$250,000 Run-Off Coverage limit. As well, our statistics tell us that one in 40 claims against lawyers exceeds the \$250,000 mark; and one in 100 claims tops \$500,000. Thus, a single claim could easily exceed your \$250,000 Run-Off Coverage limits.

Moreover, the standard Run-Off Coverage provides you with limited protection over time. The \$250,000 per claim/in the aggregate limit is a one-time limit and applies to all of the claims made against you while on exemption.\* Once the \$250,000 limit is used up, you are personally liable for any additional costs. As a result, a series of smaller claims over time can exhaust your coverage.

In addition, your exposure to claims may be higher than you think:

- Legal services which you or former partners or associates provided in the past may give rise to a claim, now or in the future.

- Lawsuits arise from many quarters – past clients, your former employer(s) and their officers or directors, shareholders, employees and any others who have relied on your legal advice.
- Many claims do not surface for several years; up to 10 per cent of claims are not reported until five years after the service that gave rise to the claim was provided.
- Although legislative changes such as the *Limitations Act, 2002*, may provide greater defences, they do not address all areas of exposure.

If you are concerned that claims arising out of past legal activities could exceed your \$250,000 Run-Off Coverage limits, you can apply to buy up these limits (as well as your Innocent Partner Coverage limits) for an additional premium.

For more information on Run-Off Coverage, please see the LawPRO website at [www.lawpro.ca](http://www.lawpro.ca), or contact our Customer Service Department at 416-598-5899 or 1-800-410-1013, or by e-mail at [service@lawpro.ca](mailto:service@lawpro.ca), and ask for a copy of the Insurance Matters brochure that applies to your category of exemption.

\* This does not apply to lawyers who qualify for the mobility exemption or exemption for temporary leave of absence.

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- applications for optional insurance coverages, and
- premium payment application form

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