

2014 LAWPRO policy responds to changes in the profession and related risks

Quick summary:

- Base premium for 2014: \$3,350 (unchanged since 2011)
- \$10,000 increase in deductible applied to certain administrative dismissal claims
- \$250,000 sublimit coverage for eligible cybercrime losses
- Coverage for Ontario lawyers also called in Quebec, in support of full mobility
- Paralegal licensees practising in partnership with lawyers must move to LAWPRO insurance

LAWPRO maintains base premium stability with help from the Errors & Omissions Insurance Fund (E&O Fund)

The LAWPRO base premium for 2014 will be \$3,350, unchanged since 2011.

Our mandate, established in 1994 by the Insurance Committee Task Force Report, requires that the cost of malpractice insurance generally reflect the risk of claims. Over the last four years, claims costs (when internal claims handling expenses are considered) have hovered near the \$100 million mark. We predict that 2014 will be no different.

In the face of escalating claims costs, how is it commercially reasonable to maintain premium stability? Our decision to hold the premium at \$3,350 was made possible by a decision to draw \$5 million in premium funding from the E&O Fund. This amount has accumulated as a result of transaction levies exceeding budget by varying amounts over the last several years.

For the 2014 policy year, we have elected to use the fund to allow for a steady base rate as we consider other factors that may affect the program in time for 2015.

What's the bottom line for lawyers? By drawing from the E&O Fund for 2014, we can spare lawyers the approximately \$200 increase in premium that would otherwise have been required to operate the program for the policy year.

\$10,000 increase in deductible applied to certain administrative dismissal claims

Escalating numbers of preventable administrative dismissal claims have prompted us to introduce a \$10,000 increase in deductible for these claims under certain circumstances. See page 2 for details.

Sublimit coverage for eligible cybercrime losses

For the 2014 policy year, LAWPRO has introduced sublimit coverage of \$250,000 per claim and in the aggregate for eligible cybercrime claims. See page 3 for an explanation of this coverage sublimit.

2014 policy supports Ontario/Quebec lawyer mobility consistent with NMA 2013

The 2014 LAWPRO professional indemnity policy provides the insurance framework for full permanent mobility for Quebec and Ontario lawyers. Read about the new insurance requirements on page 2.

Paralegal licensees practising in partnership with lawyers must move to LAWPRO insurance

In 2013, the Law Society passed a by-law requiring that paralegal licensees practising in partnership with lawyers purchase their mandated practice insurance from LAWPRO commencing in 2014. This new requirement is reflected in the terms of the 2014 policy; for details, see page 3.

\$10,000 increase in deductible for certain administrative dismissal claims

In our efforts to control escalating claims, we have circulated repeated warnings, tips, and resources about the risk of having a claim administratively dismissed for delay or by reason of abandonment under Rule 48 of the *Rules of Civil Procedure*. The article “Know how administrative claims happen, and take 8 steps to immunize against them,” which appeared in the September 2013 issue of *LAWPRO Magazine*, represents the eighth article we have published on this topic since 2009 – and that’s not including the many other efforts our spokespeople – and other writers and presenters – have made to educate the bar about the topic in the context of presentations, speeches, and CPD programming.

Nevertheless, these highly preventable claims continue to occur, and are becoming more challenging than ever to defend. Having opened our battle against administrative dismissals with a bushel of lawyer resource “carrots”, we are now forced to resort, in certain circumstances, to a less palatable approach. Starting with the 2014 policy year, where an administrative dismissal is not set aside through steps taken by or under the direction of LAWPRO, in regard to a resulting claim, the deductible for that claim will be deemed to apply to claim expenses, indemnity payments and/or repair costs and be \$10,000 more than the deductible chosen by the insured

and/or listed on the declarations page of the policy. (There is an exception to this, for claims arising out of certain *pro bono* work.)

We know that the possibility of an increased deductible has the power to deter oversights and misjudgments that lead to claims. When, in an effort to target claims based on conflicts of interest, a “double deductible” was introduced for claims arising from circumstances in which a lawyer represented parties adverse in interest, the proportion of LAWPRO claims based on conflicts of interest decreased in the years that followed. It is our hope that the introduction of an increased deductible for claims arising from non-rectifiable administrative dismissals will have a similar influence on lawyers’ practice habits.

Often these types of claims can be repaired if early notice is provided, so we urge lawyers to continue to report actual and potential claims as soon as they are discovered, to permit LAWPRO counsel every opportunity to have the proceeding reinstated and to avoid the application of the increased deductible. For this reason the increased deductible will apply only to claims resulting from administrative dismissals that are not set aside through steps taken by or under the direction of LAWPRO.

2014 policy supports Ontario/Quebec lawyer mobility consistent with NMA 2013

This October, the National Mobility Agreement 2013 (NMA 2013) is expected to be executed by representatives from Canadian law societies.

One of the key issues that required resolution to pave the way for this agreement was how to co-ordinate insurance requirements for lawyers called to both the Barreau du Québec and to one or more of the common law jurisdictions in Canada. While insurance requirements are consistent with respect to coverage limits across common law Canada, there are significant differences between the insurance

programs in these provinces/territories and the Quebec insurance program. Notably, lawyers called and practicing in Quebec are required to carry insurance with much higher limits of liability.

Lawyers called in both Quebec and Ontario will be required to carry two policies of insurance (the Law Society of Upper Canada and the Barreau du Québec’s programs of insurance). If the lawyer is called in more common law jurisdictions in Canada, he or she may be eligible to claim exemption from payment of the law society premiums in all but Quebec and one of the common law provinces, in accordance with the established exemption criteria.

Sublimit coverage for eligible cybercrime claims

Cyber attacks pose a growing threat to business livelihoods. While large-scale attacks on technology companies, government, and big businesses are more likely to feature in the headlines, smaller businesses and individuals are also being targeted.

Because law practices have access to confidential client information and often maintain substantial balances in trust accounts, lawyers and law firms are appealing targets to cyber criminals. Law firms may in fact be easier targets than larger businesses, because they may employ less sophisticated information security systems.

At LAWPRO, we believe that preventing breaches in confidentiality and financial losses due to these cyber attacks is a responsibility we all share. Law firms and individual staff members and lawyers who work in them must educate themselves about cyber risks and take all reasonable steps to ensure that data and funds are securely protected. Insurance against resulting losses should be viewed as a worst-case remedy, and not a replacement for preventive and protective steps.

In late 2012, LAWPRO learned of a high-value cyber attack on an Ontario firm. The attack was highly sophisticated and complex, and was designed to permit the fraudster to gain direct access to a firm's trust account using online banking privileges. For details about this attack and how to avoid being the victim of a similar fraud, see our December 21, 2012, post on the AvoidAclaim blog: avoidaclaim.com/2012/ontario-law-firm-victim-of-large-fraud-due-to-infection-by-trojan-banker-virus/. This is in addition to instances reported in the media involving cyber attacks against several law firms to access confidential client information.

Most Canadian law society insurance programs explicitly exclude coverage for cyber attack-related claims and exposures, whereas LAWPRO has refrained from excluding such issues. With the

demonstrated exposure of the insurance program to large losses arising out of cybercrime, and the potential for clusters of such claims across law firms, it is appropriate that further consideration now be given to how this risk is addressed under the insurance program and what additional steps might best be taken by lawyers to better protect their client data and trust funds, as well as themselves.

The increasing importance of cybercrime has led LAWPRO, for the 2014 policy year, to create a sublimit of coverage in the amount of \$250,000 for losses related to cybercrime as defined in the policy. This approach is consistent with that of certain other insurers which, like LAWPRO, are members of the National Association of Bar Related Insurance Companies (NABRICO).

In establishing this sublimit, we hope to balance the provision of some security for law practices facing a risk not wholly within lawyers' control with the need to encourage law firms to adopt cyber security best practices. **We strongly encourage lawyers to take every precaution reasonably available to prevent falling victim to a cybercrime.**

Lawyers should also understand that the sublimit provided, like all areas of the policy, applies to losses arising from lawyers providing professional services as lawyers. Losses that a firm might experience that go beyond this type of insurance coverage include reputational loss, physical damage or business interruption. Speak with your insurance broker to find out more about coverage for all types of cyber liability.

Over the next several months, including in the next issue of *LAWPRO Magazine*, we will be publishing information about cybercrime and how to protect your practice.

Paralegal licensees practising in partnership with lawyers must move to LAWPRO insurance

For consistency and efficiency in coverage it has been found that coverage is best provided by a single insurer for all partners in a partnership. Accordingly, earlier this year, the Law Society amended its by-laws to require, as of 2014, paralegal licensees practising in partnership with one or more lawyers to obtain their mandated insurance from LAWPRO. (This requirement does NOT apply to paralegals who work in law firms, but are not in partnership with lawyers.)

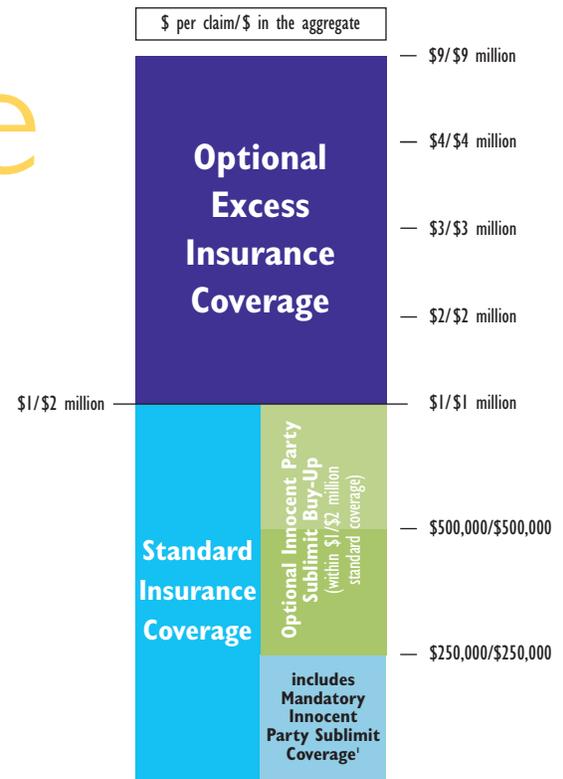
The premium that will be charged to paralegal partners for this coverage, which will be introduced as the paralegal partners' commercial insurance comes due for renewal on or after January 1, 2014, will be based upon risk and, like the premium charged to

lawyers, will be subject to change as risk and other factors change. Factors that will be considered in assessing practice risk will include whether or not the paralegal licensee is involved in handling claims for statutory accident benefits, how many years the paralegal licensee has been in practice, whether he or she is in part-time practice, and his or her claims history. Paralegal licensees practising in partnership with lawyers will also, like their lawyer partners, be subject to transaction levies for certain civil litigation transactions.

Finally, like all-lawyer firms, paralegal partners will need to select the same deductible and innocent party sublimit option as other insureds in the firm.

2014 insurance coverage

for lawyers in private practice sole practitioners and lawyers in association or partnership



Standard Insurance Coverage

The base program

Eligibility:

Required of all lawyers providing services in private practice.²

Coverage limit:

\$1 million per claim/\$2 million in the aggregate (i.e., for all claims reported in 2014), applicable to claim expenses, indemnity payments and/or costs of repairs together.

New Cybercrime Coverage Sublimit:

The 2014 insurance program introduces a sublimit coverage of \$250,000 per claim/in the aggregate for eligible cybercrime claims, 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.

As explained on pages 1 and 2 of this issue, an increase in deductible of \$10,000 has been introduced for claims based on administrative dismissals where the dismissal is not set aside through steps taken by or under the direction of LawPRO. For more information on non-standard deductibles, please see our FAQ article on the subject at: lawpro.ca/deductible-options

Base premium:

\$3,350 per insured lawyer (plus PST).

Mandatory Innocent Party Sublimit Coverage³

Eligibility:

Required of all lawyers practising in association or partnership (including general, MDP, LLP, and lawyer/paralegal 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/or costs of repairs together.

Premium:

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

Defining cybercrime

CYBERCRIME(S) means an incursion, intrusion, penetration, impairment, use or attack of a COMPUTER SYSTEM(S) by electronic means by a third party, other than the INSURED or the INSURED'S LAW FIRM.

Mandatory Real Estate Practice Coverage (for real estate practitioners)

Eligibility:

Required of all lawyers practising real estate law in Ontario in 2013.

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; 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:

\$250 per lawyer (plus PST).

Optional Insurance Coverages

Innocent Party Sublimit Buy-Up⁴

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) 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 Coverage⁴

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.

LAWPRO coverage for paralegal licensees practising in partnership with lawyers

As of January 1, 2014, or on the date thereafter on which their existing insurance coverage comes due for renewal, paralegal licensees practising in partnership with lawyers will be required to carry professional indemnity insurance provided by LAWPRO. Paralegal licensees practising in partnership with lawyers will require coverage with the same limits and the same deductibles as that carried by their lawyer partners. They will also be required to carry Mandatory Innocent Party Sublimit Coverage with the same sublimits as that carried by their lawyer partners.

For details about LAWPRO insurance coverage for paralegals, including information about risk-rating, premiums, and deductibles, please contact the customer service department at (416) 598-5899 or 1-800-410-1013 or via email: service@lawpro.ca.

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 lawyers in private practice, and to lawyers with Run-Off Coverage protection, bought up to the \$1 million/\$2 million level.

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

¹ Optional for sole practitioners.

² 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.

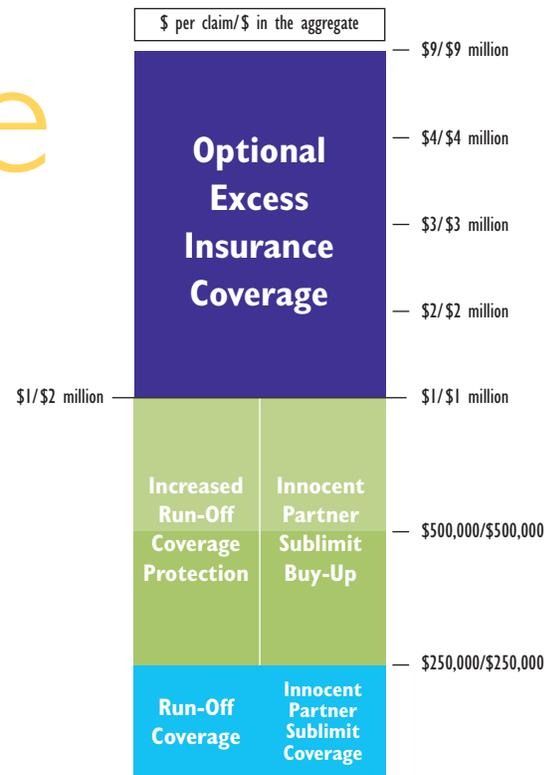
³ Coverage for dishonest (as defined), fraudulent, criminal or malicious acts or omissions.

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

2014 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 Law Ontario, 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 claims 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.

Optional Insurance Coverages

Increased Run-Off Coverage protection

Eligibility:

- optional for lawyers and eligible paralegal licensees 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 or eligible paralegal licensees 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.

Do you provide non-traditional services? These may not be covered! See: "Danger signs: Five activities generally not covered by your LAWPRO policy" from LAWPRO Magazine Volume 9.2 (practicepro.ca/activities-not-covered); "Avoiding claims when serving clients on a budget" from LAWPRO Magazine Volume 11.4 (practicepro.ca/clients-on-budget); and "Lawyers on client boards: Handle with care" published January 2012 in LAWPRO's corporate commercial webzine (practicepro.ca/lawyers-on-client-boards).

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

Eligibility:

Available to lawyers in private practice, and to 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/\$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 basis, based on a risk assessment of information provided in the Excess Insurance application.

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.

For information

For detailed information on the insurance programs and insurance options, or for application forms, please visit the LAWPRO website at 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.

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.

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

Are you covered for a big claim? Consider LAWPRO Excess Insurance

With your Law Society insurance renewing January 1, it is a good time to consider your firm's excess needs. Remember that the limits on LAWPRO's primary program are \$1 million per claim/\$2 million in the aggregate.

Could any of your matters lead to a malpractice claim of more than \$1 million? Don't forget to include defence costs and pre-judgment interest. And remember, you can be held liable for the work of partners, associates, employees and others.

LAWPRO has you covered as we offer excess limits ranging from \$1 million per claim/in the aggregate to \$9 million per claim/in the aggregate.

The benefits of purchasing Excess Insurance from LAWPRO

There are benefits to getting your excess insurance from LAWPRO. Our Excess program builds on the primary program, minimizing the possibility of gaps in coverage because of inconsistencies between the two policies. It can reduce delays and avoid potential disputes between insurers. As reporting a claim with LAWPRO automatically triggers both primary and excess coverage, you also eliminate the worry that you could be denied excess coverage because you forgot to report promptly to all insurers.

Visit lawpro.ca for more information or to apply for LAWPRO Excess Insurance.

Connect with LAWPRO:   

MY LAWPRO: Your 24/7 online portal

Remember to visit MY LAWPRO where you can log into a secure, password-protected portal to do the following tasks:

- request and receive a certificate of insurance (on an individual lawyer basis only);
- update your contact information;
- choose or change your method of payment;
- apply for exemption from the mandatory insurance requirement;
- change your exemption status;
- apply for optional insurance coverage (excess insurance, increased run-off protection or innocent party coverage);
- file your transaction levy surcharge forms;
- access previous years' insurance documents and forms;
- view your personal account or e-filing history information, for current and previous years;
- access policy documents, including invoice and policy declaration pages; or
- access information on excess coverage specific to your firm (available if logging in using your firm account number and password).

Look for the MY LAWPRO link at the top of every page on lawpro.ca.



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LAWPRO Magazine is published by Lawyers' Professional Indemnity Company (LAWPRO) to update practitioners about LAWPRO's activities and insurance programs, and to provide practical advice on ways lawyers can minimize their exposure to potential claims.

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