

2015: Fifth year of premium stability

LAWPRO celebrates 20 years operating primary program

Quick summary:

- base premium for 2015: \$3,350 (unchanged since 2011)
- expanded range of programs approved for LAWPRO Risk Management Credit (RMC)
- paralegal partners now eligible for RMC savings
- expanded policy definitions for “employee” and “prescribed penalties”
- clarification of coverage for the work of non-licensee professionals in Multidisciplinary partnerships (MDPs)

Five years of premium stability

As we prepare for the 20th anniversary of the LAWPRO program in 2015, we are pleased to announce that, for the fifth year in a row, the LAWPRO base premium will be \$3,350.

The depth of our underwriting experience, good investment returns and plateauing claims have allowed LAWPRO to keep premiums stable despite annual claims costs of nearly \$100 million (including internal claims handling expenses).

While we cannot escape external pressures (such as changes coming to our solvency test, the Minimum Capital Test), we remain committed to the prudent claims management, cost containment and risk-rating approaches that have supported our financial stability over the last 20 years.

LAWPRO Risk Management Credit eligibility expanded

The LAWPRO Risk Management Credit (RMC) program has proven successful in encouraging lawyers’ participation in continuing professional development (CPD) programs with a risk-management focus. Because maintaining good mental health and coping well with stress helps lawyers avoid claims, LAWPRO contributes financially

to the Law Society’s Member Assistance Program (MAP) administered by Homewood Human Solutions (HHS). As of 2015, certain e-learning courses offered on the HHS site will now be approved for the RMC credit. Approved programs address issues including managing stress, managing alcohol and substance consumption, coping with financial pressures, and managing working relationships.

Also, paralegal licensees who work in partnership with lawyers are eligible, as of September 16, 2014, to earn the RMC for approved CPD programs they attend, which will allow them to save up to \$100 on their 2016 premiums.



Lawyers employed part-time for one employer now also “employees”

To support consistent and fair coverage of claims based on the work of employee lawyers, the definition of “employee” under the policy has been expanded to include all employees who provide professional services for one employer, whether they do so on a full-time or part-time basis.

Fines for non-disclosure under s. 237.3 of *Income Tax Act* now “prescribed penalties”

Section 237.3 of the *Income Tax Act* (ITA) has some potential to impose penalties on lawyers for non-disclosure of transactions alleged to offend the General Anti-Avoidance Rule (GAAR). As with certain other penalties, to ensure that effective investigation and defence cost protection of up to \$100,00 is available to lawyers who successfully defend such penalties assessed (upon final resolution), the definition of “prescribed penalties” under the policy has been expanded to include penalties charged under s. 237.3 of the ITA.

Clarification of coverage for non-licensee professionals in multidisciplinary partnerships (MDPs)

The policy has been amended for greater clarity to describe the scope of work performed by non-licensee professionals in multidisciplinary

partnerships (MDPs) that is covered by the LAWPRO policy. Coverage is limited to:

- the practice of the non-licensee's profession, trade, or occupation that supports or supplements the practice of the Law of Canada
- services performed for, or on behalf of, the MDP
- services provided or which ought to have been provided within Canada, and

- claims or civil suits brought on their merits in Canada.

New cancellation and extended notice period provisions

Cancellation and extended notice period provisions regarding paralegal partners in combined licensee partnerships are also being added to comply with the mandatory insurance provisions for paralegals under the Law Society's *By-Law No. 6*.

Exemption eligibility for “employed” lawyers

A common fallacy is that all lawyers who work in a corporate, government, education or municipal setting will be entitled to an exemption from the requirement to pay LAWPRO premiums for the Law Society's mandatory insurance program. Depending on the employment relationship and the nature of the work, this may not be true.

To qualify for one of the “single employer” exemptions under the Law Society insurance program (Exemptions D and E), the lawyer must be employed by a single employer **and** not engage in the practice of law in Ontario other than for and on behalf of that employer.

Employed by a single employer

While the situation for a lawyer who is engaged in the practice of law as an employee of a corporation and doing work only for and on behalf of that corporation is clear (they would be exempt), the circumstances in which lawyers do work for their employer or clients vary widely.

For example, the following do not meet the exemption requirements:

- **Independent contractor relationships** – the essence of an independent contractor relationship is that the contractor is not an employee.
- **Crown attorney work on a contract** to the provincial or federal government – once again, the contractor is not an employee. (This is different from a crown attorney employed by the government, who would meet the first part of the exemption test).
- **Employed lawyers who do work for different units in a corporate group** that don't fall within the definition of “employer” in Law Society *By-law No. 6*: unless that definition is met, the lawyer cannot claim exemption because he/she does not have a single employer. The by-law specifies that “employer” includes a corporation, any affiliated, controlled and subsidiary company of the corporation and any other entity employing the lawyer, and “affiliated,” “controlled,” and “subsidiary” have the same meanings given them in the *Securities Act*.
- **Lawyer employed by a single employer, but duties include performing legal services for others** (such as customers of the employer or fellow employees) – the lawyer is also engaged in the practice of law on behalf of someone else.

Engaged in the practice of law

Why is this relevant? To qualify for the “single employer” exemption, the lawyer cannot engage in the practice of law in Ontario other than for and on behalf of that employer. The nature and type of work undertaken by lawyers in corporate or other non-law firm settings will vary widely, and will often include legal and non-legal tasks. So, if the work you are doing for others (i.e., anyone other than your sole employer) isn't the practice of law, you may still qualify for the exemption.

Generally speaking, if a lawyer uses his or her legal knowledge, judgment and/or skill when working on a matter, and a solicitor/client relationship is established, it can be expected that the lawyer has engaged in the practice of law for the purposes of the LAWPRO exemptions. Job titles, task descriptions, ultimate supervision of the work and the existence of other types of insurance are not determinative of exemption eligibility.

Consider a lawyer doing document review work for litigation matters. A lawyer who is reviewing documents for relevance and production obligations, assessing documents for privilege, or identifying documents to support legal arguments and defences, would be seen to be engaged in the practice of law in determining eligibility for LAWPRO exemptions. On the other hand, a lawyer who is summarizing or condensing volumes of information for publishing purposes would not be seen to be engaged in the practice of law because that type of task doesn't require the skill or knowledge of a lawyer.

Call us if you have questions

We recognize that the employment and work circumstances of lawyers will vary widely. If you need help determining if you qualify for an exemption as an employed lawyer or if you are engaged in the practice of law, please contact the LAWPRO Customer Service Department at service@lawpro.ca or by phone at 1-800-410-1013 or 416-598-5899. We will review your situation and give you direction based on the provisions of the LAWPRO policy.

The “Not engaged in the practice of law exemption” – a separate ground of exemption

The discussion of whether a lawyer is engaged in the practice of law in this article is also relevant for lawyers claiming the “not engaged in the practice of law” exemption. If you are not engaged in the practice of law you are exempt from paying LAWPRO premiums, regardless of where you work. Once again, feel free to contact the LAWPRO Customer Service Department to discuss your specific circumstances.

Amendments to Rule 48 bring major changes to administrative dismissals

Significant changes to the *Rules of Civil Procedure* relating to administrative dismissals appear in *Ontario Regulation 170/14*, published in the September 6, 2014 *Ontario Gazette*. Specifically, the existing Rules 48.14 (Action not on trial list) and 48.15 (Action abandoned) were revoked, and a new Rule 48.14 (Dismissal of an action for delay) was substituted in their place. For ease of reading, all references to Rule 48.14 in this article are to the new rule, unless noted.

In the past three years, LAWPRO has experienced a significant spike in the number and cost of claims involving administrative dismissals. We are hopeful the provisions in the new Rule 48.14 will help reduce administrative dismissal-related claims. However, there remains a claims risk if lawyers do not comply with the requirements under the new rule, or are not aware of the operation of the transition provisions.

The major change is that an action will be dismissed for delay if not set down for trial by the later of five years after the commencement of the action or January 1, 2017.

The significant changes, effective January 1, 2015, are summarized in the following points:

- For actions commenced on or after January 1, 2012, automatic dismissal will occur, **without notice to parties or their counsel**, 5 years after the commencement of the action, unless the court orders otherwise. [Rule 48.14(1)]
- Any action struck from the trial list after January 1, 2015, and not restored by the second anniversary of being struck off, will be dismissed on that date, **without notice to parties or their counsel**, unless the court orders otherwise. [Rule 48.14(1)]
- The registrar must serve 48.14 dismissal orders (Form 48D) on all parties [Rule 48.14(2)] and any lawyer served with such an order must promptly give a copy to his or her client. [Rule 48.14(3)]
- A dismissal can be avoided if a party, with the consent of all other parties, files a timetable and draft order, at least 30 days prior to the relevant dismissal deadline. The timetable and draft order must set out the dates by which outstanding steps necessary for set-down will be completed and a date (no more than two years after the automatic dismissal deadline for the action) by which the action will be set down or restored to the trial list. [Rule 48.14(4)]
- Where the parties do not consent to a timetable, one party can bring a motion for a status hearing. At that hearing, *the plaintiff* must show cause why the matter should not be dismissed for delay. The court can dismiss the matter, adjourn the matter, make a Rule 77 case management order, or set deadlines for completion of the steps necessary prior to set-down and a deadline for set-down for trial (or restoration to the trial list). [Rule 48.14 (5-7)]
- The dismissal of an action under Rule 48.14 may be set aside under Rule 37.14. [Rule 48.14 (10)]

Transition provisions

The transition provisions provide the following:

- Any action commenced before January 1, 2012 that has not been dismissed or scheduled for a status hearing by January 1, 2015 will be dismissed January 1, 2017 **without notice to parties or their counsel**. [Rule 48.14(1)]
- Any action struck from the trial list before January 1, 2015 that has not been restored by January 1, 2017 will be dismissed on that date, **without notice to parties or their counsel**. [Rule 48.14(1)]
- Any status hearings scheduled, but not held, before January 1, 2015, will proceed under the old Rule 48.14. [Rule 48.14(12)]
- Old Rule 48.14 and 48.15 status notices received by parties prior to January 1, 2015 will cease to have effect on that date, unless a status hearing has already been scheduled or the action has already been dismissed. [48.14(11) and (13)]

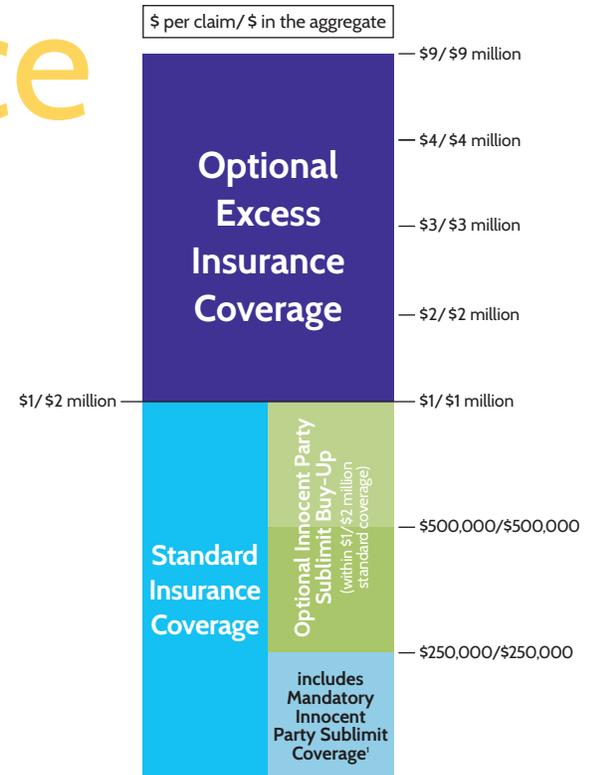
Risk management steps

LAWPRO encourages all lawyers to take steps to familiarize themselves with the requirements under the new Rule 48.14, and in particular, the transition provisions. Please update the dates in your tickler systems to reflect the new administrative dismissal and ultimate set down deadlines for all your open files. **Remember: the courts will be dismissing actions without sending notices of any type – your tickler systems must remind you of relevant dismissal deadlines.** We will be providing more risk management advice to the profession as the changes under the new Rule 48.14 are being phased in. And as there is the potential for a malpractice claim, please contact LAWPRO promptly for advice if you are required to attend at a contested show cause hearing.

2015 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 made in 2015), applicable to claim expenses, indemnity payments and/or costs of repairs together.

Reminder: Cybercrime Coverage Sublimit:

The 2015 insurance program includes 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.

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.

Standard deductible:

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

An increase in deductible of \$10,000 applies for claims based on administrative dismissals not set aside through steps taken by or under the direction of LAWPRO. The deductible will be deemed to apply to claims expenses, indemnity payments and/or costs of repairs together in respect of such claims.

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).

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.

Mandatory Real Estate Practice Coverage (for real estate practitioners)

Eligibility:

Required of all lawyers practising real estate law in Ontario in 2015.

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;

LAWPRO coverage for paralegal licensees practising in partnership with lawyers

As of 2014, paralegal licensees practising in partnership with lawyers are required to carry professional indemnity insurance provided by LAWPRO. Paralegal licensees practising in partnership with lawyers require coverage with the same limits and the same deductibles as that carried by their lawyer partners. They are also required to carry Mandatory Innocent Party Sublimit Coverage with the same sublimits as that carried by their lawyer partners.

New! Paralegal licensees with LAWPRO coverage can claim the Risk Management Credit (RMC) for the 2016 policy year. Paralegal licensees who, between September 16, 2014 and September 15, 2015, complete CPD programs approved by LAWPRO for risk management content are eligible to receive \$50 premium discount for each program (to a maximum of \$100).

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

- 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.

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:

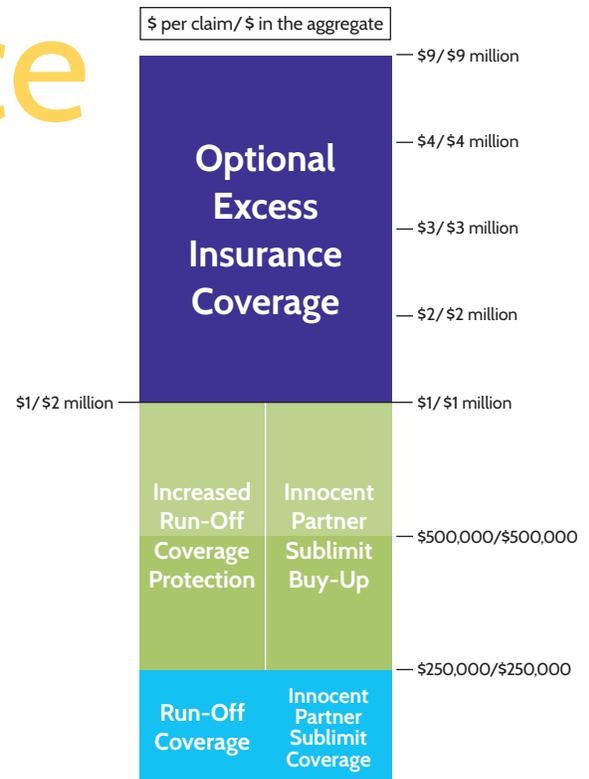
Available to law firms (including MDPs and lawyer/paralegal partnerships), and to lawyers with topped-up Run-Off Coverage. **See page 7 for details of the Excess program.**

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

2015 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 claim 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.

Deductible:

Deductible for Run-Off Coverage is \$5,000 per claim applicable to claim expenses, indemnity payments and/or costs of repairs together.

While there is no premium for basic Run-Off Coverage, run-off claims are subject to a deductible of \$5,000 per claim. For more details about the deductible and for answers to other common questions about Run-Off Coverage, please see page 29 of the "2013 Annual Review" issue of LAWPRO Magazine available at lawpro.ca/MagazineArchives

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

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-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

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

Excess Insurance for law firms and lawyers with topped-up Run-Off Coverage

Eligibility:

Available to law firms (including MDPs and lawyer/paralegal partnerships), and to lawyers with topped-up Run-Off Coverage.

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-wide basis, based on a risk assessment of information provided in the Excess Insurance application, marketing materials of the firm and supporting documentation.

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.

More information

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

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.

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.

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:

- NEW! Review your Risk Management Credit history (declared and applied)
- 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 or 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, and
- access information on excess coverage specific to your firm (available if logging in using your firm account number and password)

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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 malpractice claims. The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.

The comments in this publication are intended as a general description of the insurance and services available to qualified customers through LAWPRO. Your policy is the contract that specifically and fully describes your coverage and nothing stated here revises or amends the policy.

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