

Your 2018 insurance program

Quick summary:

- Base premium for 2018: \$2,950
- Part-time practice billing limit updated
- Innocent Party/Partner levy reduced
- No more civil litigation transaction levies for family law matters
- Civil litigation transaction levy increased to \$100

Base premium stable

The base premium for 2018 will remain unchanged at \$2,950.

Claims management and cost containment efforts are expected to support our efforts in 2018 to handle projected claims without increasing the base premium.

Part-time practice criteria updated

The gross billing limit for lawyers in respect of the Part-Time Practice Option is increased by 20 per cent to \$90,000 from \$75,000 per year.

In recognition of claims data demonstrating that lawyers who practise part-time have fewer claims, LAWPRO introduced a premium discount for part-time practice in 1997. To qualify for the discount (which is 50 per cent of the base premium), a lawyer must make an application. For the purpose of LAWPRO coverage, part-time practice is defined as 20 hours per week and 750 hours per year of professional time (including time spent on undocketed work but not including work through LAWPRO-approved Pro Bono

Ontario programs). Qualifying lawyers must also have no claims resulting in indemnity payments reported under the primary insurance program prescribed by the Law Society of Upper Canada within the previous five years.

Finally, eligibility for the discount requires compliance with a gross billings limit. When the discount was first introduced, the limit was set at \$60,000. In 2007, it was increased to \$75,000. For the 2018 premium year, to adjust for inflation and to ensure that the part-time criteria continue to reflect a similar size of practice today as when they were updated in 2007, the gross billing limit for lawyers in 2018 will be increased by 20 per cent to \$90,000.

The part-time practice option remains a risk-rated premium discount to reflect the reduced risk of claims associated with the part-time practice of law by lawyers in Ontario.

Innocent Party/Partner levy reduced

Beginning with the 2018 policy year, the Innocent Party/Partner levy will be reduced by half to \$125 for the basic \$250,000 per claim/in the aggregate sublimit coverage.

Occasionally, a client who has suffered a loss due to the dishonest, fraudulent, criminal or malicious acts or omissions of a lawyer is successful in advancing a claim against one or more associates, partners or co-shareholders of that lawyer. LAWPRO has developed "Innocent Party" coverage to insure against these claims. Lawyers practising in association, in partnership, or in a law corporation and sole practitioners practising with employed lawyers must purchase at least the basic innocent party coverage, as must all

partners and shareholders (including paralegals) in a combined licensee firm. These individuals also have the option to buy up additional levels of coverage.

Forecasting claims under this coverage is complicated. Some fund years see few to no claims, while others are plagued by a series of high-value claims. Careful actuarial analysis of past experience supports a reduction in the premium charged for all levels of innocent party coverage.

The availability and pricing of the optional coverages remain subject to underwriting of individual risks for the “buy up” categories. Pricing for the optional levels of coverage is generally projected at \$75 to buy up the coverage to \$500,000, and \$50 to further buy up the coverage to \$1 million.

Civil litigation transaction levies waived for family litigation

Family law matters make up a significant proportion of lawyer files in Ontario each year.

LAWPRO analysis of claims trends has shown that, from a professional indemnity perspective, family law litigation is significantly less risky than other kinds of litigation. In response to this observation,

beginning in the 2018 policy year, lawyers who initiate family law proceedings will no longer be required to pay civil litigation transaction levies. See the article below for further details.

Transaction levies for non-family litigation matters increased to \$100

Maintaining an effective and responsive insurance program requires a continual process of risk-rating. Risk-rating in the context of insurance simply means striving to have appropriate coordination between the cost of insurance coverage and the likelihood and magnitude of the risks to which that coverage relates. While all insurance programs require a certain amount of cost-spreading across the spectrum of program participants, demanding higher premiums from very high-risk insureds is necessary in the interests of fairness. The results of our risk-rating analysis over the past several years have made it clear that fairness now demands that the civil litigation bar be asked to shoulder more of the costs of the program. On or after January 1, 2018, transaction levies for non-family civil litigation matters will be \$100, an increase from \$50 in 2017. The transaction levy is triggered at the commencement of a proceeding or the defence of a proceeding. The rationale for this increase is presented in the article below. ■

Civil litigation levies evolve to reflect risks

No lawyer in private practice is immune to professional indemnity claims. However, over 20 years’ experience insuring the Ontario bar has made it clear to LAWPRO analysts that claims risk varies with area of practice. Lawyers who practise real estate or civil litigation face a significantly higher risk of claims than those who practise in other areas.

Like most insurers, LAWPRO strives to promote a reasonable degree of fairness in the setting of premiums. We do this, in part, by offering discounts to lower-risk practitioners (criminal law, immigration, part-time practitioners, new lawyers) and by charging transaction levies for higher-risk work (real estate, civil litigation). Transaction levies offer the additional benefit of tying premium collection to practice volume. These discounts and levies are some of the main tools by which we “risk-rate” coverage.

The analysis that underlies risk-rating is a continual process. Practice habits evolve, the economy changes, and new methods of dispute resolution emerge. These and other factors influence claims trends. Each year, LAWPRO staff track claims patterns and apply actuarial methods to re-evaluate the assumptions underlying risk-rating decisions.

In preparation for the design of the 2018 insurance program, risk-rating analysis confirmed two patterns we have been monitoring: the first is that the rate and cost of civil litigation claims is becoming too high compared to the premiums recovered from those practitioners; and the second is that family law litigation is not a part of that trend.

Risks relatively low for family law litigation

When claims are reported to LAWPRO, they are “coded” based on area of practice and the nature of the error alleged. This coding system has evolved over the years, allowing analysts to identify claims patterns with increasing precision. In recent years, LAWPRO’s actuarial analysis of risk-rating results has shown that total premiums attributable to the family law bar meet the expected loss costs.

Furthermore, within the broader category of family law-based claims, analysis shows that litigation-related errors are responsible for fewer claims than are other types of family law errors. In other words, while civil litigation broadly defined is a high-risk practice area from a claims point of view, family law litigation, as a subcategory of litigation, is not.

In addition to supporting risk-rating objectives, elimination of the civil litigation transaction levy for family law matters may help improve access to justice. By reducing coverage costs for lawyers, we hope that costs for family law litigants will also be reduced.

Premiums not keeping up with non-family litigation claims costs

Observation of the non-family litigation claims experience reveals a different story.

In recent years, the growth in civil litigation claims has outstripped the overall growth in claims. For example, from 2006 through 2010, LAWPRO received an average of 708 civil litigation claims each year. During 2011 through 2015, the average increased to 948 each year. This growth of 34 per cent vastly exceeds the 7 per cent total growth of claims for all other areas of law over the same time period.

In the years 2007 through 2014, the average cost of these claims was \$5,935 per civil litigation practitioner. This amount is significantly more than the amount collected in premiums – including civil litigation transaction levies – from the lawyers practising in this area.

Risk-rating requires a transaction levy increase

The discrepancy between the cost of claims generated by civil litigation lawyers and the premium collected from those lawyers means that an adjustment to LAWPRO’s risk-rating methods is appropriate at this time. Accordingly, beginning with the 2018 program year, the civil litigation transaction levy is increased from \$50 to \$100.

As provided in paragraph A of Endorsement No. 3 of the policy, a “civil litigation transaction” is defined as the commencement of a proceeding or a defence to a proceeding (see the full definition in the endorsement). The new levy amount will apply to proceedings commenced, as defined, on or after January 1, 2018.

Key dates

On or about October 2, 2017

LAWPRO online filing of Professional Liability Insurance renewal applications for 2018 is expected to begin. If you wish to file a paper application instead of filing online, please note that paper renewal applications will not be automatically mailed out, but it is expected that you will be able to download a 2018 pre-populated paper renewal application from our website starting on or about October 2, 2017.

October 31, 2017

Real estate and civil litigation transaction levy filing and payments are due for the quarter ended September 30, 2017.

November 7, 2017

E-filing deadline: Renewal applications filed online on or before November 7 qualify for a \$25 per lawyer e-filing discount applied to the 2018 insurance premium.

November 14, 2017

Renewal Application filing deadline: 2018 LAWPRO renewal applications filed after this date will be subject to a surcharge equal to 30 per cent of the base premium.

At the same time, transaction levies will no longer be payable in respect of proceedings that entirely pertain to family law issues.

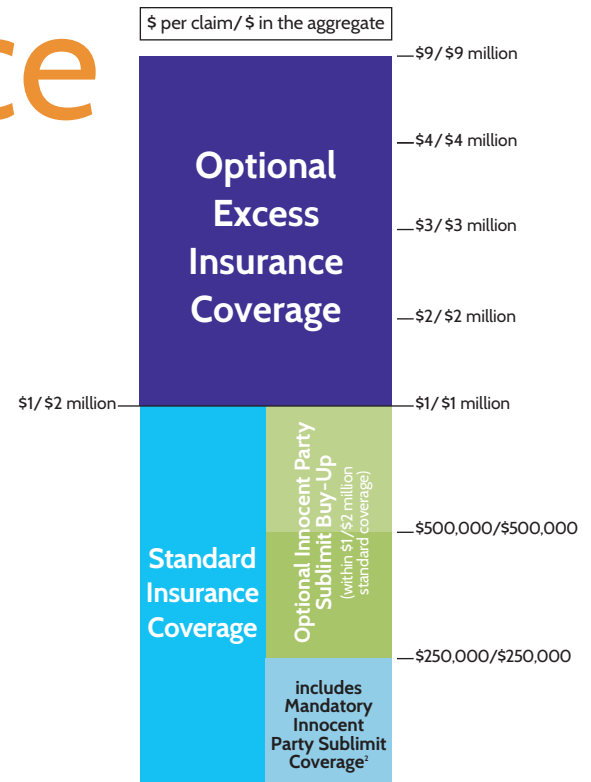
All exclusions from the application of transaction levies program in place before this change will continue to apply. Those exclusions are defined in paragraph C of Endorsement No. 3 and include: Small Claims court matters, residential landlord and tenant matters, and matters funded by Legal Aid Ontario and certain other agencies.

Looking ahead

Although some moderation in civil litigation claims costs can be expected over time with the recent changes to Rule 48, the continued relationship between civil litigation costs and premium revenue by lawyers’ primary area of practice will need to be monitored to determine whether any further action should be taken on this category in future years. ■

2018 insurance coverage

for lawyers in private practice sole practitioners and lawyers in association or partnership¹



Standard insurance coverage

The base program

Eligibility:

Required of all lawyers¹ providing services in private practice.³

Coverage limit:

\$1 million per claim/\$2 million in the aggregate (i.e., for all claims made in 2018), applicable to claim expenses, indemnity payments and/or costs of repairs together.

New billing limit for part-time practice

Beginning with the 2018 policy year, the part-time practice discount of 50 per cent is available to practices with gross billings up to \$90,000 per year that meet all other part-time practice discount criteria. For more information on the part-time practice criteria, please visit lawpro.ca.

Standard deductible:

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

Base premium:

\$2,950 per insured lawyer (plus PST).

Mandatory innocent party sublimit coverage⁴

Eligibility:

Required of all lawyers practising in partnership (including in MDPs or LLPs), in association, in law corporations with more than one lawyer, or as sole practitioners practising with employed lawyers. Also required of licensed paralegals practising in partnership with lawyers or as shareholders in combined licensee firms (CLFs).

Coverage sublimits:

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

Premium:

\$125 per lawyer or eligible paralegal licensee (plus PST).

¹ Includes paralegals practising as partners or shareholders in combined licensee firms.

² Optional for sole practitioners.

³ 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.

⁴ 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 2018.

Lawyers not eligible for the Real Estate Practice Coverage Option 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:

\$100 per lawyer (plus PST).

Optional insurance coverages

Innocent Party Sublimit Buy-Up⁵

Eligibility

Optional for all lawyers and eligible paralegal licensees practising in association or partnership (including MDPs, LLPs, and lawyer/paralegal partnerships), law corporations (with more than one lawyer and/or paralegal shareholder) 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 \$75 per insured (\$200 total Innocent Party premium); or
- to \$1 million per claim/aggregate for an additional \$125 per insured (\$250 total Innocent Party premium).

Optional Innocent Party Sublimit coverage⁵

Eligibility:

Optional for sole practitioners 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).

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 CLFs) and to lawyers with topped-up Run-Off Coverage.

Coverage limits:

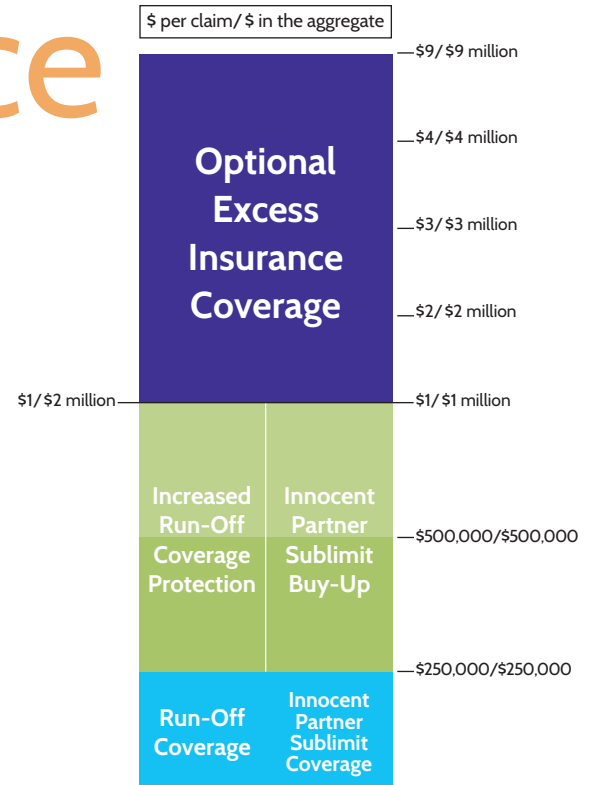
Up to \$9 million per claim/\$9 million in the aggregate

See page 7 for details of the Excess program.

⁵ LAWPRO strongly recommends that lawyers increase their optional coverage protection to the maximum sublimit offered, to provide comprehensive coverage and reduce the likelihood of gaps in coverage.

2018 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 Ontario, with respect to qualifying mentoring activities, 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;

- 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 (some exceptions apply).

Your coverage when working pro bono

Interested in working pro bono? The September 2016 issue of LAWPRO Magazine focused on access to justice issues – including pro bono services. Visit practicepro.ca/lawpromag to read “What’s my coverage when working pro bono?” which includes a helpful chart, “So you want to start an A2J initiative?” and “Lawyers: (Safely) make your own dent in the affordability barrier.”

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.

Terms ranging from two to five years are available.

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 sublimits & premiums:

Innocent Partner Sublimit coverage can be increased as follows:

- to \$500,000 per claim/aggregate; or
- to \$1 million per claim/aggregate.

Underwritten on an individual basis, based on a risk assessment of information provided in the Innocent Party Sublimit Buy-Up application.

Excess insurance for law firms and lawyers with topped-up Run-Off coverage

Eligibility:

Available to law firms (including MDPs and CLFs), 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 using, for example, 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 email: service@lawpro.ca

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

For your protection: Credit card payments are now online-only

Beginning with the current renewal season, credit card payments for LAWPRO premiums and levies will be accepted only via our secure online payment portal operated by Moneris.

Using a third party expert to store your credit card information enhances the privacy of your information and meets the Payment Card Industry Data Security Standard. LAWPRO has partnered with Moneris, a nationally recognized expert in online transactions, to provide lawyers with this security feature.

Most lawyers already know that sharing credit card information via email or print correspondence (including printed forms) can be a risky practice. Compliance with the security standard also means that we will no longer accept credit card information verbally or in writing. A visit to My LAWPRO, our online service portal, is the easiest and most secure way to make a credit card payment. Simply visit lawpro.ca to learn more and to gain access to the system.

Have questions? Please contact us by email at service@lawpro.ca or phone at: 1-800-410-1013 or 416-598-5899. ■

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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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