

# Why excess insurance?

## Celebrating 20 years of the *eXcess*<sup>™</sup> Program

In 1996 and 1997 LAWPRO (or “LPIC” as it was then known) began collecting information on whether lawyers had coverage in excess of the \$1 million per claim/\$2 million in the aggregate limits provided under the mandatory program. The thinking wasn’t that everyone necessarily needs excess. After all, some areas of practice are considered low risk for large claims. If a sole practitioner only ever works on Small Claims Court files, what are the chances that he would exceed his \$2 million aggregate limit in a given year? But depending on the type of practice a lawyer works in or the area of law, there are outlier claims that arise that exceed the \$1 million per claim limit, or a lawyer can have a cluster of claims in a year that can exceed the \$2 million aggregate limit.

Consider what would happen if a tax lawyer made the same error when advising on family trusts to several clients, or if a large mistake occurred with respect to a real estate matter or estate.

When LAWPRO began collecting this information, it turned out that 38 per cent of practising lawyers had excess professional liability insurance available to respond to claims. That sounded a bit low. When LAWPRO drilled down, we discovered that virtually all lawyers practising in firms of greater than 10 lawyers were purchasing excess insurance. However, that meant only 11 per cent of lawyers in two to four lawyer firms purchased excess insurance, and only 9 per cent of sole practitioners. This showed that lawyers in small firms were facing an inordinate amount of risk.

LAWPRO had to figure out why lawyers in smaller firms weren’t buying excess coverage. There was a concern that the small firms simply didn’t know about the value of securing excess insurance, were not being approached by commercial markets, or found the application process too difficult.

LAWPRO research showed that there was capacity in the insurance market to offer this coverage to lawyers, that it could be acquired at a pretty reasonable price, but for some reason lawyers were either unaware of the advisability of buying or found it too inconvenient or hard to acquire.

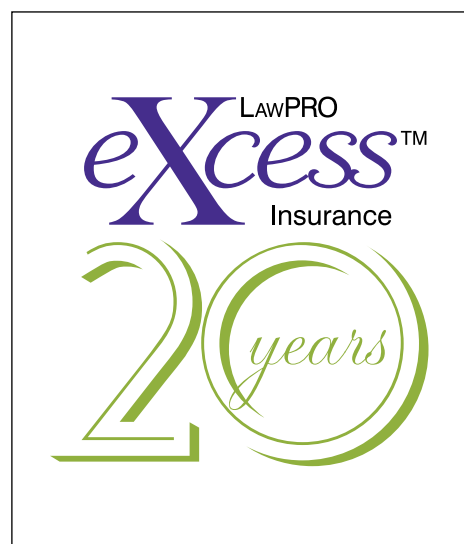
So LAWPRO decided to do something about that.

### The benefits of excess insurance

Starting in 1998 LAWPRO began offering professional liability insurance in excess of the mandatory limits to Ontario law firms. The goal was to have this coverage underwritten on an individual firm basis and be competitively priced with the coverage available from other commercial insurers. But unlike the established excess insurers in the Ontario market, LAWPRO would focus on firms of less than 10 lawyers.

The limits originally offered went from \$1 million per claim to \$4 million per claim over the mandatory limits. So if a lawyer was sued on a file for work done at an insured firm, she could expect to have between \$2 million and \$5 million in total coverage available.

At the same time as the excess program was introduced and LAWPRO committed to providing a cost effective excess insurance product to qualifying small firms in Ontario, LAWPRO set a second mandate for itself: to educate lawyers in Ontario about



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The practicePRO and TitlePLUS programs are provided by LAWPRO

the benefits of excess insurance. While not every lawyer or firm is going to need insurance above the primary program limits, many would benefit from acquiring it. And for those firms that should have excess insurance, if LAWPRO played a part in getting them to acquire it, either through the LAWPRO excess insurance program or from another insurer, then this would be considered a great success.

LAWPRO developed communication materials that challenged lawyers to test their exposure to large claims. Some of the signs that a lawyer's practice could exceed primary limits if a claim arose include:

- The lawyer could be seen as responsible for other lawyers, but doesn't know their file practices, procedures or communication steps.
- The lawyer or her co-workers work on "higher risk" files, such as litigation, real estate, corporate, commercial, tax, securities, or patents and trademark files.
- The firm maintains large trust accounts or trust accounts with a lot of activity.
- The firm handles major financial transactions or represents clients in high-stakes litigation and transaction matters, such as class action suits, pensions, securities, mergers and acquisitions.
- The lawyer's clients have become much wealthier since work was initially done for them (consider this particularly in the context of domestic contracts).
- The lawyer worked on files at a former firm, but had no control over the matters after they left, or could have vicarious exposure for work done by other lawyers at that firm.

LAWPRO wants to bring awareness to the profession about practice risks, and that includes having any gaps in coverage. Today, LAWPRO insures almost 1,500 law firms in Ontario, with the average firm size being only two and a half lawyers. The excess limits now range from \$1 million per claim to \$9 million and the target firms for our program are up to 15 lawyers, though we do actively insure firms of up to 50 lawyers. During each renewal season we see firms that have carried excess insurance with LAWPRO, sometimes for years, write in to tell us that they have now grown so large they need higher limits or bundled coverage for other types of insurance and another insurer is able to offer them a product that meets their growing needs. And this is a good thing. In fact, it's a great thing. The firm now has different insurance needs than when it first signed up with LAWPRO, and while it may have been too small to be offered terms by other insurers when it first began, as a bigger firm, it is now suited to the portfolio of a larger commercial excess insurer. As these firms grow and move out of the LAWPRO excess program, more small firms are established or discover they need excess insurance for their own peace of mind or to satisfy client demands, and they will hopefully turn to LAWPRO.

Today's LAWPRO excess customers work in all practice areas. They include sole practitioners and firms that far exceed 15 lawyers, but who are still well served by the LAWPRO excess product. While some firms began as sole practitioners, through the five, 10, or 20 years they have been with LAWPRO, we have seen them become partnerships, professional corporations, or expand as associations, and LAWPRO's bespoke excess coverage has adapted to meet their changing needs. When lawyers retire or their estates are suddenly faced with the challenges of what to do after practitioners die, LAWPRO excess insurance is there to provide optional increased limits for the run-off period.

The excess program may be small by commercial standards, with no ambitions to compete for larger firms' business, but it provides two powerful benefits to Ontario lawyers. First, by offering an affordable, stable, excess product to small firms, and secondly, by inviting the profession as a whole to think about their exposure to large or multiple claims and speak with an insurance professional about obtaining excess coverage if warranted.

There are other aspects of the excess program that are really gratifying to LAWPRO and its insureds. From underwriting to claims handling, the excess program has the benefit of professionals who work exclusively in lawyers' professional liability insurance, thus ensuring our insureds receive expert service. The program is intended to fit seamlessly over the primary program with very few exclusions. When firms carry LAWPRO excess insurance, they do not need to fill out annual renewal applications or separate claims reports, and instead get the benefits of automatic renewal and the need to report professional liability claims only once.

So, while for many people, LAWPRO is known for being the insurer for Ontario lawyers' mandatory insurance, or for being the only all-Canadian title insurer, LAWPRO is also the preferred excess insurer for small firms in Ontario. For 20 years it has excelled at providing a competitive product that meets the needs of Ontario lawyers, especially those who have traditionally had the most difficulty obtaining this kind of insurance.

If you have any questions, or would like to learn more about LAWPRO's excess professional liability program, please visit our website ([lawpro.ca/Excess\\_Insurance/excess\\_insurance\\_main.asp](http://lawpro.ca/Excess_Insurance/excess_insurance_main.asp)) or we would be delighted to hear from you in our Customer Service Department at 1-800-410-1013 or 416-598-5899. ■

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