

LAWPRO

magazine

OCTOBER 2019 VOL 18.2

INSURANCE ISSUE

Your 2020 program: Simple, clear, stable

Quick summary:

- Base premium unchanged for 2020: \$2,950
- No change to transaction levies
- Clarification of circumstances in which notice must be provided
- Clarifications to definitions of “spouse” and “dishonesty” under the policy

How to renew your insurance

You need to renew your insurance for the 2020 year. It will not happen automatically.

Visit my.lawpro.ca to e-file your insurance renewal.

Connect with
LAWPRO:



Important Dates

Policy renewals available

October 1, 2019

Online insurance renewal applications for 2020 will be available beginning October 1st.

Quarterly transaction levies and forms due

October 31, 2019

Real estate and civil litigation transaction levies and forms are due for the quarter ended September 30, 2019

E-filing deadline

November 1, 2019

Renewal applications filed online on or before November 1, 2019 qualify for a \$25 per lawyer e-filing discount applied to the 2020 insurance premium.

Renewal application filing deadline

November 8, 2019

Renewal applications filed after this date will be subject to a surcharge equal to 30 per cent of the base premium.

Quarterly transaction levies and forms due

January 31, 2020

Real estate and civil litigation transaction levies and forms are due for the quarter ended December 31, 2019

Base premium unchanged

LAWPRO is once again pleased to report that the base premium will remain unchanged at \$2,950 for 2020.

When LAWPRO was handed responsibility for providing E&O insurance in 1994, the premium was \$5,600. In fact, if inflation were removed, today's premium of \$2,950 would be the equivalent to about \$1,835 in 1995 dollars. Although we continue to see an upward trend in the number of claims against Ontario lawyers, the premiums and levies we collect, together with our cost containment efforts and investment income, continue to cover projected claims costs for Ontario lawyers.

No change to transaction levy costs

Due to the high rate and cost of claims against lawyers practising in the areas of civil litigation (except family) and real estate, LAWPRO will continue to require levies of \$100 and \$65 respectively in those areas. The civil and real estate transaction levies allow LAWPRO to risk rate the primary program, which means lawyers pay premiums that reflect their claims risk.

We will continue to monitor claims and levy trends in civil litigation, real estate, and other areas to ensure the fair and reasonable pricing of malpractice insurance.

Clarifying the circumstances in which notice of a claim must be provided

LAWPRO, like most other legal malpractice insurers, provides coverage that is triggered when a claim is made against an insured – a “claims-made” policy. In contrast, some other forms of insurance are occurrence-based, which means coverage is only available if a policy was in place at the time the error or omission is said to have occurred.

LAWPRO's claims-made policy provides greater certainty and allows for more accurate cost projections. This predictability reduces the cost of insurance which can be passed down to Ontario lawyers in the form of reduced premiums and levies.

Even if an actual claim is not made for some time, you must still give notice of any “circumstances” that could lead to a claim. To

help you determine when to provide such notice, we have refined the policy's definition of “circumstances” to be “any circumstances of an alleged, actual, or possible error, omission, or negligent act of which the insured becomes aware, which from the perspective of a reasonable lawyer or law firm could potentially give rise to a claim” under the policy. This obligation is in addition to the requirement to provide prompt notice of all actual claims.

Early notice leads to better results when defending a claim. You should not try to take steps on your own to repair a potential error. If a client asserts that you made a mistake, if you are being asked to give evidence about your work on a file, if a request for production has been made for a file, or if you are aware of any possible mistakes that could lead to a claim, LAWPRO should be immediately notified.

Additional refinement of definitions

The policy now includes a definition of spouse consistent with s. 29 of the *Family Law Act*, which states that “spouse” includes either of two persons who are not married to each other and have cohabitated continuously for a period of not less than three years, or are in a relationship of some permanence if they are the parents of a child as set out in s. 4 of the *Children's Law Reform Act*.

The definition of “dishonest” conduct has been updated to clarify when a lawyer's actions would be considered dishonest.

New regulator for LAWPRO

On June 8, 2019, the Financial Services Regulatory Authority (FSRA) assumed responsibility for the regulation of non-securities financial services in Ontario, including LAWPRO. FSRA is an independent and self-funded regulator of financial services, with a mandate to protect the public interest with increased efficiency and responsiveness.

As a regulated institution, LAWPRO is required to reliably manage risk by making prudent investment decisions, reasonable cost projections, and accurate actuarial assessments. This ensures the long-term funding of claims attracted by the Ontario legal profession at a reasonable cost.

This year, LAWPRO received its 18th consecutive “A” rating for financial strength and “a” issuer credit rating from A.M. Best Co. This independent rating is provided to companies that have an “excellent” ability to meet ongoing insurance obligations and reflects our long-term financial stability. ■



Frequently asked questions regarding renewing your coverage

Q. How do I renew my insurance coverage?

- A.** Filing your renewal application online is quick and easy:
- 1) Go to lawpro.ca and click on the yellow “LOGIN” box on the right side of the page
 - 2) Log in with your Law Society number and confidential online password. If you cannot remember that password or need to set up a new one, follow the online instructions or contact Customer Service for assistance at 416-598-5899 or at 1-800-410-1013
 - 3) Select “Renew My Professional Liability Insurance for 2020” from the list of options
 - 4) Complete the application, click “Review” at the bottom of the form, and then “Submit”
 - 5) Record your confirmation number (starting with “P”) for your added security

Q. I filed my renewal application online. It was fast and easy. Although I received a confirmation number that started with the letter “R.” I have received another email reminder to file my renewal application. What gives?

- A.** Successful online filing of your renewal application will result in a confirmation number beginning with the letter “P.” The confirmation number starting with the letter “R” means that you have only updated your contact information. You will need to go back online to complete your renewal application. The deadline to renew is November 8, 2019.

Q. Although the deadline to renew my insurance for 2020 is November 8, 2019, I will be practising at a new firm effective January 1, 2020. What should I do?

- A.** You can renew your insurance by providing either your current employment status, or your practice at the new firm effective January 1, 2020.

If your insurance renewal is completed to reflect your current employment status, you will need to subsequently send an email to service@lawpro.ca with the details of your new employment circumstances, including effective date, contact information, and name of the firm.

If your insurance renewal is completed to reflect your practice at the new firm, make sure your current firm does not also remit a filing on your behalf. If they do, your renewal will be processed pursuant to your current firm’s filing.

Q. I will be leaving my current firm on December 31, 2019 to begin my own sole practice. How do I show this change in my renewal filing?

- A.** You should call Customer Service at 416-598-5899 or 1-800-410-1013 to obtain a new firm number prior to renewing your insurance for 2020 and then e-file your renewal application online. (For instructions on e-filing, see Question 1.)

Q. I will be retiring from the practice of law as of December 31, 2019. Do I need to file a renewal application for my insurance by the November 8 deadline?

- A.** If the effective date of your retirement will be December 31 or January 1, you will need to file an Exemption Form before the November 8, 2019 filing deadline. You can e-file your exemption form by following these simple steps:

- 1) Go to lawpro.ca and click on the yellow “LOGIN” box
- 2) Log in with your Law Society number and confidential online password. If you cannot remember that password or need to set up a new one, follow the online instructions or contact LAWPRO Customer Service for assistance at 416-598-5899 or at 1-800-410-1013
- 3) Select “Apply for an Exemption” from the list of options
- 4) Complete the filing using the online instructions
- 5) Successful e-filing will result in an online confirmation number that begins with the letter “X”

If you are not yet sure of the date of your retirement from the practice of law, or the effective date is after January 1, you should renew your insurance coverage by the November 8 deadline and then subsequently file an Exemption Form noting the effective date on the form.

Q. I filed my renewal application online myself (logging in using my own LSO# and password) and my firm also completed a filing on behalf of all the members of my firm (including me). Which filing will be processed?

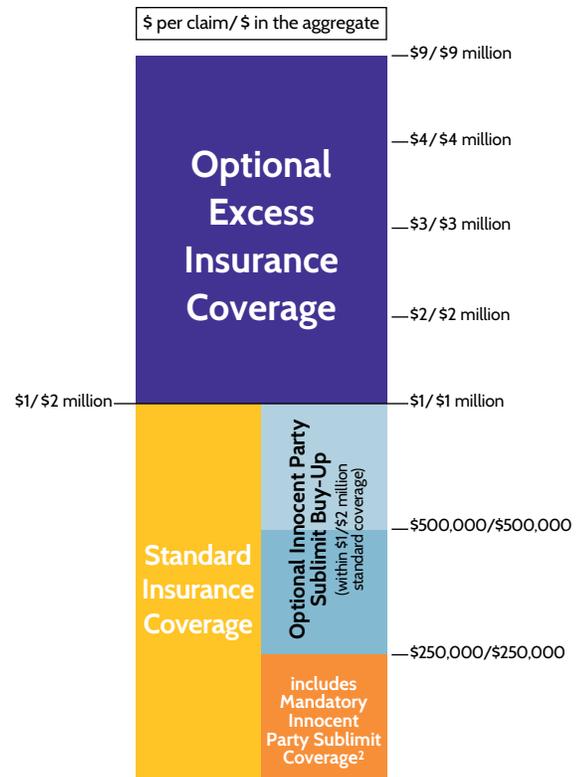
- A.** You should note that if both you and your firm submit separate renewal filings for the same renewal policy year, the filing done by the firm will trump any individual filing.

Q. What happens if I miss the November 8 filing deadline?

- A.** Applications filed after this date will be subject to a surcharge equal to 30 per cent of the base premium. ■

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 2020), applicable to claim expenses, indemnity payments and/or costs of repairs together.

Premium reductions for new lawyers

LAWPRO provides premium discounts for new lawyers with less than 4 years of practice:

- 50% discount - less than one year of practice
- 40% - 2 years of practice
- 30% - 3 years of practice
- 20% - 4 years of practice

A "full year" of experience is deemed to be at least 200 days in practice, and years of experience as a licensed lawyer in practice in any jurisdiction will be considered when considering discount eligibility.

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 2020.

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; or
- 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; and
- \$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 multi-discipline partnerships and combined licensee firms) and to lawyers with topped-up Run-Off coverage.

Coverage limits:

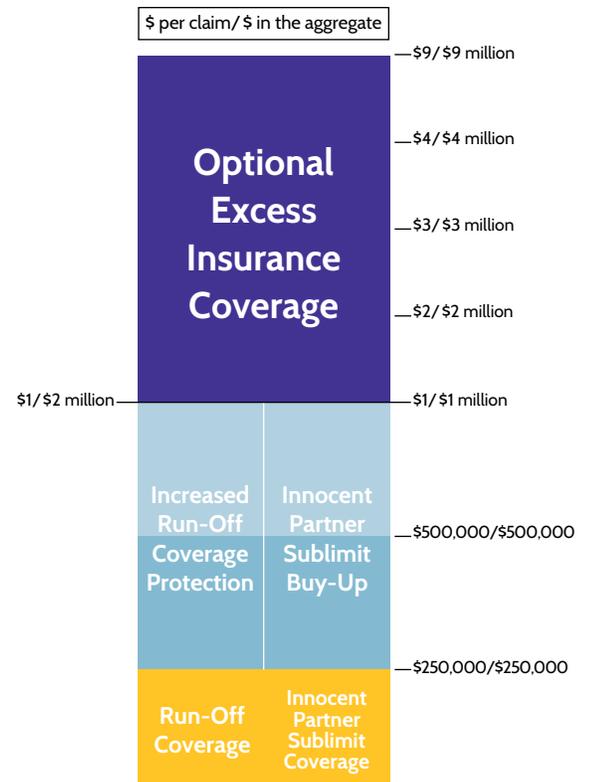
Up to \$9 million per claim/\$9 million in the aggregate

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.

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 insurance 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).

Healthy lawyers make healthy practices

LAWPRO provides almost half of the annual funding for the Ontario lawyers' Member Assistance Program (MAP). Through the MAP, legal professionals are able to access confidential mental health and wellness resources such as counselling on topics such as stress, anxiety, depression, and addiction. The MAP also offers confidential online wellness literature, child care resources, and elder care resources. For more information visit myassistplan.com.

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 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; and
- \$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 at lawpro.ca/faqs? If you have a question, we invite you to visit our FAQs to find the answer.

My LAWPRO is changing

LAWPRO is in the process of phasing in a new version of the My LAWPRO site. This update will provide users with a quick and easy way to renew their coverage, update their contact information, or file for Risk Management Credits.

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

Welcome Robert Adourian, Julia Shin Doi, and Geoff Pollock

LAWPRO is pleased to welcome Robert Adourian, Julia Shin Doi, and Geoff Pollock to its Board of Directors.

Robert Adourian practises with Devy Smith Frank LLP in the areas of real estate, wills, estate planning, estate administration, and mediation. He is an active member of the Armenian Bar Association, and has served on the Association's Board of Governors. He is a graduate of the University of Windsor Law School and is a frequent speaker on topics such as "Buying Your First Home" and "Why You Should Make a Will."

Julia Shin Doi is General Counsel and Secretary of the Board of Governors for Ryerson University. She is an adjunct professor at Osgoode Hall and the University of Toronto. She is the co-author of *Behind and Beyond Boilerplate: Drafting Commercial Agreements*, and has published and presented in the areas of licensing, securing copyright, and privacy law. She obtained a JD and LLM from from Osgoode Hall Law School.

Geoff Pollock practises civil litigation, bankruptcy and insolvency, wills and estates, corporate/commercial, and real estate with Geoff Pollock & Associates. In the past, he worked for the Australian Stock Exchange, worked for General Electric on European Mergers and Acquisitions, and was the Vice President of Corporate Finance for MFK Investment Bank in Ukraine. He previously served with the Canadian Army Reserves as a commissioned officer before receiving an MBA from the Richard Ivey School of Business and a JD from the University of Western Ontario.

LAWPRO would also like to extend its gratitude to the Board Chair, Susan McGrath, who will be stepping down after providing seven years of valuable leadership and vision. Our sincere thanks as well to Barbara Murchie and Heather Zordel, who are completing their service to the Board. ■

Save time by filing for a transaction levy exemption when renewing your policy

- **Not in real estate or litigation:** If you will not be practising in real estate or civil litigation next year, save yourself time by filing an exemption from the transaction levy filing requirements when you renew your coverage for 2020. You can change your mind part way through the year if circumstances change.
- **One or the other:** If you practice only one of real estate or civil litigation you can file an exemption from the transaction levy filing requirements for just one area.

Remember to file transaction levy forms on time

- **No transactions or matters? Quarterly reports still required:** If you are practising in real estate or civil litigation, you need to file a transaction summary form even when there are no transactions or matters that quarter.

Wondering if a transaction levy applies?

Check out our information at lawpro.ca/faqs



Return undeliverable Canadian addresses to:
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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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