

Run-Off insurance: The coverage you have after you leave practice

When lawyers retire, get appointed to the bench, go in-house or otherwise claim exemption from maintaining LAWPRO insurance, they commonly ask LAWPRO two questions:

1. Do they still need to pay for insurance?
2. What sort of services are they still allowed to perform?

When you leave private practice you are not “off the hook” for any claims that may be made against you. On the contrary, you continue to be liable for the professional services that you, or your former partners or associates, provided in the past. Because LAWPRO operates as a “claims-made” policy (i.e., the coverage you have in place when you first know about a potential claim responds to a claim, not the coverage you had in place when you did the work) you will continue to need coverage.

What is “Run-Off” coverage?

LAWPRO’s Run-Off coverage is insurance with a limit of \$250,000 per claim and in the aggregate that is provided for free to those who leave private practice. The deductible is \$5,000. The coverage amount is different for lawyers taking a temporary leave of absence, and lawyers on permanent mobility, see page 18 for more.

In addition, as part of the \$250,000 Run-Off coverage you are provided with protection

against innocent partner claims. This means that if claims are made against you for the dishonest, malicious, criminal or fraudulent acts of a former partner or associate, your Run-Off coverage can be exercised up to the 250,000 limit.

Is this Run-Off coverage enough?

While a quarter million dollars of coverage, premium-free provides a certain amount

of peace of mind, there are some facts to consider:

- The \$250,000 is a lifetime amount. It doesn't renew, and it can be eaten away by claims costs
- One in about 40 claims exceeds the \$250,000 coverage limit
- One in 100 claims exceeds \$500,000

A large single claim, or a number of smaller claims, could easily exceed your Run-Off coverage threshold, leaving you personally liable for any additional costs. And remember, this coverage does not renew. Once the \$250,000 is gone you have no coverage for any future claims.

For this reason, we encourage lawyers to consider increasing their Run-Off coverage to \$500,000 or \$1,000,000 on a 2 to 5 year basis. Innocent Partner coverage can also be increased to those limits. To apply, complete an application form at lawpro.ca

How much you should buy up your coverage and for how long will depend on your own practice circumstances. LAWPRO claims data show that it takes an average of two to three years after you have engaged in the practice of law for a claim to surface. Moreover, up to 10 per cent of claims are not made until five years after the service was provided. In some areas of practice, such as wills, estates, and real estate, it can take even longer before claims surface. For more information on how long claims can take to appear, and how limitation periods are also a factor to consider, see the article "How long should you keep your closed files?" on practicepro.ca

What sort of work can you do after you leave practice?

There is no coverage for professional services provided during any period of exemption. In other words, you cannot engage in the private practice of law in Ontario, unless you fall into one of the exceptions below.

If you provide professional services to family, friends or associates, even if on a pro bono basis, you are considered to be providing

professional services in private practice and are required to pay the LAWPRO insurance premium.

As well, in situations where you are retired as a lawyer but are acting as a mediator, arbitrator, immigration consultant or are otherwise providing services that are often but not exclusively provided by lawyers, it should be absolutely clear to clients and others that you are not providing these services as a lawyer. If you do provide these services in your capacity as a lawyer, you are considered to be providing professional services in private practice and must pay the insurance premium.

Exceptions to "no coverage for professional services"

1. Pro bono services provided through an approved pro bono professional services program associated with Pro Bono Ontario.

Your Run-Off coverage covers you for pro bono services as long as they are LAWPRO approved projects associated with Pro Bono Ontario. You will not be required to pay any deductible amount for any claims relating solely to such professional services. Claims history levy surcharge is waived.

2. Certain services as estate trustee, trustee for an *inter vivos* trust, or attorney for property

As you wind down your private law practice, it may be that you are named or act as estate trustee, trustee for *inter vivos* trust or attorney for property, even though the rest of your practice is being wound down or turned over to one or more lawyers who remain in practice.

Your role must be residual work from your past practice in Ontario, which would not be the case where you have only been named in retirement.

As well, this exemption would not apply to any trusteeship or attorney for property, where you have been named or are acting

in respect of a member of your own family (as defined under section 251(2) of the *Income Tax Act (Canada)*).

The full criteria under which a retiring lawyer who continues to act as estate trustee, trustee for an *inter vivos* trust or attorney for property, can apply for exemption are fully set out in the exemption eligibility section of the Application for Exemption. You will need to have information about your activities available when you apply for the exemption.

3. Mentoring

LAWPRO encourages retired lawyers to be mentors. You can maintain your exempt status while having coverage for mentoring services, and have your deductible (and claims levy surcharge if you return to practice) waived on any claim made against you arising out of a mentoring relationship provided that:

- you and your mentee enter into a formal mentoring relationship, evidenced by a written document of some kind;
- you have no contact with the mentee's client that would create a solicitor/client relationship; and
- the mentee understands that they are responsible for individually and independently satisfying themselves of the soundness of any suggestions, recommendations or advice-like comments made by you.

If you are interested in serving as a mentor, consider contacting the Law Society's Coach and Advisor Network (CAN), see page 15 of this issue for more information. It provides lawyers and paralegals with access to shorter-term, outcome-oriented relationships with coaches and advisors drawn from the profession. Coaches support the implementation of best practices and advisors assist with substantive and procedural law inquiries on client files. ■

Tim Lemieux is Claims Prevention & Stakeholder Relations and Claims Analyst at LAWPRO