



Toronto Lawyers ASSOCIATION 

Thursday Tips with LAWPRO and TLA:  
Insurance 101 for lawyers  
Tips for insuring your practice

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# Putting the insurance puzzle together

*Shawn Erker, Legal Writer & Content Manager, LAWPRO*

LAWPRO's primary Errors & Omissions (E&O) program is a key piece of the insurance puzzle for any lawyer and law firm. But additional insurance coverage is often required to protect against the full constellation of risk faced by a law firm.

Remember that all insurance policies are drafted to cover only a specific set of risks. It's important to familiarize yourself with what is and is not covered and excluded by each policy so you know what additional coverage or endorsements may be needed. It's a good idea to consult with an insurance broker to get a full understanding of your insurance needs and options.

We've summarized some of the basic insurance categories you may want to consider:

## Business Owner Policies (BOP)

Insurance providers will often bundle general liability insurance, property insurance, and some business interruption insurance together in competitively priced packages for small businesses.

### *Commercial General Liability Coverage (CGL)*

Failing to meet a filing deadline may trigger LAWPRO E&O insurance but failing to remove the icy patch in front of the office building requires different coverage entirely. Basic CGL coverage protects against liability associated with bodily injury and property damage suffered by third parties as well as associated legal fees.

Depending on the package and specific endorsement options provided to the firm, these policies may also cover "**Personal and Advertising Injuries**", including non-physical personal injuries such as malicious prosecution, slander and libel, or publications that violate privacy. If claims of this nature arise outside the provision of professional "legal services," coverage under a CGL policy may be necessary to avoid substantial personal liability on the part of the lawyer.

### *Property Insurance*

It's hard to work without a workspace. Property insurance responds to damage to a physical office arising from fire, vandalism, and other such perils. Separate riders or separate policies entirely may be necessary to guarantee coverage for the cost of re-creating hard-copy records and files lost in a covered event (e.g., **Valuable Papers and Records Coverage**), or to cover the cost of any specialized equipment used by the firm (e.g., **Boiler and Machinery Insurance**).

If you work from home, standard home insurance may cover the risk of losing your physical workspace, but specific protection for business records or business interruption flowing from physical property damage (discussed below) will require specific coverage.

## *Business Interruption Coverage*

Certain events, such as a devastating fire or flood, may prevent a firm from being able to operate. Business interruption insurance compensates for lost income and helps cover fixed operating expenses like staff payroll. It also may cover renting a temporary location, hiring movers for inventory, and other costs of getting back to work.

The risks covered by Business Interruption Coverage vary. To use an example on everyone's mind, most Business Interruption Coverage *does not* cover pandemic related closures unless specifically requested (and, if even available, resulting in additional cost).

Business interruptions flowing from cyber-related activities, such as ransomware that paralyzes a firm for a period of time, is usually available through specific cybercrime coverage (see below) and would usually be excluded from Business Interruption Coverage tied to Property Insurance. General Business Owner Policies may include some level of Business Interruption Coverage tied to already covered perils, such as Property Insurance that covers fire damage as well as any business interruption flowing from the fire. However, Business Interruption Coverage will be carefully circumscribed by the provider to explicitly covered perils.

## **Professional Liability Coverage**

### *Directors and Officers (D&O) Insurance*

LAWPRO's standard professional liability insurance policy does not provide coverage for liability arising as a result of a lawyer's activity as a director. D&O policies are the principal means of protecting directors from the risk of personal liability as a result of their activities on behalf of an organization.

D&O coverage can typically be obtained as single policy coverage for all directors and officers of the organization (often maintained by the organization), or as "outside director liability policies", which are purchased by individual lawyers and/or their firms. If members of your firm act as directors or officers for outside entities (charities, clients' businesses, family enterprises) and these entities don't purchase their own D&O insurance, discuss with your broker whether your firm's policy might be able to provide coverage for your members when acting in those roles.

For more information, [see our article on D&O insurance](#).

### *Executor and Trustee Insurance*

Under Ontario's *Estates Act* and in many other jurisdictions, a judge may order damages against the executor for misconduct, neglect or default which results in loss to the estate. While LAWPRO's primary policy may cover lawyers acting as executors or trustees if the appointment arose from the practice of law, lawyers acting as executors or trustees may find they need additional coverage to ensure they are protected in all circumstances.

For more information, [see our article on Executor and Trustee Insurance](#).



### *Excess E&O Insurance*

LAWPRO's primary E&O policy only covers damages up to \$1 million for most claims, with an aggregate limit of \$2 million. Claim costs beyond these amounts will fall on the lawyer in their own capacity unless excess coverage is available.

Learn about the [excess insurance options available from LAWPRO.](#)

## **Other Important Insurance**

### *Cybercrime and Data Loss*

Cyber attacks can come in different forms, all with substantial potential costs. Money held in trust could be stolen through a computer hack or social engineering (fraud). Computer software can be frozen or locked, preventing the firm's work from being completed. Personal data can be accessed or held for ransom, leading to not only potential third-party civil liability, but also regulatory costs associated with privacy legislation and potential fines. A major cyber attack that imperils client information may also lead to substantial public relations costs or reputational damage.

Many of these potential threats can be insured against—but not necessarily easily (or cheaply). LAWPRO [strictly limits its coverage of cyber threats](#) with a \$250,000 sublimit and limited scope under the primary policy. Additional coverage for cyber threats is available from various providers, but be careful to note the specific perils covered. Not all threats may be covered under a basic "cybercrime" policy, and perils from ransomware or social engineering may require separate endorsements with additional costs.

### *Crime*

LAWPRO policy includes Innocent Party coverage with an initial sublimit of \$250,000 (which can be bought up to \$1 million). This coverage offers protection to *innocent* members of a firm for the dishonest or possibly criminal actions of present or former partners or licensed employees of the firm.

Additional coverage may be available from other providers for losses (first or third party) arising from crimes, mail & transit coverage, counterfeit currency, extortion and more.

### *Employment Practices*

This insurance typically covers defence for employment litigation related to wrongful termination, harassment, breach of contract, invasion of privacy, equality rights, and other employment practices.

### *Critical Illness / Disability / Key Person Insurance*

Many firms would be seriously impacted by the loss of certain employees from illness, disability, or death. This may be an executive officer with specific skills and knowledge, or a partner with irreplaceable personal relationships with important clients. If suddenly losing these individuals could severely impact the firm's ability to function, "Key Person" insurance may be a valuable consideration.

Sole practitioners and lawyers in small firms may also want to consider critical illness or disability insurance for themselves. Even beyond personal protection for the lawyer or their family, such

insurance can be crafted to provide protection for a firm's support staff or compensation for other costs associated with the lawyer becoming incapacitated.

# Does your firm need cybercrime insurance?

In a study titled *The Cost of Cybercrime*<sup>1</sup>, Accenture surveyed 254 companies in seven countries. Over the course of five years, the study revealed a 62 per cent increase in cybercrime attacks. Data breaches during the same period doubled to 130 per year.

Accenture noted that while not every security breach results in a loss, the two most costly types of breaches (malware and web-based attacks) can take days (up to 23 days in the case of ransomware) to resolve and cost firms over \$2 million per incident on average.

LAWPRO first suggested that lawyers consider cyber insurance in the December 2013 issue of *LAWPRO Magazine*. In the article *Cyber Risk Options: Do You Have the Coverage You Need?* firms were advised that their general liability insurance policies (intended to cover bodily injury and property damage scenarios) may offer only a limited amount of coverage for cyber-related exposures. These policies were not designed to cover loss of data or a breach of a law firm network.

In addition, the cyber coverage under the LAWPRO policy is subject to eligibility criteria and a modest sublimit. Says LAWPRO's Assistant Vice President, Underwriting, Victoria Crewe-Nelson: "the LAWPRO cybercrime coverage relates to professional services. If, for example, a loss (e.g. corrupted accounting data, theft from the general account) does not relate to the provision of professional services, LAWPRO coverage

would not apply. To prepare for this kind of risk, lawyers should consider exploring broader cyber coverage available in the marketplace."

## The rapid growth of cyber insurance

According to Integro Insurance Brokers of Toronto, 10 years ago there was almost no familiarity with or interest in cyber insurance. Now, despite widespread awareness of the risks, many firms still feel their own IT departments can handle cyber dangers.

In light of recent high profile security breaches, demand for cyber insurance has grown 'exponentially.'<sup>2</sup> From 2015 to 2016, the Risk Management Society's worldwide *Cyber Survey*<sup>3</sup> found a 30 per cent increase in companies procuring stand-alone cyber insurance.

The numbers in Canada may not be quite as high. According to a 2017 FICO-sponsored survey of 350 international organizations (including Canadian law firms) 36 per cent of polled Canadian companies have no cybersecurity insurance. Of those that do, less than 20 per cent believe that the insurance will cover all cyber risks.<sup>4</sup>

## What are "professional services"?

The 2018 LAWPRO policy provides the following definition:

PROFESSIONAL SERVICES means the practice of the law of Canada, its provinces and territories, where conducted by or on behalf of an INSURED in such INSURED'S capacity as a LAWYER or member of the law society of a RECIPRO-CATING JURISDICTION (not as a member of the Barreau du Québec), subject to Part II Special Provision A; and shall include, without restricting the generality of the foregoing, those services for which the INSURED is responsible as a LAWYER arising out of such INSURED'S activity as a trustee, administrator, executor, arbitrator, mediator, patent or trademark agent.

<sup>1</sup> [accenture.com/t20170926T072837Z\\_w\\_/us-en/\\_acnmedia/PDF-61/Accenture-2017-CostCyberCrimeStudy.pdf](http://accenture.com/t20170926T072837Z_w_/us-en/_acnmedia/PDF-61/Accenture-2017-CostCyberCrimeStudy.pdf)

<sup>2</sup> [canadianlawyermag.com/author/michael-mckiernan/demand-for-cyber-insurance-on-the-upswing-3400/](http://canadianlawyermag.com/author/michael-mckiernan/demand-for-cyber-insurance-on-the-upswing-3400/)

<sup>3</sup> [rims.org/aboutRIMS/Newsroom/News/Pages/2017CyberSurvey.aspx](http://rims.org/aboutRIMS/Newsroom/News/Pages/2017CyberSurvey.aspx)

<sup>4</sup> [canadianunderwriter.ca/insurance/36-polled-canadian-firms-no-cyber-security-insurance-fico-1004114548/](http://canadianunderwriter.ca/insurance/36-polled-canadian-firms-no-cyber-security-insurance-fico-1004114548/)

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These statistics reflect the experience of larger companies, but Crewe-Nelson warns that smaller firms should also take heed: “Cybersecurity at smaller firms may be less sophisticated and there are fewer statistics regarding how many are purchasing cyber insurance coverage. But small firms are at the same risk as their larger counterparts.”

## Where do breaches occur?

Some breaches happen at the technology front end: through email, laptops, mobile devices, and desktops. Many hackers find these to be the a firm’s weakest link because they depend on employees’ diligence in following proper security procedures.

Other breaches target the back end of a firm’s IT network: storage, servers, backup systems, and wireless encryption. In addition, new security problems may soon emerge in the context of the internet of things, increased cloud computing, and the constant expansion of social media. Hackers are continually adapting their methods to new technologies. Visit [practicepro.ca/cyber](http://practicepro.ca/cyber) to read more about the cyber dangers targeting law firms.

## What does a typical cyber insurance policy cover?

First, there is no such thing as a “typical” policy: different insurers offer different products and a wide range of sublimits. If the insurance is purchased through a group plan, the underwriting might be straightforward, but will typically include only modest limits. A more bespoke insurance product may require detailed underwriting, explains Crewe-Nelson, and may include multiple lines of coverage with corresponding separate sublimits. “Consider, as an example,” says Crewe-Nelson “what counts as a business interruption once a cyber-attack occurs: how long does a system have to be down before coverage kicks in, and how soon afterwards will coverage be exhausted?”

Coverage can also include both first-party losses (losses suffered directly by the firm that purchases the policy) and third-party losses (losses suffered by a firm’s clients as a

result of a breach). It can be made available for scenarios in which the cause of the incident is internal (staff or lawyer at the firm) or external hackers.

Coverage can extend to:

- Specified costs associated with an attack, for example:
  - Lost income and operating expenses related to a loss of business due to a cyber-attack or pre-emptive network shutdown; and/or
  - Hardware, software and data recovery costs
- Payments demanded for cyber extortion/ransomware
- Crisis management expenses, such as IT forensics costs and public relations spending
- Defence expenses related to regulatory fines or penalties
- Measures to help prevent a breach
- Technical assistance to respond to an attack or breach
- Assistance with the aftermath of a breach

## Why aren’t more companies buying cyber coverage?

Integro states that some of the barriers to wider uptake of cyber insurance policies include confusion around how cyber insurance premiums are set, difficulties in adapting traditional insurance policy language to modern cyber threats, and a lack of data and loss history to make reliable actuarial calculations.

Also, it remains unclear how these policies will respond to claims, and what kinds of breaches will be excluded from coverage. For example, the wording in some policies could be interpreted as excluding breaches caused by human error, mechanical failure or incompatible software. As the market matures and decisions on cyber coverage are made by the courts, there may be more clarity for both law firms and insurers. In the meantime, firms are advised to ask questions of their insurance brokers: it’s worth an investment of time and effort at the outset

to get as much clarification as possible when comparing policies from different insurers.

## Some insurers offer prevention resources

It can be challenging for medium and small firms to develop and implement their own cybersecurity policies and infrastructure. Keeping up with the constantly evolving nature of cyber risk can be beyond the expertise of a typical law firm IT department. In addition to coverage for financial losses, a number of insurers provide access to broader technical support similar to that offered by cybersecurity firms (see “Outsourcing Your Firm’s Cybersecurity” available on [practicepro.ca](http://practicepro.ca)). Such services may include:

- Around-the-clock access to cybersecurity specialists
- Training for firm staff to help prevent a breach
- Assistance with notifying clients of the breach

Crewe-Nelson notes that access to a breach coach can be a significant asset in cases of cyber extortion and ransomware: “The coach can help determine whether the ransom should be paid, and can coach staff about how to do it. There are examples of companies phoning up and asking if they can pay for the return of just certain key documents, and being told no. Once the full ransom is paid, the company realizes that the criminals have withheld the sensitive information that the firm helped identify – and that they are now demanding a premium for those.”

If your Ontario firm has not yet explored cybersecurity coverage options, we urge you to do so. The cost of a cyber-breach goes beyond the financial losses of stolen funds, damage to equipment and lost income. There is also the damage to a firm’s reputation and the loss of confidence of its clients. With many insurers now offering cyber risk policies, firms have many options to tailor a policy to their specific needs. ■

**Tim Lemieux is Claims Prevention & Stakeholder Relations Coordinator at LawPRO.**

## Liability insurance for lawyer/directors of charities or non-profits

Serving as a director of a charitable or not-for-profit corporation can be a rewarding but potentially risky experience. A director can be held personally liable for his or her own actions or failures to act, as well as jointly and severally liable with the other members of the board of directors. Directors with specialized knowledge and expertise, such as lawyers, are held to a higher standard of care. Moreover, a lawyer/director may be perceived to be a “deep pocket” by potential plaintiffs.<sup>1</sup>

Given this exposure to the risk of liability, if you intend to serve as a director of a charity or non-profit, you should ensure that adequate directors’ and officers’ (D&O) liability insurance coverage is in place.

### LAWPRO standard policy

LAWPRO’s [standard professional liability insurance policy](#) covers you only for the “professional services” that you provide as a lawyer. It does not provide coverage for liability arising as a result of your activity as a director.

Part 1, A of the standard policy states that in consideration of payment of the premium, LAWPRO agrees “to pay all sums which the insured shall become legally obligated to pay as damages arising out of a claim” that results from the insured’s “error, omission or negligent act in the performance of or the failure to perform *professional services* for others.” [Emphasis added.]

The policy defines “[professional services](#)” as follows:

Professional services means the practice of the law of Canada, its provinces and territories, and specifically, those services performed ... by ... an insured *in such insured’s capacity as a lawyer* ... and shall include ... those services for which the insured *is responsible as a lawyer* arising out of the insured’s activity as a trustee, administrator, executor, arbitrator, mediator, patent or trademark agent. [Emphasis added]

Services arising out of the insured’s activity as a director are not included.

### LAWPRO excess policy

Like the standard policy, LAWPRO’s optional [excess professional liability insurance policy](#) covers only professional services that you provide as a lawyer. It does not cover liability arising from your activity as a director, or in other words, it does not provide incidental D&O coverage. LAWPRO’s excess policy incorporates by reference the definition of “professional services” in the underlying standard policy to ensure uniformity in the scope of coverage in the underlying and excess policies.

Generally speaking, most excess professional liability insurance policies do not cover lawyers for their activities as directors or officers. But some excess insurance policies



may offer some incidental D&O coverage. You will need to refer to the specific policy wording and consult with your insurance broker or excess insurer to find out whether your excess policy does so. If it does, you should also ascertain whether it “drops down” to afford primary coverage, since the LAWPRO standard policy does not afford such coverage.

### **Indemnity by charity or non-profit**

A charitable or not-for-profit organization can agree to indemnify a director for any liability arising out of his/her role as director. The organization may maintain D&O insurance for this purpose. Indemnification is permitted, provided that the director’s civil or regulatory liability arises out of actions taken honestly, in good faith and in the best interests of the organization.

If the charitable or non-profit organization is in financial difficulty, this indemnity may be of little or no value, particularly if there is no D&O insurance in place. It is therefore prudent, before agreeing to serve as a director, to insist that the organization not only provide indemnification but also undertake to maintain adequate levels of D&O insurance.

This is not an absolute guarantee against the risks of personal exposure. If the organization becomes insolvent, it may be unable to maintain adequate levels of insurance to protect directors, particularly if the D&O policy does not include extended or “tail” coverage.

### **Directors’ and officers’ (D&O) insurance**

Directors’ and officers’ (D&O) insurance policies are the principal means of protecting directors from the risk of personal liability as a result of their activities on behalf of an organization.

Two types of D&O coverage are available: (1) single policy coverage for all directors and officers of the organization (often maintained by the organization); and (2) outside director liability policies, secured by individual lawyers and/or their firms.

#### ***Standard D&O Policy***

A standard D&O policy is underwritten and issued on a group basis. It is a single policy that generally insures all directors and officers of an organization for their activities as directors and officers of the organization. This type of coverage is often maintained by the charitable or non-profit organization itself.

The nature of the coverage, the policy wording and available coverage options can vary significantly from one insurer to the next. Coverage is often narrowly drafted; claims may be denied or only partially covered.

For example, if there is doubt about whether the lawyer was giving advice in his or her capacity as lawyer or director, the D&O policy and the lawyer's professional liability policy may both deny coverage.

You should therefore work closely with your insurance broker to review the D&O policy maintained by the organization and its terms, conditions, exclusions and coverage options.

***Outside Director Liability (ODL) policy***

This type of coverage may be purchased by law firms or by individual lawyers. It provides insurance coverage to individuals who sit as directors on the board of a business corporation or a non-profit organization and are not employees of the organization.

There are three bases for coverage:

1. Individual coverage for named lawyer
2. Group coverage for selected lawyers within the firm who act as directors
3. Group coverage for all lawyers in the firm

ODL policies usually operate as excess insurance coverage, providing defence and indemnity coverage over and above corporate indemnity agreements and D&O policies.

ODL policies for lawyers are available from the [Canadian Bar Insurance Association](http://www.barinsurance.com) (CBIA) ([www.barinsurance.com](http://www.barinsurance.com)). CBIA's ODL program started in 1989 and currently insures over 7,000 lawyers across Canada. CBIA's ODL policy limits are quite flexible and can be adapted to the particular circumstances of the lawyer or firm and extent of the underlying insurance coverage.

[CBIA's ODL policy](#) is written as an excess policy but in certain limited situations can "drop down" in the absence of underlying coverage.

Your firm may already have an ODL policy in place. It's important to ensure that all directorships are named in the policy. You should review any such policy with your insurance broker to understand what coverage it provides.

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<sup>1</sup> For a detailed discussion of the nature and scope of liability risks for directors of charitable and not-for-profit corporations, see "[The Legal Duties of Directors of Charities and Not-for-Profits](#)" (January 2010) by Terrance S. Carter and Jacqueline M. Demczur. The paper is available on the Carters Professional Corporation website ([www.charitylaw.ca](http://www.charitylaw.ca)).

# *Availability of insurance coverage for lawyers acting as executor or trustee*

**Shawn Erker, Legal Writer & Content Manager, LAWPRO**

Estate lawyers will sometimes be called upon by a client to act as executor or trustee as part of their Professional Services. Depending on the complexity of the estate or trust, these appointments can last for years and involve a substantial time investment.

As with other aspects of a legal practice, alleged errors in the administration of an estate or trust can expose the lawyer to professional negligence claims. Even if the lawyer drafted the governing instrument themselves, they may still be exposed to accusation of improper interpretation or misadministration by beneficiaries.

It's important for lawyers adopting these responsibilities to understand what insurance coverage will be available to them, and whether additional protections may be advisable. While LAWPRO's Primary Policy (the "Policy") does cover certain responsibilities associated with estate and trust administration, there are important exceptions and limitations. This article will summarize the Policy coverage and some of its limitations.

## **I. Coverage is available when appointments are made pursuant to the insured's professional responsibilities as a lawyer**

LAWPRO provides insurance coverage to lawyers in private practice for damages resulting from an error, omission, or negligent act in the performance of "Professional Services" (see [Part I \(A\)](#) of the Policy). These Professional Services are defined in the Policy as expressly including an insured's activity as a trustee or executor so long as those activities arise pursuant to the insured's responsibilities as a lawyer (see [Part V \(gg\)](#) of the Policy).

As such, coverage is only available if the insured's appointment flows from their responsibilities as the client's lawyer, based on their legal knowledge, judgment, and skill.

## **II. Services excluded under LAWPRO's Primary Policy**

Even if the appointment flows from legal services provided to the client, and the insured continues to provide legal knowledge, judgment, and skill throughout the appointment, some actions of an executor or trustee may still be excluded under the Policy.

### *a. Investment advice or services*



First, the provision of investment advice or services often falls outside the scope of Professional Services as defined by the Policy.

Claims relating to or arising out of the provision of investment advice or services are expressly excluded under [Part III, exclusion \(d\)](#) of the Policy, unless such advice and services are a direct consequence of the lawyer's Professional Services. As such, while obligations that would normally fall within a lawyer's ordinary duties, such as taking inventory of assets and debts, dealing with banks, brokerage and other insurance companies, or arranging for the investment or liquidation of investments, may be covered, any investment advice or services that require a different level or type of expertise beyond that in which lawyers are otherwise trained would not fall within the scope of the Policy.

If an insured expects to be providing investment advice or services beyond those that normally fall within the ordinary course of their Professional Services, it may be advisable to seek additional "executor/trustee" insurance from an excess insurer or on the commercial market to ensure no coverage gaps exist.

#### *b. Intentional wrongs*

Second, Claims alleging intentional wrongs on the part of the insured, such as dishonest behavior or fraudulent, criminal, or malicious acts are also excluded under [Part III \(a\)](#) of the Policy. This would include theft or fraud against the estate or beneficiaries.

If a Claim alleges intentional wrongs by another lawyer practising with the insured, coverage is limited to Innocent Parties under the terms of [Endorsement No. 5](#). Lawyers not acting as sole practitioners must purchase the Mandatory Innocent Party Coverage, which covers circumstances where the insured may be vicariously responsible for the actors or omissions of other parties with whom the insured practises. This coverage has a sublimit of \$250,000 per claim and in the aggregate, but may be bought up to \$500,000 per claim and in the aggregate, or \$1 million per claim and in the aggregate.

#### *c. Fee disputes and punitive damages*

Third, Claims arising out of fee disputes or contested passing of accounts are not covered under the Policy, as such fees are expressly excluded under the definition of Damages in [Part V\(j\)\(ii\)](#). Disputes may arise with respect to executor or trustee compensation that the beneficiaries allege to be excessive. In these circumstances, LAWPRO will deny coverage and provide no defence if a Claim is made only with respect to solicitor fees or compensation as trustee or executor.

As well, insured should take note that a breach of their fiduciary duties as trustee or executor could lead to liability for punitive damages, which would also fall outside the scope of coverage under [Part V\(j\)\(iii\)](#) of the Policy.

### III. Coverage for lawyers winding down their practice

LAWPRO provides run-off coverage to exempt and retired lawyers who previously engaged in the private practice of law. This coverage is provided at no cost, but has a lifetime limit of \$250,000 per claim and in the aggregate.

Lawyers appointed to act as estate trustee, a trustee for an *inter vivos* trust, or an attorney for property prior to leaving practice, and who will continue to act in such a capacity, can apply under [exemption \(h\)](#) of the Policy to maintain coverage for these continuing obligations while exempt. However, this must be residual work from the lawyer's past practice; this exemption will not apply if the lawyer is appointed during retirement or in a non-practising or exempt status. As well, this exemption would not apply in circumstances where the insured is acting in respect of a family member, which means a "related person" as defined under section 251(2) of the *Income Tax Act*.

Exemption (h) applies to retired lawyers and lawyers electing a non-practising status or who otherwise qualify for exemption under eligibility rules d-f. As well, exemption (h) is available regardless of whether the lawyer is acting on a single matter or multiple trusteeships or powers of attorney.

Lawyers who qualify for this exemption can apply for increased run-off protections of either \$500,000 per claim and in the aggregate, or \$1,000,000 per claim and in the aggregate, on a 2–5 year basis.

### IV. Acquiring insurance beyond the limits of LAWPRO's Primary Policy

Lawyers appointed as executor or trustee for high-value estates or trusts may want to consider additional insurance above the standard limits of \$1 million per claim and \$2 million in the aggregate under the Policy. LAWPRO's Excess insurance options can provide increased limits up to \$9 million per claim and in the aggregate.

Excess insurance is underwritten on a firm basis, where the amount of coverage is the total pool of funds available for defence costs and indemnity payments for all lawyers in the firm. Premiums under the Excess program are underwritten on an individual firm basis, and take into account the nature and size of the firm, individual lawyers' areas of practice, and practice status and loss exposure of firm members.

### V. Know the limits of your insurance coverage

While some potential liability that can arise under a trustee or executor appointment will be covered under LAWPRO's Primary Policy, lawyers should note that coverage gaps may exist. In circumstances where the appointment is made outside the insured's Professional Services, where the insured is providing investment advice or services beyond that which would ordinarily fall under the performance of legal services, or

where the potential liability exceeds the limits under the Policy, additional insurance may be advisable.

If you suspect a Claim may be made regarding work done as an executor or trustee, contact LAWPRO immediately. If you have additional coverage questions, or would like more information on increased run-off protections or Excess insurance options, please contact LAWPRO's Customer Service at 1-800-410-1013 or 416-598-5899.

Retired lawyers, estate trustees,  
judges, in-house counsel,  
government lawyers and others  
no longer in private practice



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## Your exposure to claims never retires

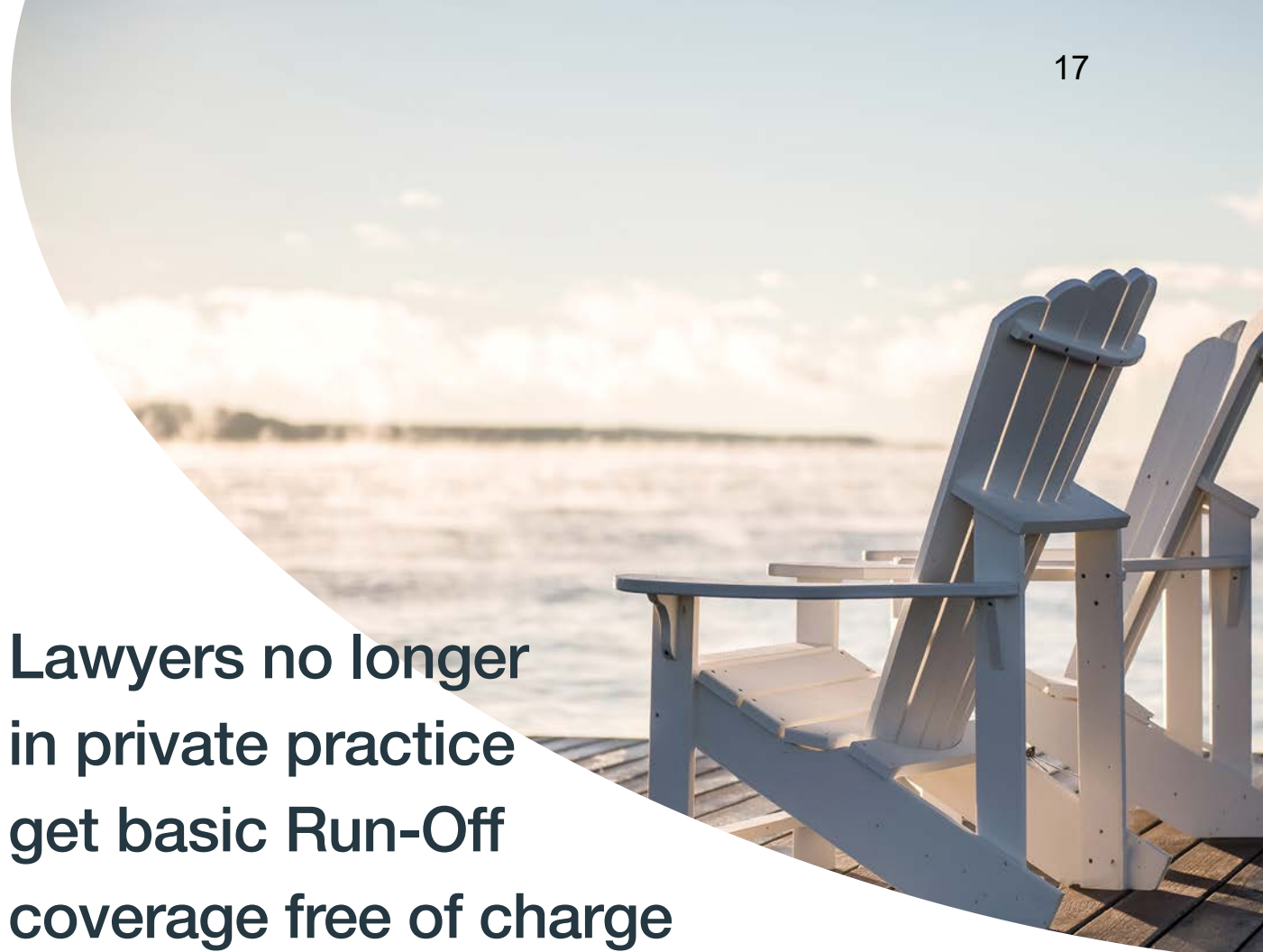
Although you have left private practice, you continue to be liable for professional services that you, or your former partners or associates, provided in the past. It takes an average of three to four years for a claim to surface, and sometimes much longer.

The basic Run-Off insurance coverage of \$250,000 provided free of charge to all lawyers who have left private practice may not be sufficient to cover the cost of claims that may be made against you.



# Informing LAWPRO about your decision to leave private practice

As soon as you know the date you plan to stop practising law, notify both LAWPRO and the Law Society of Ontario. To inform LAWPRO, complete and file an exemption form, available on [lawpro.ca](http://lawpro.ca) or contact LAWPRO Customer Service at 1-800-410-1013 or [service@lawpro.ca](mailto:service@lawpro.ca)



## Lawyers no longer in private practice get basic Run-Off coverage free of charge

Run-Off coverage is also offered free of charge to estate trustees and judges

- The coverage limit of \$250,000 per claim and in the aggregate is a lifetime limit and is not reinstated annually. It is the maximum amount for all claims made against you, including the year you leave active private practice, past years in which you were exempt, and all future years while exempt for reasons other than mobility or a temporary leave of absence.
- This \$250,000 limit is applicable to claim expenses<sup>†</sup>, pre-judgment interest and indemnity payments for claims made against you. All amounts used reduce the funds available for all other claims made against you.
- It applies only to claims arising out of services provided while you were in private practice or maintained practice coverage, except as otherwise noted in this booklet.
- The coverage is subject to a \$5,000 deductible per claim.
- There is no coverage for claims arising out of professional services you provide while exempt from paying the insurance premium (with the exception of pro bono work provided through an approved pro bono professional services program associated with Pro Bono Ontario, and where you purchased additional coverage specifically for certain services as estate trustee, trustee for inter vivos trust, or attorney for property. Details concerning these exceptions are more fully described on [lawpro.ca](http://lawpro.ca)).

<sup>†</sup> CLAIM expenses include costs of investigation, costs of REPAIRS and/or costs of LOSS PREVENTION



- Higher limits may apply on the basis of mobility or temporary leave of absence.
- Protection against innocent partner claims is included. This means that once you leave private practice, if claims are made against you for the dishonest, malicious, criminal or fraudulent acts of a former partner or associate, your Run-Off coverage provides you with up to \$250,000 of coverage for claim expenses<sup>†</sup> and indemnity payments. This is subject to any erosion in this limit as a result of all other claims that LAWPRO has been notified about under your Run-Off coverage.

<sup>†</sup> CLAIM expenses include costs of investigation, costs of REPAIRS and/or costs of LOSS PREVENTION

## Run-Off coverage for lawyers' estates

LAWPRO provides a lawyer's estate with the full increased Run-Off coverage of \$1 million per claim and \$2 million in the aggregate for the first 90 days immediately following the death of a lawyer carrying the standard primary insurance coverage, free of charge.\*

Of course, the estate remains liable for claims arising out of the deceased's practice for years to come. You may want to consider applying for additional insurance protection beyond the basic Run-Off coverage.

\* Lawyers claiming exemption on the basis of mobility or temporary leave of absence are also provided with the benefit of this 90-day coverage, but only as it relates to professional services already insured under the policy.



# Planning to do other work?

This chart can help you determine if you need standard primary insurance coverage

## Retired from private practice, judges, and others no longer in private practice

Insured under Run-Off coverage

In-house counsel and government lawyers: Run-Off coverage for former private practice is available if you are employed by a single employer and provide professional services only for and on behalf of your employer

## Engage in the practice of law for family, friends or associates (even if on a pro bono basis)

Standard primary insurance coverage required

## Acting as a mediator, arbitrator, immigration consultant

Insured for past professional services under Run-Off coverage if you are not working in the capacity as a lawyer and you are absolutely clear to clients and others that you are not providing these services as a lawyer

## Acting as estate trustee, trustee for inter vivos trust, or attorney for property

Apply for extended Run-Off coverage if you are named or act as an estate trustee, a trustee for an inter vivos trust or an attorney for property, even though the rest of your practice is being wound down or turned over to other lawyers (so, must be residual work from your past practice in Ontario), regardless of whether you are acting on a single or a number of trusteeships or powers of attorney. Coverage does not extend when you act for a family member

## Mentoring

Insured under Run-Off coverage provided that: the mentor and mentee enter into a formal mentoring relationship (as evidenced by a written document); the mentor has 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 the mentor

## Volunteering in legal aid clinics

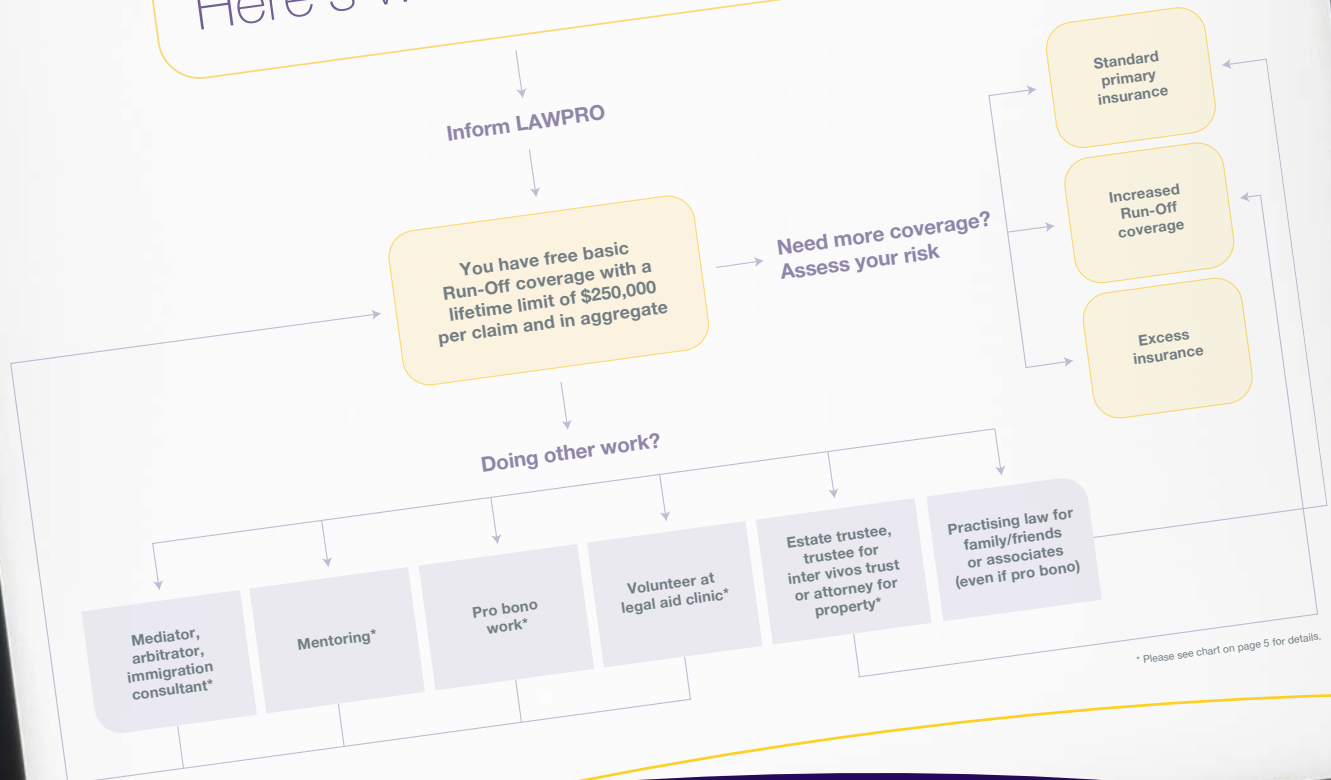
Insured under Run-Off coverage for prior work and you don't need to pay for current practice coverage provided that you have proof of insurance through the clinic and meet the exemption criteria, see [lawpro.ca/exemption](http://lawpro.ca/exemption)

## Pro bono work

Insured under Run-Off coverage if you do pro bono work through a LAWPRO-approved Pro Bono Ontario program. You are not required to pay any deductible for claims relating solely to such professional services

You will not be insured if you do pro bono work for not-for-profit organizations not associated with Pro Bono Ontario. Obtain pre-approval from LAWPRO to maintain exempt status. You may continue to qualify for exemption, however, you will not be insured for this work

## Leaving private practice? Here's what to do...



If you plan to stay in private practice – even on an occasional basis – you must obtain the **standard primary insurance coverage**. Find out more on page 7

**Increase your Run-Off coverage** to keep your limits the same as when you were practising. Find out more on page 8

Consider **buying Excess insurance** if you are concerned that the cost of claims made against you could exceed the \$1 million per claim and \$2 million in the aggregate limits. Find out more on page 10



## Standard primary insurance

If you plan to stay in private practice – even on an occasional basis – you must obtain the standard primary insurance coverage. Many semi-retired lawyers qualify for the 50 per cent premium discount available to part-time practitioners.

### Standard primary insurance:

- Coverage for your current and past professional services
- Coverage of \$1 million per claim and \$2 million in the aggregate, renewed annually
- A choice of deductible types and amounts
- To be eligible for the part-time practice discount:
  - limit your law practice to 20 hours per week on average for each week actually worked, up to 750 hours per year docketed and undocketed (during the past fiscal year and upcoming year); and
  - gross billings must not exceed \$90,000 (during the past fiscal year and upcoming year); and
  - you have no claims with a repair of indemnity payment made within the last five years.





## Increased Run-Off coverage

### 1. Choose a coverage term

- \$500,000 per claim and in the aggregate; or
- \$1 million per claim and \$2 million in the aggregate.

When choosing your coverage, decide the limit you would need to protect yourself against one or more large claims that may exceed the standard \$250,000 per claim and aggregate Run-Off limit.

### 2. Increase coverage terms

Coverage terms range from two to five years. When selecting the term, decide how long you would like coverage for combined claims that may exceed the basic \$250,000 Run-Off coverage.

### 3. Increase Innocent Partner coverage

This coverage provides greater assurance that no criminal, malicious, fraudulent or dishonest act of a former partner, associate or employed lawyer of the firm will expose you to claims that exceed \$250,000 from the past, today and in the future.

Increase your Innocent Partner coverage to:

- \$500,000 per claim and in the aggregate; or
- \$1 million per claim and in the aggregate.

## 4. Increase your coverage to include other services

You can also apply to include protection for services as an estate trustee, a trustee for an inter vivos trust or an attorney for property after you leave private practice.

With regard to this expanded protection:

- Your role as trustee or attorney for property must be residual work from your past practice in Ontario, and not where you have only been named since leaving private practice
- Coverage may apply to a single, or a number of, trusteeships and/or powers of attorney
- Coverage does not apply in the case of a trusteeship, or attorney for property for your own family members
- Coverage does not apply for any dishonest, fraudulent, criminal or malicious act(s) or omission(s)
- Availability and conditions may apply, based on individual underwriting

## Premium

The premium to increase Run-Off coverage depends on a number of factors, including the number of years and area(s) in which you practised law, and how long ago you were in private practice.

You can add innocent partner coverage. The premium is calculated as an additional percentage of your Increased Run-Off premium. Limits up to \$1 million are available.



# Excess insurance

Consider buying Excess insurance if:

- You have already opted to increase your Run-Off coverage to the maximum \$1 million per claim and \$2 million in the aggregate; and
- You are still concerned that the cost of claims made against you could exceed the \$1 million per claim and \$2 million in the aggregate limits.

LAWPRO's Excess insurance is underwritten and rated on a firm basis, based on a risk assessment of information provided in the Excess Liability Insurance application form. The amount of Excess coverage you buy is the total pool of funds available for defence costs and indemnity payments for all lawyers in the firm. Therefore, lawyers in your firm would have access to their primary coverage of \$1 million per claim and \$2 million in the aggregate plus the excess pool (if its limits have not been exhausted by claims from other lawyers in your firm).

## Premium

LAWPRO's Excess insurance program offers competitive rates for excess limits ranging from \$1 million per claim and \$1 million in the aggregate to \$9 million per claim and \$9 million in the aggregate above the coverage limit you have already secured by increasing your Run-Off coverage to the maximum available. Rates for Excess insurance coverage are set each year.

## LOCUMS and Excess insurance

If you acted as a locum, you were standing in for another lawyer to cover or run the other lawyer's law practice while they were away.

LAWPRO's Excess insurance automatically extends coverage to locums and locum work under the Excess policy issued to the firm that has hired you (the contracting firm).

Firms purchasing Excess insurance from other insurers are strongly encouraged to obtain written confirmation from their excess insurer that the locum and the contracting firm are both insureds and that it covers locum work that has or may be done.

# How to apply

## **Increased Run-Off coverage:**

Submit your completed application at least 60 days before your planned date of leave from private practice to ensure there is no gap in coverage and your higher coverage limits are in place. If you opt to apply later, the full limit protection may not be available to you should LAWPRO be notified of a claim.

## **Excess coverage:**

Request a no-obligation estimate for your firm by completing an application on [lawpro.ca/excess](http://lawpro.ca/excess). The estimate is based on existing information in our database including firm size, practice circumstance, areas of practice, claims experience and other underwriting criteria.


## **Application process:**

1. Visit [lawpro.ca](http://lawpro.ca) and login to My LAWPRO using your Law Society number and confidential password
2. Click on either “Apply for Increased Run-Off Protection” or “Apply for LAWPRO Excess Insurance”
3. Complete and submit the application form

Upon successful completion of the form you will receive a confirmation number that begins with IRP for Increased Run-Off or XS for an Excess application.

You can also print the forms from the “Your Policy” section on [lawpro.ca](http://lawpro.ca)





## Past legal activities that may pose continued risk

As a lawyer claiming an exemption, basic Run-Off coverage has a \$250,000 limit for all claims made against you now and in the future. A single claim, or a number of smaller claims, could easily exceed your Run-Off coverage limit, leaving you personally liable for any additional costs.

Research indicates that it takes an average of three to four 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. Carefully assess the risk of claims associated with your past legal activities, and those of any partner or associate with whom you have practised.

In this context, also consider limitation periods under the *Limitations Act*, 2002, which establishes a basic limitation period of two years and an ultimate limitation period of 15 years. Of course, these limitation periods may not always apply. Consider proceedings that may be commenced outside Ontario or professional services that do not pertain to the laws of Ontario.

## What is a claims made policy?


If a claim is made against you *this* year for services you provided in 2018, the policy that responds is the one in place when you first knew (or should have known) about the potential for this claim. If you first become aware of the claim after you already left private practice, it would be your Run-Off insurance that should respond.

## Former partners' coverage may not protect you

If a claim is made against you, it could happen that your former firm or partners are not named in the proceedings; the claim may concern activities unrelated to the firm; or, there may be a coverage issue (such as late notification or failure to notify) involving the former partner's coverage. In all of these scenarios, your \$250,000 basic Run-Off insurance coverage may be inadequate, leaving you personally exposed.

The Limited Liability Partnership (LLP) provisions of the *Partnership Act* provide lawyers who are practising in partnership with an opportunity to substantially reduce their vicarious exposure for the acts of their partners by becoming an LLP. Thus, former LLP partners who remain in practice, along with their insurer, may well find protection under the LLP provisions of the *Act*, which would not be available to you, leaving you exposed to the claim alone. This would be particularly so for claims arising out of services provided by you, or under your direct supervision, on behalf of the LLP.

It is important to realize that the limited liability protection afforded to partners in the past has been restricted to those claims relating to negligent acts or omissions. As a partner in an LLP you remain fully exposed to liability for the wrongful acts or omissions of another partner or an employee not under your direct supervision if the act or omission was criminal or constituted fraud, even if there was no criminal act or omission, or if you knew of the act or omission and did not take the actions that a reasonable person would have taken to prevent it. Innocent Partner Coverage helps fill this gap, as well as offering protection against exposures associated with partners and associates prior to the creation of the LLP.



## Determine if you should increase your Run-Off coverage or secure Excess insurance

Ask yourself the following questions and factor in both potential defence costs and interest payments, as well as actual damages.

### **Does the work of my former partners, associates and employees expose me to claims now and in the future?**

- Was I familiar with their practices, procedures and communications (e.g., intake process, retainers, docket control, diary systems, and file retention)?
- Did they practise in areas such as litigation, corporate, commercial, real estate, tax, securities, or patents and trademarks, that can easily create exposures well above my insurance limits?
- If they have been involved in more claims-prone areas of practice, was the work completed by those with the right expertise, or with others under the appropriate supervision or guidance?
- Are there any non-traditional or other exposures to consider, such as activities of non-lawyer employees, or multi-discipline practice exposures?

- Where are my former partners and associates now and what insurance coverage do they have? Am I exposed to claims for their past services, particularly where they do not maintain adequate insurance coverage today?
- Do I know what limitation periods are likely to apply to these various types of claims, and would I be able to defend them?

**Do I share exposure for the work of others outside the firm?**

- Have I considered the law practices of former associates, co-tenants, and others I shared space or resources with? Have I considered subcontracted or supervisory counsel, co-counsel on files, 'of counsel' and backup counsel?
- Am I satisfied that the letterhead, office signage, website, and promotional materials of my practice and any practice that has been affiliated with it, clearly communicated the nature of the relationship of my practice to that of others?
- Did my retainer agreements, invoicing and billing arrangements with clients clearly communicate the nature of the relationship of my practice to that of others?
- Did I consider locum work, whether by me or others and, was it clear to clients and others that the work was being done as locum work? What type of work was involved and are the files available in the event of a claim?

**Did I handle matters which potentially exposed me to a claim for damages that could exceed my existing coverage limits?**

- Did I or those in my former firm(s) handle major financial transactions, or represent clients in transactions where the stakes are high (for e.g., securities dealings, commercial business, international transactions, pension dealings, corporate litigation, tax advice, intellectual property services, and class action suits)?
- Have my individual and corporate clients grown in wealth? Do I know the extent of my clients' reliance on my past advice? Consider prenuptial agreements and wills, as well as advice and services for start-up companies, tech companies, and growing businesses.
- What limitation periods are likely to apply to such claims? How long will I continue to be exposed?

**What checks and balances were in place for trust accounts?**

Did my former firm(s) maintain large trust accounts or trust accounts with lots of activity and were there careful controls in place governing the activities in these accounts (for e.g., two signature requirements for each cheque or withdrawal)?

### **Do I have multiple file or client exposures?**

- Did I or those in my former firm(s) act on matters for more than one client who, if they sued collectively, could expose me to claims for damages that exceed my coverage limits?
- Has my former firm's work involved the same outside participants that might lead to similar or related claims? Consider, for example, the possible impact of common error or fraud by others involved in these files (like an appraiser, expert or individual involved in repair or remedial work).
- Did I have multiple files relying on the same legal research or opinion that could compound my exposure (in the situation where there is an error in the underlying research or opinion)?

### **Am I covered under my former firm's excess policy?**

Your former firm(s) may have arranged coverage which is applicable to you and your activities while a member of the firm. You should review the terms and conditions of these policies carefully as the coverage may not be sufficient, there may be no coverage for your practice while with other firms, or there may be no coverage for services that you provided outside of your firm practice. You should determine whether these policies are being maintained, and how you would go about providing notification of a claim. Double check that the excess insurance drops down to meet the Run-Off coverage you have chosen.

Depending on how long it takes to discover an error and resolve the claim, and the impact of costs and damages, the value of the claim could be inflated by 50 to 100 per cent, or more.

Remember: once your coverage limits have been exhausted, you could be personally liable for any claim awards made against you.



Lawyers' Professional Indemnity Company

[lawpro.ca](http://lawpro.ca)



Risk management

[practicepro.ca](http://practicepro.ca)



Additional professional  
liability insurance

[lawpro.ca/excess](http://lawpro.ca/excess)



Title insurance

[titleplus.ca](http://titleplus.ca)

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insurance matters

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LAWPRO®



For the peace of mind that comes from  
knowing you and your practice are protected

**Excess Liability Insurance**  
**Innocent Party Insurance**



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**Note:** Throughout this booklet, certain words have been capitalized to indicate that they have a specific meaning, as defined in the LAWPRO POLICY available at [lawpro.ca](http://lawpro.ca)

## your exposure to claims: it may be larger than you think

Protecting yourself against the potentially ruinous cost of claims, by ensuring you have sufficient liability insurance protection in place, should be a major consideration for you, as a practising LAWYER.

Consider the following facts, based on an analysis of LAWPRO's claims statistics over the past ten years:

- 1 in about 33 claims exceeds \$250,000;
- 1 in 74 claims exceeds \$500,000;
- 1 in every 259 LAWYERS with a claim sees that claim exceed the \$1 million mark — potentially leaving them personally liable for costs above the limits of the base insurance program;
- it can take on average three to four years for a claim to surface.

Add to the mix the changing nature of law practice, the trend to more complex claims and higher cost awards, the increasingly litigious nature of society, and the greater incidence of fraud, and it becomes clear that LAWYERS need to carefully assess their liability insurance needs.

This booklet covers two insurance options available to LAWYERS to better protect themselves against potentially ruinous liability claims costs: Excess Insurance Coverage and Innocent Party Coverage.

It also reviews some of the questions you should be asking yourself to evaluate your potential exposure to claims and need for additional insurance coverage.

And it drives home the importance of applying today for additional coverage — to ensure you have the protection you need in place when you need it.

## assess your insurance needs

### Do I Need Additional Insurance Protection?

Before you answer this question, consider some of the following facts concerning your existing professional liability insurance coverage and your potentially significant exposure to claims.

#### A single claim can seriously erode coverage limits

The \$1 million per claim/\$2 million in the aggregate (total of all claims in a policy period) standard coverage limit provided under the LAWPRO program applies to both claims expenses and indemnity payments together. In today's environment, it's not unusual for a single claim to require substantial defence costs — as much as \$500,000 or more. Similarly, prejudgment interest on a claim that arises out of services provided years earlier can take a major bite out of funds available for an indemnity payment to satisfy a judgment or settlement. Consider too the higher stakes in some areas of law, such as securities, tax, pensions, real estate, and estate work. Depending on the circumstances, your \$1 million coverage limit could be seriously eroded, leaving you personally exposed to claims costs that exceed your coverage limits.

#### A claims-made policy focuses on when the claim is made

A claims-made policy provides coverage for claims that arise out of past and present services. To trigger coverage under this type of policy, the claim must have been made against the insured for the first time during the policy period.

In this regard, although most claims arise when a written or oral allegation of breach in the rendering of legal services is first received by the lawyer and resulting from a single or related error(s), omission(s) or negligent act(s) in the performance of professional services, claims may also arise when a written or oral demand for money or services is received.

As well, there are occasions where a lawyer first becomes aware of and notifies LAWPRO of circumstances of an error, omission or negligent act which any reasonable lawyer or law firm would expect to subsequently give rise to a claim. These are deemed to be a claim first made against the lawyer during the policy period, even if a claim is only advanced as against the lawyer after the policy period.

So, with a claims-made policy the focus is not on when the services were provided or when the alleged error or omission is said to have occurred, but rather on when the claim is first made against the insured. If a claim is made against you this year for services you provided in 2012, the policy that responds is this year's policy. This is particularly important when you consider the next point — the time lag factor.

### Claims take time to develop

Research indicates that it takes on average three years after you have provided PROFESSIONAL SERVICES for a claim to surface. Moreover, up to 10 per cent of claims are not made until five years after the services were provided. In some areas of practice such as wills, estates, and real estate, it can take even longer before claims surface.

In other words, LAWYERS must carefully assess the exposure of their past, present and future practice, and that of their partners, associates, employed LAWYERS and any others for whom the LAWYER can be held accountable, including in relation to LOCUM work, when determining their insurance coverage needs.

### Your past can come back to haunt you

In assessing your insurance needs, you need to consider not just your current law practice, but also the risk of claims associated with your past law practice, and that of any partner or associate with whom you have practised.

In this context, consider the changes made to limitations periods with the introduction of the *Limitations Act, 2002* (and transition rules). This legislation establishes a basic limitation period of two years and an ultimate limitation period of 15 years. This ultimate limitation period runs from the day on which the act or omission on which the claim is based takes place, and applies irrespective of when the claim is discovered.

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Of course, these limitation periods may not always apply. Consider, for example:

- proceedings that may be commenced outside of Ontario;
- PROFESSIONAL SERVICES that do not pertain to the laws of Ontario;
- a person with a claim while a minor or during a period of incapacity;
- a person with a claim who was or may have been misled or had essential facts concealed;
- the excluded types of proceedings and scheduled statutes whose limitation periods continue to apply; or
- the discovery date of the claim, whereby former limitation periods or no limitation period may apply.

### It pays to be cautious

The benefits of protecting yourself against a potentially ruinous claim far outweigh the added premium costs for increasing your insurance coverage limits. For example, many can buy an additional \$1 million in Excess Insurance Coverage for approximately the same cost, under the primary insurance program, of having a \$Nil deductible instead of the standard \$5,000 deductible applicable to defence costs and indemnity payments together.



## ASSESS YOUR EXPOSURE: SOME QUESTIONS TO REVIEW

The following are some of the questions you may want to ask yourself to help assess whether or not you should secure additional insurance coverage limits.

When reviewing these questions and assessing your exposure, remember to factor in both potential defence costs and interest payments, as well as actual damages. Depending on how long it takes to discover an error and resolve the claim, and the impact of costs, the value of the claim could be inflated by 50 to 100 per cent, or more.

### Does the work of my present and former partners and associates, and that of employees in my current firm and any past firms, expose me to claims now and in the future?

- How well informed am or was I about their practices, procedures and communications — including file intake procedures, documenting retainers, reviewing opinions, docket control and diary systems, completeness of documentation, and file retention and storage?
- Do or did they practise in areas such as litigation, corporate, commercial, real estate, tax, securities, or patents and trademarks, that can easily create exposures well above my insurance limits?
- If they are or have been involved in more claims-prone areas of practice, has the work been focused either in the hands of a few with the right expertise, or with others under the appropriate supervision and guidance?
- Are there any non-traditional or other exposures to consider? Consider non-traditional law practices or client arrangements, and the activities of non-lawyer employees, or Multi-Discipline Practice exposures.
- Where are my former partners and associates now and what insurance coverage, if any, do they have? You may find that you are exposed to claims for their past services, particularly where they do not maintain adequate insurance coverage today. Are their existing limits likely to have been eroded by previous claims?
- Do I know what limitation periods are likely to apply to these various types of claims? Is the clock continuing to run? Would I be in a position to defend these and other claims should they arise?

### Do I share exposure for the work of others outside the firm?

- Consider the law practices of others, including those of your associates, co-tenants, and others with whom you may share space or resources. Also consider subcontracted or supervisory counsel, any previous or co-counsel on files, 'of counsel' and backup counsel for your practice, as well as those who are or have been otherwise affiliated with your practice or services.

- Am I satisfied that the letterhead, office signage, reception and telephone, fax, website, blog, advertisement and promotional materials, of both my practice and any practice that is or has been affiliated with it, consistently and clearly communicate the nature of the relationship of my practice to that of others?
- Have my retainer agreements, invoicing and billing arrangements with clients consistently and clearly communicated the nature of the relationship of my practice to that of others?
- Consider LOCUM work, whether by me or others in my firm or former firm on behalf of others, or by others on my behalf or firm members' behalf. Was it clear to clients and others that the work was being done as LOCUM work? What type of file work was involved? Are these files available in the event of a claim?

### **Do or did I handle matters which potentially exposed me to a claim for damages that could exceed my existing insurance coverage limits?**

- Did I or those in my present or former firms handle major financial transactions? Will I be involved in these types of transactions in the future? Consider for example, securities dealings, commercial business, international transactions, pension dealings, corporate litigation, tax advice, intellectual property services, and class action suits.
- Did I or those in my present or former firms represent clients where the stakes were significant? Consider for example, pension work, patents and trademarks, environmental-related services, or class action suits.
- Have I or those in my firm or former firms represented clients who are more apt to bring claims? Consider changes in client ownership or management, as well as the jurisdiction in which the client or its parent is likely to bring a claim.
- Have my individual and corporate clients grown in wealth? Do I know the extent of my clients' reliance on my past advice? Have the stakes continued to grow? Consider the drafting of prenuptial agreements and wills, as well as advice and services for start-up companies, 'dot-com' clients, and growing businesses.
- What limitation periods are likely to apply to such claims? How long will I continue to be exposed?

### **What checks and balances are in place for trust accounts?**

- Do my present or former firms maintain large trust accounts or trust accounts with lots of activity?
- Have they had careful controls in place throughout governing the activities in these accounts? Are the trust accounts overseen by more than one LAWYER? Are two signatures required for each cheque or withdrawal?

### **Do I have multiple file or client exposures?**

- Have I or those in my present or former firms acted on matters for more than one client who, if they sued collectively, could expose me to claims for damages that exceed my insurance coverage limits?
- Has much of my firm's work involved the same outside participants that might lead to similar or related claims? Consider, for example, the possible impact of a common error or fraud by others involved in these files (like an appraiser, expert or individual involved in repair or remedial work).
- Do we have multiple files relying on the same research or opinion that could compound my exposure? It is not unusual for a LAWYER to be providing opinions to different clients by relying on the same research or general or past opinion. If there is an error in the underlying research or opinion (whether your own, or that of other firm members, or that subcontracted to outside counsel), the cumulative costs of claims could easily exceed your insurance coverage limits.

### **What would be the commercial impact of an error in the matters I handled?**

Remember the impact of damages could stretch over many years, and exceed the apparent dollar value of the file that you handled. Consider the LAWYER who neglected to renew a lease in a rising market. Damages? Over \$8 million.

### **Am I concerned about my personal exposure if a claim or claims exceed my present coverage limits?**

Remember that once your coverage limits have been exhausted, you could be personally liable for any claim awards made against you.

### **Am I covered under my former firm's excess policy?**

Your former firm(s) may have arranged coverage which is applicable to you and your activities while a member of the firm. You should review the terms and conditions of these policies carefully as the coverage may not be sufficient; there may be gaps in protection, there may be no coverage for your practice while with other firms, or there may be no coverage for services that you provided outside of your firm practice. You should determine whether or not these policies are being maintained, what coverage and limit protection is being provided, and how you would go about providing notification of a claim.

## Excess Liability Insurance Coverage: frill or necessity?

### THE NEED FOR EXCESS LIABILITY INSURANCE

No one, no matter what area of law they practise, is immune to a claim. You also run the risk that the claims made against you in any one year could exceed the \$1 million per claim/\$2 million in the aggregate policy limits of the primary LAWPRO insurance program.

Excess Liability Insurance provides you with that additional layer of protection should defence and indemnity payments exceed the limits provided by the primary LAWPRO program.

### LLPs and the need for Excess Liability Insurance

Practising in a Limited Liability Partnership (LLP) also has insurance implications. One of the requirements of an LLP is that the partners advise clients about the limited extent of their liability within the Limited Liability Partnership under the *Partnerships Act*. LAWYERS in LLPs will want to be able to reassure clients that the firm — an LLP — carries substantial insurance protection.

Excess Insurance is one way for you to be able to provide that assurance and protect yourself against excess exposures — for your own PROFESSIONAL SERVICES, for services provided by others under your direct supervision or control, for firm exposures predating the LLP arrangements, and for protection of the LLP firm assets.

### Law Corporations and the need for Excess Liability Insurance

If you are practising in a Law Corporation, you will want to remember to insure for your full exposure, since the traditional protections associated with working in a corporate entity do not exist in a Law Corporation.

### LOCUMS and the need for Excess Liability Insurance

As LOCUM you are standing in for another LAWYER to cover or run their law practice while away.

LAWPRO's optional Excess program automatically extends coverage to LOCUMS and LOCUM work under the Excess policy issued to the contracting firm. But not all excess insurers may do so.

Firms purchasing excess insurance from other insurers are **strongly encouraged** to obtain written confirmation from their excess insurer that the LOCUM and contracting firm are **both** insureds under any excess policy issued, and that coverage is fully afforded in relation to LOCUM work that has or may be done.

See "Acting as a LOCUM" on page 13 for further details.

## PREMIUM COSTS

Excess Liability Insurance Coverage is available from LAWPRO and the commercial market. LAWPRO offers competitive rates for limits ranging from \$1 million per claim/in the aggregate to \$9 million per claim/in the aggregate on a firm basis *above the \$1 million per claim/\$2 million in the aggregate* coverage limits provided under the primary LAWPRO program. Rates are set each year.

Premiums under the LAWPRO Excess Insurance program are underwritten and rated on an individual firm basis, based on a number of criteria including: the nature and size of the firm; individual LAWYER'S areas of practice, practice status and loss exposure of firm members. For an indication of premiums for your firm, contact LAWPRO Customer Service at the numbers below.

Because Excess Insurance is usually underwritten on a firm basis, the amount of **excess coverage** you buy is the **total pool of funds** available for defence costs and indemnity payments for **all LAWYERS** in the firm. LAWYERS in your firm therefore would have access to their primary coverage of \$1 million per claim/\$2 million in the aggregate plus the excess pool, if its limits have not been exhausted by claims from other LAWYER in your firm.

## Interested in Obtaining Excess Coverage with LAWPRO?

Before making your final decision to purchase Excess coverage with LAWPRO, you should first contact LAWPRO and request a no-obligation premium estimate for your firm. Simply contact LAWPRO Customer Service at 416-598-5899 or 1-800-410-1013 and speak to any of our Program Coordinators to receive a no-obligation estimate. The estimate provided will be based on existing information in our database such as firm size, practice circumstance, areas of practice, claims experience and other underwriting criteria; actual premiums will be provided on completion of the Excess Insurance Application form.

If after receiving the premium estimate your firm wishes to apply for Excess coverage with LAWPRO, simply visit our website at lawpro.ca and log into the secured section of our website at **My LAWPRO** using your Law Society number and confidential password. (If you don't have a password or can't remember your password, follow the online instructions or contact our Customer Service Department at 416-598-5899 or 1-800-410-1013 for assistance.)

Follow the link to "View more online filing options". Under the "Additional Insurance Coverage" heading, select "Excess Liability Insurance Application". Complete and submit the application form (upon successful completion you will receive an online confirmation number that begins with XS).

or

Contact our Customer Service Department at 416-598-5899 or 1-800-410-1013 for more information on how to apply.

**Please note, the effective date of this coverage is 60 days from date of LAWPRO's receipt of the completed Excess Liability Insurance Application form.**

LAWPRO's Excess Insurance program is underwritten and rated on an individual firm basis, based on a risk assessment of information you provide in the Excess Liability Insurance application form. Because Excess Insurance is underwritten on a firm basis, the amount of excess coverage you buy is the total pool of funds available for defence costs and indemnity payments for all LAWYERS in the firm. LAWYERS in your firm therefore would have access to their primary coverage of \$1 million per claim/\$2 million in the aggregate plus the excess pool, if its limits have not been exhausted by claims from other LAWYERS in your firm. Excess Insurance is available from LAWPRO and in the commercial market.

## **Innocent Party Insurance Coverage: it's not my fault!**

9

Excess Liability &  
Innocent Party Insurance Coverage

### **PEACE OF MIND COVERAGE**

Innocent Party Insurance is a "peace of mind" coverage that protects members of the public, and thereby LAWYERS, against the dishonest, fraudulent, criminal or malicious acts or omissions of their present or former partners, associates, and employed LAWYERS of the firm. The increased incidence of fraud-related claims also has heightened awareness of the benefits of Innocent Party Coverage.

Standard Innocent Party Coverage provided to LAWYERS under the primary insurance program has a sublimit of \$250,000 per claim and in the aggregate. This means that the Innocent Party Coverage is provided within the primary insurance program coverage limits, and not in addition to the \$1 million/\$2 million coverage in place under the mandatory insurance program.

Like the general policy limit, this sublimit applies to both claim expenses and indemnity payments together. Therefore, one claim with substantial defence costs would quickly erode the amount of funds available for indemnity.

As well, this sublimit applies to claims under the Real Estate Practice Coverage which is required of all LAWYERS practising real estate law in Ontario, since the sublimit of liability for that coverage is included within the Innocent Party Coverage sublimit. For more details concerning the Real Estate Practice Coverage Option visit [lawpro.ca](http://lawpro.ca) (select "Practice Type") or contact the LAWPRO Customer Service Department.



## Increasing Innocent Party Coverage sublimits

Practitioners can apply to increase their Innocent Party Coverage sublimit:

- For an additional annual premium of \$75 per insured LAWYER (or PARALEGAL PARTNER OR SHAREHOLDER), practitioners can apply to increase their coverage sublimit to \$500,000 per claim and in the aggregate; OR
- For an additional annual premium of \$125 per insured LAWYER (or PARALEGAL PARTNER OR SHAREHOLDER), practitioners can apply to increase their coverage sublimit to \$1 million per claim and in the aggregate.

All LAWYERS practising in a law firm that is a partnership (including general, MDP, CLF and LLP partnerships), or in a Law Corporation (with more than one LAWYER or a CLF), or PARALEGAL PARTNER OR SHAREHOLDER must select the same buy-up option.

For maximum assurance, and to avoid any gaps in insurance coverage, LAWPRO strongly recommends that LAWYERS buy up their Innocent Party Coverage to the maximum primary limits of \$1 million per claim/ in the aggregate.

## LLPs and the need to increase Innocent Party Coverage

LAWYERS in Limited Liability Partnerships (LLPs) should consider increasing Innocent Party Coverage sublimits above those provided by their Standard Innocent Party Coverage.

It is important to realize that the limited liability protection afforded to partners in the past has been restricted to those relating to negligent acts or omissions. Although this has changed more recently, as a partner in an LLP today you may be exposed to liability for wrongful acts or omissions of another partner, or of an employee of the partnership who is not under your direct supervision, if the act or omission was criminal or constituted fraud. This is so even if there was no criminal act or omission. You may also be exposed to liability for wrongful acts or omissions of another partner or of an employee of the partnership who is not under your direct supervision, if you knew or ought to have known of the act or omission and did not take the actions that a reasonable person would have taken to prevent it. Innocent Party Coverage helps fill these gaps, as well as offering protection against exposures associated with partners and employees prior to creation of the LLP.

## LOCUMS and the need for Innocent Party Coverage

As LOCUM you are standing in for another LAWYER to cover or run their law practice while away.

If you are standing in for a LAWYER in an association, partnership or LAW CORPORATION with more than one LAWYER, and other LAWYERS in the firm have bought up their Innocent Party protection, you must carry at least that same amount of increased Innocent Party protection. LAWPRO **strongly recommends** that the LOCUM, as well as LAWYERS in the contracting firm, apply for the full amount of Innocent Party protection available to ensure that they are well protected against CLAIMS that may arise out of dishonest acts.

If a CLAIM does arise in relation to LOCUM work, it is the LOCUM's policy coverage under the Law Society program that would respond.

See "Acting as a LOCUM" on page I3 for further details.



## acting as a LOCUM

As LOCUM you are standing in for another LAWYER to cover or run their law practice while away.

In this replacement you are considered a member of the firm that has hired you (the contracting firm) and should anticipate being viewed as such by clients and others particularly appreciating the Law Society recommendation that all clients be informed that the LOCUM will be covering the contracting firm lawyer's practice so may be working on their files, and that retainer agreements may expressly provide for potential LOCUM involvement.

Insurance requirements, options and coverages all need to be considered in this light.

### IF YOU ARE ACTING AS LOCUM

You are responsible for ensuring that you have in place Law Society program protection with appropriate coverage options that reflects your LOCUM work, as well as your own law practice that you may still be conducting.

Some issues to consider include:

#### 1. **Your current insurance coverage and options under the Law Society program**

Do the practice and coverage options in place for you under the program still apply?

For example, if you opted for the Restricted Area of Practice option but your LOCUM work is not confined to only criminal and/or immigration law, or if you had qualified for the Part-time Practice option but now will be working full-time (whether as a LOCUM for a single LAWYER, or for more than one LAWYER, in addition to your own personal law practice), you would no longer qualify for these options and would need to have them removed.

Similarly, if your LOCUM work is to include the practice of REAL ESTATE LAW and you do not carry the Real Estate Practice Coverage option, you need to first apply for and be granted this option before doing this work.

#### 2. **The need for Innocent Party Coverage under the Law Society program**

If you are standing in for a LAWYER in an association, partnership or LAW CORPORATION with more than one LAWYER, and other LAWYERS in the firm have bought up their Innocent Party protection, you must carry at least that same amount of increased Innocent Party protection. LAWPRO **strongly recommends** that the LOCUM, as well as LAWYERS in the contracting firm, apply for the full amount of Innocent Party protection available to ensure that they are well protected against CLAIMS that may arise out of dishonest acts.

If a CLAIM does arise in relation to LOCUM work, it is the LOCUM's policy coverage under the Law Society program that would respond.

### 3. The need for Excess Coverage

LAWPRO's optional Excess program automatically extends coverage to LOCUMS and LOCUM work under the Excess policy issued to the contracting firm. But not all excess insurers may do so.

Firms purchasing excess insurance from other insurers are **strongly encouraged** to obtain written confirmation from their excess insurer that the LOCUM and contracting firm are **both** insureds under any excess policy issued, and that coverage is fully afforded in relation to LOCUM work that has or may be done.

### If You Are The Contracting Firm Hiring A Locum

In the eyes of the client and others, you can anticipate that the LOCUM will be seen as acting as a member of the contracting firm. It is important that the contracting firm ensures that the LOCUM maintains Law Society program protection and coverage options that are consistent with both the LOCUM work and the coverage of the firm's other lawyers.

Firm LAWYERS should keep in mind the following regarding the Law Society program:

- Limit protection for a claim made against the LOCUM would not be increased by virtue of the program coverage maintained by other LAWYERS in the contracting firm;
- Partners in the firm could find themselves responsible for paying the LOCUM's program DEDUCTIBLE; and
- No protection is available in respect of allegations of damage to the goodwill and reputation of the firm.

As well, the aggregate limit protection provided to LOCUMS could also be eroded by CLAIMS that are not related to LOCUM work.

### For information on insurance coverage for LOCUMS,

Please contact the LAWPRO Customer Service Department at 1-800-410-1013 or 416-598-5899; fax 416-599-8341; or via email to [service@lawpro.ca](mailto:service@lawpro.ca).

## **Avoid any chance of a gap in coverage. Apply today!**

If you intend to increase your insurance coverage limits by securing additional insurance coverage, you should ensure that LAWPRO has received your completed application **at least 60 days before the coverage is to be in place**, to better avoid the possibility of gaps in insurance coverage between your primary program coverage and any excess insurance you or your firm might carry, and to ensure that your higher coverage limits are in place on the desired date.

Note that just because you have applied to increase your limits does not obligate you to purchase this additional coverage, nor does it obligate LAWPRO to provide it.

### **For information and an application form,**

Visit the LAWPRO website at [lawpro.ca](http://lawpro.ca),  
or contact the LAWPRO Customer Service  
Department at 1-800-410-1013 or  
416-598-5899; fax 416-599-8341; or  
via email to [service@lawpro.ca](mailto:service@lawpro.ca)

**Note:** This page left blank purposefully. Please see next page for Appendices.





# **appendices**

## appendix I: definitions

### LAWYER(S)

Each person who holds a Class LI licence pursuant to the by-laws of the *Law Society Act*, R.S.O. 1990, c.L.8 (*"Law Society Act"*).

### LOCUM(S)

A PRACTISING LAWYER who substitutes for another LAWYER, on a temporary basis, in the performance of PROFESSIONAL SERVICES for the clients of the other LAWYER or the other LAWYER'S LAW FIRM. For the purposes of such work under the Law Society program, the LOCUM is deemed to be a member of the LAW FIRM to which the other LAWYER belongs.

### PRACTISING LAWYER(S)

A LAWYER who is engaged in the practice of law and is not exempt from the payment of insurance premium levies pursuant to the by-laws of the *Law Society Act* or suspended from the practice of law in Ontario, and should include LAWYERS while employed exclusively by one or more DESIGNATED AGENCY(IES) before January 1, 2017.

### PROFESSIONAL SERVICES

The practice of the Law of Canada, its provinces and territories, where conducted, by or on behalf of an INSURED in such INSURED'S capacity as a LAWYER or member of the law society of a RECIPROCATING JURISDICTION (not as a member of the Barreau du Québec), subject to Part II Special Provision A; and shall include, without restricting the generality of the foregoing, those services for which the INSURED is responsible as a LAWYER arising out of such INSURED'S activity as a trustee, administrator, executor, arbitrator, mediator, patent or trademark agent.

### RECIPROCATING JURISDICTION(S)

As defined in paragraph 9(4) under By-Law 6 of the *Law Society Act*.

### NATURE OF PRACTICE

#### LAW CORPORATION — SOLE

A professional LAW CORPORATION, in accordance with the *Business Corporations Act* and By-Law 7 of the *Law Society Act*, in which a LAWYER practises as a SOLE PRACTITIONER.

#### LAW CORPORATION — NOT SOLE

A professional LAW CORPORATION, in accordance with the *Business Corporations Act* and By-Law 7 of the *Law Society Act*, in which more than one LAWYER acts in private practice.

### SOLE PRACTITIONER

A LAWYER in private practice who practises law on the LAWYER'S own without LAWYER partners or shareholder(s), LAWYER associates, PARALEGAL partner(s) or shareholder(s), or employed LAWYERS, and who does not practise in a LAW CORPORATION. Note that LAWYERS who share a firm name website, contact information, marketing materials, or whose name appears on letterhead with the names of other LAWYERS, are not considered SOLE PRACTITIONERS for the purposes of the insurance program.

### ASSOCIATION

LAWYER(S) in private practice affiliated with other practising LAWYER(S) or PARALEGAL(S) (e.g. share services, website or other marketing materials, space and/or whose names appear on joint letterhead, etc.), other than in a Law Corporation or partnership.

### COMBINED LICENSEE FIRM (CLF)

A COMBINED LICENSEE FIRM, other than a MDP, with PARALEGAL PARTNER(S) OR SHAREHOLDER(S) in accordance with By-Law 6 of the *Law Society Act*, in which one or more LAWYER(S) are partner(s) or shareholder(s) in private practice.

### PARTNERSHIP — GENERAL

A Law Partnership, in accordance with the *Partnerships Act* and the *Law Society Act*, other than a MULTI-DISCIPLINE PARTNERSHIP, a COMBINED LICENSEE FIRM, or a Limited Liability Partnership (LLP), in which more than one LAWYER acts in private practice.

### PARTNERSHIP — MULTI-DISCIPLINE PRACTICE (MDP)

A MULTI-DISCIPLINE PARTNERSHIP with non-lawyer partner(s), in accordance with By-Law 7 of the *Law Society Act*, in which one or more LAWYERS act in private practice.

### PARTNERSHIP — LIMITED LIABILITY PARTNERSHIP (LLP)

An LLP in accordance with the *Partnerships Act* and By-Law 7 of the *Law Society Act*, in which more than one LAWYER acts in private practice.

### IN-HOUSE CORPORATE COUNSEL

LAWYERS employed as counsel by a single corporation, other than a Law Corporation or a government corporation, and not employed as a teacher.

### EMPLOYED, OTHER

LAWYERS employed in government or education and other LAWYERS employed as counsel not in private practice, but other than In-house Corporate Counsel.

### RETIRED OR OTHERWISE WITHDRAWN FROM PRACTICE

Retired LAWYERS, emeritus LAWYERS, and LAWYERS only acting as estate trustee, trustees for *inter vivos* trust or attorney for property, as residual work from the LAWYERS' former law practice.

## appendix 2

### TOOLS AND RESOURCES FROM practicePRO

LAWPRO's practicePRO initiative provides risk management, claims prevention and law practice management information to Ontario lawyers.

#### LAWPRO MAGAZINE

*LAWPRO Magazine* is published throughout the year and sent to all LAWYERS in private practice in Ontario. All the articles from past issues are available, and can be accessed chronologically and by topic in the *LAWPRO Magazine* archives. ([practicepro.ca/lawpromag](http://practicepro.ca/lawpromag))

#### AVOIDACLAIM.COM

A blog that provides immediate and practical information to help lawyers avoid frauds and legal malpractice claims. ([avoidaclaim.com](http://avoidaclaim.com))

#### PRACTICE AIDS

On the practicePRO site you can find many helpful practice aids, including: checklists and retainer precedents, fraud prevention information, limitation period charts, client relations help and much more. ([practicepro.ca/practice-aids](http://practicepro.ca/practice-aids))

#### TECHNOLOGY RESOURCES

practicePRO helps LAWYERS integrate technology into their practices through a variety of technology resources and articles including electronic data security. ([practicepro.ca/technology](http://practicepro.ca/technology))

#### WELLNESS RESOURCES

The practicePRO website provides links to assessment tools, guides and resources to help LAWYERS address wellness and balance issues. ([practicepro.ca/wellness](http://practicepro.ca/wellness))

#### THE "MANAGING" SERIES OF BOOKLETS

These 'how-to' booklets provide practical insights, precedents and checklists to help lawyers deal with specific law practice management issues. These booklets will help you to manage conflicts of interest, practice interruptions, the finances of your practice, and more. ([practicepro.ca/practice-aids/managing-booklets](http://practicepro.ca/practice-aids/managing-booklets))

#### MEMBER ASSISTANCE PROGRAM (MAP)

LAWPRO encourages INSUREDS to take steps to manage stress and to achieve a healthy and balanced lifestyle. The MAP provides confidential assistance to all INSUREDS and their families. The MAP, which is operated by Homewood Health™, receives financial, arms-length support from the Law Society and LAWPRO. ([practicepro.ca/practice-aids/wellness](http://practicepro.ca/practice-aids/wellness))

For more information on how practicePRO can work for LAWYERS, visit our website at [practicepro.ca](http://practicepro.ca), email [practicepro@lawpro.ca](mailto:practicepro@lawpro.ca), or contact us at 416-596-4623 or 1-800-410-1013.





Lawyers' Professional Indemnity Company  
250 Yonge Street  
Suite 3101, P.O. Box 3  
Toronto, Ontario M5B 2L7

t 416-598-5800 or 1-800-410-1013  
f 416-599-8341 or 1-800-286-7639

email: [service@lawpro.ca](mailto:service@lawpro.ca)  
[lawpro.ca](http://lawpro.ca)



## Q. What are my insurance options if I need to take a temporary leave of absence from practice?

**A.** You can apply for Exemption 'C' under the LAWPRO Program if you are taking a temporary leave of absence from practice. The leave may be up to five years for family reasons or illness and two years for other reasons. This exemption is for a temporary leave of absence only, meaning you must intend to return to practice. It is not available if you wish to pursue alternative employment and there is no coverage for professional services provided during your period of exemption except for the following:

- pro bono services provided through an approved pro bono project associated with Pro Bono Ontario;
- certain mentoring services; and
- certain services as estate trustee, trustee for *inter vivos* trust, or attorney for property, provided you have completed an application

### How does my coverage change?

If you apply part way through a policy year, you keep the coverage options (including deductible) you have in place and then revert to the standard coverage at the outset of the next policy year if you remain on exemption. Lawyers who apply at the outset of the policy year are provided with the full coverage of \$1 million per claim/\$2 million in the aggregate and the standard deductible of \$5,000.

### Protecting yourself from a claim while on leave

LAWPRO claims statistics show that lawyers taking extended leaves of absence face increased vulnerability to claims as a result of inadequate file supervision, transfer

procedures, and missed deadlines. Litigators should be mindful of the 5-year deadline to set matters down for trial under Rule 48. Files left unattended can trigger a "cluster" of administrative dismissals and is a scenario that LAWPRO sees all too frequently. In various areas of practice, claims have arisen when the departed lawyer has failed to ensure active files are being monitored by staff or transferred to a colleague.

Here are some tips to avoid the files you leave behind becoming a malpractice claim:

#### Develop and follow procedures for seamless transfer of files

Failing to follow firm file transfer procedures can lead to unnecessary confusion. A file may have languished because damages are

minimal and/or there are difficult issues of liability. When going on leave, make sure to be frank with the successor lawyer or the lawyer who will be assigning the files as to why the matter is in the state that it's in, and what steps need to be taken.

#### Write detailed file transfer memos

Disorganized files can result in details being missed. A good practice is to include a detailed file transfer memo for each file.

#### Ensure employees are appropriately supervised

Lawyers should not be relying solely on staff to handle files in their absence: at the end of the day it is the lawyer who will be facing a malpractice claim. ■



## A leave of absence checklist

- ☐ Draft detailed file transfer memos that explain upcoming closing dates, limitation dates, administrative dismissal deadlines, or other important dates and any steps that must be taken before those dates.
- ☐ Communicate with your clients about your absence in advance and tell them who will be handling their file while you are away. Put this conversation in writing in a letter to the client and detailed notes to file.
- ☐ Ensure your tickler system is effective, populated properly, and staff have been trained in the use of the system.
- ☐ Ensure junior lawyers, clerks and staff are appropriately supervised and pay attention to signs that suggest they are overwhelmed and at risk of missing deadlines.
- ☐ Keep your office and files organized so that lawyers taking over your files will be able to locate the information they need and understand what work remains to be done.
- ☐ Diarize in your tickler system any upcoming or regular filing deadlines that apply to your clients, such as annual corporate filings, licence renewals, IP renewals, requirements for passing of accounts.
- ☐ For litigators, diarize timelines in your tickler system including the 5-year deadline to set matters down for trial under Rule 48, meet outstanding orders, and to ensure your files stay on track.
- ☐ Be prepared for leaves by already having an action plan in place for unexpected work interruptions or emergencies.
- ☐ Confirm your firm's excess insurance coverage will extend to you during your leave.
- ☐ If an error is made or a potential malpractice claim is discovered, LAWPRO should be notified immediately.

FACTS

VS

MYTHS

# LAWPRO

## is not like your auto insurer

### A lawyer dispels common myths about your insurance coverage

In my more than 20 years of defending lawyers on malpractice claims, I continue to be amazed at how little some lawyers seem to know about the "LAWPRO policy" and how a claim is handled. I am also frustrated by how often lawyers have not done even the simplest things that could help them avoid or defend a malpractice claim.


Lawyers often assume that LAWPRO operates like an auto insurance company. This impression is just not correct – LAWPRO is very different from your auto insurer because it:

- Actively works to prevent claims;
- Does not look for ways to avoid providing insurance coverage;
- Appoints repair counsel to fix the mistake and reduce damages if there has been an error;
- Does not settle a claim just because the cost of defending the claim may exceed the amount at issue;
- Takes a principled approach and settles claims where there has been negligence and the client suffered damages;
- Appoints counsel to vigorously defend proceedings if there is no negligence or damages; and
- Works collaboratively with defence counsel and the insured to defend the claim.


From my work defending lawyers, I have found over and over again some common myths about the LAWPRO policy and how claims should be handled. All these comments apply to coverage under the mandatory

insurance program LAWPRO runs on behalf of the Law Society, and may also apply to excess insurance coverage if it is in place.

#### MYTH #1: Only bad lawyers have claims against them.


**FACT**  Even the best lawyers make honest mistakes or can face a baseless allegation of negligence from a client that is suddenly unhappy due to unexpected events or changed circumstances. LAWPRO's claims stats indicate that almost half of all lawyers can expect to have at least one malpractice claim in the course of their career. Many of the lawyers reading this will have to contact LAWPRO to report a claim at least once in their career.

#### MYTH #2: Lawyers only need to report to LAWPRO when they are served with a statement of claim.


**FACT**  Lawyers should report to LAWPRO in a variety of circumstances. These include: when a lawyer discovers or thinks a mistake was made; when

a client has asserted that the lawyer made a mistake; when a lawyer is being asked to swear an affidavit or give evidence about their file handling; or, when a request for production or court order has been made for the lawyer's file. When in doubt, report!


#### MYTH #3: If a lawyer can fix their mistake, they should try to do that before contacting LAWPRO.

**FACT**  A lawyer should never try to fix a mistake or admit to a client a mistake has been made. Instead, LAWPRO should be immediately contacted. Attempting to fix a mistake or admitting an error may jeopardize the lawyer's insurance coverage, especially if it makes the situation worse. LAWPRO claims professionals or defence counsel can coach you on the conversation you should have with a client if there is a potential claim.


**MYTH #4: A lawyer working at a firm does not have to worry about their LAWPRO policy. It is a firm concern.**

 **Fact** The lawyer is individually named as the insured under the LAWPRO policy, not the firm. This is unlike excess policies where the firm is usually the named insured. Any claims should be reported to LAWPRO by the lawyer who made the purported error or is responsible for the file. LAWPRO will look first to the individual lawyer for payment of any applicable deductibles or claims surcharge levies, even if there is an arrangement that the firm will pay these amounts. As well, LAWPRO can look to the partner(s)/shareholder(s) of the law firm the lawyer was at as of the date of the claim for payment of the deductible.

**MYTH #5: It is better not to take notes or keep your file because it makes it harder to prove you made a mistake.**

 **FACT** It makes it harder to defend! While clients remember what was said and done on a file, usually in great detail, in my experience lawyers just do not remember the details. Notes or other documentation in a file that can establish what actually happened can be a lifesaver in the event of a claim.


**MYTH #6: Reporting a claim will trigger a deductible and claims surcharge levies.**

 **FACT** Simply reporting a claim to LAWPRO does not, repeat, does not trigger a deductible. Lawyers have various deductible choices that include a nil deductible option (where you don't pay a deductible at all), a deductible that only applies when there's a

payment further to a judgment, settlement and/or repair ("indemnity payment"), and a third deductible option that applies to indemnity payments and claims expenses. If the third type of deductible applies, 50% of the deductible would be payable when a statement of defence or responding materials are filed, and the remainder would be payable on the earliest of the commencement of discoveries, examinations, or a pre-trial conference is held, or when an indemnity payment is made.


The claims history levy surcharge is only applied if a claim has had an indemnity payment or the entire claim limit has been otherwise exhausted. If a claim is closed without any repair being required or payment made to the other side, then your premiums aren't expected to go up just because you've had a claim reported. Most claims are settled without a finding of negligence. In 2021, 35% of LAWPRO claims were closed with no costs whatsoever, defence costs were incurred on only 52% of the files, and an indemnity payment was paid on only 13% of the files.

**MYTH #7: Lawyers do not have to worry about obtaining insurance in excess of the amount afforded under the LAWPRO policy.**

 **FACT** The LAWPRO policy provides annual errors and omissions coverage of \$1 million per claim, or \$2 million in the aggregate. Keep in mind that this amount erodes with defence costs and expenses – which can sometimes be significant, even when the allegation of negligence has no merit. Consider the matters you handle and the nature of your practice – get excess coverage if you think you have exposure to a claim that would be worth more than \$1 million in terms of indemnity (including pre-judgment interest)

and defence costs. Excess coverage is not very expensive and gives you great comfort. Visit [lawpro.ca/excess](http://lawpro.ca/excess) for information on LAWPRO's excess insurance program.

**MYTH #8: Lawyers have no insurance coverage after they leave practice.**

 **FACT** When lawyers leave private practice (e.g., to retire, go in-house, move to another jurisdiction or take a temporary leave to focus on family) they usually qualify for exemption from payment of the premiums. Whatever the reason, the policy provides for Run-Off coverage that covers the work you did as an Ontario practising lawyer, for free! The standard Run-Off coverage has a sublimit of \$250,000 that covers your work as a lawyer when coverage was carried prior to going on exemption. This basic Run-Off coverage remains in place and lasts as long as you are on exemption. Of course, the limits will be depleted by claims that arise after the lawyer goes on exemption and the coverage may change in future. Lawyers can apply to buy up this sublimit to \$500,000 or \$1 million. It's also worthwhile to check if your current or previous firms have any excess insurance that might also respond to claims made against former members of the firm after they leave and what conditions might apply.

Take the time to learn more about your LAWPRO policy. Visit [lawpro.ca](http://lawpro.ca) for a copy of the policy and coverage. And remember to take steps to reduce your exposure to a claim. [practicepro.ca](http://practicepro.ca) has loads of helpful tools and resources to help you accomplish this. Lastly, please follow the advice I give above to help LAWPRO and your defence counsel defend you in the event you face a malpractice claim. ■

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Susan Sack is a partner at Rosen Sack LLP.

# LAWPRO KEY DATES FOR 2023

Make a note of the key dates for 2023 and mark your calendars accordingly.

## **January 31, 2023**

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending December 31, 2022.

## **February 6, 2023**

Last date to qualify for a \$50 early payment discount on the 2023 policy premium (see the 2023 Program Guide for details).

## **April 30, 2023**

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending March 31, 2023.

## **April 30, 2023**

Annual exemption forms are due from lawyers not practising civil litigation and/or real estate in 2023 and wanting to exempt themselves from quarterly filings.

## **July 31, 2023**

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending June 30, 2023.

## **September 15, 2023**

File your LAWPRO Risk Management Credit Declaration by this date at lawpro.ca to qualify for the \$50 premium discount on your 2024 insurance premium for each LAWPRO-approved CPD program (to a maximum of \$100) completed by September 15, 2023.

## **On or about October 1, 2023**

2024 Insurance Renewal Application filing begins: The online filing of Professional Liability Insurance renewal applications for 2024 is expected to begin.

## **October 31, 2023**

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending September 30, 2023.

## **November 8, 2023**

Renewal application filing deadline: 2024 Professional Liability Insurance renewal applications received by LAWPRO (online or otherwise) after this date and up to December 1, 2023 will have an additional premium of \$350 applied to the 2024 insurance premiums (subject to Program approval by Convocation). Lawyers who do not file by December 1, 2023 will pay an additional premium of \$600 and a default policy will be issued on their behalf.

**LAWPRO Customer Service Department can be reached at: 416-598-5899 or 1-800-410-1013; by fax at 416-599-8341 or 1-800-286-7639;  
or by email at service@lawpro.ca**





# Essential LAWPRO Resources

**practicePRO.ca website:** All of the risk management information that LAWPRO creates under the practicePRO banner is available on the practicePRO website: [practicepro.ca](https://practicepro.ca)

**AvoidAClaim.com blog:** Visit the blog for fraud warnings, the names of bogus clients involved with confirmed frauds and examples of the messages and documents they are providing to lawyers: [avoidaclaim.com](https://avoidaclaim.com)

Use our **Fraud Fact Sheet** to help you and your staff recognize fraudulent matters and the red flags of a fraud: [practicepro.ca/fraud](https://practicepro.ca/fraud)

**LAWPRO Magazine archives:** Articles and supplemental resources from past issues of *LAWPRO Magazine* are available online. Finding individual articles is easy: [practicepro.ca/lawpromag/past-issues/](https://practicepro.ca/lawpromag/past-issues/) or articles can be searched by topic.


**Wellness and balance:** practicePRO provides tools and resources to help you manage stress, and achieve a healthy and balanced lifestyle: [practicepro.ca/wellness](https://practicepro.ca/wellness)

**MAP: Member Assistance Program (MAP):** Homewood Health (with financial support from the Law Society and LAWPRO) provides Ontario lawyers, law students, licensed paralegals and their families with confidential professional counselling and volunteer peer support for alcohol, drug or other addictions, eating disorders, stress, burnout or mental illness. If you, your partner or your spouse needs help, please call 1-855-403-8922 (TTY: 1-866-433-3305) or access online services: [myassistplan.com](https://myassistplan.com)

**practicePRO lending library:** The practicePRO lending library has more than 100 books on a wide variety of law practice management topics. Ontario lawyers can borrow books in person or via email. A full catalogue of books is available: [practicepro.ca/practice-aids/lending-library/](https://practicepro.ca/practice-aids/lending-library/)

**Practice Aids:** There are many practice aids available under the practicePRO banner. These tools and resources provide you with practical information and advice for dealing with a wide variety of practice management-related issues: [practicepro.ca/practice-aids/](https://practicepro.ca/practice-aids/)





## Title insurance matters: One of these things is not like the other

You may recall the title as a lyric from a song in a popular kids show many years ago, reinforcing the benefits of being aware and noticing differences.

This same lesson applies when comparing the legal protection coverages offered by other title insurers that compete with the Legal Service Coverage that's included in TitlePLUS policies. The differences are not always obvious and often discovered after a claim, where coverage is not what was expected.

Unfortunately, the lawyer could then be facing a lawsuit from their client, professional reputation damage, and a paid claim under their errors and omissions coverage that may trigger payment of a deductible and claims levy surcharges, often resulting in additional costs of \$17,000 or more over the next five years.

Real Estate remains one of the highest in claims by area of practice, with LAWPRO reporting that 27% of new claims in 2021 were real estate related. As such, it is important to protect yourself and your clients by understanding the differences in the various legal protection coverages offered by title insurers.

Did you know that many legal service endorsements are subject to the same exclusions, limitations, and exceptions contained in the title insurance policy? Be aware, as circumstances may arise where the lawyer is exposed to liability and could be sued.

**Scenario-** A lawyer closes a purchase of vacant land but misses adding one of the PIN's on a transfer due to an administrative error. When their client attempts to later sell the property, the missing PIN is discovered to be in the prior owner's name. The client submits a claim under the title insurance policy. However, since coverage is limited to the land as legally described in Schedule A, the claim is denied. Further, although the policy included a legal protection endorsement, it is subject to the same exclusions, conditions, and exceptions of the title insurance policy and unfortunately, there is no coverage.

This claim scenario would have been covered if the lawyer had the Legal Services Coverage included in a TitlePLUS policy, as the policy explicitly states there is coverage if the lawyer:

“Commits an error or omission in providing legal services for the Transaction for which liability is imposed by law.”

Other common policies offered by other insurers are those that cover smaller error and omissions claims but have monetary claim payout limits. Limits on the amount of the claim are always a cause for concern, particularly because the average cost of a real estate claim is \$34,000. A TitlePLUS policy has no limitations on payouts other than the policy amount, and the industry standard inflation protection limit on the original policy amount.

Lastly, some legal service options require you to purchase the coverage each time you order a policy. This additional step can be easily missed, especially in a time of competing priorities and busy days. With a TitlePLUS policy, there are no extra steps. Legal Services Coverage is automatically included in most policies - no missed coverage, no extra input, and no extra charge.

TitlePLUS Legal Services Coverage stands on its own and is the coverage many legal professionals rely upon and trust. Visit [titleplus.ca](https://titleplus.ca) to learn more about the many new changes at TitlePLUS including TitlePLUS Legal Counsel Fees.

To learn about the many scenarios where TitlePLUS Legal Services Coverage would respond, watch this video <https://www.youtube.com/watch?v=nOAzv5U044U> ■

---

Lisa Burdan is Sales Manager, TitlePLUS at LAWPRO



# Introducing the NEW TitlePLUS<sup>TM</sup>

BACKED BY LAWPRO

## Rebuilt with you in mind

- Integrated with the Unity practice management platform
- An intuitive website and application
- TitlePLUS Legal Counsel Fee to recognize your work
- Easier, faster underwriting and one-step issuance
- Separate policies for owners and lenders
- Most policies automatically include legal service coverage

Built for lawyers,  
backed by LAWPRO

We know your business  
Give us a second look

## What you've always wanted

- ✓ Efficiency
- ✓ Simplicity
- ✓ TitlePLUS Legal Counsel Fee
- ✓ Expertise you can count on
- ✓ Excellent protection for your clients



# THE VERDICT IS IN

## The **NEW TitlePLUS** is better than before

The new TitlePLUS® is fast and easy-to-use. It's a one-stop shop to purchasing title insurance that busy legal professionals expect. Within minutes, you can complete an easy online application and receive a user-friendly title insurance policy that automatically includes legal service coverage.

Backed by LAWPRO®, TitlePLUS is the only Canadian-owned title insurance provider that puts lawyers first. We understand that lawyers are a critical part of the real estate transaction, and we are committed to offering a service that values lawyers' expertise.

From instant quotes to streamlined underwriting to simplified sign-up, all our enhancements are designed with lawyers at the forefront. And, when real estate transactions are more complex, our team of specialists are available to make sure your clients get the solutions they need.

## BETTER TECHNOLOGY

- Integrated with the Unity practice management platform
- A modern application process that's easier to use
- No more entering common title matters
- More information at your fingertips so you can finish faster
- Complete your commercial application in Ontario online

## CLEARER WORDING. SEPARATE POLICIES

- Separate owner and lender policies to provide ease of use and clarity
- Simplified language so your clients understand what they are getting
- Modern format and clearer layout
- Most policies automatically include legal service coverage

## UNDERWRITING TO EASE YOUR BUSINESS

- Auto-generated underwriting removes the guess work
- Searching efficiencies save time
- Simplified policy issuance process
- Coming soon: insure more than one mortgage or multiple properties for the same transaction in one application

## DESIGNED TO PUT YOU FIRST

- TitlePLUS Legal Counsel Fee to recognize your work
- Easy sign-up and instant quotes
- Expert guidance when you need it

The new TitlePLUS will be available soon on RealtiWeb®

Contact us for a free demo



titleplus@lawpro.ca



1-800-410-1013  
416-598-5899



# INSURANCE SOLUTIONS CUSTOMIZED COVERAGE FOR LAWYERS

CORPORATIONS + INDIVIDUALS



CONTACT KATHRYN MCKAYE PRETTY 905-330-7361





# TODAY'S DISCUSSION

- Early Years: Risk & Needs Assessments
- Mid Career Requirements
- Health & Family
- Office Support, Risk Management
- Staffing: Benefits & Pension
- Retirement



# INDIVIDUALS

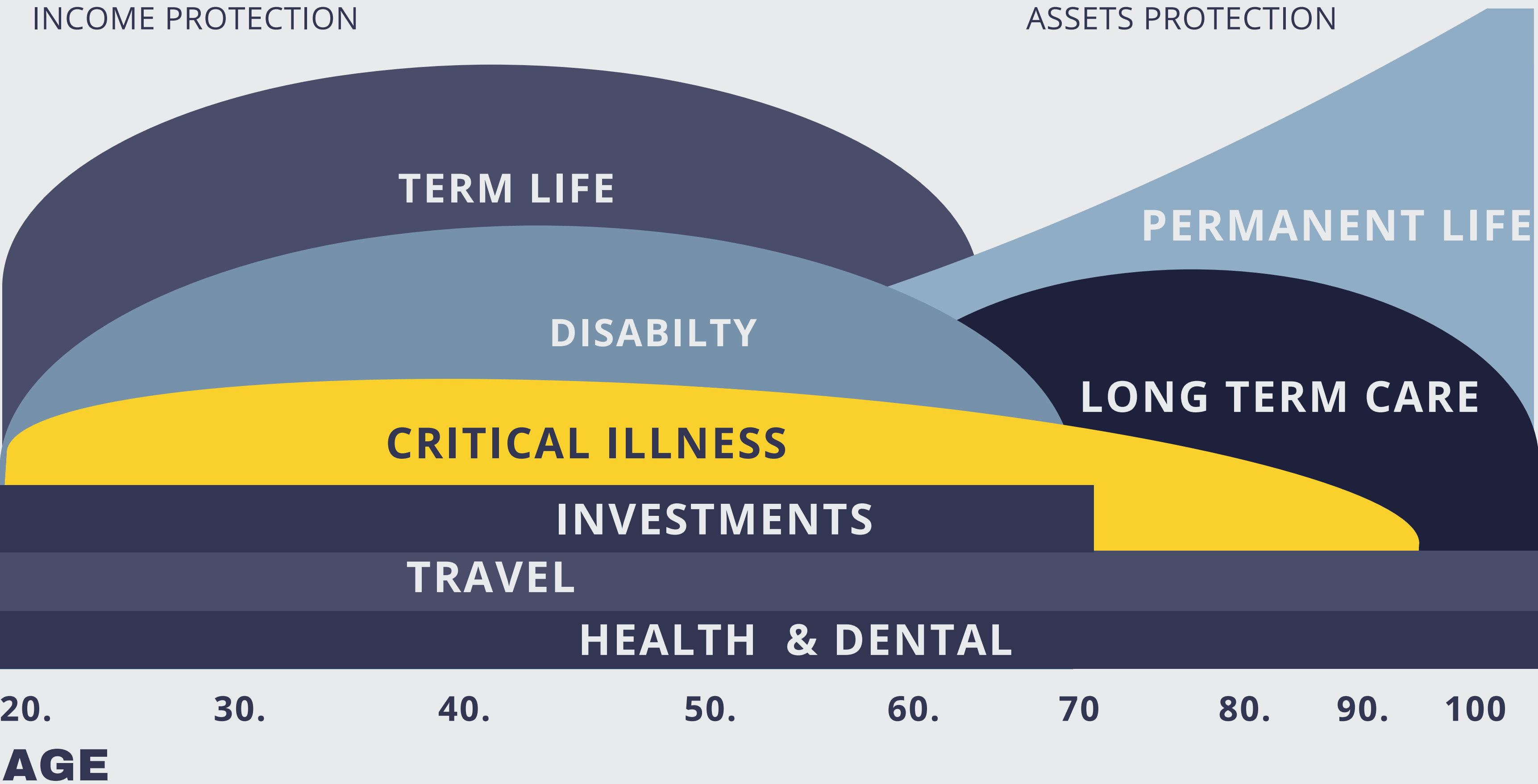
- Term and Permanent Insurance
- Disability Income Protection
- Critical Illness
- Wealth through Insurance
- Waterfall strategies
- Health Benefits



# TIME HORIZON OF RISK COVERAGE

INCOME PROTECTION

ASSETS PROTECTION



## FOR LAW FIRMS

- Collateral Assignments, Partnership Agreements
- Corporate Wealth Insurance
- Buy / Sell Fund Agreements
- Key Person
- Business Overhead Expense
- Term Life
- Staff Programs
- Group Health Benefits
- Pension dbPlus
- Office insurance Program



# BUSINESS PLANNING OVERVIEW

CONVERSATIONS FOR EVERY STAGE OF YOUR BUSINESS GROWTH

1

SURVIVAL

## PERSONAL PLANNING

- Risk management
- premature death
- Will
- Disability
- Critical Illness
- Retirement planning
- registered plans
- asset allocation
- non registered savings plans
- Other goals
- Children's education Home Purchase
- Tax minimization

2

INVEST

## BUSINESS CONTINUATION PLANNING

- Key Person Protection
- premature death
- critical illness
- Buy sell agreements
- retirement
- disability
- death & critical illness
- Business Overhead Protection
- Executive benefit planning

3

GROWTH

## BUSINESS SUCCESSION PLANNING

- Ownership transition
- Sell or liquidate
- Estate equalization
- Retain in family
- Successor training
- Successor buy sell agreement
- Management transition
- Power of attorney
- Retirement income planning

4

MATURITY

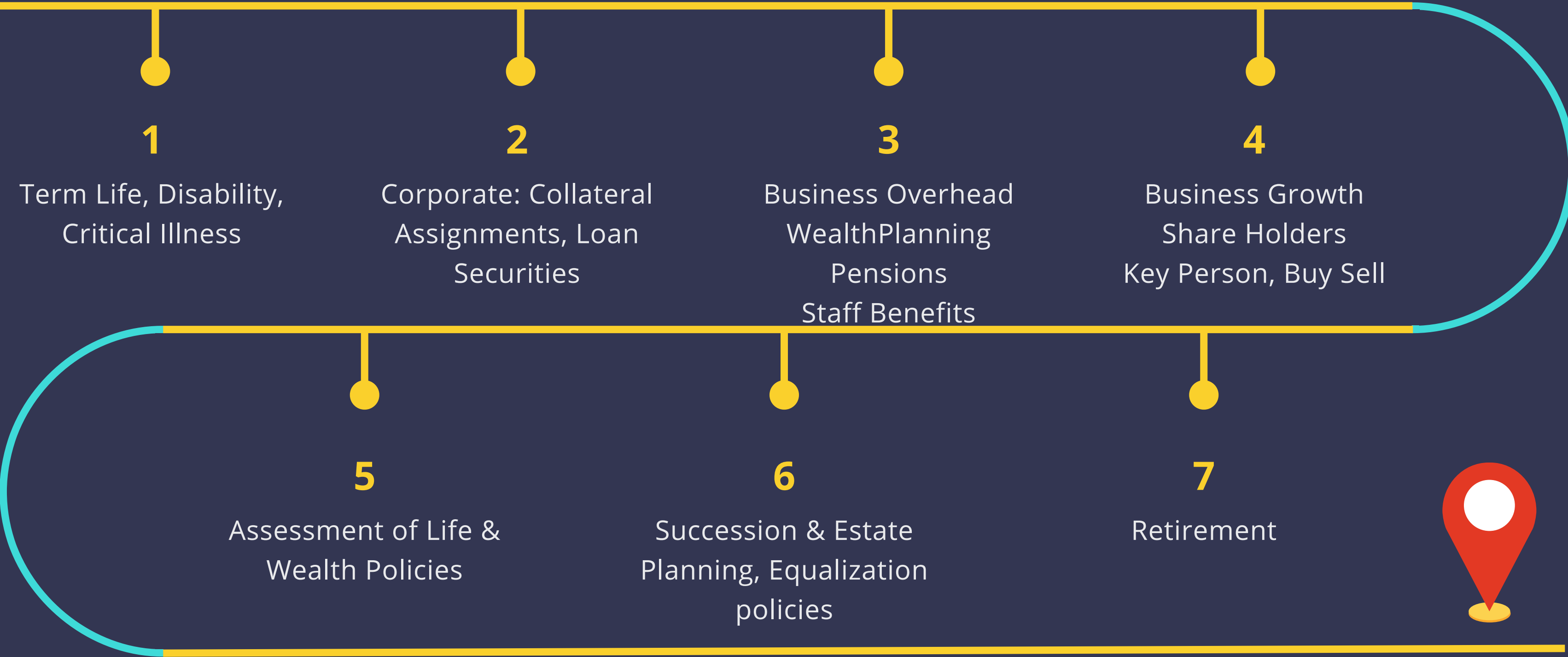
## ESTATE PLANNING

- Will Planning
- Estate equalization
- Tax Planning
- Estate maximization
- Estate Freeze
- Share redemption
- Liquidity
- Trust Planning
- Family trusts
- Spousal trusts
- "Self-settled" trusts
- Philanthropy
- planned giving



# LAWYER'S BUSINESS ROAD MAP

Milestone considerations, every journey is customized for each lawyer



## GROUP HEALTH BENEFITS

- Self Employed
- Member of Small Firm
- Retired
- Health Protect, PLUS and Retiree plans, 3 plans for customized coverage.
- prescription drugs, paramedical services, hospital serves.
- additional dental with basic and major dental services.



**OVERVIEW OF HEALTH PLANS**



**LAWYERS  
FINANCIAL**





# OFFICE INSURANCE

- Policy covers business-related equipment goes beyond one location.
- The same protections apply when your laptop lives on your kitchen table.





## OFFICE INSURANCE

Additionally to comprehensive coverage for damage to business property, the Office Insurance Program also provides coverage for:

- Cyber security risks
- Damage to computers and electronic media
- Loss or damage of valuable documents
- Criminal activity, including fraud
- Employee theft
- Umbrella liability for bodily injury, property damage, personal injury and advertising injury.



QUOTE >>



d33gTsa5rpx

jj5UFd491se7

password123

**LAWYERS  
FINANCIAL**



# BALANCING LIFE, WEALTH, CAREER & HEALTH

Individual, Retirement & Family

Career, Firm, Staffing



BOOK MEETING LINK WITH KATHRYN >>



# YOUR PRESENTER



## ABOUT

- 30 years experience across various industries corporate strategy, business leadership, financial stewardship, global brand and marketing executive, business consultant
- Board of Directors Executive; President, Chair and Vice Chair Roles in the community.

## FINANCIAL ADVISOR

- Financial Advisor specialize in Life, Health and Wealth Solutions for legal community, focus on long term goals and estate planning

## PERSONAL:

Hockey Goalie, Long Distance Gravel Bike Cyclist, Meditation Coach, Mom and Large Scale Urban Gardening

**BOOK MEETING LINK WITH KATHRYN >>**







# TIPS ON MANAGING YOUR E&O POLICY FROM LAWPRO

Cindy Ramos  
Quality Assurance Analyst/Trainer  
Lawyers' Professional Indemnity Company

May 25, 2023



# Agenda



**Deductibles and Premium Surcharges**



**Renewal**



**Managing Your Levy Filings / Exemptions**



**Changing Firms**



**Starting your own firm**



**What to do when retiring**



**Practicing Part-Time**



**Key Dates**

# Deductibles and Premium Surcharges

**Deductibles which apply to claim expenses, indemnity payments and/or costs of repairs together:**

- 50% of the deductible amount is payable for investigation and defence expenses when the Statement of Defence or responding material is filed.
- 50% of the damages amount for investigation and defence expenses due or incurred at the time of commencement, when examination begins, or once a pre-trial conference is held
- Any outstanding deductible amount left is applied to judgments, settlements, and/or costs of repairs when the expenditure is due.

**Deductibles that apply to indemnity payments and/or costs of repairs only:**

- Applies to judgments, settlements and/or costs of repairs, to the extent of the deductible amount, when the judgment, settlement and/or cost of repair expenditure is due.

## Claims History Levy Surcharge

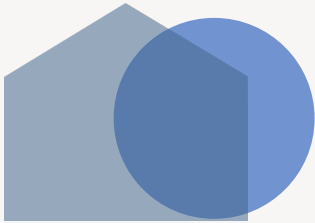
- The claims history levy surcharge applies to claims which resulted in LAWPRO having to make a payment as a result of a judgment or to settle or repair a claim.
- The surcharge is not triggered by the mere reporting of a claim or potential claim.
- It is payable over a period of five consecutive years during which you have been a practicing lawyer.

# Insurance Renewal

Renewal Begins	No changes?	Making changes to your coverage or status?	Filing Deadline	Surcharges
On or about October 1, 2023	Our One-Click renewal allows you to simply and quickly renew your coverage in seconds.	A pre-populated electronic application will be available in the My LAWPRO section of our website.	Applications filed after the November 8, 2023 deadline (tentative) will be subject to strictly enforced surcharges.	<ul style="list-style-type: none"> <li>• \$350 if filed late (Nov 8 - Dec 1)</li> <li>• \$600 if not filed</li> </ul>

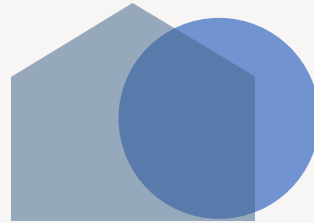
\* Please note that paper renewal applications will not be automatically mailed out, but it is expected that you will be able to download a 2024 pre-populated paper renewal application from our website starting on or about October 1, 2023.

# Managing Your Levy Filings / Exemptions



**Do I have to file levy forms if I do not practice Civil Litigation?**

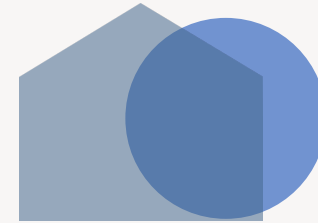
Lawyers who do not practice Real Estate or Civil Litigation are exempt from the quarterly remitting of the Civil transaction levy surcharge forms, however you must file an annual Transaction Levy Exemption form by April 30th.



**I practice only Criminal and/or Immigration law, do I still need to file transaction levies?**

For 2023, we are introducing automatic exemption from the transaction levy filing requirements for lawyers on the Restricted Area of Practice premium discount.

You can now certify on your renewal application that you and the other members of your firm only practice criminal and/or immigration law.



**When are levy filings and payments due?**

The Real Estate and Civil Litigation transaction levies payable shall be accumulated and paid quarterly within thirty days of the quarterly period ending on the last day of March, June, September and December.

# Transaction Levy Filing Deadlines

**January 31, 2023**

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending December 31, 2022.

**April 30, 2023**

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending March 31, 2023

**April 30, 2023**

Annual exemption forms are due from lawyers not practicing civil litigation and/or real estate in 2023 and wanting to exempt themselves from quarterly filings.

**July 31, 2023**

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending June 30, 2023.

**October 31, 2023**

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending September 30, 2023.

# Changing Firms

## Individual Lawyer

### What happens to my LAWPRO coverage when I change firms?

LAWPRO coverage applies to the individual lawyer and is not limited to any one law firm. If you leave one firm to join another, your coverage follows you.

Email [service@lawpro.ca](mailto:service@lawpro.ca) with your full name, Law Society number, last day work at previous firm, effective starting date at new firm, full contact information and desired billing instructions for premium payments.

## Firms

### Lawyer joins your firm from another law firm:

Email [service@lawpro.ca](mailto:service@lawpro.ca) with the lawyer's name and Law Society number, effective starting date, full contact information and desired billing instructions for premium payments.

### Lawyer leaves your firm:

Email [service@lawpro.ca](mailto:service@lawpro.ca) with the lawyer's name and Law Society number, effective leaving date, forwarding contact information (if available) and any instructions for discontinuing or refunding (if applicable) premium payments



# Starting your own solo firm

86

Here's what you need to do about LAWPRO



## STEP 1: Let LAWPRO know

Send an email to [service@lawpro.ca](mailto:service@lawpro.ca) with the following information:

- Your full name and Law Society number
- Effective date of the start of your new practice
- Any changes to your contact information including mailing address, email address, telephone, and fax numbers



## STEP 2: Your coverages

**Deductible:** If you were previously at another firm, your deductible was the same as other lawyers in the firm. If you want to change your deductible, complete the Application for Mid-Term Changes form available in [My LAWPRO](#).

**Premium payment:** If your premium was being paid by a previous firm, you will now need to complete the Premium Payment Authorization form in My LAWPRO to update and set up your payment details.



## STEP 3: Area of law

**Criminal and/or Immigration only:** If you will only be practicing criminal and/or immigration law, you can claim the Restricted Area of Practice discount by completing the Application for Mid-Term change form available in My LAWPRO. Once added, you do not need to file transaction levies as long as the restriction is present.

**Civil Litigation or Real Estate:** If you will be practising in real estate, apply for the Real Estate Practice Coverage Option

Both civil litigation and real estate practitioners need to diarize the deadlines for completing transaction levy filings: April 30, July 31, October 31, and January 31. The filing forms are available on My LAWPRO.

NOT practising ANY real estate or civil litigation? Apply for an exemption from filing levies on



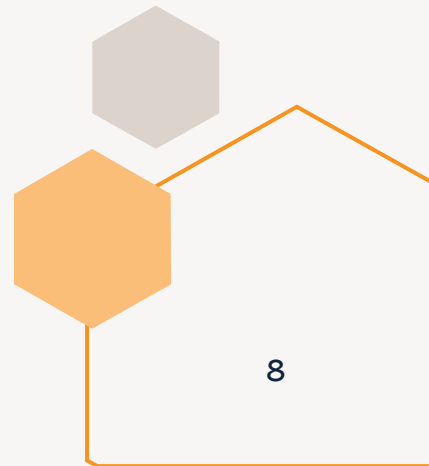
## STEP 4: Payment arrangement

If you would like to pay by credit card or in installments, complete the Premium Payment Authorization form in My LAWPRO. To pay by lump sum cheque, respond to the invoice you will receive in the mail.



## STEP 5: Renew each year

Set a reminder in your calendar to renew your insurance each year in the first week of October. The renewal filing can be completed online through My LAWPRO.



# Starting your own multi member firm

Here's what you need to do:



## STEP 1: Let LAWPRO know

The partner who will be responsible for handling LAWPRO filings for the firm should email [service@lawpro.ca](mailto:service@lawpro.ca) with the following information:

- The firm name and contact information
- The names and Law Society numbers of all lawyers in the firm
- We will follow up with you shortly to have online filing capability put in place



## STEP 2: Firm coverages

**Deductible and restricted area of practice:** All members of the firm must have the same deductible. If they do not, they need to complete an Application for Mid-Term Changes in the [My LAWPRO Portal](#) to request the same deductible.

To take advantage of the Restricted Area of Practice discount for criminal and immigration law, all members in the firm must only practice those areas of law.



## STEP 3: Payment arrangement

Complete the Premium Payment Authorization form for the firm members in the My LAWPRO portal. If the firm will be paying the premiums for all or some of the lawyers, the lawyer responsible for filing on behalf of the firm can complete one form. If any individual lawyers will be paying their own premiums, they can each login to their individual accounts and complete the form on their own behalf.



## STEP 4: Levy filings

### Criminal and/or Immigration only:

If all lawyers in the firm will be practising only criminal and/or immigration law, they can claim the Restricted Area of Practice discount by completing the Application for Mid-Term Changes form available in My LAWPRO. Once added, they do not need to file transaction levies as long as the restriction is present.

### Civil Litigation or Real Estate:

If you will be practising in real estate, apply for REPCO coverage.

Both civil litigation and real estate practitioners need to diarize the deadlines for completing transaction levy filings: April 30, July 31, October 31, and January 31. The filing forms are available on My LAWPRO.

If a lawyer is NOT practising ANY real estate or civil litigation they can apply for an exemption from filing levies on My LAWPRO.



## STEP 5: Renew each year

Set a reminder in your calendar to renew your insurance each year in the first week of October. The renewal filing can be completed online through My LAWPRO.

## Additional information on insurance coverage and starting a firm.



### Does your firm need Excess Insurance?

Excess insurance is optional and available to lawyers in private practice or on exemption. It provides an additional layer of insurance protection should your defence and indemnity payments exceed the limits of the primary LAWPRO insurance program. Excess insurance is available from LAWPRO and from other insurers in the commercial market.



### Does your firm need Cyber coverage?

Your LAWPRO insurance policy offer only a limited amount of coverage for cyber-related exposures.

For more information on cyber coverage, please refer to Endorsement 14 in the LAWPRO Policy book.

# What to do when retiring.

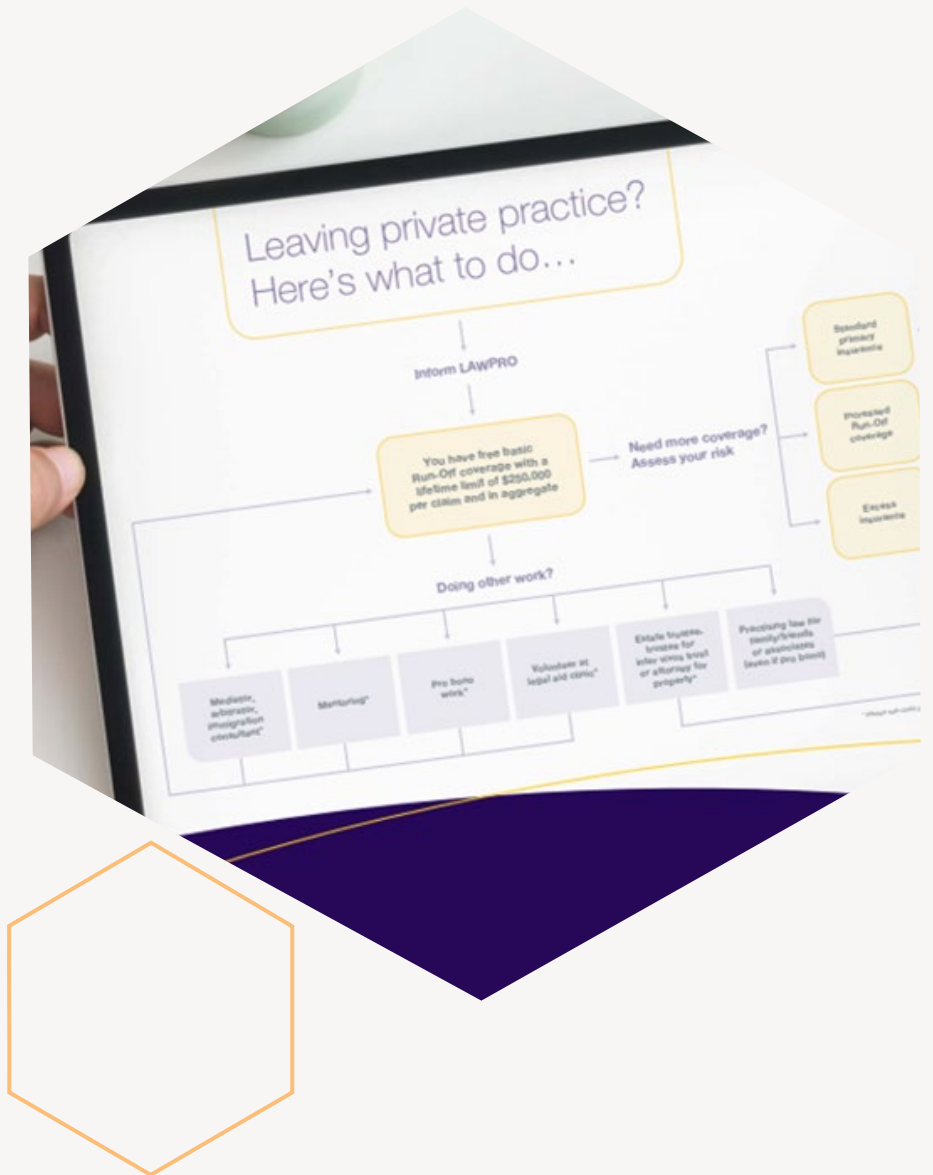
If you are planning on retiring on January 1, 2024, you must:

- complete an Application for Exemption, not an insurance renewal application.

If your retirement will be effective part-way through the policy year:

- file an insurance renewal application, then subsequently file an Exemption form closer to your retirement date.

Upon receipt of your completed Exemption form, you will be reimbursed for any insurance premiums prorated to the actual date of your retirement, limited to a 30-day period immediately preceding LAWPRO's receipt of your completed form. For those carrying the Real Estate Practice Coverage option, requests for Exemptions are not backdated.



# Standard Run-off Coverage

## What coverage do you have upon retirement?

You have a maximum of \$250,000 per claim/in the aggregate Run-off coverage for claims brought against you.

## Is Innocent Partner Coverage included?

As part of the \$250,000 Run-Off coverage you receive free of charge, you are also provided with run-off protection against innocent partner claims (claims are made against you once you leave private practice, for the dishonest, malicious, criminal or fraudulent acts of a former partner or associate).

## What is the premium?

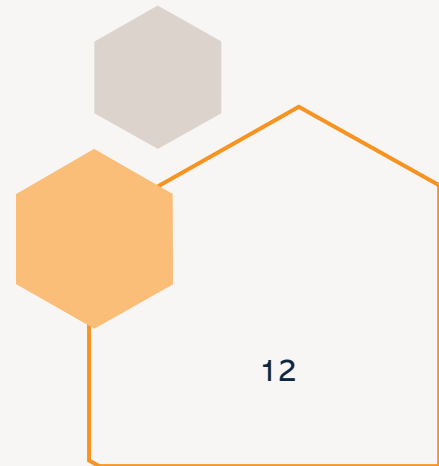
There is no premium for lawyers exempt under this category.

## How to apply?

File an Application for Exemption.

There is no coverage for professional services provided during any period of exemption. To qualify for an exemption, you cannot engage in the practice of law in Ontario, subject to the following exceptions:

- *Pro bono* services provided through an approved *pro bono* professional services program associated with Pro Bono Ontario.
- Certain services as estate trustee, trustee for inter vivos trust, or attorney for property
- Certain mentoring services provided pursuant to LAWPRO-approved risk management protocols
- Clinics funded by Legal Aid Ontario



# Increased Run-Off Protection (Optional)

## What is it?

This is an optional coverage that is available to lawyers who have only standard Run-Off coverage and would like to increase their coverage protection.

## What are the coverage limits?

- \$500,000 per claim and in the aggregate; or
- \$1 million per claim and \$2 million in the aggregate

Innocent Partner Buy-Up (sublimit coverage within Run-Off Buy-Up coverage) can also be increased to those limits.

Excess insurance may be purchased for additional protection above the \$1 million per claim/\$2 million aggregate coverage

## What are the coverage terms?

Coverage terms range from two to five years.

## What about coverage for Residual Work?

You may also apply to include protection for services as an estate trustee, a trustee for an inter vivos trust or an attorney for property after you leave private practice. However, your role as trustee or attorney for property must be residual work from your past practice in Ontario, and not where you have only been named since leaving private practice.

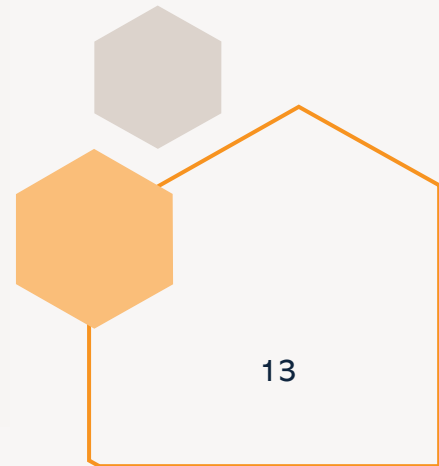
## What is the premium?

Increased Run-Off coverage protection is underwritten on an individual basis and is dependent on several factors.

## How to apply?

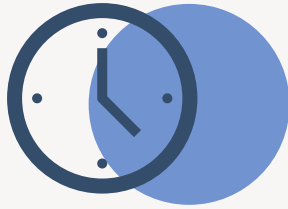
Complete an “Application to Increase Run-Off Coverage”.

**Important:** First time applicants should apply at least 60 days before the coverage is to be in place to avoid any gaps in coverage limit.



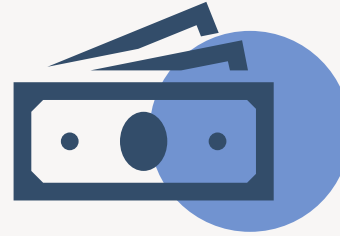
# Practicing Part-time

The Part-time practice option is available only to practitioners who in the current year and the previous policy year:



## HOURS OF PROFESSIONAL TIME

Restrict their law practice to 20 hours per week on average for each week worked, and 750 hours per year of professional time in private practice (including time for undocketed work);



## BILLINGS

Have gross billings of \$90,000 per year or less.



## CLAIMS

Have not reported a claim under the LAWPRO liability insurance program with a repair and/or indemnity payment made in the last five (5) years.

**Note:** Eligibility criteria will be pro-rated if the lawyer applies for the part-time practice option part way through the year.



## Part-time Premium Adjustment



Lawyers are eligible for a premium discount equal to 50% of the base premium.

The maximum premium discount for practitioners who choose more than one practice option, i.e. Restricted Area of Practice, Part-Time Practice options and the New Lawyer discount combined, cannot exceed 50% of the base premium.

## Part-time Requirements and Restrictions



Lawyers applying for this option must sign the Part-Time Options Declarations on the Application Form or must fill out a mid-term change form if requesting part way through the year.

Lawyers who have been provided with the part-time practice option but subsequently exceed the eligibility criteria will lose the part-time practice designation and will have their insurance premium and other terms of insurance amended retroactively to the inception date of the policy.

# Key Dates

To download or print a list of LAWPRO Key Dates, please visit the LAWPRO website at [www.lawpro.ca](http://www.lawpro.ca).

## LAWPRO KEY DATES FOR 2023

Make a note of the key dates for 2023 and mark your calendars accordingly.

### January 31, 2023

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending December 31, 2022.

### February 6, 2023

Last date to qualify for a \$50 early payment discount on the 2023 policy premium (see the 2023 Program Guide for details).

### April 30, 2023

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending March 31, 2023.

### April 30, 2023

Annual exemption forms are due from lawyers not practising civil litigation and/or real estate in 2023 and wanting to exempt themselves from quarterly filings.

### July 31, 2023

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending June 30, 2023.

### September 15, 2023

File your LAWPRO Risk Management Credit Declaration by this date at [lawpro.ca](http://lawpro.ca) to qualify for the \$50 premium discount on your 2024 insurance premium for each LAWPRO-approved CPD program (to a maximum of \$100) completed by September 15, 2023.

### On or about October 1, 2023

2024 Insurance Renewal Application filing begins: The online filing of Professional Liability Insurance renewal applications for 2024 is expected to begin.

### October 31, 2023

Real estate and civil litigation transaction levy filings and payment (if any) are due for the quarter ending September 30, 2023.

### November 8, 2023

Renewal application filing deadline: 2024 Professional Liability Insurance renewal applications received by LAWPRO (online or otherwise) after this date and up to December 1, 2023 will have an additional premium of \$350 applied to the 2024 insurance premiums (subject to Program approval by Convocation). Lawyers who do not file by December 1, 2023 will pay an additional premium of \$600 and a default policy will be issued on their behalf.

# LAWPRO Quick Guide

For key dates and general “need to know” information, please reference the LAWPRO Quick Guide at [www.lawpro.ca](http://www.lawpro.ca).

## LAWPRO QUICK GUIDE

### 2023 FILING DATES TO ADD TO YOUR CALENDAR

**January 31  
April 30  
July 31  
October 31**

File and pay quarterly real estate and civil litigation levies (if any are due)

**April 30**

Not practising real estate or civil litigation: Last day to file an annual levies exemption form

**September 15**

Last day to file Risk Management Credit declarations to qualify for the \$50 premium discount, go to [lawpro.ca/rmcredit](http://lawpro.ca/rmcredit)

**October 3 - November 8**

2024 Insurance Renewal open in the My LAWPRO portal

#### NEW IN 2023

Only practising criminal or immigration law: You do not need to file quarterly levies or transaction levy exemption forms

### WHAT FIRM MANAGERS NEED TO KNOW



How can I simplify our firm quarterly filings and annual renewals?

Set up a firm account to file on behalf of all lawyers in the firm:

- The managing partner should go to [https://my.lawpro.ca/new\\_login/login.asp?file=fpr](https://my.lawpro.ca/new_login/login.asp?file=fpr)
- Login using your LSO number and individual password under 'Lawyer Filing'
- You will be prompted to make a declaration that you are the managing lawyer for your firm
- Log out of My LAWPRO
- If the managing partner changes, contact LAWPRO to reset your firm password



When does the civil litigation levy or real estate levy apply?

Go to [lawpro.ca/faqs](http://lawpro.ca/faqs) to find our [civil litigation transaction levy chart](#) and [real estate transaction levy chart](#) to find out if a levy applies.



Is a new call joining your firm? Is a lawyer re-entering private practice joining your firm?

These lawyers should go to [lawpro.ca](http://lawpro.ca) and complete an application form in the My LAWPRO portal. If they don't already have an account, they can register online, then go to the 'File Online' tab and complete the form.



Is a lawyer taking a temporary leave of absence but remaining a member of your firm?

At least 30 days before, the lawyer should visit [lawpro.ca](http://lawpro.ca) and file an application for exemption in My LAWPRO. In the absence of this completed form, coverage and premiums will remain in place unabated.



Is a lawyer retiring or otherwise leaving private practice in Ontario?

At least 30 days before, the lawyer should visit [lawpro.ca](http://lawpro.ca) to file an application for exemption in My LAWPRO. Consider increasing Run-Off coverage. There is a 60 day waiting period from the date of application for the increased coverage to come into effect.

### CONTACT US

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[service@lawpro.ca](mailto:service@lawpro.ca)

A decorative graphic on the left side of the slide consists of a cluster of hexagons in various colors: light blue, orange, grey, and dark blue. Some hexagons contain images: a hand writing on a calendar, a person working at a laptop, a hand writing on a notepad, and a person's hands at a desk. Other hexagons are empty or have a thin outline.

# Thank you

## Resources and CPD for Lawyers

LAWPRO's Practice Management Resources	
<a href="#">LAWPRO's Practice Tips Sheets</a>	Helpful tip sheets organized by type of practice error which provide ways to avoid common mistakes. Includes tips on delegation, managing deadlines, conflicts of interest, and other categories.
<a href="#">Table of Ontario Mentoring Programs</a>	A helpful table of various mentoring programs offered by legal groups and associations for Ontario lawyers
<a href="#">Technology Products for Lawyers and Law Firms</a>	A helpful table of software solutions for lawyers
Additional resources	
<a href="#">LSO: Guide to Opening Your Law Practice</a>	Law Society of Ontario guidance on opening a law practice and preparing a business plan.
<a href="#">LAWPRO's 2023 Insurance Program Guide: New Applicants</a>	Guidance to help lawyers determine which forms to file and how best to proceed with filing either an Application or Exemption Form for E&O insurance.
<a href="#">LAWPRO's 2023 Insurance Program Guide: Renewals</a>	Guidance on renewing insurance for all lawyers in private practice in Ontario for the 2023 year.
Additional CPD for lawyers	
<a href="#">Protecting your firm against fraud</a>	This pre-recorded program from April 2023 draws on actual frauds and close calls and reviews the most recent fraud efforts targeting lawyers, law firms and their clients. It provides practical tips to help lawyers manage ID verification, identity fraud, and other scams.
<a href="#">Continuing to manage – Mental health, resilience and resources</a>	In this pre-recorded program, members of the legal community join LAWPRO and the TLA in conversation about managing mental health. The session addresses a range of issues including how we can keep connected, find mentors and engage with resources.

## SPEAKER BIOS

### *Victoria Crewe-Nelson*



**Victoria Crewe-Nelson** was appointed Vice President, Underwriting & Customer Service and Secretary for the board in 2018. She is responsible for the preparation, placement, and maintenance of reinsurance and corporate insurance. She provides leadership in the analysis of program changes and improvements and ensures adherence to regulatory, program and underwriting requirements.

Victoria started at LAWPRO in 2012 as Assistant Vice President, Underwriting. Before joining LAWPRO, Victoria gained experience in practice areas including corporate/commercial, litigation, estates and trusts, real estate, and admiralty law. A past instructor with the Bar Admission Course, Victoria has been published on topics including professional liability, the Limitations Act, class actions, family law and parental responsibility. Victoria was called to the Ontario bar in 2003 after completing a B.A. and LL.B. at the universities of Toronto, Ottawa and Edinburgh.



## ***Kathryn McKaye Pretty***



**Kathryn McKaye Pretty** is an advisor with Lawyers Financial Advisory Services. Her financial stewardship provides clients with long-term solutions to grow and protect their wealth. Acting as a business consultant first, she creates tailor-made insurance plans to help clients revitalize their business and manage risk.

With more than 10 years of experience as an advisor in the not-for-profit sector, Kathryn has successfully consulted clients ranging from public corporations to individuals and families.

## *Cindy Ramos*



**Cindy Ramos**, a Toronto native, is a Quality Assurance Analyst and Trainer in the Underwriting and Customer Service department at LAWPRO. Her role as a Quality Assurance Analyst and Trainer entails establishing trends, data reporting, applying best practices, and improving and developing LAWPRO's Quality and Training program.

Cindy has been employed at LAWPRO for over 10 years, first as a Program Coordinator and presently as Quality Assurance Analyst and Trainer. Cindy brings an extensive knowledge of LAWPRO's products and a vast amount of customer service experience. Her professional background includes more than seventeen years experience in the insurance industry for companies such as Fidelity Investments, Transamerica Life Canada, and Intact Insurance.

Outside of work, Cindy enjoys travelling and spending quality time with family and friends.

## ***Shawna Ramsay***



**Shawna Ramsay** is a National Consultant with TitlePLUS title insurance. She began her career in real estate working on the Teranet property conversion project and then as a real estate clerk. She joined the TitlePLUS department of Lawyers' Professional Indemnity Company just over 19 years ago.

Shawna regularly attends one on one meetings to discuss TitlePLUS coverage, underwriting requirements, and processes. She enjoys digging into a real estate file and providing guidance on how title insurance might be able to help. She has written several papers and given various presentations on behalf of TitlePLUS to assist lawyers and clerks with their continuing education.

Shawna lives near Kemptville which is just outside of Ottawa, is the proud mother of two boys and loves to travel.

## ***Shawn Erker***



**Shawn Erker** is the Legal Writer and Content Manager in the Claims Prevention & Stakeholder Relations department at LAWPRO. Prior to joining LAWPRO, Shawn practised as a civil litigator in British Columbia in a full-service national firm after clerking at the British Columbia Court of Appeal.

He graduated from UBC Law where he served as Editor-in-Chief of the UBC Law Review.