

A LAWPRO Underwriter's View

Insurance underwriting is a disciplined blend of data, intuition, and experience. For those of us underwriting lawyers' professional liability risks in Canada, every renewal form, PracticePRO fraud alert, claims notice, or law society concern is one more puzzle piece. We balance warning signs against strengths, red flags against corrective actions, and forecasts against reality. When we get it right, pricing is a fair reflection of risk that protects the system and the lawyers who rely on it.

LAWPRO underwriters apply experience, data and judgment to assess exposure and anticipate trends when reviewing applications and making plans for future policy years. It's a careful balancing act. For the same lawyer and firm, we'll see some factors that point towards higher risk, and some factors that point towards lower risk, and evaluate the total picture, not a just single data-point. As a result, the premiums paid reflect the appropriate level of risk of claims, and the program will be able to pay claims for that policy year.

Sometimes there are changes in practice risks that we didn't foresee and claims come in faster and higher than we expected. And sometimes claims go down because a risk factor changes, technology improves, or better and more effective controls are introduced. If this is going to reduce what an insurance company pays for claims then we have an obligation make adjustments to reflect the lower risk.

How an underwriter views your practice will be very nuanced. Consider a few examples:

Firm size and structure

Is it better to practice in a small, medium or large firm? There are benefits and risks associated with all of them.

- Small firms are less likely to be working on multi-national deals for mega corporations so the severity of their claims are often assumed to be lower. But, especially for those that are just starting out, it can be hard to say no when you're trying to build up your book of business. They may take on more work than they can handle with their resources or will "dabble" in unfamiliar areas.
- Mid-sized boutiques often specialize, which sounds safer. But specialization in high-risk areas or heavy reliance on shared precedents can mean when something goes wrong, it goes wrong for a lot of clients.

- Large firms may have strong checks and balances, but they also carry more severe exposures on higher-value matters and can be perceived as deep pockets that are an attractive target for less meritorious claims.

Claims history

You might think that a lawyer who has never reported a claim will always be viewed as low risk but it isn't necessarily true. If a lawyer has practised for 40 years and the ten claims they've reported were all out of an abundance of caution and didn't reflect true negligence, their risk remains low. Early reporting helps us mitigate damage or effect repairs quickly. By contrast, if a third-year lawyer has never reported a claim, and also doesn't file their applications on time (or at all), we don't know if:

- They aren't making mistakes, or
- They aren't reporting mistakes.

As an underwriter, there is a concern that a backlog of claims could surface later when the lawyer can't ignore the problem anymore.

On the other hand, sometimes more frequent claims tell the real story. A lawyer with one large claim in their distant history may reflect that a lesson was learned that never needed to be repeated. And a lawyer with 20 small-value claims that reflect the same error being repeated over and over again might indicate bad practice habits that the lawyer can't or won't change.

Complaints

If a complaint leads to a lawyer being disciplined for breach of fiduciary duty or ethics, it's difficult to view that lawyer as a good risk. Some lawyers get disciplined because they were duped by clients or other parties. These lawyers aren't malicious, but a history of being vulnerable to manipulation is still a risk factor.

Not all complaints are equal. If you're a great family law lawyer, you are likely to have at least one disappointed spouse on the other side writing a rotten review about you. Likewise, if a client doesn't get what they hoped for this can lead to fee disputes that can escalate to Law Society complaints. This lawyer isn't automatically a bad risk, but repeated breakdowns in communications or client-expectation management that lead to complaints/fee disputes can signal something to watch. Context will always matter.

Factors Outside Your Control.

Even excellent lawyers with strong risk management systems will sometimes get sued. You are practising in a litigious society and the number of claims brought against lawyers are trending upwards. Economic cycles, client expectations, and practice specific volatility mean claim frequencies rise and fall. Some claims are justified;

others are meritless. Sometimes lawyers face exposure for the conduct of colleagues, associates or staff they trusted. As underwriters, we plan for the unexpected and ensure that the insurance being provided to our clients will respond responsibly and there will be sufficient funds to manage and pay out claims.

At the end of the day, underwriting can't be about perfection. It's about vigilance, transparency, and the willingness to recalibrate when the real world refuses to behave like the spreadsheets. Markets shift, claims evolve, and even the best lawyers can face bad luck or bad actors. Good underwriting is collaborative and when both sides get it right, we become partners in managing risk and keeping the profession (and your clients) protected. ■

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My LAWPRO Portal FAQ

All about transaction levies

What is a transaction levy?

- As part of its commitment to operating the Primary Program in a commercially reasonable manner and better ensuring that premiums reflect the general practice risks of insureds (i.e., those that are a higher risk pay a higher premium), LAWPRO utilizes transaction levy surcharges. Accordingly, levies charged on some litigation and real estate transactions are designed to reflect the increased risk of those two areas of law.

Who must file and pay transaction levies?

- Lawyers, other than those exclusively practicing criminal or immigration law, must file and pay transaction levies quarterly. Lawyers not practicing real estate or civil litigation may submit a levy exemption form to avoid having to do quarterly filings.

When are levy filings due?

- Transaction levies are due quarterly on April 30, July 31, October 31, and January 31 for the quarter ending 30 days prior.

How do I file and pay transaction levies?

- Log in to My LAWPRO, then click the 'File Transaction Levies / Exemption' tile and follow the prompts.

For more specific information about when a levy is due or not due, please refer to www.lawpro.ca/faqs.