

insurance matters

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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contents

Your exposure to claims	1
Assess your insurance needs	
Do I need additional insurance protection?	2
Assess your exposure: Some questions to review	4
Excess Liability Insurance Coverage: frill or necessity?	
The need for Excess Liability Insurance	7
LLPs and the need for Excess Liability Insurance	7
Law Corporations and the need for Excess Liability Insurance	7
LOCUMS and the need for Excess Liability Insurance	7
Premium costs	8
Innocent Party Insurance Coverage: it's not my fault!	
Peace of mind coverage	9
Mandatory Innocent Party Coverage	10
Increasing Innocent Party Coverage sublimits	10
LLPs and the need to increase Innocent Party Coverage	10
LOCUMS and the need for Innocent Party Coverage	11
Optional Innocent Party Coverage	11
The need for Optional Innocent Party Coverage	11
Optional Innocent Party Coverage sublimits	12
Premium costs	12
Acting as a LOCUM	
If you are acting as LOCUM	13
If you are the CONTRACTING FIRM hiring a LOCUM	14
Apply today!	15
Appendices	
Definitions: Nature of practice	17
Tools and resources from practicePRO	19

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

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 35 claims exceeds \$250,000;
- 1 in 90 claims exceeds \$500,000;
- 1 in every 150 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 two to 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.

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 in-take 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 his/her 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 Customer Service Representatives 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

Visit our website at lawpro.ca and click on the "E&O insurance" tab. Click on "Insurance Forms", expand the "Optional insurance coverages" heading and click on the "Excess Liability Insurance Application" to download a PDF version of the application form.

Print off the application, complete the form and email, fax or send the application via regular mail to LAWPRO Customer Service.

or

Contact our Customer Service Department at 416-598-5899 or 1-800-410-1013 to request an application be sent to you.

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!

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.

Innocent Party Insurance provides a minimum **sublimit** coverage 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 (select “Practice Type”) or contact the LAWPRO Customer Service Department.

MANDATORY INNOCENT PARTY COVERAGE (ASSOCIATIONS, PARTNERSHIPS AND LAW CORPORATIONS)

LAWYERS practising in association, partnership (including general, MDP and LLP partnerships) or in a Law Corporation (with more than one LAWYER), and sole practitioners practising with employed LAWYERS, all partners and shareholders (including PARALEGAL[S]) in a Combined Licensee Firm (CLF), must purchase the minimum Innocent Party Coverage of \$250,000 per claim and in the aggregate. The premium for this sublimit coverage is \$250 per insured LAWYER or PARALEGAL PARTNER OR SHAREHOLDER.

Increasing Innocent Party Coverage sublimits

Practitioners can apply to increase their Innocent Party Coverage sublimit:

- For an additional annual premium of \$150 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 \$249 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 Mandatory 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 his/her law practice while away.

If you are standing in for a LAWYER in an association, partnership or LAW CORPORATION with more than one LAWYER, or a CLE, you must carry at least the minimum \$250,000 per claim and aggregate Innocent Party sub-limit protection. This is even if you otherwise maintain a personal law practice as a SOLE PRACTITIONER.

If 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 13 for further details.

OPTIONAL INNOCENT PARTY COVERAGE (FOR SOLE PRACTITIONERS AND LAWYERS PRACTISING ALONE IN A LAW CORPORATION)

The need for Optional Innocent Party Coverage

Although Innocent Party Coverage is optional insurance, LAWYERS in this group also are well advised to consider their need for this type of coverage in the context of the following issues:

THE CHANGING PRACTICE CLIMATE

Changes in law practice make it increasingly important for sole practitioners to be able to assure clients that they have insurance coverage that protects the public against the dishonest, fraudulent, criminal or malicious acts or omissions of LAWYERS.

For example, you may need to protect the security of clients' funds while they are in your control. Or financial institutions may require insurance protection to recognize escrow closings. Optional Innocent Party Coverage is a tool that allows sole practitioner LAWYER to provide this protection.

EXPOSURE TO CLAIMS ARISING OUT OF PAST PARTNERSHIPS OR ASSOCIATIONS

If you are a sole practitioner who in the past practised with partners, associates, or employed LAWYERS, you continue to face potential vicarious exposure for the acts or omissions of those with whom you once practised.

However, as a sole practitioner practising without employed LAWYERS, or as a LAWYER practising alone in a Law Corporation, you are no longer required to carry Mandatory Innocent Party Coverage. Therefore the insurance policy now in place for you no longer protects you against the dishonest, fraudulent, criminal or malicious acts or omissions of former partners, shareholders associates or employed LAWYERS of the firm.

Buying Optional Innocent Party Coverage enables you to maintain, and even buy up, protection for yourself against these types of claims.

Optional Innocent Party Coverage sublimits

LAWPRO offers Innocent Party Coverage sublimits of:

- \$250,000 per claim/in the aggregate;
- \$500,000 per claim/in the aggregate; or
- \$1 million per claim/in the aggregate.

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, LAWPRO recommends that you maintain your Optional Innocent Party Coverage sublimit at the maximum \$1 million per claim/in the aggregate level.

Premium costs

Optional Innocent Party Coverage is underwritten on an individual basis, based on a risk assessment of information provided by the applicant LAWYER(S) in the Innocent Party Sublimit Buy-Up application.

Interested in Applying for Optional Innocent Party Coverage?

To complete an application online, 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 "Innocent Party Sublimit Buy-Up Application". Complete and submit the application form (upon successful completion you will receive an online confirmation number that begins with IPBU).

or

Visit our website at lawpro.ca and click on the "E&O insurance" tab. Click on "Insurance Forms", expand the "Optional insurance coverages" heading and click on the "Innocent Party Sublimit Buy-Up Application" to download a PDF version of the application form.

Print off the application, complete the form and email, fax or send the application via regular mail to LAWPRO Customer Service.

or

Contact our Customer Service Department at 416-598-5899 or 1-800-410-1013 to request an application be sent to you.

acting as a LOCUM

As LOCUM you are standing in for another LAWYER to cover or run his/her 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 or in a CLF, you must carry at least the minimum \$250,000 per CLAIM/aggregate Innocent Party sub-limit protection. This is even if you otherwise maintain a personal law practice as a SOLE PRACTITIONER.

If 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.

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,
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.



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 PRACTISING 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/magazinearchives)

AVOIDACLAIM.COM

A blog that provides immediate and practical information to help lawyers avoid frauds and legal malpractice claims. (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/practiceaids)

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)

WELLNESS RESOURCES

The practicePRO website provides links to assessment tools, guides and resources to help LAWYERS address wellness and balance issues. (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/managingbooklets)

THE ONLINE COACHING CENTRE (OCC)

The OCC is an online, self-coaching tool, comprising more than 150 modules on topics such as: communicating powerfully; managing stress; overcoming procrastination; managing practice more efficiently; developing new business opportunities; and capitalizing on emotional intelligence. (practicepro.ca/occ)

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



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