Weathering the insurance storm

How LAWPRO has shielded Ontario lawyers from the insurance crunch

If you've had to renew car or home insurance in the last 12 months, you know all too well that significant rate increases are the norm, not the exception.

The situation is no different in the professional liability insurance market.

Although the first signs of trouble were on the horizon even before September 11, 2001, that day was a turning point. By the next day, reinsurers – companies that assume a portion of the risk for insurers such as LAWPRO – had posted losses of $25 billion; as equity markets plunged and stock values fell, a further $50 billion was withdrawn from reinsurance markets.* Faced with declining capital, major international players abandoned market sectors or stopped writing some lines of business entirely. Consolidations, mergers, retrenching were – and still are – the order of the day among insurers and reinsurers. Since 2002, 47 of North America's 157 top reinsurance have been downgraded by Standard & Poors,* raising concerns about the long-term financial viability of some companies. Double and even triple-digit premium increases have become the norm in many insurance sectors, including – for lawyers – the excess insurance markets.

* *Canadian Underwriter, July 2003*

Most errors and omissions insurers have also felt the pinch. Securing reinsurance protection in these "hard" markets where the options are fewer and the pricing has gone through the roof has been a challenge for many of Canada's professional liability providers.

But under LawPRO's insurance program, Ontario lawyers have been largely insulated from these pressures. At $2,500 per lawyer, they are paying some of lowest premiums seen in close to a decade. Moreover, premiums have declined steadily for the past seven years – and for 2004 will stay at the same low levels they were in 2003.

How is it that Ontario lawyers are doing so well when others in other parts of the continent are faring far worse?

The answer lies in some key decisions that the Ontario bar made in the mid- and late 1990s about the structure, focus and operations of the Law Society's insurance program – decisions that today are paying off for Ontario lawyers.

Mandatory insurance with an element of risk rating

The Law Society's requirement that all lawyers in practice in Ontario carry a minimum of $1 million in professional liability insurance coverage with LawPRO is a major factor contributing to the stability and security of the Ontario insurance program.

LawPRO currently insures about 19,400 lawyers – making this company the largest bar-related malpractice insurer in Canada (and one of the largest in North America).

Our size however, works for, not against us, providing us with the opportunity to spread out the risk across the whole of the insured bar. This ability to spread out the risk across many lawyers, and our ability to project with some measure of certainty the future size of our insured base, lets us plan in the long term and adds an important measure of predictability to the program. As well, we are less susceptible in the short term to external forces and pressures.

Thus, the mandatory nature of the program enables us to provide affordable and stable base premiums for all, and ensures equal access to malpractice insurance for all practising lawyers, regardless of practice area. In other words, the mandatory nature of the program insulates lawyers from the vagaries of the insurance market in which premiums in some years can be low, only to be followed by major spikes in premiums and decisions by insurers to abandon high risk practice areas (and practitioners) entirely. Insurance is affordable, and it can be afforded by all.

Another benefit of our size is the wealth of data we have in our possession about lawyers' practices and their practice risks. Our extensive database, which now incorporates many years of data on the demographics, claims experience and practice areas of Ontario lawyers, allows us to predict and project with a high measure of accuracy. We can spot practice and risk issues before they become a major issue for the bar, and develop appropriate risk management tools and information campaigns to help the bar address these potential exposures. The introduction of TitlePLUS, our participation in DIVORCEmate, and the many tools and resources developed by our risk management program practicePRO, are good examples. We can make longer term projections about the impact of environmental and economic factors on the bar and on our insurance program.

The reliability and scope of this data also enables us to structure the program to risk rate segments of the bar that represent a disproportionately high or low risk. For example, those who qualify for the part-time practice or restricted area of practice criteria, or who are newly called to the bar, benefit from a 40 per cent premium discount because, statistically, they represent a lower risk to the insurance program. Similarly, civil litigation and real estate lawyers – both of whom practise in statistically higher risk areas of law – pay a premium surcharge of $50 per transaction. As well, lawyers with one or more claims pay an annual levy surcharge of $2,500 or more, depending on their number of claims. These measures ensure that the premium paid by lawyers who practise in high-risk areas of law closely matches their claims experience.

The bottom line: LawPRO 's mandatory program has ensured that insurance is affordable, and that it can be afforded by all over the long term – without the displacement that can result when whole segments of the bar cannot secure affordable insurance, or cannot insure themselves at all.

Financial strength means independence

When LawPRO first assumed management of the insurance program, we typically reinsured up to 50 per cent of the program, in part because we did not have sufficient capital within LawPRO to assume all of the risk ourselves.

By 2001, as reinsurance markets were hardening, we were reinsuring just over 30 per cent of the program. Our sound financial position – as confirmed for three successive years by the Excellent (A) rating from the A.M.Best Co – has enabled us to retain all of the primary program ourselves for the last two years, without having to rely on volatile reinsurance markets. In 2003, for example, we estimate that reinsuring the primary program would have added 10 per cent to the base premium.

Proactive, claims and risk management that looks at the big picture

One benchmark of our success is our ability to manage the claims portfolio, both from a cost and strategic point of view. The claims resolution approach we've implemented takes into consideration both the individual lawyer, as well as the impact of our strategy on the bar as a whole. We will not pay out frivolous or vexatious claims to simply make them disappear. Similarly, when a claim and our approach to resolving that claim could have far-reaching implications for the bar, we will go to bat for the bar (and the lawyer). Good examples are appeals of *Wong v. 407527 Ontario Ltd., Vaz-Oxlade v. Volkenstein,* and *Silaschi v. 1054473 Ontario Ltd.*; if upheld, these decisions could have had serious implications for the real estate bar. (See *Averting havoc for the real estate bar*, LPIC News Fall 2000).

Complementing our claims management approach is a high-profile risk management program that focuses on the long term – specifically on the need to help lawyers understand the root causes of claims and improve their client communication, conflict management systems and other aspects of practice that can result in claims. LAWPRO 's practicePRO program provides a myriad of tools and resources that address the risk issues associated with law practice – all of them free of charge – because of our belief that effective risk management equates with lower claims frequency and costs over the long term.

These measures are making a difference. The number of claims reported in each of the last few years has remained relatively stable – at under the 2,000 mark – an indication, perhaps, of the higher awareness among lawyers of the risks associated with law practice. As well, we've seen the first signs of a correlation between increased knowledge of risk issues, and lower incidence of claims. As is more fully discussed in the article **CLE Premium Credit program makes its mark** on page 17 of this issue of LAWPRO Magazine, lawyers who participate in CLE programs that include a risk management component appear to be less likely to have claims than those who do not.

TitlePLUS – the lawyer's title insurance program

One of the most advanced practice and risk management tools under the LAWPRO umbrella is TitlePLUS, our title insurance product. Like other title insurance programs, TitlePLUS moves some of the title-related risks inherent in real estate practice out of the mandatory program into the title insurance program. Unlike other products, TitlePLUS covers both the title-related aspects and the legal services provided by the lawyer in the transaction – thus providing lawyers and clients with more comprehensive coverage and further reducing the potential for real estate losses within the insurance program. Where real estate once accounted for 50 per cent and more of LAWPRO's claims costs, in 2002 only about 30 per cent of losses were attributed to real estate practice.

Strict underwriting standards and a Web-based application process that supports TitlePLUS' underwriting requirements help ensure that losses within the TitlePLUS program – which are paid out of the TitlePLUS revenue stream – also are kept to a minimum. Less than one half of one percent of TitlePLUS policies written to date have reported claims; most of these claims have a value of less than $1,000.

But for the bar – real estate lawyers and others – TitlePLUS comes with one other major advantage: It is the lawyer's title insurance program, developed to help ensure that lawyers continue to play a central role in the real estate transaction. It reflects a fundamental aspect of LAWPRO's mission: To provide lawyers with programs and services that enhance their viability and competitive position.

"It is in tight insurance markets such as the one we're currently experienceing that LAWPRO really comes into its own and provides value to the profession," says LAWPRO President & CEO Michelle Strom. "We can provide a stabilizing influence and help insulate the legal profession from the cyclical ups and downs of the insurance marketplace, and from the many external pressures that are brought to bear on commercial insurers."