

SPECIAL ISSUE ON LIABILITY INSURANCE

Your tool to help manage risk

- Lawyers in private practice**
- In-corporate house counsel**
- Lawyers working in government or education**
- Retired lawyers and judges**

Do you have the liability insurance coverage you need given your potential exposure to claims?

I N T H I S I S S U E

2002 INSURANCE PROGRAM

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Base premium falls to \$2,700

The base insurance premium – the premium paid by most lawyers in the province – will fall to \$2,700 per lawyer in 2002, the lowest it has been since LPIC assumed responsibility for the administration of the liability insurance program in 1995.

The \$100 drop in the base premium to \$2,700 from \$2,800, is the fifth consecutive decline in

insurance premiums. Actual premiums paid by many lawyers will be lower, depending on a number of variables such as options selected, years in practice and practice areas. For example, part-time practitioners, those who restrict their practice to criminal and/or immigration law, and lawyers newly called to the bar will pay a premium of only \$1,620 in 2002.

Premiums for other insurance coverages, transaction levies and discounts will remain the same as they were in 2001. Revenues from the real estate, civil litigation and claims history levy surcharges will again be applied as insurance premiums, consistent with LPIC's commitment to a risk-rated insurance program.

Key deadline dates:

Nov. 1 to e-file application and receive \$50 discount

Nov. 9 to file insurance application without late-filing surcharge

November 1, 2001:

E-file deadline

To encourage lawyers to file their insurance applications electronically via the LPIC website, LPIC is again offering lawyers a \$50 per lawyer discount if they e-file by November 1, 2001. The discount will be applied directly to the 2002 insurance premium invoice.

Last year a record two out of every three lawyers e-filed their insurance applications – a 15 per cent increase over the previous years, bringing the total number of lawyers who web-filed their application to 12,500.

November 9, 2001:

Application filing deadline

The final date by which completed applications must be filed –

electronically, by fax or mail – to avoid a late filing surcharge of 30 per cent of the base premium is November 9, 2001.

Application packages containing pre-populated applications and a guide book explaining the application, the 2002 insurance program and coverage options, were mailed to all lawyers in private practice in early October.

Sole practitioners and those who practise in firms of less than 10 lawyers were mailed to individually. For firms with 10 or more lawyers, application packages were mailed to the managing partner or insurance contact in the firm, along with special instructions for filing.

Applications were pre-populated with lawyer-specific data drawn from LPIC's database. As in the

past, many lawyers only must verify the information on the pre-populated form, and sign the appropriate declaration and warranty sections. Changes can be easily indicated on the reverse of the application.

New on the 2002 application is a question on claims and potential claims which you may have to complete. For details, see Changes to 2002 application on page 3.

If you have not yet received your Application/Exemption package and are in private practice, you should immediately contact LPIC Customer Service at (416) 598-5899 or 1-800-410-1013, or via e-mail at service@lpic.ca.



To e-file, go to www.lpic.ca
Click on **File Online**

E-file in minutes by following these simple steps

What you'll need

Before you e-file, make sure you have the following at hand:

- your Law Society (LSUC) member number (check the mailing label on your 2002 insurance application package mailed to you in early October);
- your unique, confidential password.

About your password

- If you have completed any online LPIC filings in the past, the password you used will still be valid.
- If you have forgotten your password, you may be able to reconfirm it using the "Forgot your password" function on the LPIC website at www.lpic.ca
- If you do not have a password you can complete our online password request form (a Customer Service representative will then contact you to establish your password), or you can call (416) 598-5899 or 1-800-410-1013 during regular business hours and request a password. To minimize your wait time, we suggest you call and arrange your online filing password as soon as possible. **DO NOT WAIT UNTIL OCTOBER 31st.**

E-file in 4 easy steps

1. Go to the LPIC website at www.lpic.ca and click on File Online.
2. You will be prompted to enter your Law Society member number (see your mailing label on your 2002 application package) and your unique, confidential password.
3. Select 2002 Professional Liability Insurance Application — Online form from the list of options. Your application form will appear, pre-populated with your information pulled from our database.
4. Follow the on-screen instructions for completing your application — in minutes! All of the information on the 2002 insurance program and options is available online.

2002 APPLICATION FORM PROFESSIONAL LIABILITY INSURANCE

LPIC

Changes to the 2002 application

No instalment payments by cheque

Because of changes to the banking services available to LPIC, we will no longer be able to accommodate instalment payments made by post-dated cheques. Lawyers preferring to pay their insurance premiums by monthly or quarterly instalments can select to pay either by credit card or pre-authorized payment. Alternatively, lawyers opting to pay their insurance in a lump sum, by cheque or pre-authorized payment, will be eligible for a \$150 premium discount.

Claims/potential claims notification

As an additional risk management measure, LPIC has added to the 2002 application a question drawing lawyers' attention to their obligation to notify LPIC of claims. This question must be completed by the following:

- individual lawyers changing any coverage options for 2002;

- individual lawyers re-entering private practice in 2002 after a period of being exempt from having to pay the insurance premium; and
- all lawyers in law firms where the application is filed on a law firm basis.

Key contact information requested

To assist LPIC in streamlining its communications and providing more targeted information to key individuals in law firms, law firms are being asked to provide key contact information for firm members/employees responsible for activities related to insurance, continuing legal education (CLE) and claims matters. This information will assist LPIC in working with various constituencies to develop new programs, materials and communications vehicles that better meet the needs of various segments of the bar.

WHO MUST FILE AN APPLICATION?

- Any lawyer insured under the LPIC program in 2001 who intends to continue in private practice in 2002.
- Any lawyer who was exempt under the program in 2001 but intends to return to private practice in 2002.
- Any in-house counsel, government or education lawyer who, in the course of employment or otherwise, provides legal services to third parties.
- Any lawyer who, although retired from active private practice, occasionally provides legal services.
- Any lawyer who, although not resident in Ontario, engages in more than "occasional practice" in Ontario, as defined under the *Rules for Exemption Eligibility*.

Report to Convocation highlights



Insurance requirements for MDPs reaffirmed

Lawyers practising in Multi-Discipline Partnerships (MDP) will be required to maintain, for their non-lawyer partners, the minimum LPIC insurance coverage of \$1 million per claim/\$2 million in the aggregate, Convocation of the Law Society of Upper Canada agreed at its September 28 meeting.

Convocation also accepted a number of other recommendations from LPIC that set out the parameters for the liability insurance

coverage provided to both lawyers and non-lawyers in the MDP.

Lawyer partners:

- Lawyers who are partners in an MDP will have insurance coverage for the professional services they provide for or on behalf of the MDP (as well as for professional services which they may provide outside of the MDP).

Non-lawyer partners

- Non-lawyer partners will be covered for the professional services they provide for or on behalf of the MDP, but any services they continue to provide on their own outside the MDP would not be covered by the LPIC policy.
- They would not be eligible for the run-off coverage after leaving the MDP.
- Existing transaction levy surcharges will apply to non-lawyer partners in the MDP, meaning all partners in an MDP are subject to the requirement to pay real estate and civil litigation transaction levy surcharges, if applicable.

General coverage issues

- The effective date for insurance coverage for lawyer and non-lawyer partners in the MDP is

April 30, 1999, or the date on which the MDP was first authorized by the Law Society, which ever is later.

- The definition of professional services covered under the LPIC policy will, for the purposes of the non-lawyer partners' services, be expanded to include the practice of the non-lawyer's profession, trade or occupation, provided it supports or supplements the practice of law.
- As is the case with all partnerships, all lawyer and non-lawyer members of the MDP will have to select the same coverage options (eg. the same deductibles), and will be required to carry Mandatory Innocent Party Coverage for lawyer and non-lawyer partners alike.

Law corporations to be subject to insurance policy terms and conditions

Law corporations (including their lawyer directors, officers and shareholders) will be considered "insureds" under the LSUC/LPIC insurance program, and will be covered for the professional services rendered by the named shareholders and employees on

behalf of the law corporation, Convocation has decided.

A law corporation with more than one practising lawyer will be considered a law firm, as defined in the LPIC policy, with its lawyer shareholders required to select the same coverage options and carry the same coverage on a firm-wide basis, consistent with the requirements of a law partnership.

In other words, those in a law corporation will be obliged to carry Mandatory Innocent Party Coverage, and select the same deductible options and Innocent Party Buy-Up options.

A law corporation with only one practising lawyer will be considered a sole practitioner under the LSUC/LPIC insurance policy.

Lawyer mentoring program to be restructured

A more structured mentoring program, with new guidelines, procedures and documentation that better defines the parameters of the mentoring relationship, will be developed by LPIC and the Law Society in the coming year.

In approving LPIC's recommendation to formalize the existing Law Society mentoring program, Convocation acknowledged the many benefits – including claims avoidance – that accrue from this type of initiative.

Any claims arising out of services provided by mentored lawyers participating in a mentoring program will be the responsibility of that mentored lawyer alone: The mentoring lawyers will not be subject to any deductible or claims history levy surcharge for claims that arise out of the mentoring relationship, provided the new mentoring procedures, guidelines and documentation have been followed.

LPIC expects to publish a special issue of LPIC News on mentoring and the restructured mentoring program early in 2002.

Insurance premium credit for CLE courses approved

Prompted in part by the success of the premium credit offered by LPIC for lawyer participation in its Online Coaching Centre, Convocation has approved an expanded premium credit program for legal and other educational programs offered by a variety of bar-related organizations.

Starting in 2002, lawyers participating in select courses approved by LPIC will receive a \$50 premium credit per course, to a maximum of \$100 per lawyer. The credit will be applied to each lawyer's 2003 LPIC insurance premium.

Select programs offered by LPIC, the Law Society, the Ontario Bar Association, The County and

District Law Presidents' Association, the Advocates' Society and others may be eligible for this program, provided they meet requirements now under development. Principal among these is the need to ensure the course helps lawyers become more knowledgeable in the law, more effective in managing their practice in a changing practice climate, and reduces lawyers' exposure to claims.

LPIC will continue to provide free access to the Online Coaching Centre to all members of the Ontario bar; use of the OCC will continue, as part of the expanded program, to qualify lawyers for a \$50 credit, to be applied to the insurance premium.

step #1

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, associates and 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 storage?
- Do or did they practise in areas such as litigation, corporate, commercial, real estate, taxation, securities, patents and trademarks that can easily create exposures well above my insurance limits?
- If they are or have been involved in these 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 guidance and instruction?
- 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.

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, advertisement and promotional materials, of both my practice and any practice 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?

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

- Have I or those in my present or former firms handled major financial transactions, or represented clients in large transactions? Consider for example, securities dealings, commercial business, international transactions, pension dealings, corporate litigation, and class action suits.
- Have I or those in my present or former firms represented clients where the stakes were significant? Consider pension work, patents and trademarks, environmental-related services, or 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? 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 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?

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? Do we have multiple files relying on the

same legal advice or services that could compound my exposure?

For example, 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.

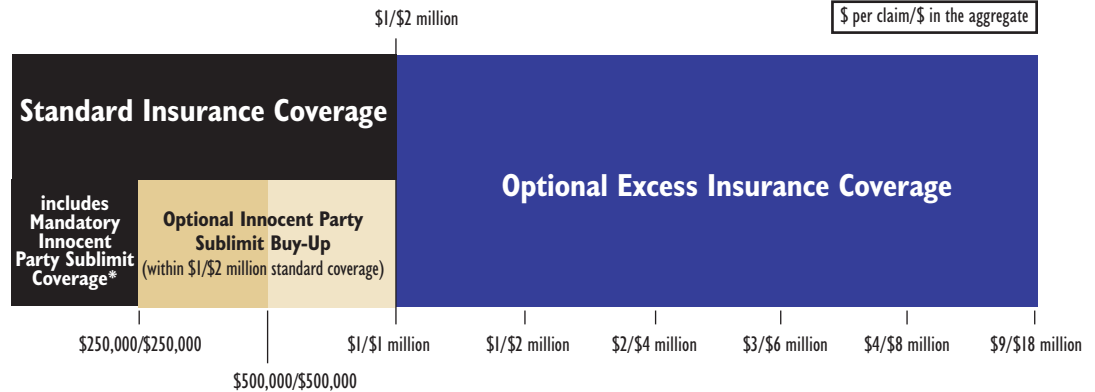
Am I covered under my former firm's excess policy?

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 provided by you outside of your firm practice. You should determine whether or not these policies are being maintained, and what coverage and limit protection is being provided.

step #2

Understand your insurance coverage

Sole practitioners and lawyers in association or partnership



Standard insurance coverage

The base program

- Eligibility:** Required for all lawyers providing services in private practice.**
- Coverage limit:** \$1 million per claim/\$2 million aggregate (i.e. for all claims reported in 2002) applicable to claim expenses, indemnity payments and costs of repairs together.
- Standard deductible:** \$5,000 per claim, applicable to claim expenses, indemnity payments and costs of repairs together.
- Base premium:** \$2,700 per insured lawyer.

Mandatory Innocent Party Sublimit Coverage***

- Eligibility:** Required for all lawyers practising in association or partnership (including MDPs and LLPs), law corporations (with more than one lawyer) and sole practitioners practising with employed lawyers.
- Coverage sublimit:** \$250,000 per claim/in the aggregate applicable to claim expenses, indemnity payments and costs of repairs together.
- Premium:** \$250 per lawyer.

Optional Insurance Coverages

Innocent Party Sublimit Buy-Up****

- Eligibility:** Optional for all lawyers practising in association or partnership (including MDPs and LLPs), law corporations (with more than one lawyer) and sole practitioners practising with employed lawyers.
- Coverage sublimits & premiums:** Innocent Party Sublimit Coverage can be increased as follows:
- to \$500,000 per claim/aggregate for an additional \$150 per lawyer (\$400 total Innocent Party premium); or
 - to \$1 million per claim/aggregate for an additional \$249 per lawyer (\$499 total Innocent Party premium).

Optional Innocent Party Sublimit Coverage****

- Eligibility:** Optional for sole practitioners and lawyers practising alone in a law corporation. Provides protection for ongoing liability that sole practitioners can have in situations such as the following:
- if you've acted as back-up counsel or had others act as back-up counsel for you;

Optional Insurance Coverages (continued)

- if you've taken a temporary leave of absence from your practice and have delegated your work to others;
- if you've practised as a partner or associate in the past;
- if your practice includes or once included employees;
- if you've practised in any situation in which you could be seen as lending your name to others.
- as an assurance to others if involved in electronic registration and escrow closings.

Coverage sublimits: LPIC offers Optional Innocent Party sublimits of:

- \$250,00 per claim/aggregate;
- \$500,000 per claim/aggregate;
- \$1 million per claim/aggregate.

Premiums: Underwritten on an individual basis, based on a risk assessment of information provided in the Innocent Party Sublimit application.

Excess Insurance Coverage

Eligibility: Available to all lawyers in private practice, and to all lawyers with Run-Off Insurance Coverage.

Coverage limits: The following Excess limits**** are above the \$1 million per claim/\$2 million aggregate limits of the primary program. Coverage is provided on a FIRM basis (i.e. for all lawyers in the firm):

- \$1 million per claim/\$2 million in the aggregate;
- \$2 million per claim/\$4 million in the aggregate;
- \$3 million per claim/\$6 million in the aggregate;
- \$4 million per claim/\$8 million in the aggregate;
- \$9 million per claim/\$18 million in the aggregate.

Premiums: Underwritten on an individual lawyer basis, based on a risk assessment of information provided in the Excess Insurance application.

For information

For information on any of these insurance options, or for application forms, please contact the LPIC Customer Service Department at (416) 598-5899 or 1-800-410-1013 or via e-mail: service@lpic.ca.

You can also find detailed information on the insurance program and your insurance options on the LPIC website – www.lpic.ca.

* *Optional for sole practitioners*

** *Lawyers who are on temporary leave and qualify for exemption (c) are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program.*

*** *Coverage for dishonest, fraudulent, criminal or malicious acts or omissions.*

**** *LPIC strongly recommends that lawyers buy up their optional coverage limits to the maximum offered, to avoid gaps in coverage.*

step #3

Consider these scenarios

Note: The following fictitious claims scenarios are based on claims situations and illustrate typical liability insurance issues faced by lawyers. Although the implications of the deductible are not discussed in any of these scenarios, resolution of the claim in each scenario would have been subject to the deductible selected by the lawyer.

The case for Excess Insurance Background

Mr. B is a seasoned and claims-free lawyer who has worked in association with several lawyers over the years, and has never considered the need for excess insurance. One day, a claim arising out of an estate file he handled more than 10 years ago suddenly surfaces. Because of complications involving other services provided to the client and the nature of the client, settlement discussions prove to be futile and, after a period of more than two years, the claim ends up going to trial.

Insurance issues

By the time Mr. B's claim goes to trial, defence costs have exceeded \$200,000. Damage estimates for which Mr. B could be liable stand at another \$500,000. Depending on the costs of trial and its outcome, the total defence and indemnity costs for this single claim will inch uncomfortably close to the \$1 million per claim coverage which Mr. B has under the primary LPIC program, and may exceed those limits, at which point he will be personally responsible for costs beyond the \$1 million mark. As well, this single claim will seriously erode his aggregate \$2 million coverage limits for the year.

Had he secured even the minimum \$1 million per claim/\$2 million

Excess Coverage, Mr. B would have a lot less to worry about.

Innocent Party Coverage: A case for closing the gap

Background

Mr. M and Ms. C have been law partners for close to 20 years. One day, Mr. M disappears, leaving the firm's trust account empty. Subsequent investigations reveal that Mr. M had been improperly investing clients' funds for years, leaving Ms. C to face claims exceeding \$1.3 million.

Insurance issues

Ms. C had secured the minimum \$1 million/\$2 million Excess Insurance for the firm. Unfortunately, she elected not to increase the Innocent Party limits beyond the \$250,000 Mandatory Innocent Party Coverage limits required of all lawyers practising in association or partnership. She will be personally liable for the \$750,000 gap between the Mandatory Innocent Party Coverage, and the \$1 million level at which the Excess Insurance with Innocent Party protection kicks in. Had she bought up her Innocent Party Coverage limits to the maximum \$1 million per claim/in the aggregate, as recommended, she would not have been personally exposed to that \$750,000 gap in coverage.

Why sole practitioners should consider Optional Innocent Party Coverage

Background

Ms. S is a sole practitioner who went out on her own after working for several years in another firm.

Shortly after hanging out her shingle, she was shocked to learn that she had just been named in a lawsuit against one of her former partners; the claimant alleged fraud and sought \$1.5 million in damages.

Because acts of fraud are excluded from coverage under the standard insurance program coverage, and because Ms. S had elected not to secure Innocent Party Coverage, her potential exposure was significant. When damages were awarded, she and her former partners were facing a \$500,000 judgment. Ms. S was at risk of being put into bankruptcy.

Insurance issues

If Ms. S had secured Innocent Party Coverage, LPIC would have paid the damages awarded against her, to the extent of the sublimit coverage she had secured.

For example, if she'd opted for only the minimum \$250,000 sublimit coverage, LPIC would have covered the first \$250,000 of the award. Any remaining monies owing would have been her own exposure.

On the other hand, if she'd opted for \$500,000 sublimit coverage, LPIC would have paid all costs associated with the claim.

In either case, funds available to satisfy any future claims would have been reduced by the amount of defense, settlement, judgment or repair costs that LPIC would have paid. Thus, if she had bought the minimum \$250,000 Optional Innocent Party Coverage (for sole practitioners), this single claim would have exhausted her \$250,000 sublimit coverage for the current policy period.

insurance for exempt lawyers

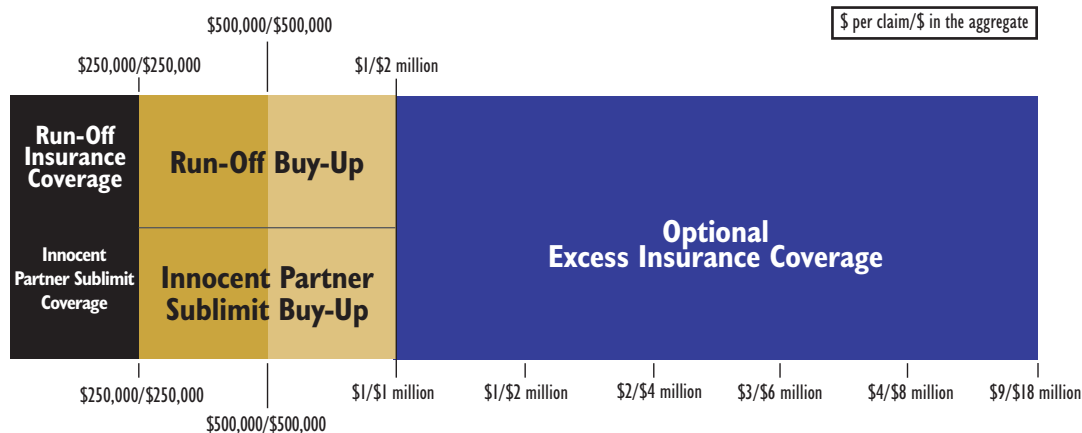
- In-house corporate counsel
- Government lawyers, educators and others not in active private practice
- Retired lawyers, judges and others no longer practising law

step #1

Assess your Exposure (see page 6)

step #2

Understand your insurance coverage



The standard Run-Off Coverage

Eligibility: Provided at no charge to all members of the Law Society who are not in active private practice who qualify for exemption* from payment of insurance premiums and levies.

Coverage sublimit: \$250,000 per claim/in the aggregate, not re-instated annually, subject to the following:

- applies only to claims arising out of services provided while the lawyer was in private practice or otherwise maintained the full, ongoing practice coverage;
- applies to claims expenses, indemnity payments and costs of repairs together;
- does not provide coverage for claims arising out of any services a lawyer provides while exempt from paying the insurance premium;
- includes a sublimit coverage of up to \$250,000 per claim/in the aggregate for Innocent Partner claims.

Premium: none

Optional Insurance Coverages

Run-Off Coverage Buy-Up

Eligibility: Optional for lawyers with only the basic Run-Off Coverage who are concerned that claims now and in the future may exceed \$250,000 per claim/aggregate.

Coverage limits: Exempt lawyers can apply to increase Run-Off Coverage limits to:

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

for terms ranging from two to five years.

Premiums: Underwritten on an individual basis, depending on the years practised, areas of law practised, the amount of time since the applicant was in private practice, and other risk-based factors.

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Innocent Partner Sublimit Buy-Up

Eligibility: Optional for exempt lawyers who have applied to increase their Run-Off Coverage through Run-Off Coverage Buy-Up and who may be concerned about their innocent partner exposure.

Coverage Innocent Partner Sublimit Coverage can be increased as follows:

- sublimits & premiums:**
- to \$500,000 per claim/aggregate for an additional five per cent of the Run-Off Coverage Buy-Up premium; or
 - to \$1 million per claim/aggregate for an additional eight per cent of the Run-Off Coverage Buy-Up premium.

Excess Insurance (see page 9)

* Lawyers who are on temporary leave and qualify for exemption (c) are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program.

step #3

Consider these scenarios

Run-Off Coverage may be insufficient to cover claims that surface after you have stepped out of private practice

Background

Mr. W retired from his small-town Ontario real estate and wills/ estates practice two years ago with a claims-free track record, so he never saw the need to buy up his Run-Off Coverage beyond the \$250,000 per claim/aggregate coverage limits. Notice that he was being sued for upwards of \$1 million by the children of one of his former clients because of an alleged oversight in the drafting of their father's will 10 years ago therefore came as a complete shock.

Insurance issues

Even more unsettling was the exposure that this claim represented. The value of the estate had increased considerably over the intervening years. Disputing heirs also made a quick resolution to the claim more difficult, resulting in increased defence costs. No matter what the outcome, Mr. W knew his potential exposure was significant – and beyond his Run-Off Coverage limits.

Had Mr. W bought up his Run-Off Coverage limits, his personal exposure would have been significantly less. For example, if he had increased his coverage to the full \$1 million per claim/\$2 million aggregate available, chances are virtually all of the defence, judgment or settlement costs associated with his claim could have been covered by LPIC. As well, had he applied for increased Run-Off Coverage when he first retired, his risk-rated premium would have reflected his claims-free track record. For Mr. W to secure increased Run-Off Coverage for the future will be difficult, and certainly costly.

A single innocent partner claim may exhaust total insurance coverage for in-house counsel and other exempt lawyers

Background

Two years after he accepted a position as in-house counsel and closed his small law practice, Mr. T learned that his former partner was being charged with theft from the law firm's trust account. More than two dozen clients were claiming they had lost close to \$1 million collectively – and as a former partner, Mr. T also was being sued.

Insurance issues

As in-house counsel, Mr. T had claimed exemption from paying the insurance premium; he had in place the no-charge Run-Off Coverage that is provided to all members of the Law Society who qualify for exemption. But he did not think he needed additional coverage.

Mr. T's Run-Off Coverage did provide Innocent Partner sublimit coverage to a maximum of \$250,000 – barely enough to cover his defence and damages costs. But that single claim effectively exhausted his total liability insurance coverage. That's because the

Innocent Partner coverage is a sublimit coverage within the Run-Off Coverage; funds used to satisfy Innocent Partner claims reduce the amount of funds still available to meet any other claim obligations. In Mr. T's case, that meant there were no funds available to satisfy any additional claims, now or in the future. Unless he was able to secure additional insurance coverage, he would be personally liable for any other claims made against him.

casebook

Beware the non-client

By Debra Rolph
LPIC Research Coordinator

The case

A solicitor received a surprise visit to his office. One visitor, Mr. M, was a client. The other two – Mr. and Mrs. B – he had never dealt with before. The lawyer was shown an agreement which the parties had drawn up and executed without his advice. Mr. and Mrs. B had agreed to buy a 50% interest in a company owned by Mr. M for \$200,000. Of that sum, Mr. and Mrs. B were to pay \$100,000 cash. They were also to assume responsibility for \$100,000 worth

of mortgages on the subject property. The company owned a property on which a flea market business was conducted.

The following day, the lawyer received a certified cheque from the Bs in the amount of \$100,000. He paid this into his trust account, and then disbursed the money in accordance with his client Mr. M's instructions.

The Bs quickly became disenchanted with the flea market business. They wanted their capital back.

The property was subsequently put up for sale in early 1991. Because of the recession, the new purchaser paid only \$20,000 in cash; the balance was funded by a vendor take-back mortgage, which was behind several other mortgages. The Bs did not receive their money back. They sued the lawyer. The Bs' claim against the lawyer was based in negligence arising out of the alleged relationship of solicitor and client, and out of breach of

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Significant Stats

Almost 8% of LPIC claims are caused by a failure to calendar

Although it is one of the easiest errors to prevent, simply failing to keep a proper calendar is one of the most common causes of claims made against Ontario lawyers. In the last 12 years, 2,335 claims – 7.6 per cent of all claims reported – have been attributed to this error. Costs and indemnity payments to deal with these claims totalled just over \$38 million.

As noted above, this error is very easy to prevent. Everyone should have proper tickler systems in place. You should identify time deadlines, follow-ups and reminders. Establish a system for checking the accuracy of information inputs. Keep a backup system as a safety net. Calendar every case, not just litigation matters.

For a more detailed review of what you can do to prevent this error, and others like it, visit www.practicepro.ca and download the *managing the lawyer/client relationship booklet*. It will help you avoid making this mistake, and build a better relationship with your client.

practicePRO



#3

Text Selection Made Easy

In certain situations, selecting passages of text precisely with the mouse can be difficult. Probably the best examples of these situations are when you are working with information in a tightly packed table, or trying to select a large piece of a very long document or Web page.

Here is a handy trick to help you select text in these situations. First you must place the insertion point where you want the selection to start. Do this with a single left click of your mouse in this exact location.

Next, you need to get the end of the passage you want displayed on the screen. Use your scroll bars or other appropriate keys to move to where you want the selection to end. While moving to the end point, be careful not to click anywhere in the document you are working with as this will move the initial insertion point.

When you get to the screen that displays the end point, and while holding down your Shift key, do a left click with your mouse in this exact location. All text in between the two insertion points will be selected. You can then cut or copy the selected passage as you desire.

This trick works in most Windows applications.

LPIC's Online Coaching Centre racks up success

If there was ever any doubt about the bar's willingness to embrace online learning, the success of LPIC's Online Coaching Centre has put those doubts to rest:

- To date, almost 18,000 individual OCC modules have been downloaded by the more than 3,000 lawyers who have registered to use this Web-based self-coaching tool.
- In addition, entire workshops consisting of about 20 to 25 modules each were downloaded more than 1,400 times. Based on feedback from some law firms,

the modules within these workshops are being accessed internally by hundreds of lawyers in each of these firms.

- Close to 1,900 lawyers completed the required three modules and filed their online Survey and Declaration to qualify for a \$50 premium credit, to be applied to their 2002 insurance premiums. In fact, overwhelming last-minute response prompted LPIC to extend the filing deadline to September 28 from September 15.

The two most-accessed workshops are: Overcoming Procrastination, and Getting Stress Hardy. The top ten modules and the numbers of times they were downloaded are as follows:

1. putting first things first (544)
2. knowing why you want to be stress hardy (443)
3. cleaning up the messes in your life (419)
4. changing your thinking about stressful situations (365)
5. focusing on your goals (331)
6. understanding the components of your life (324)
7. using a To-Do list (317)

8. letting go of unhelpful beliefs (315)
9. handling multiple projects (262)
10. delegating to the future (261)

Analysis of OCC statistics indicated that participants in the OCC were representative of the bar regardless of firm size, area of practice, geographic location, or years in practice.

In light of the positive feedback for the online Coaching Centre, the CLE premium credit program will be expanded next year to include premium credits for participating in accredited CLE programs (including the OCC). (See story on page 5)

Deadline alert: Mandatory reporting of Suspicious Transactions starts November 8

The implementation of the federal anti-money laundering legislation is rapidly moving forward. The final regulations concerning the mandatory reporting of suspicious transactions were recently released.

Lawyers and law office staff will be statutorily obliged to report suspicious transactions starting November 8. Compliance with other parts will be required in phases over the next 4-12 months. Training staff and preparing your practice will take a great deal of work: If you have not already started to prepare to comply, you should start immediately.

LPIC has undertaken several initiatives under its practicePRO banner to help lawyers meet the onerous obligations placed on them by this legislation.

- Our 45-page Web-based Guide contains a detailed step-by-step review of the obligations imposed by this legislation. This Guide is dynamic and will be updated as this legislation is implemented. An extensively updated Version #3 of the Guide was just released. To date more than 1,000 lawyers have downloaded this Guide.
- In conjunction with the Law Society of British Columbia, a sample compliance manual has been prepared. It is designed so that lawyers will be able to easily adapt it for their firms and to use it for staff training.
- practicePRO is offering an email news service that is providing current information to all interested individuals. This service provides regular updates by email of current news and information on this legislation. Almost 500 lawyers have subscribed to this service.

Go to the practicePRO website at www.practicePRO.ca to download the detailed Guide or the compliance manual, and to subscribe for the email news service.

Again, please immediately start your work to comply, and remember to use these helpful tools from practicePRO in your efforts to do so. They will save you many hours of work.

Money laundering events to note

November 5

How to Comply with the New Anti-Money Laundering Legislation

A joint program of LSUC and the OBA

OBA Conference Centre

9 a.m. – 5 p.m.

To register, call: (416) 947-3374

Law association presentations

Over the last few months, practicePRO director Dan Pinnington has visited more than a dozen law associations to explain the money laundering act and its implications for lawyers. Many more presentations are planned for the next several months. Watch your local association newsletter for details of a presentation in your area. To book Dan, send an email to pinningd@lpic.ca or call (416) 596-4623 and speak to Sophie Nicholson-Clarke.

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a fiduciary duty or obligation by accepting money from them and disbursing such money to his acknowledged client Mr. M.

The judgment

The Bs' action against the lawyer was dismissed. They failed to establish any solicitor-client relationship between themselves and the lawyer. There was no evidence of any retainer letter. They did not ask for, or receive, the lawyer's advice. Since the \$100,000 belonged to Mr. M, the lawyer was entitled to disburse it on Mr. M's instructions. In the circumstances, the lawyer could not be faulted for failing to recommend independent legal advice. The Court also dismissed the plaintiffs' contention that the lawyer owed

them a fiduciary duty. There was no credible evidence that the plaintiffs reasonably relied on the lawyer, and that the lawyer was aware of this reliance.

The lesson

The lawyer did nothing wrong, yet he was drawn into protracted litigation. How do you protect yourself in situations such as this?

Take a lesson from the litigation bar. Litigators avoid direct dealings with parties to litigation other than their own clients. When they are obliged to deal with unrepresented non-clients, they leave the non-client in no doubt but that they represent their own clients, and no one else. You may think that unrepresented participants in your client's transaction are not "hostile."

Once they lose money, they may look for a scapegoat, and you could be an appealing target.

The fewer direct dealings you have with non-clients, the more difficult it is for them to allege a solicitor-client relationship with you, or that they reasonably relied upon you to protect their interests. The fewer office visits and telephone calls, the better. If direct dealings cannot be avoided, advise them clearly, preferably in writing, they you do not represent them. Like chicken soup, a recommendation of independent legal advice can never hurt.

***Banzon v. Madsen et al*, [2001] O.J. No. 2216 (Ont.S.C.J.)**



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