



**REPORT TO  
CONVOCAATION**

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**SEPTEMBER 2018**

TO: The Treasurer and Benchers of the Law Society of Ontario

**RE: 2019 Insurance Program: Transmittal of Report to Convocation**

This year, there are few changes needed to the coverage offered by the LAWPRO policy, but efforts were made to streamline the operation of the primary insurance program and to better align it with the administrative practices of the Law Society of Ontario. Provision is made to accommodate licensee employees at Civil Society Organizations in the event the Law Society allows this type of entity to provide legal services directly to the public.

***Premium pricing for 2019***

The base premium will remain at \$2,950 per lawyer for 2019. This is the same base premium since 2017.

***No change to transaction levies***

As well, real estate and civil litigation (non-family) transaction levies will not change. However, since the rate and cost of civil litigation (non-family) and real estate claims remain high compared to the base premiums received from practitioners in these areas, the relationship between these costs and premium revenues will continue to be monitored to determine whether any further action should be taken on these categories in the future.

***Alignment with Law Society practices***

To better meet lawyers' expectations and achieve greater consistency, LAWPRO works to align its administrative practices with those of the Law Society of Ontario. In recent years, the Law Society of Ontario reduced its default period for failure to complete filings and pay fees and levies to 60 days from 90 and 120 days. Accordingly, for LAWPRO matters, the default period will be reduced to match those set by the Law Society.

Also, to align with Law Society practices, the reinstatement fee that is owing by lawyers who are administratively suspended for failure to pay LAWPRO levies will be increased to \$300 from \$150, plus applicable taxes effective January 1, 2019.

Further, administrative suspensions resulting from the failure to pay deductibles will, as of January 1, 2019, result in the application of the reinstatement fee. However, no reinstatement fee will apply in respect of suspension just for failure to file outstanding LAWPRO real estate and/or civil litigation transaction reports.

***Designated Agencies discount expanded to consider proposed Civil Society Organizations***

LAWPRO is supportive of efforts by the Ontario bar to encourage access to justice and address human rights concerns pertaining to the provision of legal services to members of the public who might otherwise not be able to afford legal representation.

One way LAWPRO supports these efforts is through the provision of discounted insurance to lawyers employed by qualifying entities referred to as "Designated Agencies." The Law Society of Ontario is currently considering a recommendation to allow licensees to provide legal

services through non-law firm entities that provide free legal advice and services, referred to as “Civil Society Organizations.”

If the proposed Civil Society Organizations are approved by the Law Society to provide legal services directly to the public, LAWPRO will expand the use of its Designated Agencies discount and accept applications for possible premium discounts for employee lawyers in such organizations.

### ***Conclusions***

LAWPRO Board members and management continue to stay apprised of issues and concerns that are shaping the direction of the legal profession in Ontario. The needs of the public and Ontario legal professionals are at the forefront of the development, planning, and implementation of an insurance program that is both commercially reasonable and responsive to changing times.

***Original signed by Susan McGrath***

Susan T. McGrath  
Chair

***Original signed by Daniel Pinnington***

Daniel E. Pinnington  
President & CEO

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# LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")

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## REPORT TO CONVOCATION – SEPTEMBER 2018

### BACKGROUND

1. The Law Society of Ontario ("Law Society") governs the legal profession in the public interest. One of the ways it discharges its responsibilities is through the mandatory requirement it places on practising lawyers to obtain professional liability insurance coverage for legal malpractice claims. This coverage is provided by LAWPRO, a provincially licensed insurer that is owned by the Law Society.
2. The coverage that the Law Society's mandatory insurance program ("Program") provides is considered to be both in the best interests of the public and in the best interests of Ontario lawyers – in that the public has reasonable assurance that an insurance policy backstops errors committed by lawyers in practice, and lawyers have assurance that they have a degree of financial protection for their professional liability that is well-suited to most lawyers' practice needs.
3. In recent years, we have seen an upward trend in the number of open claims files, with approximately 3,873 open files as at December 31, 2017, estimated to have a gross value of \$485.1 million. At over \$735 million in assets, the Program manages about 84 per cent of the Law Society's over \$875 million in combined assets.
4. Each September since 1995, LAWPRO's Board of Directors has reported to Convocation on changes to the Program for the following calendar year. The timing of this Report is necessitated by the logistics of renewing about 27,000 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.
5. This Report is also an opportunity for LAWPRO's Board to review with Convocation issues of importance to its insurance operations and receive policy

direction where necessary. Financial information on LAWPRO and the Program is provided to Convocation throughout the year.

6. Convocation established LAWPRO's mandate in 1994 with the adoption of the Insurance Committee Task Force Report ("Task Force Report"). The mandate and principles of operation derived from the Task Force Report are as follows:

- that LAWPRO be operated separate and apart from the Law Society by an independent board of directors;
- that LAWPRO be operated in commercially reasonable manner;
- that LAWPRO move to a system where the cost of insurance reflects the risk of claims; and
- that claims be resolved fairly and expeditiously; however, this was not to be a system of "no-fault" compensation and there would be certain circumstances where coverage was denied or coverage was limited.

For 2019, we have conducted our annual review of the Program to revalidate the approach and rating structure in light of these Task Force recommendations.

7. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO's operations, and that the proposed Program for 2019 continues to fulfill these principles. This Report deals solely with the Program for the Law Society, and not the LAWPRO optional insurance segment, composed of TitlePLUS<sup>®</sup> title insurance and the Excess Professional Liability Insurance program.

## **2019 PROGRAM SUMMARY**

8. The following summarizes the 2019 Program, as provided for in this Report.

### ***Premium Pricing for 2019***

- (i) The base premium is \$2,950 per lawyer for 2019, the same base premium charged in 2018 (paragraph 97(a)).**
- (ii) The levies will remain \$100 for civil litigation transactions and \$65 for real estate transactions for files opened on or after January 1, 2019. Revenues from real estate and civil litigation transaction levies collected by the Errors & Omissions Fund during the year are budgeted at \$30.0 million for the purposes of establishing the base premium for 2019 and other budgetary purposes (paragraph 97(b)).**
- (iii) 100 per cent of the premiums and losses for the Program will again be retained by LAWPRO in 2019, subject to limited capital backstop protection provided by the Errors & Omissions Fund, and reinsurance protecting the Program from multiple losses arising out of a common event or nexus (paragraph 72).**

### ***Changes to the Default Period and Reinstatement Fee***

- (iv) The Program's default period and reinstatement fee will be changed to more closely reflect the practises of the Law Society. This will include reducing the default period from 120 days to 60 days and increasing the reinstatement fee to that imposed by the Law Society resulting from suspension for defaults relating to payments (paragraph 23).**

### ***Changes to Reflect the Proposed Introduction of Civil Society Organizations***

- (v) If Civil Society Organizations (or such other non-profit service providers as the Law Society may provide for that act for no-fee and which promote**

access to justice and the interests of human rights for low-income Ontarians), are approved by the Law Society to provide legal services directly to the public, LAWPRO will expand the use of its “Designated Agencies” discount and accept applications for possible premium discounts for employee lawyers in respect of such organizations (paragraph 28).

***Other Program Features (or Adjustments)***

(vi) Subject to the changes identified earlier in the Report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2018 will remain unchanged for the 2019 Program (paragraph 102).

***The Errors & Omissions Insurance Fund***

(vii) The investment income of the Errors & Omissions Fund which is surplus to the obligations of the Fund will be made available to the Law Society during 2019 (paragraph 12).

***Conclusion***

The LAWPRO Board considers the Program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this Program of Insurance for 2019 and asks for Convocation’s acceptance of this Report at the September Convocation, so that the 2019 Program can be implemented by January 1, 2019 (paragraph 103).

## **PART 1 – THE ERRORS & OMISSIONS INSURANCE FUND**

9. LAWPRO provides services to the Law Society with respect to the Errors & Omissions Fund of the Law Society, which is currently in run-off mode. (The Errors & Omissions Fund was responsible for the Program prior to 1990, and for a group deductible of up to \$250,000 per claim prior to 1995.)

10. In recent years the Errors & Omissions Fund resources have been utilized to settle outstanding claims (for Program policies in place between July 1, 1989 and December 31, 1994), maintain its investment in LAWPRO share capital, and make available \$15 million of funds to backstop the potential of significant deterioration in the loss experience under recent years' Program policies. Where the investment income has been considered surplus to the Errors & Omissions Fund's commitments, it has typically been aggregated for use to the benefit of the Law Society for general purposes.

11. As of June 30, 2018, the Errors & Omissions Fund had no outstanding claims liabilities, as all files for 1994 and prior years are closed. Since there are sufficient assets in the Errors & Omissions Fund to fully meet its other outstanding liabilities, the LAWPRO Board is again satisfied that the investment income generated by the Errors & Omissions Fund is surplus to the needs of the Errors & Omissions Fund and can be used by the Law Society for its general purposes.

12. **Accordingly, the investment income of the Errors & Omissions Fund which is surplus to the obligations of the Fund will be made available to the Law Society during 2019.**

## **PART 2 – CHANGES TO THE PROGRAM FOR 2019**

13. In developing the details of the 2019 Program, LAWPRO has considered the changing environment in which lawyers practise and any comments received from the profession during the previous year. The general structure of the current Program appears in most ways to meet the needs and practice realities of the profession for 2019.

14. For the 2019 Program, however, two modifications in the structure of the Program, or in the form and substance of the policy, are contemplated.

### **Changes to the Default Period and Reinstatement Fee**

15. Lawyers<sup>1</sup> who fail to make the requisite filings and payments are subject to summary suspension under By-Laws Nos. 5, 6 and 8 of the *Law Society Act*, R.S.O. 1990, c.L.8. If a LAWPRO insured has failed to complete the Law Society's Annual Report, or to pay Program premiums, a default period is provided for under Law Society by-laws<sup>2</sup> and a similar administrative suspension process is followed. Both the Law Society and LAWPRO conduct various types of follow-up prior to suspension being pursued, and ultimately names are submitted to a designated Bencher to authorize the suspensions.

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<sup>1</sup> Paralegals who are insured by LAWPRO by virtue of Endorsement No. 13 under the Law Society Program Policy (i.e., those who are either partners with lawyers or co-shareholders with lawyers in a professional corporation) are subject to a different process than lawyers insured by LAWPRO when it comes to cancellation and default period. Such paralegals are subject to having their practice coverage under the Program cancelled for failure to pay premiums or submit necessary applications. Like other paralegal professional liability insurers, LAWPRO is then required to notify the Law Society of such cancellation and it is then up to the Law Society to determine if suspension of the paralegal's licence is merited for failing to have insurance in place as required under By-Law No. 6 of the *Law Society Act*.

<sup>2</sup> Subsection 46(1) of the *Law Society Act* provides that the designated Bencher may make an order suspending a licensee's license if, for the period prescribed by the by-laws, the licensee has been in default for failure to pay a fee or levy payable. Subsection 5(1) of By-Law No. 6 provides that the period of default for failure to pay an insurance premium levy is 120 days after the day on which payment of the levy is due.

16. More recently, however, the process for these administrative suspensions have begun to diverge more as the Law Society has updated its processes. With this report, LAWPRO Management proposes to bring its processes more in line with that of the Law Society.

17. In recent years, the Law Society has reduced its default period from 120 days to 90 days to the current 60 days. Under the Law Society's current process, prior to the default period ending, Law Society licensees are sent reminder notices. Once the period has ended, licensees are provided with further notice regarding the suspension process. In order to have their licenses to practise reinstated, the licensees must pay all outstanding licence fees (including any applicable late filing fee) and a reinstatement fee of \$300 (plus applicable taxes).

18. When the Law Society increased the reinstatement fee from \$150 to \$300 and reduced the default period from 120 days to (most recently) 60 days, similar changes were not introduced in respect to the Program. Effective January 1, 2019, LAWPRO proposes that similar changes will be introduced in respect to the Program.

19. LAWPRO does not propose introducing a late filing fee, similar to that used by the Law Society, but will instead continue to encourage timely payment of premiums through the use of the early payment discount, first introduced in 1997.

20. To make the suspension process more consistent, however, administrative suspensions resulting from the failure to pay deductibles will, as of January 1, 2019, result in the application of the reinstatement fee. Currently, no such fee applies in respect of suspension for failure to pay deductibles under the Program.

21. To summarize, the requirements as a result of administrative suspension for failure to pay LAWPRO levies or submit LAWPRO filings after January 1, 2019 will be as follows:

- Pay all outstanding LAWPRO premium insurance levies and/or deductibles, plus a reinstatement fee equal to that applied by the Law Society arising from non-

payment of Law Society licence fees (which is currently \$300), plus applicable taxes;

- Pay all outstanding LAWPRO Real Estate and/or Civil Litigation Transaction Surcharge levies, plus a reinstatement fee equal to that applied by the Law Society arising from non-payment of Law Society licence fees (i.e. \$300), plus applicable taxes;
- File all outstanding LAWPRO Real Estate and/or Civil Litigation Transaction reports, but no reinstatement fee shall apply.

22. These proposed changes will require amendment to By-law No. 6 of the *Law Society Act*.

**23. Accordingly, the Program’s default period and reinstatement fee will be changed to more closely reflect the practises of the Law Society. This will include reducing the default period from 120 days to 60 days and increasing the reinstatement fee to that imposed by the Law Society resulting from suspension for defaults relating to payments.**

### **Changes to Reflect the Proposed Introduction of Civil Society Organizations**

24. In order to advance access to justice and efforts to expand the ability of disadvantaged members of the public to access legal services, the Law Society’s Alternative Business Structures (“ABS”) Working Group recommended that Convocation approve that licensees could provide legal services through non-law firm entities that would provide free legal advice and services. The Working Group specifically reviewed and rejected models that would have allowed legal service providers to charge any fees (even reduced fees or membership fees) if they wished to be considered Civil Society Organizations (“CSOs”).

25. LAWPRO currently allows a significant premium discount to qualifying government-funded agencies that promote access to justice and meet human rights concerns with free legal services to members of the public who might otherwise not be

able to afford legal representation. These entities are referred to as “Designated Agencies” (“DA”). If a lawyer only engages in the practice of law for and on behalf of a DA employer, the lawyer qualifies for a discount equal to 75% of the base premium (a current savings of \$2,212.50), as well as being exempt from payment of any civil litigation transaction levies.

26. Government-funded agencies seeking consideration to be a DA are encouraged to provide LAWPRO with information about the social benefit they provide, the payment model for providing services, activities undertaken by their employed lawyers, the means testing used for its clients, claims history, risk management tools, and other factors. LAWPRO underwriters, together with executive-level input, can then assess whether the agency should qualify for the discount and will advise accordingly. Currently there are three Designated Agencies<sup>3</sup>: the Human Rights Legal Support Centre, the Office of the Employer Adviser, and the Office of the Worker Adviser.

27. If the Law Society should make changes to the *Law Society Act* or its by-laws to allow for regulation of legal services to the public through CSOs, it is expected that the current Designated Agency model used by LAWPRO can support these types of initiatives. CSOs approved by the Law Society can seek DA designation with LAWPRO, and each application can be reviewed by LAWPRO underwriters to determine if the premium-reduction for employee lawyers is warranted in respect of the given applicant employer.

**28. Accordingly, if Civil Society Organizations (or such other non-profit service providers as the Law Society may provide for that act for no-fee and which promote access to justice and the interests of human rights for low-income Ontarians), are approved by the Law Society to provide legal services directly to the public, LAWPRO will expand the use of its “Designated Agencies” discount**

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<sup>3</sup> For an up-to-date listing of Designated Agencies, visit the LAWPRO website at: [https://www.lawpro.ca/insurance/insurance\\_type/Designated\\_Agencies.asp](https://www.lawpro.ca/insurance/insurance_type/Designated_Agencies.asp)

**and accept applications for possible premium discounts for employee lawyers in respect of such organizations.**

### **PART 3 – THE PROFESSIONAL LIABILITY INSURANCE PROGRAM**

29. Rapid increases in the number and cost of claims during the mid to late 2000s, combined with severe volatility in the world investment markets in the late 2000s, placed significant pressure on the Program. While the Program is still subject to ongoing uncertainty regarding claims costs and investment income, the gentler growth rate of claims and solid experience in the investment markets over the last five or so years, have been key contributors to the Program returning to firmer footing. The proposals outlined in the following pages are designed to address the present challenges in a prudent fashion and maintain LAWPRO's ability to meet the needs of the Program in the years to come.

30. To establish the recommended Program for 2019, the LAWPRO Board considered several factors, such as:

- the cumulative effect of the recent underwriting and investment results, and the economic environment, on the Program;
- the expected future loss costs;
- the revenue sources which are expected to supplement the base levies; and
- the inherent uncertainties in predicting the results of the Program each year.

31. To ensure the Program's long-term viability, LAWPRO and the Board took a prudent approach to projections of revenue, as well as claims frequency and severity, taking into account factors such as emerging claims trends, general economic conditions and inflationary pressures on the claims portfolio.

32. As part of its ongoing planning process, LAWPRO looked at a five-year time horizon. Any LAWPRO forecast is reviewed and revised periodically based on new

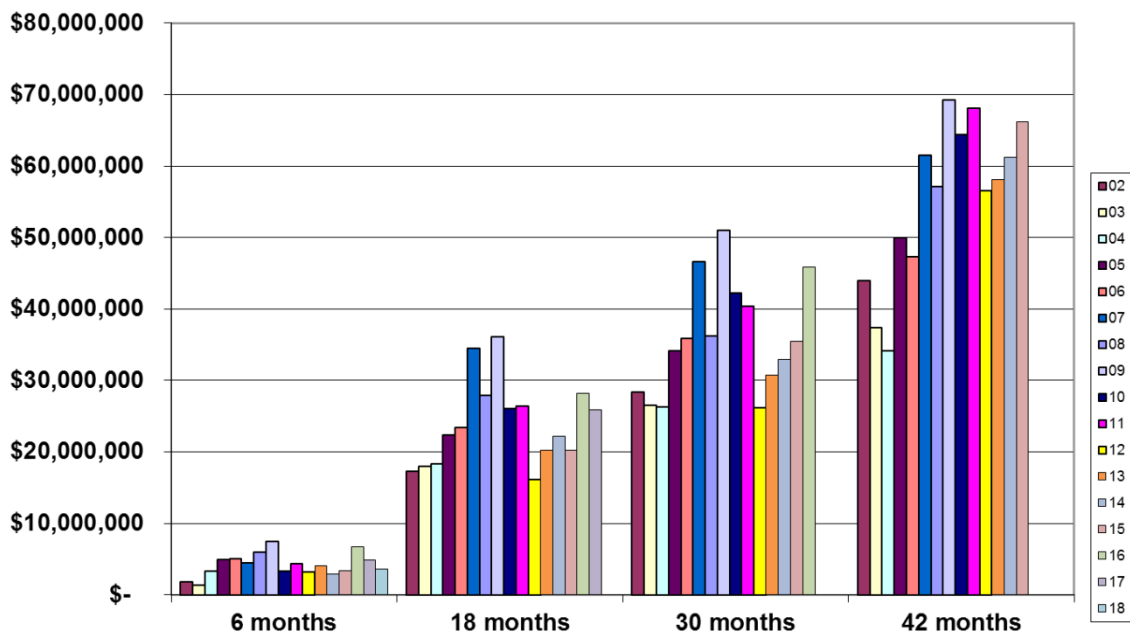
information as it emerges. The subject forecast reflects the trends detailed in this Report, and takes a conservative approach to projecting the frequency and cost of claims under the Program. This prudent approach is dictated by uncertainties associated with predicting (a) general economic and inflationary trends, and (b) claims associated with recommended or recent Program changes, as applicable.

### Program Costs

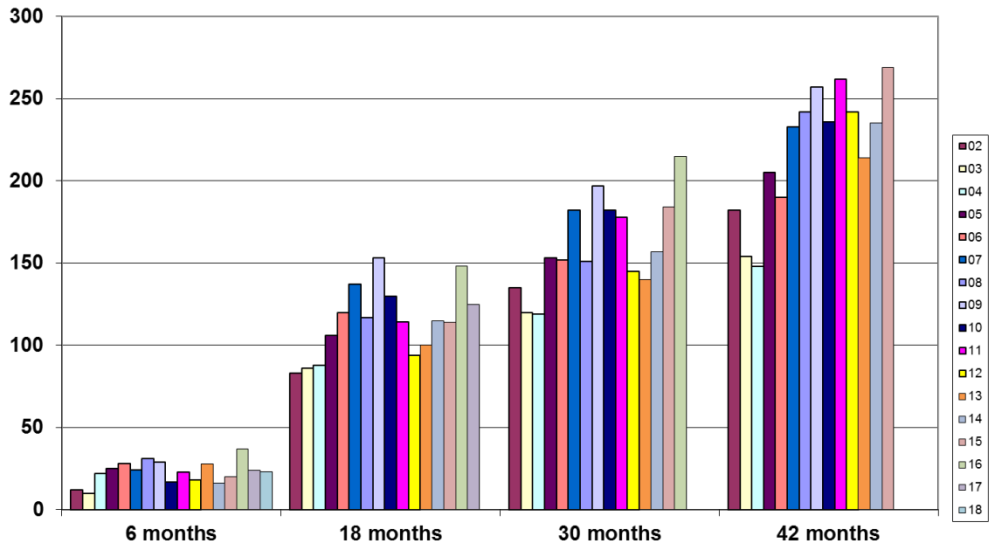
33. LAWPRO’s revenue requirements for the 2019 Program are based on the anticipated cost of claims for the year, as well as the cost of applicable taxes and Program administration.

34. Loss experience has trended up noticeably in terms of frequency since 2004, with more claims reported than in the earlier part of that decade. It is too early to form a final view on the development of the most recent fund years’ claims, such as 2016 through 2018, but there is a noticeable recent stabilization in the number of claims involving \$100,000 or more (as seen in the following charts).

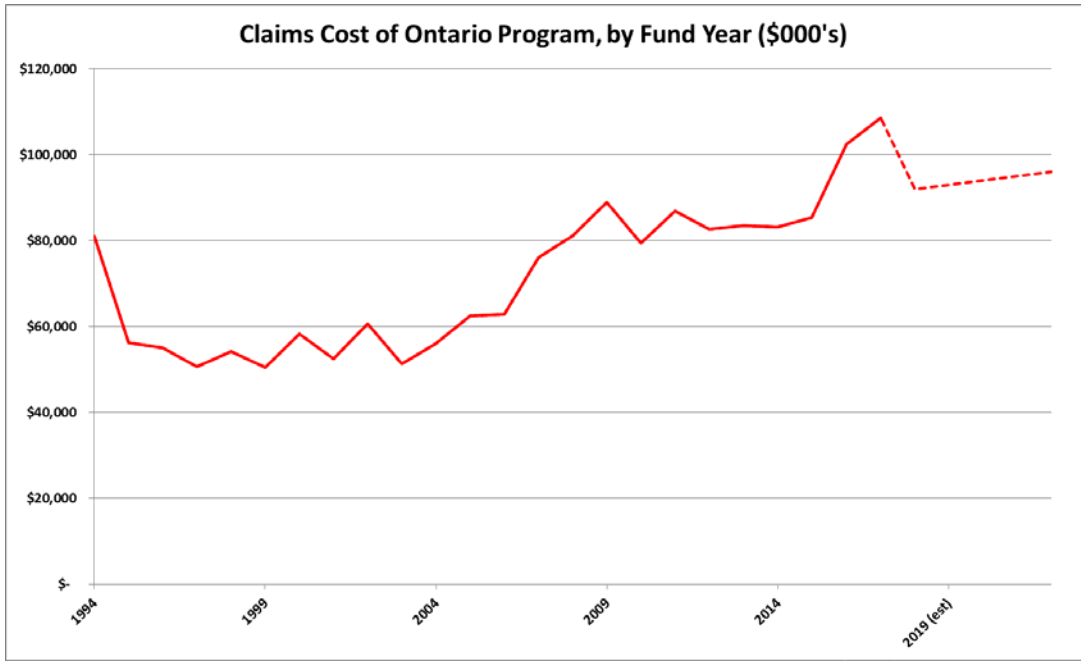
**Dollar Value of Claims Valued at Greater than \$100,000  
by Age and Fund Year**



**Count of Claims Valued at Greater than \$100,000  
by Age and Fund Year**



35. For 2019, LAWPRO expects direct claims costs alone to be \$92.5 million, a level which has also stabilized somewhat in recent years (see chart following). LAWPRO estimates total Program funds (that is, claims costs plus general expenses) required for 2019 to be \$119.9 million. This estimate is slightly above the current forecast of total Program funds needed for 2018, which is approximately \$118.3 million.



## **Risk Rating**

### ***Background***

36. As already discussed in this Report, the Task Force Report concluded that the cost of insurance under the Program should generally reflect the risks.

37. Specifically, the Task Force Report indicated that "...as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."<sup>4</sup>

38. In keeping with this approach, LAWPRO regularly conducts detailed analyses of the risks associated with the Program. The earlier results of these analyses are summarized in previous Reports to Convocation. These analyses concluded that the practice of real estate and civil litigation represented a disproportionate risk when compared to other areas of practice, and that lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

39. The objective of risk rating was finally achieved in 1999 by applying various discounts and additional levies (such as the real estate and civil litigation transaction levies and claims history levy) to the Program.

40. Risk rating, however, is not static. Since the relationship between the cost of claims and different areas of practice may change, LAWPRO must continue to monitor the Program to ensure that risk rating continues to be achieved. The results of these earlier risk analyses are re-evaluated each year, and the factors used to assess risk and determine premium under the Program are re-evaluated for degree of relevance. The factors currently used to match risk to premium include area of practice, years in practice, claims history, liability for partners and associates, and size of practice.

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<sup>4</sup> 1994 Task Force Report, page 17.

41. As in the past, LAWPRO's risk analysis also examined the degree of specialization, size of firm, and geographic location of practice as possible factors to be used in assessing risk and setting premiums. The potential factors were examined individually and on a combined basis to determine any correlation or dependencies.

42. The result of this analysis is summarized in the graphs contained in **Appendix "B"** of this Report.

43. In 2018, this review has reaffirmed the overall validity of the rating structure currently in place, subject to certain adjustments in magnitude. The results of the customary re-evaluation of the earlier risk analyses are addressed in this Report at paragraphs 50 to 65.

### ***Practice Trends***

44. LAWPRO's present risk analysis reaffirms the results of its last Report indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice. These two areas of practice represented 70 per cent of the claims reported and 65 per cent of the claims costs under the Program in 2017.

45. In particular,

- a) Real estate claims costs have trended upwards since 2001, with real estate accounting for nearly 30 per cent of costs in many of those years. Since 2004, claims costs in this area of practice have increased almost 76 per cent;
- b) In 2017, the exposure relating to the practice of civil litigation again was substantially more than that traditionally seen, with civil litigation accounting for 31 per cent of the claims reported and 37 per cent of the claims costs under the Program;
- c) In 2017, the nature of claims against civil litigators was also reaffirmed, with missed limitation period claims (including Rule 48-related administrative dismissals) accounting for almost 31 per cent of litigation claims, whereas

general conduct or handling of the matter accounted for about 69 per cent of these claims; and

- d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior 10 years were about three times more likely to report a claim during the past year than those with no claims in the prior 10 years.

46. LAWPRO has been watching the civil litigation area of law carefully for the past several years. Despite steps taken by LAWPRO such as the “Rule 48 Toolkit”, extensive efforts to educate the litigation bar on claims avoidance, and the mandatory increased deductible for certain administrative dismissal claims, the reality remains that in recent years the growth in civil litigation claims has outstripped the overall growth in claims. For example, from 2006 through 2010 LAWPRO received an average of 708 civil litigation claims each year, and during 2011 through 2016, the average increased to 934 each year. This growth of 32 per cent vastly exceeds the 7 per cent total growth of claims for all other areas of law over the same time period. In addition, costs of civil litigation claims have remained resiliently high. During 2007 through 2016, the average cost of these claims was \$5,825 per civil litigation practitioner, an amount far in excess of what was collected in premiums (including civil litigation transaction levies).

47. Last year, it was concluded that the \$50 transaction levy was insufficient to perform its risk-rating function, as the costs associated with civil litigation, as compared to other areas of practice, now substantially outweigh the revenue generated by the transaction levy and base levy premiums of these lawyers.

48. Although the number and cost of litigation-related claims was likely to recede somewhat as the latest Rule 48 changes took full effect, it was clear that additional transaction levy revenues would need to be raised from the litigation bar to ensure effective risk-rating under the Program. In an effort to address this gap, the civil litigation transaction levy was raised to \$100 effective for all files opened after January 1, 2018.

## ***Risk Management Initiatives***

49. A principal mandate of LAWPRO is to help the legal profession manage the risk associated with practice. This is accomplished by providing lawyers with information, tools and resources that help them manage risk and practice in a more risk-averse fashion. Among LAWPRO's major risk management initiatives are:

- **TitlePLUS<sup>®</sup> Program:** TitlePLUS insurance is a competitive title insurance product that has made a positive difference in the Ontario real estate market. It expands the choice offered to consumers and lawyers. It influences the behaviour of other title insurers. It educates consumers and has expanded policy coverages available to them. It also educates lawyers on title insurance and real estate trends. The TitlePLUS program promotes real estate lawyers and recommends that consumers seek the advice of lawyers when closing their real estate transactions.
- "TitlePLUS Today", the department's news bulletin, is sent regularly to subscribing lawyers across Canada, providing legal and underwriting updates on current national real estate issues. Also, in recognition of the role support staff play in real estate transactions, the department publishes "TitlePLUS Tips", a bulletin written especially for support staff in the offices of subscribing lawyers. To increase lawyer and clerk understanding of the products and risk management techniques, links to how-to videos and risk management videos were distributed via these newsletters.
- In an effort to help minimize the risks associated with real estate transactions, two free TitlePLUS Continuing Professional Development programs were provided to real estate lawyers on: (a) the complexities of condominium transactions; and (b) steps to closing a residential real estate purchase, highlighting red flags and the types of mistakes we see lawyers make. The programs included practice management tips and resources.

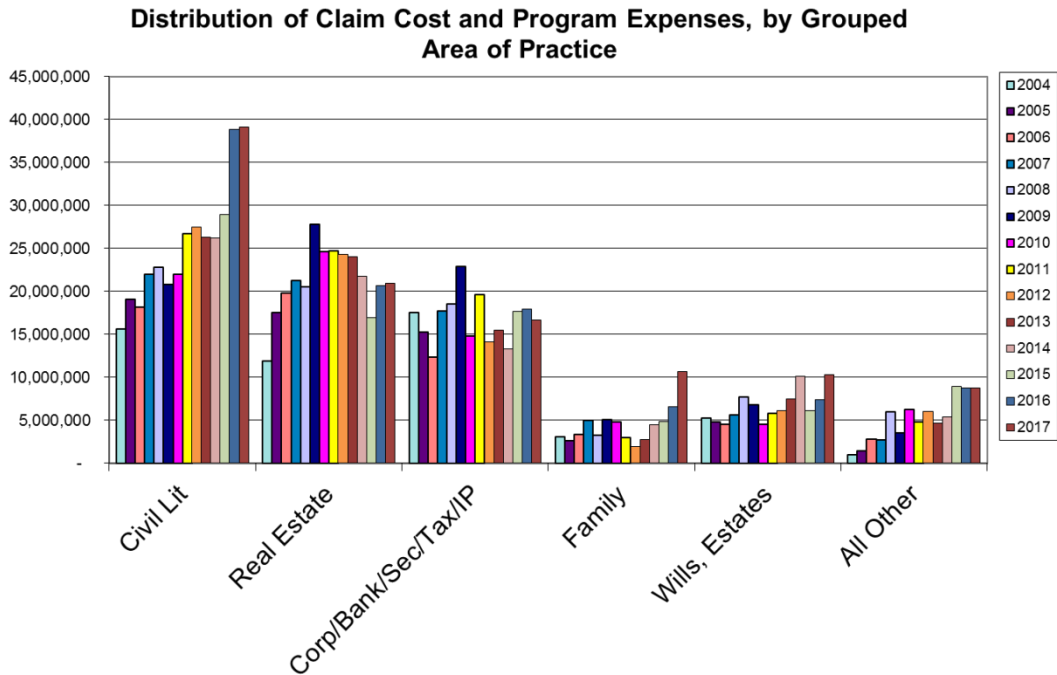
- LAWPRO has continued with its consumer education program, involving a media campaign highlighting the role of lawyers in real estate transactions and TitlePLUS insurance. In 2017, the campaign included articles, videos and radio clips resulting in over 7.5 million impressions in over 226 publications, websites and radio stations across Canada. Topics such as home buying, home ownership, leasing and renovating risks highlighted ways in which lawyers can provide valuable advice to the public.
- **practicePRO® Program:** Now in its 20<sup>th</sup> year, LAWPRO's successful risk management and claims prevention initiative is a recognized source of high-quality risk management tools and resources both inside and outside of Ontario. This year, practicePRO staff helped lawyers avoid malpractice claims through articles in *LAWPRO Magazine* and other law-related publications, information on the practicePRO website and AvoidAClaim blog, social media, live presentations, and at CPD programs. The February 2017 issue of *LAWPRO Magazine* titled, "Right Decision, Wrong Decision" examined the science behind how we make decisions, and increased understanding of how lawyers can be more conscious of their own habits and biases. The August 2017 issue focused on "Managing Change" and discussed how lawyers can better adapt to changes in technology, their life stage, and career. An updated practicepro.ca website was launched in September of 2017, and an update of lawpro.ca was launched in August of 2018. The practicePRO website features LAWPRO's claims prevention resources. Lawpro.ca is the hub of our corporate identity and the first place insureds and other stakeholders, including potential employees, visit to better understand the company's views and services. Both sites have easier-to-navigate structures and more intuitive designs that will help visitors find the information they need quickly and easily. There is straightforward navigation to the most visited pages and up-to-date security features. They are designed to look as good on a tablet or smart phone as a desktop computer and the sites are compliant with Accessibility for Ontarians with Disabilities Act (AODA) requirements. The February 2018 issue was called "Top Legal Disruptions" and featured an in-depth look at the future of law and the changes that will affect every lawyer's practice.

The practicePRO program maintains relationships and actively works with its various constituents, including the Law Society, the Ontario and Canadian Bar Associations, local law associations, legal goods and service providers, the legal and mainstream press and others. To help lawyers improve their practices, the practicePRO lending library makes over 100 of the best books on law practice, technology and risk management topics available on loan for free to all Ontario lawyers.

- **Fraud:** In terms of the potential risk they present to the Program, fraud-related claims are an ongoing and significant concern for LAWPRO. The Fraud Fact Sheet was downloaded 3,600 times from the practicePRO website in 2017 and handed out at CPD programs and events sponsored. The AvoidAClaim blog continues to be an important tool for alerting lawyers to the latest email and online fraud scams as they happen. The blog averaged almost 700 visitors a day and LAWPRO published 60 fraud-related posts in 2017.
- **The LAWPRO Risk Management Credit:** This premium credit, available since 2001, is a significant LAWPRO risk management initiative. To be eligible for a credit (\$50 each up to a maximum of \$100) on premiums for 2019, lawyers (and paralegal insureds in combined licensee firms) must have participated in LAWPRO-approved CPD programs or Homewood Health e-Learning courses between September 16, 2017 and September 15, 2018. Over 300 programs qualified for the credit during this period. During the course of the year, these programs had approximately 50,000-55,000 attendees.

### ***Revalidating Risk Rating***

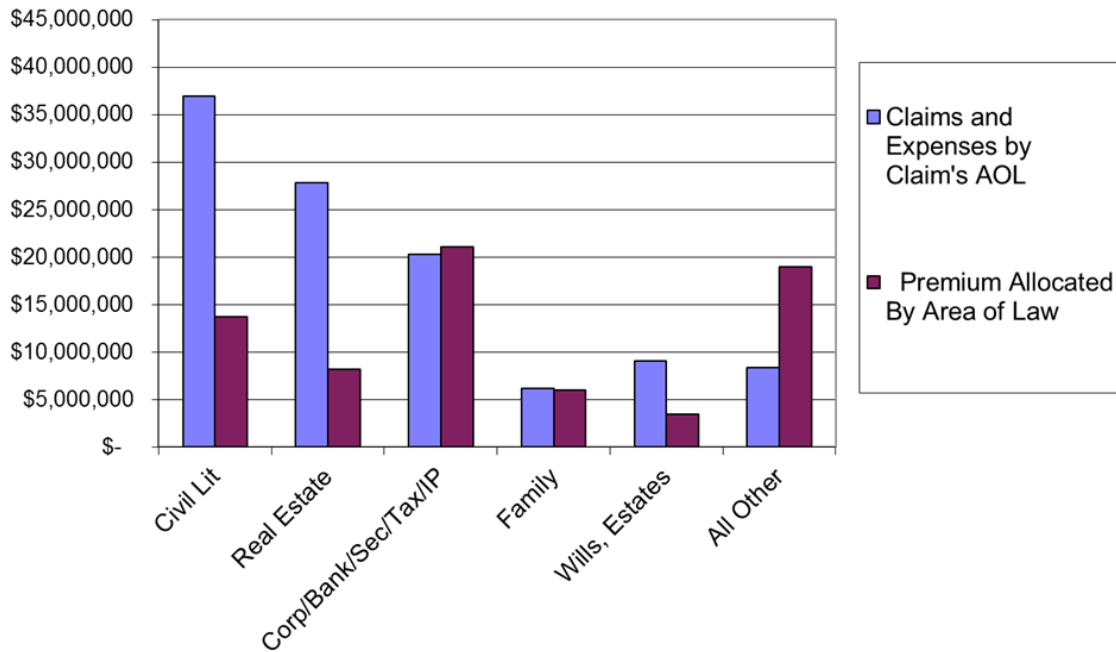
50. Each and every year LAWPRO re-evaluates the Program by area of practice to ensure that it continues to be effective in its risk rating. The following chart shows the distribution of ultimate expected claims costs by detailed area of practice.



51. Apparent from this chart are the significant claims costs in certain practice areas and the fact that real estate and litigation continue to be higher risk on a consistent basis over a multi-year period. At the same time, the fact that few lawyers practice exclusively in one area provides a compelling reason to group together common or related areas of practice.

52. To ensure that risk rating is being achieved, the Program’s anticipated losses and related costs are compared to the premiums on an annual basis. Based on the most recent loss experience under the Program (including that seen under the Program up to December 31, 2017), the following chart compares the anticipated losses and costs distributed by area of law to the proposed base premiums by primary area of practice. The premiums in this chart include the proposed base premiums with real estate practice coverage, innocent party and base premium adjustments, but exclude transaction levies and claims history surcharges.

**Comparison of Projected 2019 Premium by Lawyer's Area of Practice  
to Claims and Expenses by Claim's Area of Law**



53. The shortfall between the anticipated claims costs and expenses to base premiums is particularly significant for the areas of real estate law and civil litigation.

54. The latest Program statistics indicate that without the benefit of the transaction and claims history levy revenues, the 2019 base premium would be about \$7,850 for those whose primary area of practice is real estate. For those whose primary area of practice is civil litigation, it would be about \$5,600 calculated on the same basis (once again, higher than base premium).

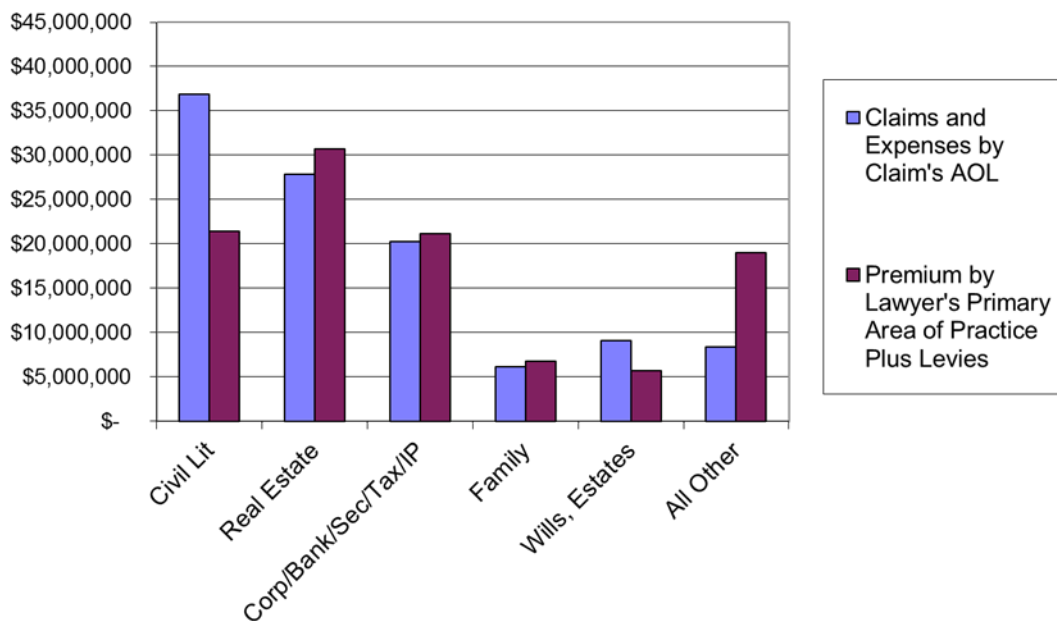
55. Past Reports to Convocation have discussed the importance of using the transaction and claims history surcharge levies as premiums, to avoid any substantial dislocation among the bar in the higher areas of practice which would otherwise occur with risk rating.<sup>5</sup> By including the transaction and claims history surcharge levies in most

<sup>5</sup> 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 37-37; and 1996 LAWPRO Report to Convocation, pp.32-36.

recent years, a shortfall for real estate and civil litigation claims costs is typically overcome. While this trend is still applicable to real estate, the same cannot be said for civil litigation. After factoring in transaction levies, the premiums relating to this area of law fall short of the related loss costs.

56. The following chart compares the anticipated premiums sorted by the lawyer’s primary area of practice (plus the claims history surcharge, Real Estate Practice Coverage Option (“REPCO”) premium and transaction levies) to the anticipated claims costs and expenses for each area of law.

**Comparison of Projected 2019 Premium by Lawyer's Area of Practice + Allocated Levies to Claims and Expenses by Claim's Area of Law**



57. This comparison indicates that, with the benefit of the transaction and claims history surcharge levies, and including the REPCO premium, there is a more acceptable correlation between revenues and claims for the major practice areas. Although some moderation in civil litigation claims costs is expected over time with the recent changes in Rule 48, the relationship between civil litigation costs and premium revenue by lawyers’ primary area of practice will be monitored to determine whether any further action should be taken on this category in future years.

58. The graph does indicate some subsidy by area of practice, especially by the practitioners in the “All Other” category. This subsidy changes somewhat over time and may vary considerably from year to year for the smaller practice areas, if they were broken down in greater detail.

59. The area of wills and estates has experienced an increase in claim costs over the past decade. Given the relatively small number of practitioners in this area, a few large claims often skew the results. LAWPRO will continue to monitor these results and propose any action, if appropriate, at a future date.

60. Despite family law claims trending upwards over time, the revenues collected from family law practitioners continue to both cover the associated losses and support the exemption of this work from civil litigation levies.

61. Appreciating the foregoing variables and possibilities of comparison by area of practice, it appears that the Program with the proposed changes will substantially meet its objectives of risk rating. Although some subsidy may exist for certain areas of practice, when taking into account operating costs and commercial realities, the cost of insurance under the Program is considered to be generally reflective of the risk. Notably, the Task Force Report acknowledged that “...no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk.”<sup>6</sup>

62. Other aspects reviewed in the analysis included the exposure based on the size of the firm, year of call, geographic location and prior claims history. The overall results of this analysis reaffirm the premium discounts already in place, including the surcharge applied to practitioners with a prior claims history. The results of this analysis are reproduced in select graphs in **Appendix “B”**.

63. Although the volume (size) of practice may not be wholly determinative of risk, the transaction levies do reflect the volume of business transacted in a practice, as well as the higher risk associated with real estate conveyancing and civil litigation.

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<sup>6</sup> 1994 Insurance Committee Task Force Report, at page 17.

64. Accordingly, the LAWPRO Board is satisfied with the continued use of transaction and claims history levy revenues as premium, with the result that the cost of insurance under the Program continues to generally reflect the risk.

65. Various examples of premiums which would be charged to members depending on the nature of their practice are summarized in **Appendix “C”** of this Report.

### **Reinsurance and Capital Preservation**

66. LAWPRO annually assesses its need for reinsurance based on its capital position and its claims results and volatility.

67. In its early years, LAWPRO purchased Program-wide quota share reinsurance. A stronger financial position and more stable claims experience enabled LAWPRO to cease reinsuring the Program with quota share reinsurance starting in 2003. In addition to relying on LAWPRO's own capital, the resources of the Errors & Omissions Fund up to a \$15 million cap were effectively relied on starting in 2003.

68. For 2019, it is proposed that there continue to be a \$15 million dollar cap on the Errors & Omissions Fund's exposure to provide additional premium to LAWPRO. As in 2010 through 2018, to the extent that the net loss ratio exceeds the anticipated loss ratio for the year by an absolute 10 per cent, the Errors & Omissions Fund would cover the losses. The 2010 through 2019 backstop provisions will be evaluated separately, with the \$15 million limit shared by the ten Fund Years. The lower likelihood of a payout by the Errors & Omissions Fund in this regime, as it commenced on January 1, 2010, makes the protection more akin to a catastrophic coverage, providing payout only in the unlikely scenario that an insurance fund year experienced significant deterioration from its initial expectations.

69. By relying on its own resources and the \$15 million backstop from the Errors & Omissions Fund as described above, LAWPRO will not need to pursue the expensive course of purchasing reinsurance on a Program-wide basis.

70. For 2019, LAWPRO will again look to purchase reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005 (the “Clash Excess of Loss Reinsurance”). This protection against aggregated losses extends across both the Program and TitlePLUS initiative, and offers some measure of protection against a series of claims, such as fraud-related claims where the fraudster targets more than one lawyer, or a single defect in the title affecting an entire condominium project.

71. For 2019, LAWPRO will again look to purchase a possible total limit of \$30 million in Clash Excess of Loss Reinsurance coverage above LAWPRO’s retained exposure.

**72. Accordingly, 100 per cent of the premiums and losses for the Program will again be retained by LAWPRO in 2019, subject to limited capital backstop protection provided by the Errors & Omissions Fund, and reinsurance protecting the Program from multiple losses arising out of a common event or nexus.**

## **Revenues**

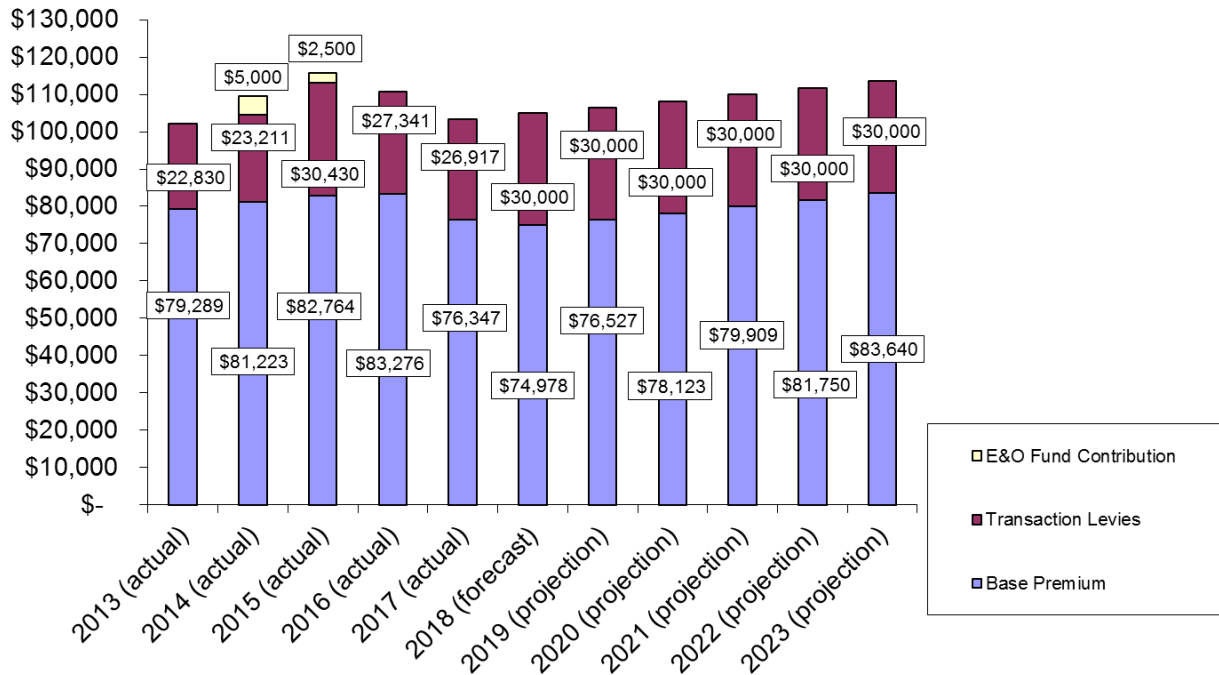
73. To meet the total expected Program obligations for 2019, LAWPRO first evaluates its likely investment income, and then considers premium sources. By way of contrast with many earlier years in LAWPRO’s operation of the Program, there will be no contribution from the Errors & Omissions Fund to minimize the base premium; instead premium revenues to meet fiscal requirements for 2019 will come only from two principal sources: the base premium<sup>7</sup> and levy surcharges.

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<sup>7</sup> “Base premiums” includes base premiums with applied discount or charges, as well as innocent party and REPCO premiums.

74. The projected premium revenues from these two sources are as follows:

**Premium Revenues, by Source (\$000s)**



**a) Investment Income**

75. LAWPRO takes full advantage of the time between the collection of premiums and the payment of claim costs by investing any available funds into a well-diversified portfolio of fixed income and equity securities. LAWPRO uses the resulting investment income to help pay operating and claims expenses, thereby reducing the amount of funds that must come from premium sources.

76. LAWPRO provides further stability to the Program by segregating into a separate portfolio (the liability-matched portfolio) sufficient money to pay anticipated future claims costs, with any surplus capital held in a different portfolio. The securities in the liability-matched portfolio consist of high-quality government and corporate fixed income securities, with the future cash inflows to LAWPRO arranged to coincide with the

expected payout patterns of the future claim costs. The surplus portfolio consists of a prudent mix of fixed income and equity securities.

77. Since 2008, investment returns have weakened due to fallout from the worldwide credit crunch. In particular, with central banks such as the Bank of Canada lowering their overnight interest rates to rock-bottom levels, the rates of return on fixed income securities have also dropped significantly. For LAWPRO, the downward pressure on returns is exacerbated as fixed income securities mature and need to be reinvested at these low rates. A prolonged “low for long” environment would place continued pressure on fixed income yields, while the eventual rise in central bank rates could result in a shock to fixed income security prices. As a result of these risks, LAWPRO has maintained a prudent investing philosophy to protect this portfolio, with its expected return set at a modest 2.85 per cent.

78. LAWPRO’s prudent investing philosophy includes a conservative, well-diversified equity portfolio. Of note, this portfolio’s annualized return from before the 2008 market crash up until June 30, 2018 has been very respectable, at over five per cent. Overall, LAWPRO’s portfolio is well-positioned for both capital preservation and steady growth.

### ***Levy Surcharge***

79. The Ontario real estate market has been quite resilient in the last few years, but there are indications that the market will be varied in the near term. The 2018 Housing Market Information Portal (Ontario Edition) published by Canada Mortgage and Housing Corporation<sup>8</sup> notes deteriorating metrics, such as new home starts, which suggests that the real estate market is likely to face pressure in the near to medium term.

80. At present, the levy surcharges include a \$100 civil litigation transaction levy and a \$65 real estate transaction levy, as well as a claims history levy surcharge.<sup>9</sup>

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<sup>8</sup> <https://www03.cmhc-schl.gc.ca/hmiportal#Profile/35/2/Ontario>

<sup>9</sup> The claims history levy surcharge ranges from \$2,500 for a lawyer with one claim paid in the last five years in practice, to \$25,000 for a lawyer with five claims paid in the last five years in practice (an additional \$10,000 is levied for each additional claim paid in excess of five).

Revenues from these levy surcharges are applied as premiums, to supplement the base levy.

81. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while the revenue from real estate transaction levies declined by approximately 50 per cent between 1999 and 2009 (prior to the increase in the real estate transaction levy for the 2010 Program).<sup>10</sup>

82. More recently, the number of transaction levies has moderated slightly as a result of the softening Ontario real estate sales. As of June 2018, transaction levy revenues are below expectations, at \$1.2 million under budget.

83. To account for ongoing uncertainties in the real estate market and the prospect of a shortfall, a conservative approach has been taken in estimating revenues from levy surcharges for 2019.

84. As described above in this Report, the use of transaction levies ensures an element of risk rating in the Program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which likely would occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when introduced in 1995.

85. For 2019, LAWPRO estimates transaction levy revenues at \$30.0 million.

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<sup>10</sup> The increased use of title insurance is considered to be largely responsible for a reduction in the count of real estate transaction levies since 1999. Lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer, based on a standard form agreement entered into between the title insurer and the Law Society on behalf of Ontario lawyers. It is estimated that more than 90 per cent of residential real estate transactions in Ontario are title-insured (LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy fillings). In recent years, the number of real estate transaction levies collected has moved in tandem with residential real estate sales. This indicates a maturity or saturation of this market for title insurance.

### ***Errors & Omissions Fund***

86. The insurance related transactions between the Law Society, insured lawyers and LAWPRO flow through the Errors & Omissions Fund. Through the Fund, insurance premiums and levies are collected from lawyers (and related insureds) on behalf of the Law Society. From this Fund, LAWPRO, as the insurer, is paid. While for recent year ends the Errors & Omissions Fund had a balance held well over \$60 million, after payment of current year's premium and calculating the reserve needed for pre-1995 claims which remain the responsibility of the Errors & Omissions Fund, the vast majority of those funds have already been committed for specific purposes, such as the \$15 million Program backstop (see paragraphs 66 through 72) and the Errors & Omissions Fund's investment in LAWPRO shares.

87. The current LAWPRO five-year projection does not assume further contributions from the Errors & Omissions Fund to support the base rate premium.

### ***Capital Requirements***

88. As LAWPRO has worked through some quite challenging times, its prudent and conservative approach to the issues of the day has stood it in good stead. LAWPRO has maintained a solid capital base, as well as a robust asset-liability matching program to ensure that the funds are available to satisfy the claims obligations undertaken to date. Also, LAWPRO has received a consistent "A" (Excellent) rating from A.M. Best Co. each year since 2000, and since 2012 has retained its "stable" outlook based on its commanding market profile and recent improvement in operating and underwriting results. (An "outlook", which looks more to the future, is different from a "rating".)

89. As a final consideration before determining the base premium, LAWPRO must consider its capital needs. Canadian regulators use the Minimum Capital Test ("MCT") in order to assess capital adequacy of a property and casualty insurer. The MCT is a risk-based ratio calculation which compares the insurer's capital or net assets available to the "capital required". Through the capital required component of the test, regulators

prescribe certain additional capital or margins that must be held based on the various types of assets and liabilities on the insurer's balance sheet.

90. A significant margin requirement relates to the approximate 25 per cent additional capital that must be held for all the net claims liabilities on the books that relate to commercial liability (which includes professional liability coverage). Given the steady historical growth of LAWPRO's net claims liabilities over the last decade or so, even a positive net income result can often be accompanied by a decline in LAWPRO's MCT ratio. As a very general rule of thumb, LAWPRO requires approximately \$5 million of either net income or increased after-tax net unrealized gains on its surplus portfolio<sup>11</sup> to maintain a flat to slightly increasing MCT ratio.

91. The determination of a specific insurer's "ideal" MCT ratio is no easy task, as historic industry approaches were primarily designed simply to identify levels that are too low. Canadian regulators require that insurers do not fall below various MCT levels, such as the 100 per cent minimum and 150 per cent supervisory levels. In 2016, LAWPRO completed its first capital assessment pursuant to the *Autorité des Marchés Financiers' Guidance on Capital Adequacy Requirements*, and the Office of the Superintendent of Financial Institutions' *Guideline E-19 Own Risk and Solvency Assessment*, resulting in LAWPRO's internal target ratio being lowered from 180 per cent to 170 per cent. This result has been reaffirmed in 2017 and again in 2018.

92. In addition, as part of the above exercise and reconfirmed this year, the Board set LAWPRO's long term preferred operating range at 215 to 240 per cent based on LAWPRO's risk profile and its unique ability to set premiums and raise capital, which differs significantly from those of other commercial insurers in Canada. An MCT result in this range would allow LAWPRO some capacity to absorb unexpected losses or changes in market conditions, and have time to implement a strategy to restore capital levels to the desired range.

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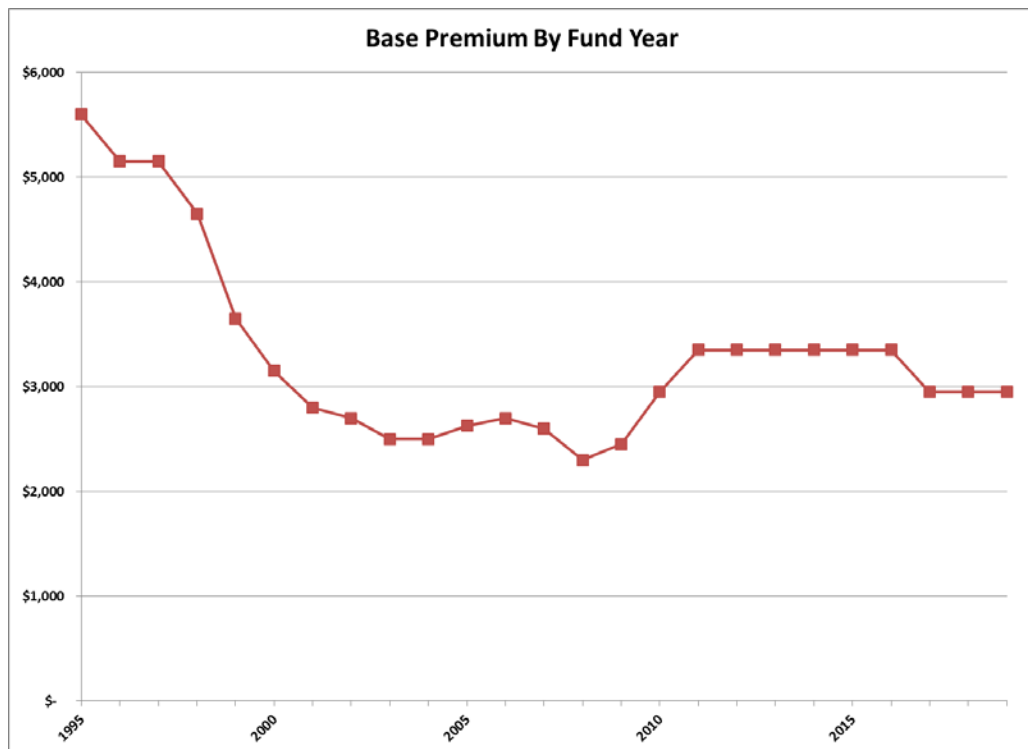
<sup>11</sup> Increases in net unrealized gains relating to the liability-matched portfolio, as well as realized gains, are included in net income.

93. LAWPRO's MCT of 225 per cent as of June 2018 is within the Board's preferred operating range, indicating that a phase of capital replenishment is not currently required.

### **Base Premiums**

94. Based on the previous discussion of Program costs, sources of revenue and capital needs, the base premium can again be set at \$2,950 per member to account for LAWPRO's recent levelling of claims costs, as well as its overall solid fiscal performance during the last couple of years. In summary, the 2019 proposed base premium is based on the following key assumptions:

- 27,917 practising insured lawyers (full-time equivalents);
- \$119.9 million in anticipated total Program costs (paragraph 35);
- \$30.0 million in budgeted transaction levy revenues (paragraph 85); and
- 2.85 per cent return on investment (paragraph 77).



95. At this time, the Board is satisfied that this base premium rate appropriately recognizes the inherent uncertainties in emerging claims experience and economic conditions, and allows the Program to continue to operate on a self-sustaining basis while protecting LAWPRO's overall financial position. The approach taken is consistent with information provided in the Report to Convocation in recent years. It should be noted that a base premium of \$2,950 per lawyer in 2019 is significantly lower than premiums charged at some points in the past. In fact, if inflation were removed, this premium would be the equivalent to under \$1,900 in 1995 dollars.

96. In setting a base premium rate for 2019, LAWPRO tested its five-year planning horizon under various scenarios. Overall LAWPRO results are projected to exceed break-even, while allowing LAWPRO to gradually reposition its MCT result to a more moderate position within its preferred operating range. Many factors influence this forecast, most significantly interest rates and claims experience. The results of this forecast cannot be considered definitive in nature and further base premium rate increases may be required in future years.

97. **Accordingly:**

- a) **The base premium is \$2,950 per lawyer for 2019, the same base premium charged in 2018; and**
- b) **The levies will remain \$100 for civil litigation transactions and \$65 for real estate transactions for files opened on or after January 1, 2019. Revenues from real estate and civil litigation transaction levies collected by the Errors & Omissions Fund during the year are budgeted at \$30.0 million for the purposes of establishing the base premium for 2019 and other budgetary purposes.**

***Other Program Features (or Adjustments)***

98. With the exception of the changes specifically described in this Report, all aspects of the Program for 2019 will remain unchanged from the Program now in place.

99. As detailed in **Appendix “A”**, subject to the noted changes, the current Program for lawyers in private practice encompasses the following:

- Standard practice coverage, including Mandatory Innocent Party Coverage; and
- coverage options, including Innocent Party Buy-Up, Part-Time Practice, Restricted Area of Practice, and REPCO.

100. The current Program also provides for premium discount and surcharges. Discount and surcharges as a percentage of premium include:

- New Lawyer discount;
- Part-Time Practice discount;
- Restricted Area of Practice Option discount;
- Designated Agency Employee discount;
- adjustments for deductible options and minimum premiums; and
- a surcharge in the event that no completed application form is filed.

101. Discounts and surcharges as stated dollar amounts include:

- the Mandatory Innocent Party premium;
- optional Innocent Party Buy-Up premium;
- the REPCO premium;
- premium discount for early lump sum payment;
- e-filing discount; and
- Continuing Professional Development discount.

102. **Subject to the changes identified earlier in the Report, the remaining exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2018 will remain unchanged for the 2019 Program.**

## CONCLUSION

103. The LAWPRO Board considers the Program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Committee Task Force Report. The LAWPRO Board offers this Program of Insurance for 2019 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2019 Program can be implemented by January 1, 2019.

ALL OF WHICH LAWPRO'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION.

September 2018

Susan T. McGrath

Chairperson of the Board

Lawyers' Professional Indemnity Company

Malcolm L. Heins

Vice-Chairperson of the Board

Lawyers' Professional Indemnity Company

## **Appendix “A”**

### **The Standard Program Coverage for 2019<sup>12</sup>**

#### *Eligibility*

- Required of all lawyer sole practitioners, lawyers practising in association or partnership, paralegals acting in partnership with lawyer(s), paralegals holding shares in professional corporations with lawyer(s) and lawyers practising in a LAW CORPORATION, who are providing services in private practices.
- Required of all other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who do not fully meet the Program exemption criteria.
- Available to lawyers who do meet the exemption criteria, but opt to purchase the insurance coverage.

#### *Coverage Limit*

- \$1 million per CLAIM/\$2 million aggregate (i.e. for all claims made in 2019), applicable to CLAIM expenses, indemnity payments and/or cost of repairs together.

#### *Standard DEDUCTIBLE*

- \$5,000 per CLAIM applicable to CLAIM expenses, indemnity payments and/or costs of repairs together.

#### *Standard base premium*

- \$2,950 per insured lawyer.

#### *Transaction Premium Levy*

- \$65 per real estate transaction and \$100 per civil litigation transaction;

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<sup>12</sup> Terms entirely capitalized are as defined in the Program policy.

- No real estate transaction levy generally payable by transferee's lawyer if title-insured.

#### *Premium reductions for new lawyers*

- Premium for lawyers with less than 4 full years of practice (private and public)<sup>13</sup>:
  - ◇ less than 1 full year in practice<sup>14</sup>: premium discount equal to 50 per cent of base premium;
  - ◇ less than 2 years in practice: premium discount equal to 40 per cent of base premium;
  - ◇ less than 3 years in practice: premium discount equal to 30 per cent of base premium;
  - ◇ less than 4 years in practice: premium discount equal to 20 per cent of base premium.

#### **Mandatory Innocent Party Coverage**

##### *Eligibility*

The minimum coverage of \$250,000 per CLAIM/in the aggregate must be purchased by paralegals in partnership with lawyer(s), paralegals who own shares in LAW CORPORATIONS with lawyer(s) and all lawyers practising in association or partnership (including general, CLP, MDP and LLP partnerships), or in the employ of other lawyers.

The minimum coverage must also be purchased by all lawyers practising in a LAW CORPORATION, where two or more lawyers practise in the LAW CORPORATION.

##### *Premium*

\$125 per insured lawyer.

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<sup>13</sup> Years of experience as a licensed lawyer in private or public practice in any jurisdiction will be considered when determining the New Lawyer Discount eligibility. The discount options (50% off base premium, 40% off base premium, 30% off base premium, 20% off base premium) cannot be repeated for more than two policy years.

<sup>14</sup> "Full year" of experience is deemed to be at least 200 days in practice.

## 2019 Program Options

### 1. Deductible option

*\$Nil deductible*

- Increase in premium equal to 15 per cent of base premium (\$442.50 increase).

*\$2,500 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together*

- Increase in premium equal to 7.5 per cent of base premium (\$221.25 increase).

*\$2,500 deductible applicable to indemnity payments and/or costs of repairs only*

- Increase in premium equal to 12.5 per cent of base premium (\$368.75 increase).

*Standard Program: \$5,000 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together*

- Base premium of \$2,950 per insured lawyer.

*\$10,000 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together*

- Decrease in premium equal to 7.5 per cent of base premium (\$221.25 decrease).

*\$10,000 deductible applicable to indemnity payments and/or costs of repairs only*

- Increase in premium equal to 7.5 per cent of base premium (\$221.25 increase).

*\$25,000 deductible applicable to claim expenses, indemnity payments and/or costs of repairs together*

- Decrease in premium equal to 12.5 per cent of base premium (\$368.75 decrease).

## 2. Innocent Party Sublimit Coverage Options

### ***Innocent Party Coverage Sublimit Buy-Up: For lawyers practising in associations, partnerships and LAW CORPORATIONS***

Lawyers practising in association or partnership (including general, combined licensee partnerships with both lawyer and paralegal partners, multidiscipline partnerships and LLP partnerships) or a LAW CORPORATION (with more than one practising lawyer, including professional corporations with both lawyer and paralegal shareholders), can apply to increase their Innocent Party Coverage in two ways, subject to management underwriting of individual risks for these “buy up” categories of risk:

Increase coverage sublimit to:	Additional annual premium:
\$500,000 per claim/aggregate	\$75 per insured lawyer
\$1 million per claim/aggregate	\$125 per insured lawyer

### ***Optional Innocent Party Coverage Sublimit: For sole practitioners and lawyers practising alone in a LAW CORPORATION***

#### *Coverage sublimits*

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

### **3. Practice Options**

#### ***Restricted Area of Practice Option***

##### *Eligibility*

Available only to lawyers who agree to restrict their practice to criminal<sup>15</sup> and/or immigration law<sup>16</sup> throughout 2019.

##### *Premium*

Eligible for discount equal to 50 per cent of base premium, to a maximum of \$1,475.<sup>17</sup>

#### ***Part-Time Practice Option***

##### *Eligibility*

Available only to part-time practitioners who meet the part-time practice criteria.

##### *Premium*

Eligible for discount equal to 50 per cent of base premium, to a maximum of \$1,475.

#### ***Designated Agency Employee Option***

##### *Eligibility*

Available only to lawyers who are employed by and agree to restrict their practice to PROFESSIONAL SERVICES provided on behalf of their DESIGNATED AGENCY(IES) employers throughout 2019. Lawyers electing this option must not elect a deductible option of more than \$5,000 per claim. This discount cannot be combined with the Restricted Area of

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<sup>15</sup> Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

<sup>16</sup> Immigration law is considered to be practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and regulations, and procedures and policies pertaining in this Report, including admissions, removals, enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights*.

<sup>17</sup> The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Lawyers' discount combined cannot exceed 50 per cent of the base premium.

Practice, Part-Time Practice, New Lawyers' or early lump sum premium payment discounts. Lawyers claiming the Designated Agency Employee option are not required to maintain Innocent Party coverage and are eligible for the e-filing and LAWPRO Risk Management Credit discounts.

#### *Premium*

Eligible for discount equal to 75 per cent of base premium, to a maximum of \$2,212.50.

### ***Real Estate Practice Coverage Option***

#### *Eligibility*

All lawyers who intend to practice real estate law in Ontario in 2019 must be eligible for and apply for this coverage option.

“ELIGIBLE” means eligible to practice real estate law in Ontario, as permitted by the Law Society. Categories of lawyers who would not be eligible to practice real estate law in Ontario, include:

- those who are in bankruptcy;
- those who have been convicted or disciplined in connection with a real estate fraud;
- those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practicing real estate, or an undertaking not to practise real estate.

#### *Premium*

\$100 per insured lawyer.

## **4. Premium Payment Options**

### ***Instalment Options***

- Lump sum payment by cheque or pre-authorized bank account debit: eligible for \$50 discount;

- Lump sum payment by credit card;
- Quarterly instalments;
- Monthly instalments.

#### **5. E-filing Discount**

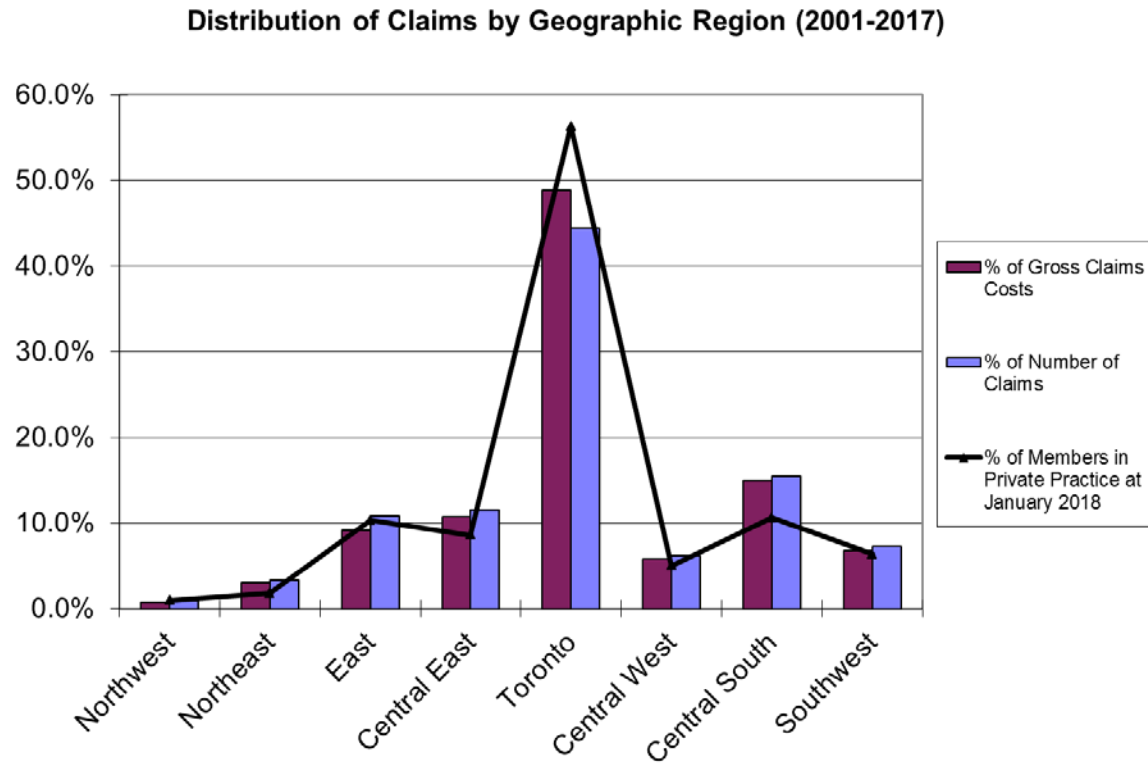
- \$25 per insured lawyer (for renewal applications filed online on or before November 1, 2018).

#### **6. LAWPRO Risk Management Credit**

- \$50 per course, subject to a \$100 per insured lawyer maximum discount, will be applied under the 2019 insurance Program.
- Under the expectation that this will continue under the 2020 Program, LAWPRO will continue to collect data for pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2018 and September 15, 2019, where the lawyer completes and files the required LAWPRO Risk Management Credit online declarations by September 15, 2019.
- The premium credit includes one credit (\$50) per insured, per year for select programs offered by the Law Society's Member Assistance Program (MAP). The premium credit is also available to paralegal partners or shareholders in combined licensee firms insured under the Program.

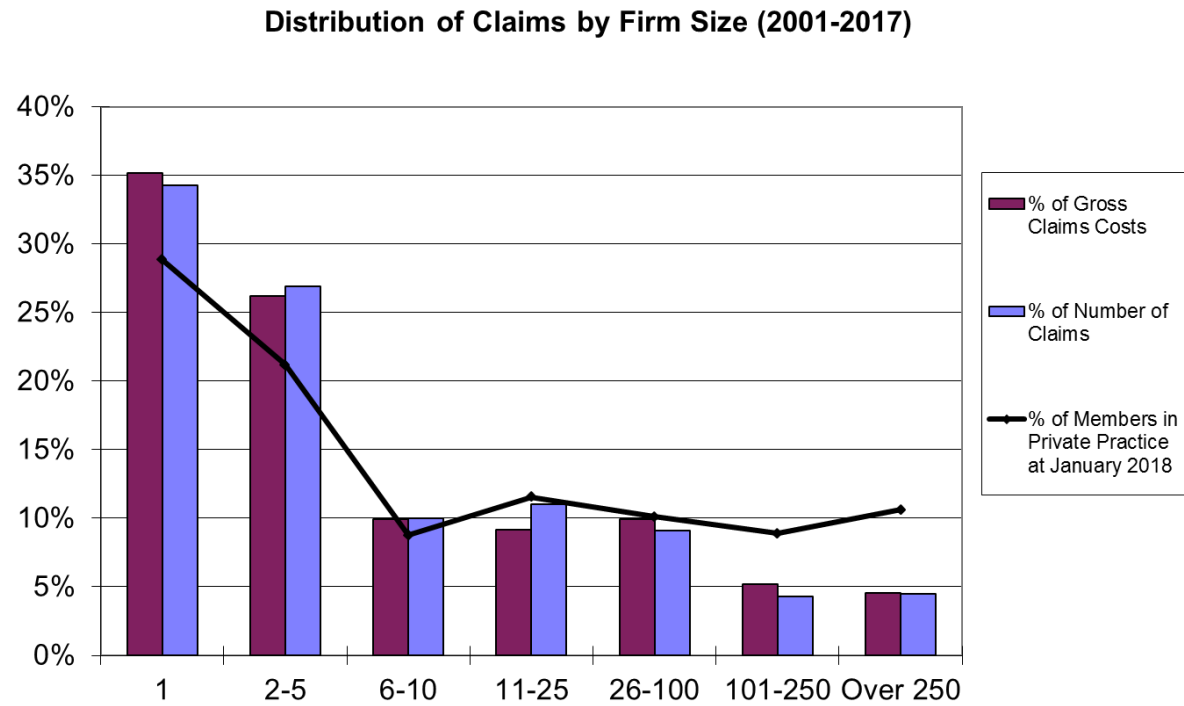
**Appendix "B"**

**Distribution of Claims by Geographic Region**



**Appendix "B"**

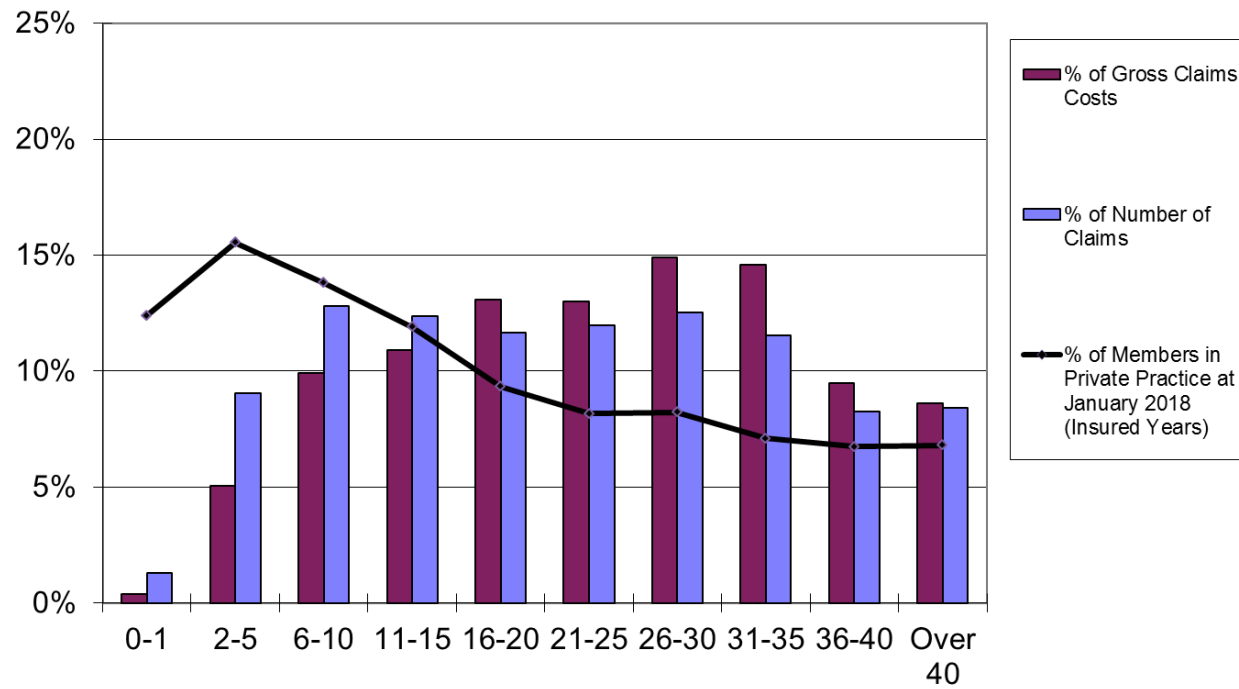
**Distribution of Claims by Firm Size**



**Appendix "B"**

**Distribution of Claims by Years since Date of Call**

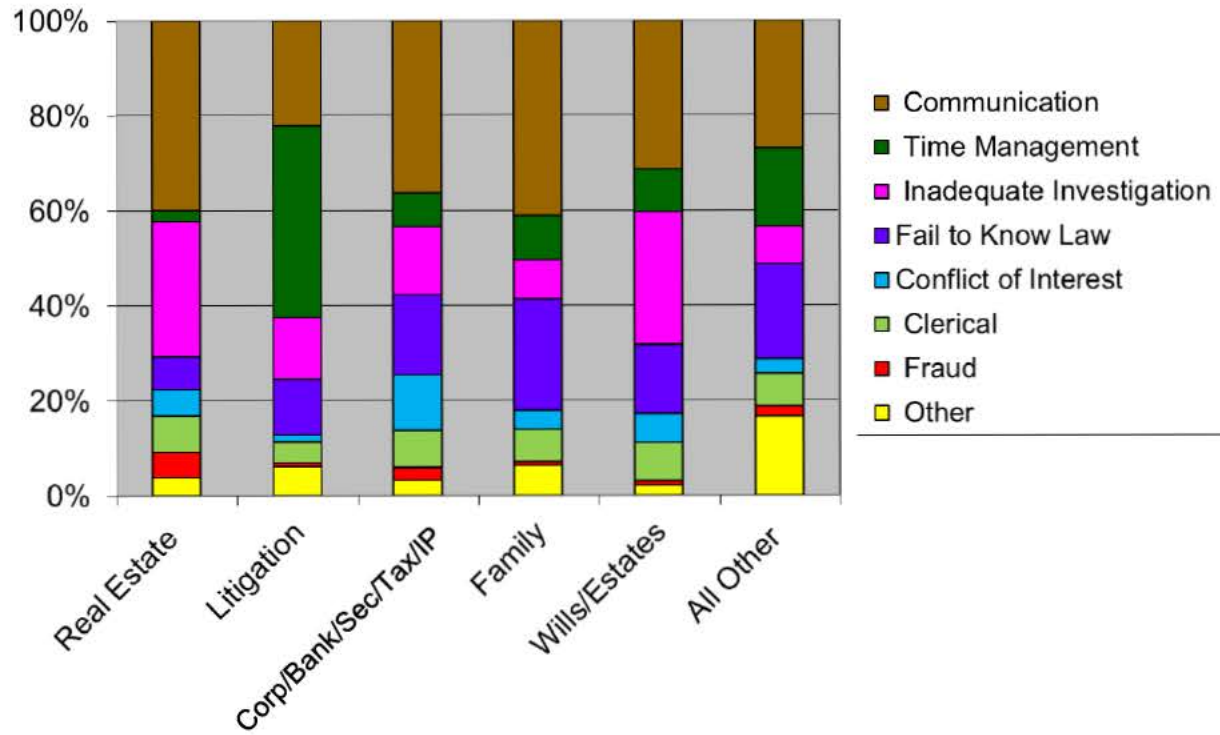
**Distribution of Claims by Insured Years in Practice (2001-2017)**



**Appendix "B"**

**Distribution of Claims by Reported Claims Count and Area of Law**

**Claim Causes by Reported Claims Count and Area of Law (2001 to 2017)**



**Communications:** Communication-related errors (including poor communication, not keeping clients informed or failing to obtain client consent) are the biggest causes of claims in all areas of law (except litigation, where it is the #2 cause) and in firms of all sizes. While the most numerous claims, they are at the same time the most easily prevented. Lawyers can reduce their exposure to these types of claims by controlling client expectations, actively communicating with the client at all stages of a matter, documenting advice and instructions, and confirming in writing what work was done on a matter at each step along the way.

**Time management:** These kinds of claims including failing to ascertain a deadline, failing to calendar the deadline, and failing to react to the deadline even when it was known. These lapses often become claims when a limitation period ends up being missed or an action is administratively dismissed due to failing to move the litigation forward appropriately. There are also claims resulting from procrastination when a lawyer lets files that require work languish for extended periods of time. Time management claims are heavily concentrated in the litigation field, as it is so reliant on deadlines. Practice management software and tickler systems can help prevent these claims, as can lawyers building in more time cushions so that they are not adversely affected by unexpected delays.

**Inadequate investigation:** Modern technology and busy practices may be behind the tendency of lawyers to give quick legal advice without taking extra time to dig deeper or ask appropriate questions on a client's matter. In recent years, LAWPRO has seen a big increase in these types of claims in real estate, litigation and will/estates areas of law. High-volume real estate practice often means lawyers do not have enough time to ask the clients about their plans for the property, and as a result don't do the necessary searches or obtain the proper title insurance.

**Failure to know/apply the law:** These claims result from a lawyer not having sufficient or current knowledge of the relevant law on a matter in which he or she is working. Extensive federal and provincial legislation, as well as voluminous case law, help make this the second-most-common type of claim in family law. This category also includes failing to know or appreciate the consequences of tax law in corporate/commercial matters. Lawyers can best avoid this type of claim by sticking to the law they know best and not "dabbling" in other areas.

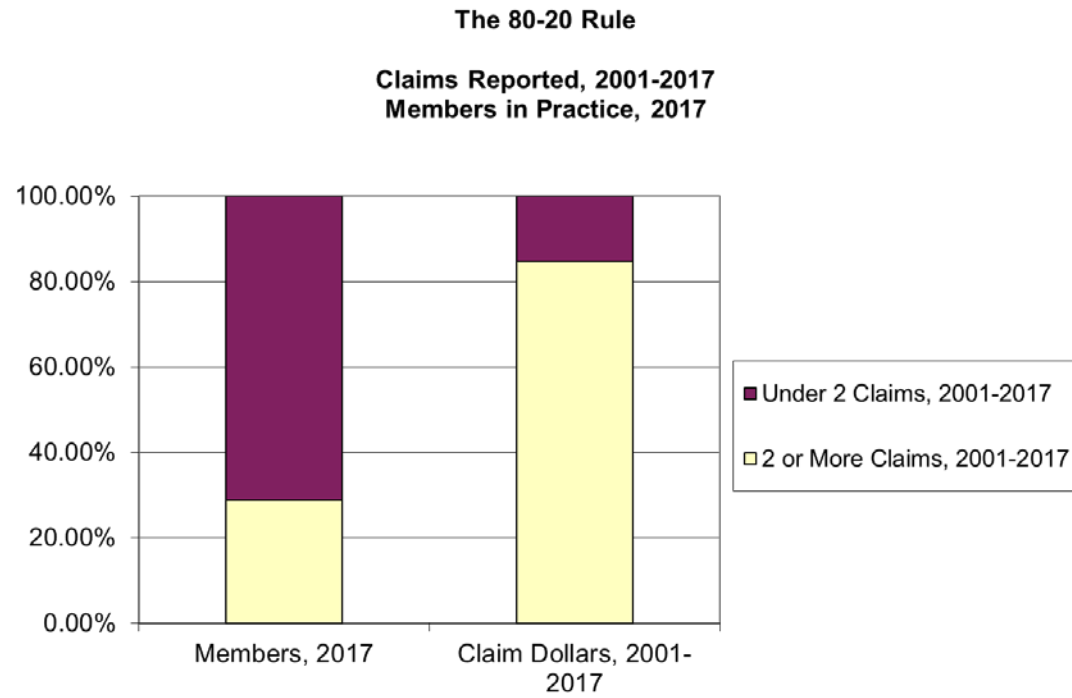
**Conflict of interest:** There are two types of conflict claims: the first arises when conflicts occur between multiple current or past clients represented by the same lawyer or firm. The second is a conflict that arises when a lawyer has a personal interest in the matter. As they regularly act for multiple clients/entities, real estate and corporate commercial lawyers experience proportionately more conflicts claims than other areas of law, while litigators have a relatively low rate of conflicts claims.

**Clerical errors:** These types of errors include things such as simple clerical mistakes, errors in mathematical calculation, work delegated to an employee or outsider that is not checked and failure to file documents. As important as delegation is to the efficient functioning of a law firm, lawyers need to take the time to review the work as they are ultimately responsible for it.

**Fraud:** Fraud continues to be a significant risk for LAWPRO, one which could cost the Program significant claims dollars if not prevented. Lawyers are reporting attempted frauds to LAWPRO on a daily basis. Fraudsters on occasion still successfully dupe lawyers and law clerks, and it is not just real estate lawyers who are targeted. Litigation, business and family law lawyers are regular targets of bad cheque scams involving debt collections, spousal support payments and business loans. “Phishing” attempts and other cyber hacking methods are targeting lawyer trust accounts. Through our efforts, Ontario lawyers are clearly more aware of frauds, but ever more sophisticated frauds mean lawyers must continue to be vigilant.

**Appendix "B"**

**The 80-20 Rule**



**Appendix “C”**

**Premium Rating Examples**

**Premium Rating Examples (In Dollars)**

	<b>1995<sup>†</sup></b>	<b>2005<sup>††</sup></b>	<b>2015<sup>†††</sup></b>	<b>2019<sup>††††</sup></b>
<b>Base premium</b>	\$5,600	\$2,625	\$3,350	<b>\$2,950</b>
<b>Examples:</b>				
<b>1. Sole Practitioner Practising Real Estate Law</b> - \$10,000 defence & indemnity deductible - early lump sum payment discount - early e-filing of application	\$5,600*	\$2,228	\$3,274	<b>\$2,754</b>
<b>2. Firm Practitioner Practising Real Estate Law</b> - \$25,000 defence & indemnity deductible - \$250,000 Mandatory Innocent Party cover - early e-filing of application	\$6,000*	\$2,497	\$3,406	<b>\$2,781</b>
<b>3. New Lawyer Practising in Association</b> - first year in practice discount - \$250,000 Mandatory Innocent Party cover - \$10,000 defence & indemnity deductible - early lump sum payment discount - early e-filing of application	\$3,900*	\$1,428	\$1,599	<b>\$1,304</b>
<b>4. Criminal Lawyer (sole practitioner)</b> - Restricted Areas of Practice discount	\$5,600*	\$1,178	\$1,349	<b>\$1,179</b>

	1995 <sup>♦</sup>	2005 <sup>♦♦</sup>	2015 <sup>♦♦♦</sup>	2019 <sup>♦♦♦♦</sup>
- \$10,000 defence & indemnity deductible - early lump sum payment discount - early e-filing of application				
<b>5. Part-time Lawyer (in association)</b> - Part-time Practitioner discount - \$1,000,000 Optional Innocent Party cover - \$10,000 defence & indemnity deductible	\$6,000 <sup>*†</sup>	\$1,877	\$1,923	<b>\$1,504</b>
<b>6. Firm Practitioner with 1 Claim</b> - claims history levy surcharge - \$5,000 defence & indemnity deductible - \$250,000 Mandatory Innocent Party cover	\$8,500 <sup>*</sup>	\$5,375	\$6,100	<b>\$5,575</b>
<b>7. Sole Practitioner with 2 Claims</b> - claims history levy surcharge - \$5,000 defence & indemnity deductible	\$10,600 <sup>*</sup>	\$7,625	\$8,350	<b>\$7,950</b>
<b>8. Designated Agency Lawyer</b> - \$5,000 defence & indemnity deductible - early e-filing application - Risk Management Credit (x 2)	\$5,600	\$2,500	\$3,225	<b>\$613<sup>‡</sup></b>

\* Subject to a \$6,000 defence and indemnity deductible (adjusted to \$7,500 in the case of an insured with one previous claim, or \$8,500 in the case of two previous claims).

† Subject to \$250,000 Innocent Party cover only, additional limits not available.

♦ Members are also required to pay a \$25 levy for each civil litigation or real estate transaction not otherwise excluded.

♦♦ Members are also required to pay a \$50 levy for each civil litigation or real estate transaction not otherwise excluded.

♦♦♦ \$65 per real estate transaction and \$50 per civil litigation transaction. Premium for the Real Estate Practice Coverage Option was also applied.

♦♦♦♦ \$65 per real estate transaction, \$100 per civil litigation transaction, and \$100 Real Estate Practice Coverage Option applied.

‡ If a lawyer is employed exclusively by one or more Designated Agencies and any civil litigation transaction is performed in the course of such employment, the Lawyer is not required to pay a civil litigation transaction levy surcharge.

## Appendix “D”

### LAWPRO Vision, Mission & Values



#### Our vision

To be regarded as the preferred insurer in all markets and product lines in which we do business.

#### Our mission

To be an innovative provider of insurance products and services that enhance the viability and competitive position of the legal profession.

#### Our values

##### *Professionalism*

**Individually and as a team, we hold ourselves to the highest professional standards.**

We deliver programs and services known for quality and cost-effectiveness, and for being practical, helpful and relevant.

We demand the best of ourselves every day and in everything we do.

##### *Innovation*

**We foster a climate in which creativity, innovation and change can flourish.**

We share ideas, skills and knowledge and encourage continual learning.

We value teamwork and collaboration, and the diverse strengths and perspectives of others.

##### *Integrity*

**We act with the highest levels of integrity in all of our interactions and decisions.**

We aim to always be consistent, fair, ethical and accountable.

##### *Service*

**We strive for excellence in customer service.**

We share our knowledge, experience and expertise with our customers and with each other, so that together we can identify, prevent and solve problems.

We take the time to listen and understand, so we can respond effectively and empathetically to our customers and to each other.

We demonstrate courtesy and genuine respect for all.

##### *Leadership*

**We try to make the world a better place, and to that end lend our energy and expertise to many communities.**

## Appendix “E”

### LAWPRO Statement on Corporate Social Responsibility



## Statement on Corporate Social Responsibility

LAWPRO's vision is to be regarded as the preferred insurer in all product lines and markets in which it does business.

Implicit in this vision – and in the values that support our vision – is a commitment to being a responsible, involved and accountable citizen of the many communities in which we hold membership: the employer community, the insurance community, the legal community, and of course the larger community in which we all live.

The LAWPRO Corporate Social Responsibility Statement is informed by this spirit of community and accountability, while acknowledging that that we are governed and profoundly shaped by our unique role as the provider of the primary professional liability insurance program for all lawyers in Ontario. Our social responsibility commitment as a corporate body is focused on four principal areas:

#### **Providing a healthy and rewarding workplace**

We respect and value our employees and the vital role they play in enabling the company to fulfill its mandate. To that end we adopt policies and practices that not only comply with applicable law and fair labour practices, but also respect diversity, promote inclusion and fellowship, cultivate professional growth through education and service, and promote health, safety and wellness, in the workplace and in personal life.

#### **Respecting the environment**

We believe that individually and as a company we have a role to play as stewards of our environment and its resources. To that end we support and promote initiatives in our company that help advance the goal of a sustainable environment. The company supports the work of its employee-led Green Committee, which aims to educate LAWPRO employees about the role individuals and organizations can play in protecting and improving the environment. LAWPRO also has spearheaded a company-wide campaign to reduce reliance on paper and related products, and facilitate use of technology in all aspects of the company's operations. The company actively encourages initiatives such as these that meet a dual mandate of being stewards of the environment and the bar's resources.

#### **Fostering the legal community**

We view a committed, healthy and diverse bar as essential to the functioning of a democracy and to the protection of individual rights in society. We have over the years provided financial and in-kind support to organizations that promote and deliver lawyer wellness programs. As well, we make available wellness information and resources electronically at no cost. We support and sponsor a range of legal-related charitable and non-profit causes that advance the role and reputation of lawyers in our community and, by implication, foster access to justice in Canada. We also work to support charitable initiatives which have captured the interest and imagination of the bar and their clients. We promote the enrichment of the bar through our promotion of legal education, both internally and externally, and by fostering the building of relationships within the legal community.

#### **Supporting the broader Canadian community**

We acknowledge that, as highly skilled and employed individuals, we are among the fortunate in our community. LAWPRO employees give back by selecting five registered charities annually and partner with the company to fundraise for their benefit. In addition, each LAWPRO employee may request one "charity day" per year to undertake work for the registered charity of the employee's choice. We actively contribute to the advancement of the Canadian insurance industry, and engage in a dialogue with government in the interests of the bar and the Canadian consumer. We promote inclusion by working to expand the range of our materials available in both official languages and by providing materials in other languages based on level of demand.

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