

Insurance matters:

Everyone makes mistakes,
don't let a lack of excess
insurance be yours.

Agreement of Purchase

...and which is not to be assumed by Purchaser on completion, is not available in registrable form on title within a reasonable period of time after completion, out of the closing funds, a discharge in mortgage statement by the mortgagee setting out the balance required to obtain the discharge, and, to obtain the discharge out of the balance due on completion.

...knowledge having had the opportunity to inspect the property prior to submitting this Offer and Vendor of this Offer there shall be a binding agreement of purchase and sale between Purchaser and Vendor. ...on the property and all other things being purchased shall be and remain until completion at the risk of Vendor. Vendor shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be taken back a Charge/Mortgage, or Purchaser is assuming a Charge/Mortgage, Purchaser shall obtain a reasonable evidence of adequate insurance to protect Vendor's or other mortgagee's interest on completion.

...Agreement shall be effective to create an interest in the property only if Vendor complies with the subdivision Act. If Vendor is taking back a Charge/Mortgage, or Purchaser is assuming a Charge/Mortgage, Purchaser shall obtain a reasonable evidence of adequate insurance to protect Vendor's or other mortgagee's interest on completion.

...PARATION: The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form and, and any Charge/Mortgage to be given back by the Purchaser to Vendor at the expense of the Purchaser. Vendor covenants that the Transfer/Deed to be delivered on completion shall contain the statements of the Planning Act, R.S.O. 1990.

...Purchaser shall be credited towards the Purchase Price with the amount, if any, necessary for Purchaser to pay to the Vendor under the non-residency provisions of the Planning Act, R.S.O. 1990.

...that the Province of Ontario has implemented current changes in property tax as a result of a re-assessment of this transaction.

Contents


What is Excess insurance?	2
Why you may need Excess Insurance?	3
What is my risk?	5
Risks associated with your business set-up	8
Innocent Party Coverage	9
Premium	10
How to apply	10



Risks are as varied as the legal problems you solve.

With the changing nature of law practice, the complexity of claims, higher cost awards, greater incidents of fraud, evolving tax rules, growing real estate values, and the increased speed of transactions, lawyers need to carefully assess liability insurance limits.

Spilled coffee is your biggest worry when your firm has LAWPRO Excess insurance to handle the rest.



What is Excess insurance?

Excess insurance is professional liability coverage with limits above the primary coverage.

It provides an additional layer of protection should your defence and indemnity payments exceed the limits of the primary LAWPRO insurance program. It's optional and available to lawyers in private practice or on exemption.

LAWPRO's Excess insurance is individually underwritten and rated on a firm basis, based on a risk assessment of the firm as a whole. Excess coverage is for defence costs and indemnity payments for all lawyers in the firm. Therefore, lawyers in your firm would have access to their primary coverage of \$1 million per claim and \$2 million in the aggregate plus the excess pool.

LAWPRO offers excess limits up to \$9 million per claim and \$9 million in the aggregate. This is on top of the Primary coverage of \$1 million per claim and \$2 million in the aggregate.

Excess insurance
provides
higher limits

Why you may need Excess coverage

Don't be caught by surprise - a number of claims together in one year may surpass the primary limits

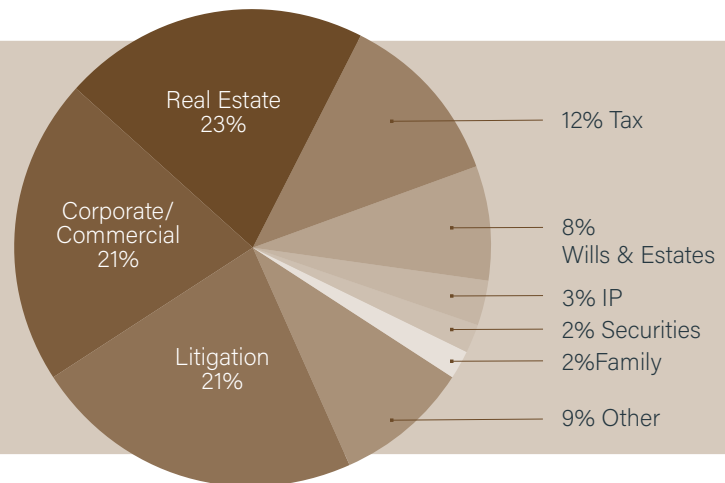
A single claim can seriously erode coverage limits

Excess insurance can help protect against a single large claim or a group of claims exceeding the primary coverage limits of \$1 million per claim/\$2 million in the aggregate, which apply to both claim expenses and indemnity payments together. It's not unusual for a single claim to have substantial defence costs. Also, prejudgment interest on a claim from services provided years ago can take a major bite out of funds available for an indemnity payment to satisfy a judgment or settlement.

Some areas of law, such as securities, tax, pensions, real estate, and estate work have factors that can contribute to more expensive claims. Depending on the circumstances, your \$1 million per claim coverage limit could be seriously eroded, leaving you personally exposed to claims costs that exceed your primary coverage limits.

LAWPRO claims that use up all or most of the \$1 million coverage per claim are not common, but when they happen, they tend to happen in some areas of law more than others. The graph below shows 15 years of claims over \$900,000 and areas of law in which they occurred.

LAWPRO claims over \$900K
by area of law (2007-2021)





Past legal activities may pose continued risk

If you are a lawyer on exemption from the primary program, your basic Run-Off coverage has a \$250,000 limit for all claims made against you now and in the future.


Our data indicates that it takes an average of three to four years after you have engaged in the practice of law for a claim to surface. Moreover, up to 10% of claims are not reported until five years after the service was provided. In some areas of practice, such as wills, estates, and real estate, it can take even longer before claims surface. Carefully assess the risk of claims associated with your past legal activities, and those of any partner or associate with whom you have practised.

In this context, also consider limitation periods under the *Limitations Act*, 2002, which establishes a basic limitation period of two years after the claim is discovered and an ultimate limitation period of 15 years. Of course, these limitation periods may not always apply. But the value of a claim may be much higher over a number of years thereby exceeding your Run-Off coverage.

A single claim, or a number of smaller claims, could easily exceed your Run-Off coverage limit, leaving you personally liable for any additional costs

What is a claims made policy?

If a claim is made against you this year for services you provided in the past, the policy that responds is the one in place when you first knew (or should have known) about the potential for this claim. If you first become aware of a claim after you already left private practice, it would be your Run-Off insurance that would respond.



What is my risk?

Ask yourself the following questions and factor in both potential defence costs and interest payments, as well as actual damages. When assessing your insurance needs, consider your current law practice, and the risk of claims associated with your past law practice, as well as that of any partner or associate with whom you have practised.

You are only as
safe as your
partners and
employees

The work of your current and former partners, associates and employees exposes you to claims now and in the future

- Was I familiar with their practices, procedures and communications (e.g., intake process, retainers, docket control, diary systems, and file retention)?
- Did they practise in areas such as litigation, corporate, commercial, real estate, tax, securities, or patents and trademarks, that can easily create exposures well above my insurance limits?
- If they have been involved in more claims-prone areas of practice, was the work completed by those with the right expertise, or with others under the appropriate supervision or guidance?
- Are there any non-traditional or other exposures to consider, such as activities of non-lawyer employees, or multi-discipline practice exposures?
- Where are my former partners and associates now and what insurance coverage do they have? Am I exposed to claims for their past services, particularly where they do not maintain adequate insurance coverage today?
- Do I know what limitation periods are likely to apply to these various types of claims, and would I be able to defend them?

You share exposure for the work of others outside the firm

- Have I considered the law practices of former associates, co-tenants, and others I shared space or resources with? Have I considered subcontracted or supervisory counsel, co-counsel on files, 'of counsel' and backup counsel?
- Am I satisfied that the letterhead, office signage, website, and promotional materials of my practice and any practice that has been affiliated with it, clearly communicated the nature of the relationship of my practice to that of others?
- Did my retainer agreements, invoicing and billing arrangements with clients clearly communicate the nature of the relationship of my practice to that of others?

People outside your firm can increase your risk

Some matters potentially expose you to a claim for damages that could exceed your primary coverage limits

- Did I or those in my former firm(s) handle major financial transactions, or represent clients in transactions where the stakes are high (e.g., securities dealings, commercial business, international transactions, pension dealings, corporate litigation, tax advice, estate planning, intellectual property services, and class action lawsuits)?
- Have my individual and corporate clients grown in wealth? Do I know the extent of my clients' reliance on my past advice? Consider prenuptial agreements and wills, as well as advice and services for start-up companies, tech companies, and growing businesses.
- What limitation periods are likely to apply to such claims? How long will I continue to be exposed?

Matters worth more money than my primary coverage may lead to more expensive claims

Inadequate checks and balances in place for trust accounts

Do my current or former firm(s) maintain large trust accounts or trust accounts with lots of activity and were there careful controls in place governing the activities in these accounts (e.g., two signature requirements for each cheque or withdrawal)?

Multiple file or client exposures

- Did I or those in my former firm(s) act on matters for more than one client who, if they sued collectively, could expose me to claims for damages that exceed my primary coverage limits?
- Has my former firm's work involved the same outside participants that might lead to similar or related claims? Consider, for example, the possible impact of common error or fraud by others involved in these files (like an appraiser, expert or individual involved in repair or remedial work).
- Did I have multiple files relying on the same legal research or opinion that could compound my exposure (in the situation where there is an error in the underlying research or opinion)?


Large and active trust accounts can be risky, and multiple clients can multiply risk exposures

Uncertainty of 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 no coverage for your practice while with other firms, or there may be no coverage for services that you provided outside of your firm practice. You should determine whether these policies are being maintained, and how you would go about providing notification of a claim.

Double check that the excess insurance drops down to meet the Run-Off coverage you have chosen.

Depending on how long it takes to discover an error and resolve the claim, and the impact of costs and damages, the value of the claim could be inflated by 50 to 100 per cent, or more.

A person with dark hair, wearing a light-colored sweater, is holding a black smartphone. Overlaid on the phone's screen is a graphic of a checklist with four items, each marked with a green checkmark. The background is a soft-focus indoor setting.

Risks associated with your business set-up

Limited Liability Partnerships (LLP)

Practising in a Limited Liability Partnership (LLP) has insurance implications. One of the requirements of an LLP is that the partners advise clients about the limited extent of their liability within the Limited Liability Partnership under the *Partnerships Act*. Lawyers in LLPs may want to be able to reassure clients that the firm – an LLP – carries substantial insurance protection.

Excess Insurance is one way for you to provide assurance and protect yourself against excess exposures – for your own professional services, for services provided by others under your direct supervision or control, for firm exposures predating the LLP arrangements, and for protection of the LLP firm assets.

Law Corporations

If you are practising in a Law Corporation, remember to insure for your full exposure, since the traditional protections associated with working in a corporate entity do not exist in a Law Corporation.

Did you know
you remain personally
liable for claims even if
you have a professional
corporation?

Innocent Party Coverage

Innocent Party coverage protects members of the public – and you – against the dishonest, fraudulent, criminal, or malicious acts or omissions of present or former partners, associates, employed lawyers and firm employees.

Standard Innocent Party coverage under the primary insurance program has a sublimit of \$250,000 per claim and in the aggregate. This sublimit is applicable to claim expenses, indemnity payments and repairs together. It is included within the primary insurance program coverage limits, and not in addition to the \$1 million/\$2 million coverage in place under the mandatory insurance program.

You can apply for an increase to your Innocent Party sublimit:

- to \$500,000 per claim/aggregate for an additional \$75 per insured; or
- to \$1 million per claim/aggregate for an additional \$125 per insured

All lawyers and paralegal partners or shareholders in a law partnership (including general, multi-discipline partnership and/or combined licensee partnerships and LLP partnerships) or law corporations must select the same Innocent Party Sublimit coverage.

One claim with substantial defence costs could quickly erode the \$250,000 available under the mandatory Innocent Party coverage

LLPs and the need to increase Innocent Party coverage

Lawyers in Limited Liability Partnerships (LLPs) should consider increasing Innocent Party Coverage sublimits above the standard coverage. As a partner in an LLP you may be exposed to liability for wrongful acts or omissions of another partner or employee who is not under your direct supervision.

Acting as a Locum

As locum you are standing in for another lawyer or their law practice while they're away.

Firms purchasing excess insurance from other insurers are strongly encouraged to obtain written confirmation from their excess insurer that the locum and contracting firm are both insureds under any excess policy issued, and that coverage is fully afforded in relation to locum work.

If you are standing in for a lawyer in an association, partnership or law corporation with more than one lawyer, and other lawyers in the firm have bought up their Innocent Party protection, you must carry at least that same amount of increased Innocent Party protection. LAWPRO strongly recommends that the locum, as well as lawyers in the contracting firm, apply for the full amount of Innocent Party protection available to ensure that they are well protected against claims that may arise out of dishonest acts.

Premium

LAWPRO is committed to providing cost effective Excess insurance to qualifying small firms in Ontario. Premiums are underwritten on a firm basis, based largely on information you provide in the Excess Liability Insurance application found in My LAWPRO. This includes the nature and size of the firm, individual lawyers' areas of practice, practice status, the loss exposure of firm members and other underwriting criteria.

Contact us to receive a no-obligation estimate.

How to apply

Want to know more or apply for Excess insurance? Email service@lawpro.ca or login to My LAWPRO.

Avoid gaps in coverage

The effective date of coverage is 60 days from the date of LAWPRO's receipt of the completed Excess Liability Insurance Application form. If you intend to increase your insurance coverage limits by securing additional insurance coverage, you should ensure that LAWPRO has received your completed application at least 60 days before the coverage is to be in place, to better avoid the possibility of gaps in insurance coverage between your primary program coverage and any excess insurance you or your firm might carry, and to ensure that your higher coverage limits are in place on the desired date. Note that just because you have applied to increase your limits does not obligate you to purchase this additional coverage, nor is LAWPRO obligated to provide it.



Risk management
practicepro.ca



Additional professional
liability insurance
lawpro.ca/excess



Title insurance
titleplus.ca

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