

Insurance matters:

Retired lawyers, estate trustees,
judges, in-house counsel,
government lawyers and others
no longer in private practice



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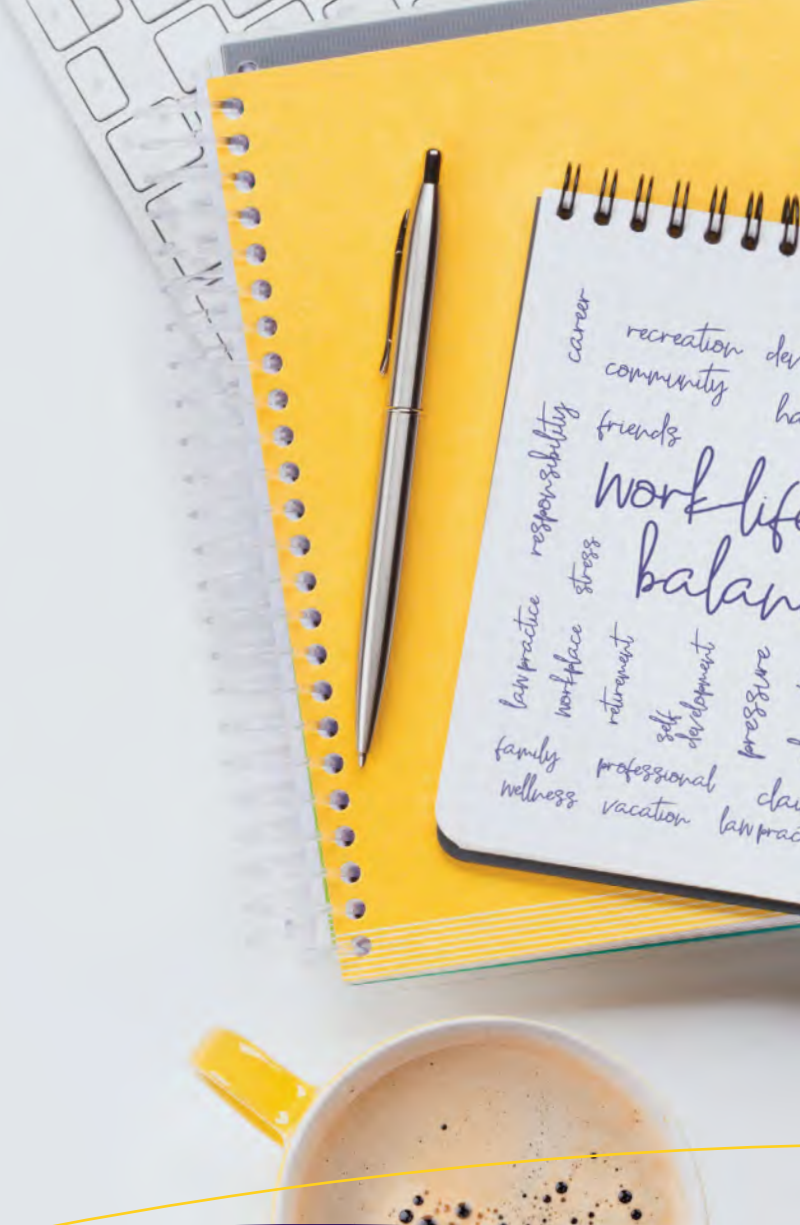
www.lawpro.ca



Your exposure to claims never retires

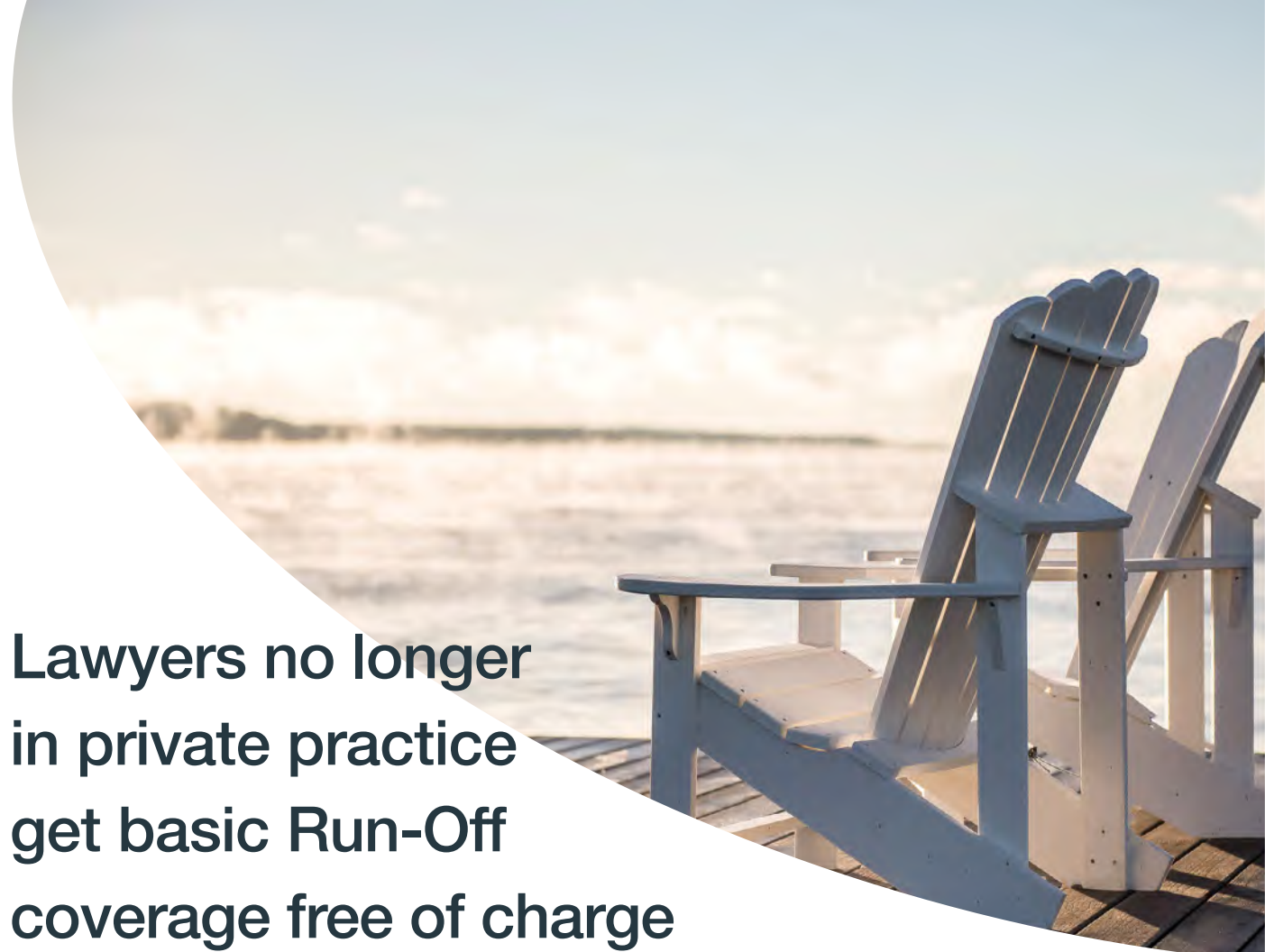
Although you have left private practice, you continue to be liable for professional services that you, or your former partners or associates, provided in the past. It takes an average of three to four years for a claim to surface, and sometimes much longer.

The basic Run-Off insurance coverage of \$250,000 provided free of charge to all lawyers who have left private practice may not be sufficient to cover the cost of claims that may be made against you.



Informing LAWPRO about your decision to leave private practice

As soon as you know the date you plan to stop practising law, notify both LAWPRO and the Law Society of Ontario. To inform LAWPRO, complete and file an exemption form, available on lawpro.ca or contact LAWPRO Customer Service at 1-800-410-1013 or service@lawpro.ca



Lawyers no longer in private practice get basic Run-Off coverage free of charge

Run-Off coverage is also offered free of charge
to estate trustees and judges

- The coverage limit of \$250,000 per claim and in the aggregate is a lifetime limit and is not reinstated annually. It is the maximum amount for all claims made against you, including the year you leave active private practice, past years in which you were exempt, and all future years while exempt for reasons other than mobility or a temporary leave of absence.
- This \$250,000 limit is applicable to claim expenses[†], pre-judgment interest and indemnity payments for claims made against you. All amounts used reduce the funds available for all other claims made against you.
- It applies only to claims arising out of services provided while you were in private practice or maintained practice coverage, except as otherwise noted in this booklet.
- The coverage is subject to a \$5,000 deductible per claim.
- There is no coverage for claims arising out of professional services you provide while exempt from paying the insurance premium (with the exception of pro bono work provided through an approved pro bono professional services program associated with Pro Bono Ontario, and where you purchased additional coverage specifically for certain services as estate trustee, trustee for inter vivos trust, or attorney for property. Details concerning these exceptions are more fully described on lawpro.ca).

[†] CLAIM expenses include costs of investigation, costs of REPAIRS and/or costs of LOSS PREVENTION

- Higher limits may apply on the basis of mobility or temporary leave of absence.
- Protection against innocent partner claims is included. This means that once you leave private practice, if claims are made against you for the dishonest, malicious, criminal or fraudulent acts of a former partner or associate, your Run-Off coverage provides you with up to \$250,000 of coverage for claim expenses[†] and indemnity payments. This is subject to any erosion in this limit as a result of all other claims that LAWPRO has been notified about under your Run-Off coverage.

[†] CLAIM expenses include costs of investigation, costs of REPAIRS and/or costs of LOSS PREVENTION

Run-Off coverage for lawyers' estates

LAWPRO provides a lawyer's estate with the full increased Run-Off coverage of \$1 million per claim and \$2 million in the aggregate for the first 90 days immediately following the death of a lawyer carrying the standard primary insurance coverage, free of charge.*

Of course, the estate remains liable for claims arising out of the deceased's practice for years to come. You may want to consider applying for additional insurance protection beyond the basic Run-Off coverage.

* Lawyers claiming exemption on the basis of mobility or temporary leave of absence are also provided with the benefit of this 90-day coverage, but only as it relates to professional services already insured under the policy.

Planning to do other work?

This chart can help you determine if you need standard primary insurance coverage

Retired from private practice, judges, and others no longer in private practice

Insured under Run-Off coverage

In-house counsel and government lawyers: Run-Off coverage for former private practice is available if you are employed by a single employer and provide professional services only for and on behalf of your employer

Engage in the practice of law for family, friends or associates (even if on a pro bono basis)

Standard primary insurance coverage required

Acting as a mediator, arbitrator, immigration consultant

Insured for past professional services under Run-Off coverage if you are not working in the capacity as a lawyer and you are absolutely clear to clients and others that you are not providing these services as a lawyer

Acting as estate trustee, trustee for inter vivos trust, or attorney for property

Apply for extended Run-Off coverage if you are named or act as an estate trustee, a trustee for an inter vivos trust or an attorney for property, even though the rest of your practice is being wound down or turned over to other lawyers (so, must be residual work from your past practice in Ontario), regardless of whether you are acting on a single or a number of trusteeships or powers of attorney. Coverage does not extend when you act for a family member

Mentoring

Insured under Run-Off coverage provided that: the mentor and mentee enter into a formal mentoring relationship (as evidenced by a written document); the mentor has no contact with the mentee's client that would create a solicitor/client relationship; and, the mentee understands that they are responsible for individually and independently satisfying themselves of the soundness of any suggestions, recommendations or advice-like comments made by the mentor

Volunteering in legal aid clinics

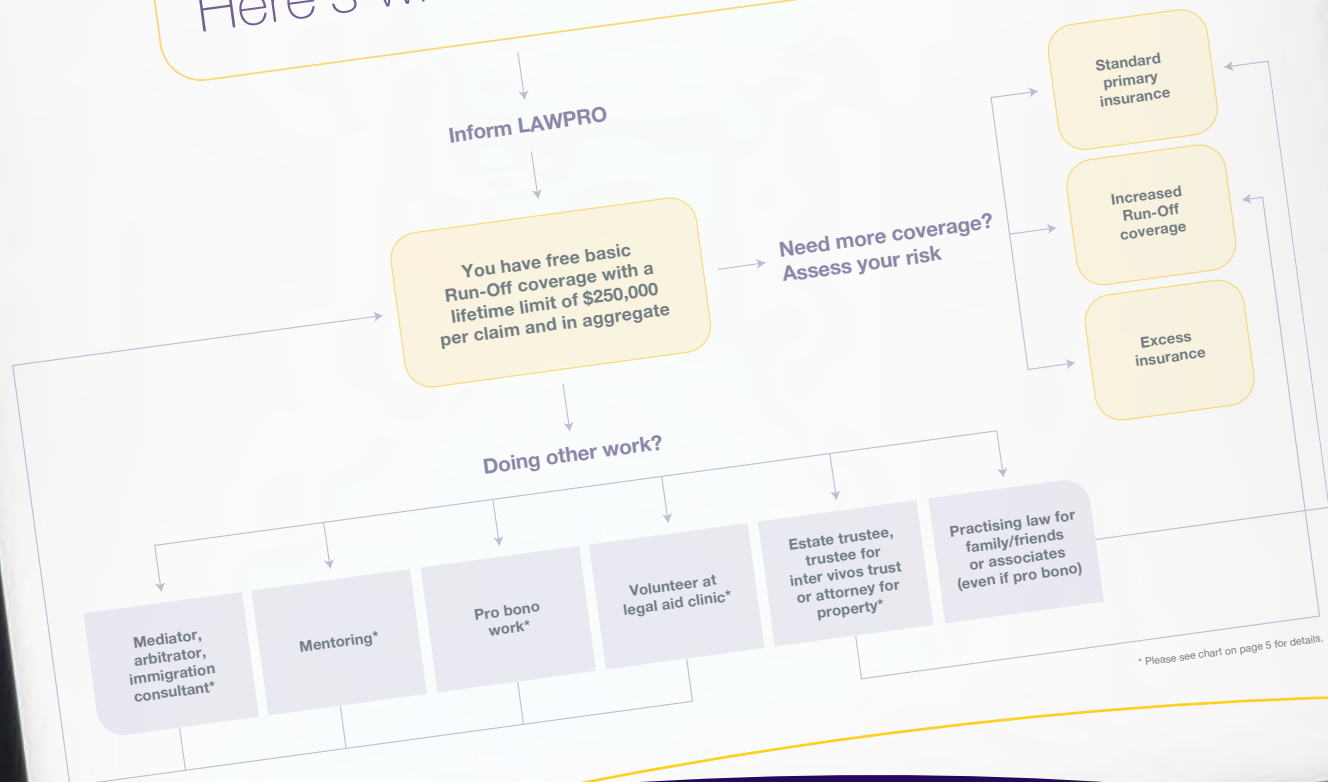
Insured under Run-Off coverage for prior work and you don't need to pay for current practice coverage provided that you have proof of insurance through the clinic and meet the exemption criteria, see lawpro.ca/exemption

Pro bono work

Insured under Run-Off coverage if you do pro bono work through a LAWPRO-approved Pro Bono Ontario program. You are not required to pay any deductible for claims relating solely to such professional services

You will not be insured if you do pro bono work for not-for-profit organizations not associated with Pro Bono Ontario. Obtain pre-approval from LAWPRO to maintain exempt status. You may continue to qualify for exemption, however, you will not be insured for this work

Leaving private practice? Here's what to do...



If you plan to stay in private practice – even on an occasional basis – you must obtain the standard primary insurance coverage. Find out more on page 7

Increase your Run-Off coverage to keep your limits the same as when you were practising. Find out more on page 8

Consider **buying Excess insurance** if you are concerned that the cost of claims made against you could exceed the \$1 million per claim and \$2 million in the aggregate limits. Find out more on page 10



Standard primary insurance

If you plan to stay in private practice – even on an occasional basis – you must obtain the standard primary insurance coverage. Many semi-retired lawyers qualify for the 40% premium discount available to part-time practitioners.

Standard primary insurance:

- Coverage for your current and past professional services
- Coverage of \$1 million per claim and \$2 million in the aggregate, renewed annually
- A choice of deductible types and amounts
- To be eligible for the part-time practice discount:
 - limit your law practice to 20 hours per week on average for each week actually worked, up to 750 hours per year docketed and undocketed (during the past fiscal year and upcoming year); and
 - gross billings must not exceed \$100,000 (during the past fiscal year and upcoming year); and
 - you have no claims with a repair of indemnity payment made within the last five years.



Increased Run-Off coverage

1. Choose a coverage term

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

When choosing your coverage, decide the limit you would need to protect yourself against one or more large claims that may exceed the standard \$250,000 per claim and aggregate Run-Off limit.

2. Increase coverage terms

Coverage terms range from two to five years. When selecting the term, decide how long you would like coverage for combined claims that may exceed the basic \$250,000 Run-Off coverage. (Please note that the first \$250,000 of Run-Off Coverage, as provided free of charge to all LAWYERS withdrawn from private practice, is not reinstated on the renewal of any Coverage Limit Buy-Up if the \$250,000 base limit has already been depleted prior to renewal.)

3. Increase Innocent Partner coverage

This coverage provides greater assurance that no criminal, malicious, fraudulent or dishonest act of a former partner, associate or employed lawyer of the firm will expose you to claims that exceed \$250,000 from the past, today and in the future.

Increase your Innocent Partner coverage to:

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

4. Increase your coverage to include other services

You can also apply to include protection for services as an estate trustee, a trustee for an inter vivos trust or an attorney for property after you leave private practice.

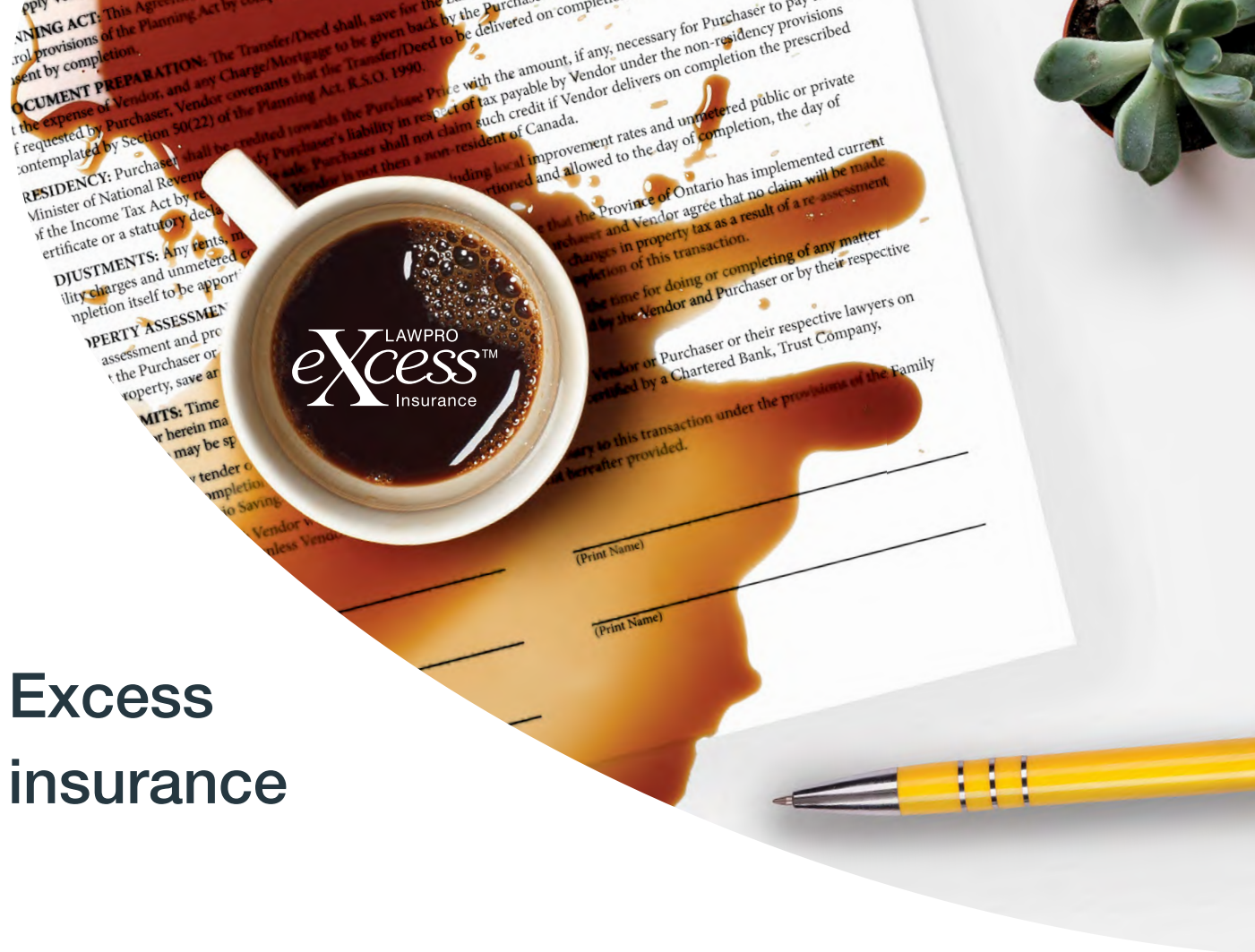
With regard to this expanded protection:

- Your role as trustee or attorney for property must be residual work from your past practice in Ontario, and not where you have only been named since leaving private practice
- Coverage may apply to a single, or a number of, trusteeships and/or powers of attorney
- Coverage does not apply in the case of a trusteeship, or attorney for property for your own family members
- Coverage does not apply for any dishonest, fraudulent, criminal or malicious act(s) or omission(s)
- Availability and conditions may apply, based on individual underwriting

Premium

The premium to increase Run-Off coverage depends on a number of factors, including the number of years and area(s) in which you practised law, and how long ago you were in private practice.

You can add innocent partner coverage. The premium is calculated as an additional percentage of your Increased Run-Off premium. Limits up to \$1 million are available.



Excess insurance

Consider buying Excess insurance if:

- You have already opted to increase your Run-Off coverage to the maximum \$1 million per claim and \$2 million in the aggregate; and
- You are still concerned that the cost of claims made against you could exceed the \$1 million per claim and \$2 million in the aggregate limits.

LAWPRO's Excess insurance is underwritten and rated on a firm basis, based on a risk assessment of information provided in the Excess Liability Insurance application form. The amount of Excess coverage you buy is the total pool of funds available for defence costs and indemnity payments for all lawyers in the firm. 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 (if its limits have not been exhausted by claims from other lawyers in your firm).

Premium

LAWPRO's Excess insurance program offers competitive rates for excess limits ranging from \$1 million per claim and \$1 million in the aggregate to \$9 million per claim and \$9 million in the aggregate above the coverage limit you have already secured by increasing your Run-Off coverage to the maximum available. Rates for Excess insurance coverage are set each year.

LOCUMS and Excess insurance

If you acted as a locum, you were standing in for another lawyer to cover or run the other lawyer's law practice while they were away.

LAWPRO's Excess insurance automatically extends coverage to locums and locum work under the Excess policy issued to the firm that has hired you (the contracting firm).

Firms purchasing Excess insurance from other insurers are strongly encouraged to obtain written confirmation from their excess insurer that the locum and the contracting firm are both insureds and that it covers locum work that has or may be done.

How to apply

Increased Run-Off coverage:

Submit your completed application at least 60 days before your planned date of leave from private practice to ensure there is no gap in coverage and your higher coverage limits are in place. If you opt to apply later, the full limit protection may not be available to you should LAWPRO be notified of a claim.

Excess coverage:

Request a no-obligation estimate for your firm by completing an application on lawpro.ca/excess. The estimate is based on existing information in our database including firm size, practice circumstance, areas of practice, claims experience and other underwriting criteria.

To Apply:

Visit lawpro.ca and login to My LAWPRO using your Law Society number and confidential password... to submit an application for Increased Run-Off Protection"

To apply for Excess Insurance, please email service@lawpro.ca for more information.



Past legal activities that may pose continued risk

As a lawyer claiming an exemption, basic Run-Off coverage has a \$250,000 limit for all claims made against you now and in the future. 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.

Research 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 per cent of claims are not made 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 and an ultimate limitation period of 15 years. Of course, these limitation periods may not always apply. Consider proceedings that may be commenced outside Ontario or professional services that do not pertain to the laws of Ontario.

What is a claims made policy?

If a claim is made against you *this* year for services you provided in 2018, 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 the claim after you already left private practice, it would be your Run-Off insurance that should respond.

Former partners' coverage may not protect you

If a claim is made against you, it could happen that your former firm or partners are not named in the proceedings; the claim may concern activities unrelated to the firm; or, there may be a coverage issue (such as late notification or failure to notify) involving the former partner's coverage. In all of these scenarios, your \$250,000 basic Run-Off insurance coverage may be inadequate, leaving you personally exposed.

The Limited Liability Partnership (LLP) provisions of the *Partnership Act* provide lawyers who are practising in partnership with an opportunity to substantially reduce their vicarious exposure for the acts of their partners by becoming an LLP. Thus, former LLP partners who remain in practice, along with their insurer, may well find protection under the LLP provisions of the *Act*, which would not be available to you, leaving you exposed to the claim alone. This would be particularly so for claims arising out of services provided by you, or under your direct supervision, on behalf of the LLP.

It is important to realize that the limited liability protection afforded to partners in the past has been restricted to those claims relating to negligent acts or omissions. As a partner in an LLP you remain fully exposed to liability for the wrongful acts or omissions of another partner or an employee not under your direct supervision if the act or omission was criminal or constituted fraud, even if there was no criminal act or omission, or if you knew of the act or omission and did not take the actions that a reasonable person would have taken to prevent it. Innocent Partner Coverage helps fill this gap, as well as offering protection against exposures associated with partners and associates prior to the creation of the LLP.



Determine if you should increase your Run-Off coverage or secure Excess insurance

Ask yourself the following questions and factor in both potential defence costs and interest payments, as well as actual damages.

Does the work of my former partners, associates and employees expose me 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?

Do I 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?
- Did I consider locum work, whether by me or others and, was it clear to clients and others that the work was being done as locum work? What type of work was involved and are the files available in the event of a claim?

Did I handle matters which potentially exposed me to a claim for damages that could exceed my existing 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 (for e.g., securities dealings, commercial business, international transactions, pension dealings, corporate litigation, tax advice, intellectual property services, and class action suits)?
- Have my individual and corporate clients grown in wealth? Do I know the extent of my clients' reliance on my past advice? 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?

What checks and balances were in place for trust accounts?

Did my 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 (for e.g., two signature requirements for each cheque or withdrawal)?

Do I have 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 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)?

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

Your former firm(s) may have arranged coverage which is applicable to you and your activities while a member of the firm. You should review the terms and conditions of these policies carefully as the coverage may not be sufficient, there may be 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.

Remember: once your coverage limits have been exhausted, you could be personally liable for any claim awards made against you.



Lawyers' Professional Indemnity Company

lawpro.ca



Risk management

practicepro.ca



Additional professional
liability insurance

lawpro.ca/excess



Title insurance

titleplus.ca

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