Update from LAWPRO

Dan Pinnington, CEO
FOLA, November 2019
Agenda

• Why LAWPRO is different
• LAWPRO 101
• 2020 Program changes
• LAWPRO myths and fake news
• Claims trends
• How you can help
• Questions
Why LAWPRO is different from other insurance companies

- Has to insure everyone
- Actively works to prevent claims
- Does not look for ways to avoid coverage
- Appoints repair counsel to fix mistakes and reduce damages
- Takes a principled approach to settling claims
- Vigorously defend claims where no negligence or damages
- Works collaboratively with defence counsel and insured to defend a claim
Why LAWPRO?

- Public protection: clients should be compensated if their lawyer makes an error
- *Law Society Act* gives LSO statutory right to have mandatory, universal insurance program
- All Canadian jurisdictions have similar programs
  - Allows for mobility
What is LAWPRO?

- FSRA regulated insurance company
- Wholly owned by LSO
- Licensed to provide professional liability insurance in Ontario
- Launched in 1995 in response to the insurance crisis
LAWPRO's mandate from Insurance Task Force

- Independent with own Board of Directors
- Operate in commercially reasonable manner
- Premiums should reflect the risk of claims
- Resolve claims fairly and expeditiously
  - Strive to find coverage whenever possible
  - Not “no fault”
  - Deny/limit coverage in appropriate circumstances
Mandatory “Primary” program

- Lawyers and paralegal partners
- Covers “Professional Services”
- Individual lawyer is named insured
- $1 million per claim / $2 million aggregate
- “Base” premium $2,950
- Default deductible $5,000

Visit lawpro.ca for policy and more details
To be fair, premiums should reflect risks

- Premium reductions
- Transaction levies
- Different deductibles
- Claims surcharge levies
- Real Estate Practice Coverage Option (REPCO)
- Optional coverages

How “risk rating” is accomplished
Part-time discount
- 50% (<750 billable hours and <$90,000 gross billings)

Restricted area of practice discount
- 50% if solely criminal or immigration

New call discount
- 50%, 40%, 30%, 20% first 4 years

Designated government agencies (and CSO's)
- 75%
- Pro bono work
  - No premium required in some situations

Base premium reductions
• A greater volume of work means greater claims risk
• $100 per litigation matter commenced
  • Not family law matters
• $65 per real estate transaction
• Collect $30 million per year

Transaction levies risk rate for practice volumes
• $5,000 default
  • Also $0, $10,000 and $25,000

• Double deductible for conflicts of interest claims

• $10,000 deductible for certain administrative dismissal claims

Different deductibles
In addition to base premium, over 5 years after a claim is paid:

- 1 claim paid: $2,500
- 2 claims paid: $5,000
- 3 claims paid: $10,000
- 4 claims paid: $15,000
- 5 claims paid: $25,000
- 6 claims paid: $35,000
- plus $10,000 per claim paid in excess of 6

Claims surcharge levies
• Premium $2950
  • $1,835 in 1995 dollars
  • Was $5,600 in 1994
• Clarifying the circumstances in which notice of a claim must be provided
• Refinement of definitions for clarity

2020 Insurance program
LAWPRO E&O Policy
myths and fake news
Only bad lawyers have claims against them?
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- Even the best lawyers make mistakes
- 42% have had a claim
Lawyers only need to report to LAWPRO when they are served with a statement of claim?
Lawyers only need to report to LAWPRO when they are served with a statement of claim?

Report when:
• You discover a mistake
• A client says you made a mistake
• When asked to produce file
• Court order

When in doubt – report
If a lawyer can fix their mistake, then they should try that before contacting LAWPRO?
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Never try to fix a mistake
Don’t admit to client you made a mistake
Contact LAWPRO immediately

Could result in denial of coverage
Don’t just let the firm handle the claim
Don’t just let the firm handle the claim

Individual is named insured on policy
We look to find responsible lawyer
Also look to them to pay deductible
(then to partners/shareholders at date of claim)
No notes means there is no evidence
I made a mistake?
No notes means there is no evidence I made a mistake?

No notes makes it harder to defend Clients will remember everything You won’t Notes can be a lifesaver!
As soon as I report a claim, I need to pay a deductible?

No

Deductible choices

Only pay a deductible
As soon as I report a claim, I need to pay a deductible?

NO!!

Only pay a deductible when there is a payment further to judgement, settlement and/or repair

Or ½ with defence filing and ½ when discoveries, examinations or pre-trial
No deductible if “loss prevention”

Allegation of error
We don’t agree
Uphold insured’s position
  e.g. summary judgement

(vs “repair” e.g., fixing admin dismissal)
Closed with no payment 50%
Closed with defence and indemnity 14%
Closed with defence payment only 36%
The mandatory policy is enough coverage?
The primary policy is enough coverage

It depends
The nature of your practice
$1 million per claim/$2 million in the aggregate
In a typical year:

275 or so claims exceed $100,000

Less then 10 claims hit $1 million limit
• Designed for firms under 50 lawyers
• 3,817 lawyers at 1,512 firms
• Limits as high as $9 million per claim/in the aggregate
• Firms are named insured
• No broker’s commission!
• Retention rate of 98%
Excess self-assessment

Lawpro.ca/excess
I’m retiring so I won’t be insured if mistakes are found later?
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Free Run-Off insurance
For work done while in practice!
$250K lifetime limit

Buy more if you think you need it
Run-off Buy-up
$500,000 or $1 million
Claims trends and emerging risks
2019 Open claims and number reported

- Open claims: 4,082
- Reported claims: 2,774
Claims per 1000 lawyers

- 1997: 115
- 2002: 95
- 2007: 105
- 2012: 125
- 2018: 101.5
Areas of loss by cost

- Litigation: 29%
- Real Estate: 28%
- Other: 12%
- Corp/ Bank: 10%
- Wills/Estates: 12%
- Family: 9%
Causes of loss by cost

- Communication: 26.1%
- Inadequate Investigation: 21.2%
- Time Management: 17.3%
- Know/Apply the Law: 15.1%
- Other: 10.3%
- Clerical Error: 6.0%
- Conflict of Interest: 3.2%
- Fraud: 0.8%
Personal challenges lead to claims so LAWPRO contributes to funding of MAP
See our Claims Fact Sheets for information about individual areas of practice.
Liencing a Project: Which Act Applies?

Contract with owner entered into (S. 39 demand)
- Pre July 1, 2018
  - Procurement process (S. 39 demand)
    - Pre July 1, 2018
      - Construction Lien Act applies
    - July 1, 2018 - September 30, 2019
      - Construction Act (July 1, 2018 - September 30, 2019) applies
    - On/post October 1, 2019
      - Construction Act applies

- July 1, 2018 - September 30, 2019
  - No Procurement process
    - Construction Lien Act applies

- On/post October 1, 2019
  - No Procurement process
    - Construction Act applies

Lease first entered into (S. 39 demand)
- Pre July 1, 2018
- On/post July 1, 2018
- On/post October 1, 2019

Contact / Procurement
- Pre December 6, 2018 (S. 39 demand)
  - Construction Lien Act applies

Contact / Procurement Pre December 6, 2018 - September 30, 2019 (S. 39 demand)
  - Construction Act (July 1, 2018 - September 30, 2019) applies

See back for more information
practicePRO resources now available on FOLA website
fola.ca/practice-resources
How can LAWPRO help?
Questions please!
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Contact me if questions