

CANADIAN LAWYERS INSURANCE ASSOCIATION VOLUNTARY EXCESS PROFESSIONAL LIABILITY INSURANCE

Law firms and sole practitioners are facing unprecedented challenges: a global pandemic, a looming recession, and a rapidly evolving insurance market. It is understandable that these entities are now looking to reduce operating costs, but these measures should be taken with a clear view of what's at stake. Rash cost-cutting of insurance coverages can expose you and your firm to higher risk, leading to greater cost uncertainty.

*Firms and sole practitioners are at greater risk than ever against legal liability claims that could leave you exposed to personal liability. **This is not the time that you want to let your professional liability coverage lapse.** An E&O insurance policy is your best solution for transferring the risk of legal liability away from you and your firm. How will you feel when you have a malpractice claim for the first time this year, and no cover for it, even if you buy excess next year? Changing to a non-practising status or retiring completely does not exempt you from personal risk of legal liability. The Law Society staff and the Office of the Canadian Lawyers Insurance Association are available to assist you with any questions or concerns regarding this important decision.*

CLIA provides a long-term professional liability insurance solution for the legal profession in Canada. Through CLIA, participating Law Societies' lawyers have mandatory Errors and Omissions insurance with a limit of \$1m per claim and a \$2M annual aggregate limit.

For many lawyers, that mandatory limit may not be sufficient coverage to meet their needs, so CLIA's Voluntary Excess Program (VEP) provides the option of additional coverage limits of up to \$9M per claim, with a \$9M annual aggregate, and is 100% reinsured. The limits available under the VEP are \$1M, \$2M, \$3M, \$4M, \$6.5M and \$9M excess of \$1M.

CLIA believes in building long-term and healthy relationships with reinsurance companies. CLIA and its strategic partners have thrived within this framework, and CLIA has been able to deliver a cost-effective and stable program that provides a broad range of coverage and value to Canadian lawyers.

The objectives for the Voluntary Excess Program are:

1. To ensure that CLIA's insureds receive a first-rate product and exemplary service;
2. To ensure that the VEP program is sustainable over the long term; and

3. To offer stable and competitive premiums in order to retain existing business and gain new business.

Excess insurance provides another layer of security in the event defence and indemnity costs exceed the mandatory \$1M limit. As the value of clients' transactions increases over time, lawyers and law firms should consider what levels of Errors and Omissions (E&O) insurance would be adequate. One large claim could quite quickly erode the primary policy, leaving the lawyer or law firm exposed to significant personal liability.

Each year CLIA negotiates the terms of its reinsurance contracts with its long-term existing reinsurance companies as well as new potential insurance markets. This provides the lawyers participating in this program with the best coverage and price available in the global reinsurance markets.

Matters you should consider in assessing the adequacy of existing insurance limits for you or your firm:

- the type of transaction and its potential impact on the client;
- the size of the transaction and the frequency of large transactions;
- whether former associates and partners currently have excess insurance that is either inadequate or excludes their past activities;
- the time horizon of the advice, as the impact of the advice may continue to grow over time as may the potential liability; and
- your total risk tolerance.

Premiums

Premiums vary with the amount of excess coverage purchased. A lawyer can choose the level of excess insurance based on the potential risk exposure. The total premium is based on the total number of lawyers in a firm. If a member is a partner or associate in a firm and the member requires excess insurance, the excess policy must be purchased for the firm as a whole.

Retired Lawyers

It is important to note that lawyers who have retired from practice continue to be responsible for work they performed prior to retirement. Although lawyers \$1m mandatory insurance coverage still applies as long as the professional services that are now the subject of a claim took place when the retired lawyer was practising and insured, that does not apply with excess insurance. That is why there is an option for retired lawyers to purchase excess coverage on an individual basis, to address any unforeseen circumstances that may develop after retirement, provided they are retiring as a current member of CLIA's VEP, either as a sole practitioner or as a member of a firm.

New this year CLIA is offering a discounted premium rate for retired inactive lawyers. They will receive a 25% discount off the per lawyer rates. You must declare on the application form that you are retired and interested in the discount.

Claims-Made Policy

Excess insurance policies are claims-made, which means the trigger for coverage is not when the work was done but when the claim was known to the insured and reported to the insurer. If you have stopped carrying excess insurance at the time the claim is made, the excess policy will not respond.

Why Buy Your Excess Liability Coverage from CLIA

CLIA specializes in legal liability Insurance and has been providing quality affordable legal liability insurance to Canadian lawyers for over 30 years. The relationships that have developed with reinsurance companies over this time are invaluable. They provide the program with flexibility to manage claims without interference from the reinsurer and provide pricing stability when insurance markets become difficult or the program's claims become excessive. The relationships that have developed with all the Law Society Subscribers have helped CLIA understand their mandate and have worked with them to resolve difficult situations.

CLIA is different from typical Commercial Insurers:

1. CLIA is not an incorporated entity, but rather is a contractual arrangement between the members by way of a Subscribers' Agreement;
2. As a reciprocal, CLIA can only ensure its members (in this case the lawyers who are licensed by a Law Society). CLIA is financially supported by its members through premium collected. The members are the shareholders and there are no commissions charged;
3. CLIA can tailor insurance products to meet the needs of its membership and ensures availability of coverage, independent of conventional market cycles;
4. CLIA is structured such that the funding of claims is based on loss experience of the program and not directly affected by the volatility of commercial insurance markets;
5. Discounts may be provided to subscribing members in the form of premium credits. Firms that have been with the program for a number of years may be eligible to receive additional credits based on the length of their participation in the excess program.

Looking Ahead

Each year effective July 1st, CLIA conducts its annual Voluntary Excess Program renewal process. This is an opportunity for you to review your risk portfolio and determine if you have enough coverage for the upcoming year.

New this year is an additional coverage limit of \$6.5M in excess of the \$1M mandatory coverage. We are offering this based on a number of requests that we have received for a coverage value between \$4M and \$9M.

It is important for you to renew your coverage before the end of the policy year to avoid gaps in coverage that may leave you unnecessarily exposed to risk of uninsured liability. CLIA has been working on improving the application process to make it quicker and easier for you to apply for insurance. This year the online application process will open on **June 1st, 2020** to ensure that you have time to complete the application and submit premium payments prior to the July 1st policy renewal.

If you have any questions as you are completing the application process this year you can contact the CLIA office online at renewals@clia.ca or by phone at (306) 347-3057 (Cindy) and (306) 347-3055 (Sheila).