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# errors&omissions

## Wondering when to report that claim or potential claim? Do it now.

Do you think you may have a claim to report, but are wondering about timing? There are no good reasons to delay in reporting a claim, and many excellent reasons to do so as early as possible.

Under the current mandatory program of insurance for lawyers, the policy that responds is the one in force when a claim is first made, and not necessarily the policy that was in force when the error took place. However, if the lawyer knew or ought to have known of the claim circumstances in a previous policy year, then it may not be the current policy that will respond. The result? There is nothing to be gained by aiming to engage a particular year's policy. In fact, a delay in reporting a claim can actually jeopardize your coverage. Immediate written notice of any claim or circumstances of an error, omission or negligent act that would reasonably give rise to a claim is a condition of coverage (see Part IV, general condition E of the policy).

Insured lawyers are required to cooperate with LAWPRO in handling their claims. If LAWPRO becomes aware that a lawyer has failed to report, LAWPRO will generally contact the lawyer to encourage reporting. If that fails to prompt a claim, we may be forced to deny coverage – which we are entitled to do if LAWPRO has been prejudiced by the delay. Why does LAWPRO take delays so seriously?

- Policy provisions and terms change from one year to the next. It is important to have the right coverage respond.

- A lawyer's failure to report promptly can lead to missed limitation periods, adverse judgments, imprudently-brought appeals or lost appeal opportunities, and other negative outcomes that could have been avoided or mitigated if LAWPRO had been notified sooner.
- Even if the lawyer thinks she or he is reporting out of an abundance of caution, if LAWPRO has the opportunity to act early – even before a claim is asserted – we have a better opportunity to gather and secure evidence, seek settlement, and assist the insured in avoiding a claim being made at all.

If you report a claim and nothing develops, your deductible won't be triggered and there won't be any surcharged increase in your premium. It's far riskier to delay and have your coverage denied, especially since delaying could jeopardize even your firm's excess insurance coverage. You should also consider that it may not just be your insurance coverage that is at risk, but also your licence to practice. The *Law Society Act* and O.Reg. 167/07 make it clear that a lawyer's failure to report a claim or circumstances reasonably expected to give rise to a claim can warrant disciplinary action by the Law Society.

Remember that LAWPRO is *your* insurer. If a mistake occurs, let us know right away. ■

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## How to report – and how not to report – a claim to LAWPRO

Whether you make your report using our useful online Claim Notice Report or in some other manner, in order for us to properly investigate evaluate your claim:

1. **Tell YOUR side of the story:** Do not just send us a copy of the statement of claim, if you've been served with one; send us your rebuttal – or comments – so we can better understand the situation and how we can defend you.
2. **Be concise:** No stream-of-consciousness letters, please! Send us a well-organized summary ( a page or two is likely enough) and include the key facts, details, and dates.
3. **Tell us what's at stake:** Remember, LAWPRO is an insurance company. We need to understand, as early as possible, the dollar value of the claim or your best estimate (even if it is zero) so that we can dedicate appropriate resources and set reserves for the claim or potential claim.

4. **Do not send the whole file:** We may not need it. Please wait until one of our claims professionals contacts you to discuss necessary documentation. If a decision is made to engage outside counsel to handle the claim, you may then need to send your file materials to that lawyer directly.
5. **Report promptly, and be available for our questions:** Do not wait to report your claim until the day before you leave on holiday! If you will not be reachable and an urgent response or action is required, be sure to brief a partner or junior about the claim details.

The sooner we have the information we need, the sooner we will be in a position to consider a resolution, or pursue repair or defence efforts on your behalf. ■

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Douglas Scott has been a claims counsel at LAWPRO since 1987.