

Insurance for Lawyers Providing Pro Bono Services

For most lawyers the purchase of the Law Society of British Columbia's professional liability insurance is mandatory. Some lawyers however, such as retired and non-practising lawyers, or in-house counsel, are exempt from this obligation and accordingly, carry no insurance.

To encourage these otherwise uninsured lawyers to provide pro bono legal services, the Law Society has arranged for the provision, without cost to these lawyers, of insurance for certain pro bono legal services.

Note however that this insurance will also benefit lawyers in practice who do carry insurance, provided the other requirements for this particular insurance are met. The benefit to lawyers who carry insurance are that the normal financial consequences that arise if a claim is paid by the insurer (which, by way of reminder, we set out below) are waived.

HOW DOES ONE GET COVERAGE?

The insurance provided is not comprehensive coverage. Coverage is provided for "sanctioned services", which is a defined term in the insurance policy. Services are sanctioned, and you will be eligible for coverage, if the services:

- (a) are provided without financial gain,
- (b) by a lawyer who is a member in good standing with the Law Society,

Persons who have not maintained their membership in good standing with the Law Society are not entitled to the benefit of the coverage.

- (c) to an individual

Pro bono legal advice provided to an organization, firm, company or partnership is not covered by this insurance.

- (d) who was not previously know to the lawyer

Pro Bono advice to friends, relatives and acquaintances, for example, is not covered.

- (e) who is of limited financial means;

The approved program will have a policy that defines this requirement.

- (f) only through a program approved for insurance purposes; and

A list of those programs is available through ProBonoLaw of British Columbia or on its website at www.probononet.bc.ca.

- (g) the services provided fall within the approved category of services.

A list of the approved category of services, correct as at July 31, 2004 is attached. The list is also available through ProBonoLaw of British Columbia or on its website at www.probononet.bc.ca.

POINTS TO NOTE

The list of programs and services approved for insurance purposes may be changed at any time. Current lists of approved programs and services may be found on Pro Bono Law of British Columbia's website at www.probononet.bc.ca, and lawyers are encouraged to review the website from time to time to see if any changes have been made. There is no obligation to notify any person of a change in status of a program, or of a change in the services for which insurance is available. The obligation rests with the lawyer to ensure that, at the time pro bono services are provided, the program and services are still approved for insurance purposes. Any change to a list will take effect 14 days after the change is posted to the website.

A reminder that, as with any policy of insurance, there are other terms and conditions in the insurance policy that may limit coverage. All lawyers will want to familiarize themselves with the terms of the insurance policy, and are reminded of their obligation under the insurance policy to report claims or potential claims promptly. A copy of the current insurance policy is available in the Member's Manual for Law Society members, as well as posted on the insurance portion of the Law Society's website (www.lawsociety.bc.ca)

WHAT ARE THE BENEFITS OF THE INSURANCE?

Apart from the obvious benefit of having insurance for the advice provided, the normal consequences that flow from the insurer paying a settlement or judgment on your behalf are waived.

- the lawyer's deductible of \$5,000 (first paid claim) or \$10,000 (subsequent paid claims within three years of the report date of the first paid claim) is waived;
- the lawyer's surcharge of \$1,000 per annum for five years (not exceeding the amount paid by insurer), is waived
- the lawyer loses eligibility for the part-time discount (lawyers who work only a certain number of hours per week on average receive a 50% discount in their insurance premium).

In addition, lawyers who buy insurance and are claiming the part-time discount need not include any of the hours spent engaged in sanctioned services in their calculation of hours. Thus your part-time discount is not jeopardized by providing sanctioned services.

WHAT IS THE RESPONSIBILITY OF THE LAWYER?

When providing pro bono legal services, lawyers are expected to meet the same quality and standard of service as would be provided to any client. In that regard, lawyers providing pro bono services are reminded of the following practices. Obviously, some of these apply more to circumstances where you assume conduct of a file or matter than to the provision of advice provided at a clinic.

- ensure that the services provided are within your area of legal competence;
- ensure that you are not acting in a conflict of interest;
- clearly communicate to the client the scope of your retainer, including any limitations;
- establish and maintain a basic system of record keeping that includes, as a minimum, client name and contact information, dated descriptions of the services provided and advice given and, if the retainer requires, copies of relevant documents such as correspondence, pleadings, contracts;
- establish and maintain, as appropriate, a bring-forward system and limitations system, and other such documentation and processes as may be necessary to support a client file;
- maintain the records, including any electronically stored records, in confidence, free from any inadvertent unauthorized disclosure;

- establish and maintain a records retention policy;
- if there is any possibility that you may be properly served with documents on behalf of a pro bono client, ensure that the client and any other relevant persons, such as opposing counsel, are advised if you move location or are for any reason unavailable;
- consider having a written plan in place for dealing with files and clients in the event of your death or incapacity; and
- maintain your membership with the Law Society in good standing.

WHAT IS THE RESPONSIBILITY OF THE APPROVED PROGRAM?

Insurance coverage is not provided for the organization that offers the program, or its officers, directors or employees.

The Law Society does however expect a program to play a role in risk management or risk reduction in relation to possible claims. To be approved for insurance purposes, a program has agreed with the Law Society that it will:

- (a) maintain a policy regarding a client’s financial or other eligibility for pro bono assistance which is consistent with providing services to individuals of limited means, and establish written guidelines to determine an applicant’s eligibility for service based on that policy;
- (b) create and maintain a record of:
 - the lawyer’s name and Law Society member number;
 - the client’s name;
 - the date(s) the services were provided; and
 - a brief description of the services, sufficient to determine if it is, prima facie, a service falling within the list of approved services;
- (c) ensure that lawyers providing pro bono services through the program are provided with a copy of this Information Sheet, and obtain written confirmation from each new volunteer lawyer that the volunteer has read and understood the Information Sheet; and
- (d) refuse to accept as a program volunteer any lawyer who is not, or who ceases to be, a member in good standing of the Law Society.

Pursuant to this agreement the insurance can be cancelled or revoked. The insurance might be revoked if the Lawyers Insurance Fund, (the department of the Law Society that manages lawyers’ insurance), becomes aware that the required records are not being maintained by a program, if the program appears to be providing legal services that are not sanctioned services or if there appears to be an inordinate number of claims against lawyers providing pro bono legal services through a particular program.

Approved services as of July 31, 2004

Pro bono legal services approved for the purposes of the B.C. Lawyers' Compulsory Professional Liability Insurance Policy by the Law Society of British Columbia ("approved services") effective September 1, 2002

If services* are provided in any of the following areas:

1. *Contract (includes consumer law)*
2. *Constitutional Law*
3. *Criminal (includes criminal defence, Young Offenders Act, criminal injury and victim assistance)*
4. *Defamation*
5. *Debts & Collections (includes foreclosures, builders liens)*
6. *Employment Law (includes employment insurance, harassment)*
7. *Family & Child Law (includes divorce, child welfare, adoptions)*
8. *Health, Disability & Social Assistance (includes mental health and adult guardianship, workers compensation, income maintenance)*
9. *Human Rights (includes police complaints, prisoners' rights)*
10. *Immigration*
11. *Taxation & GST*
12. *Insolvency/Bankruptcy*
13. *Insurance*
14. *Housing*
15. *Pension & Benefits (includes CPP/OAP/BC Benefits)*
16. *Torts/Negligence*
17. *Wills & Estates*
18. *Miscellaneous:*
 - a) *Professional Services Complaints*
 - b) *Name Changes*
 - c) *Notarizing or Taking Affidavits***

they are approved services, unless they relate in any fashion to:

1. *Estate (tax) planning or trusts set up for tax purposes****
2. *Environmental Law*
3. *Native land or other Native property claims*
4. *Defence or prosecution of class or representative actions.*

If services are provided in an area of law that is either not listed or is specifically excluded, they are not approved services.

**The services may relate to or consist of substantive or procedural law, summary advice, solicitors' or litigators' work, transactional services or administrative law.*

***Only if the lawyer providing the services is a practising lawyer, as only practising lawyers are entitled to exercise the power of a Notary or take affidavits.*

****Includes services relating to tax driven wealth management plans, but not tax advice incidental to advising on simple wills and estates.*

To: _____ (name of service provider)

I wish to provide pro bono legal services through you. I confirm that:

(a) I am a member of the Law Society of British Columbia in good standing; and

(b) I have read and understood the contents of this Information Sheet, including the attached list of approved services.

signature

Dated: _____

Name: _____

Address: _____

Telephone: _____

Law Society Member #: _____