



# ERRORS & OMISSIONS

A periodic update from the  
Lawyer's Professional Indemnity Company

## MEMORANDUM TO THE PROFESSION

November 1992

### INSURANCE UPDATE - 1993 LEVY

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Chair Insurance Committee

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Director of Insurance

When your Insurance Committee reported to the profession last July at the time of notice of the semi-annual levy, we informed you of the decision not to raise the levy mid year in the hope and expectation that there would be a reduction in the number and value of claims in the next few months.

While there has been a modest improvement in both categories as shown in the following chart, other factors have tended to offset the reduction. In particular, a fall in interest rates, and a hardening of rates for reinsurance have had a negative impact on the E & O Fund.

	January/September		October/December	
	# of Claims	Net Value	# of Claims	Net Value
1991	2,733	\$37,150,206	1,191	\$30,311,668
1992	2,381	\$32,783,266	--	--

Taking these factors into account and projecting 1992 claims to the year end based on historical patterns, we have estimated 1993 claims results for levy setting purposes. The resulting levies for the new year, as recommended by your Insurance Committee and approved by Convocation on November 27, 1992, reflect an approximate \$500 increase for the majority of members. As levies will henceforth be billed on a semi-annual basis, the levies by Rating Category for the first six months of 1993 are as set down in the following table:

1993 Levies First Six Month Period - January/July		
Rating Category By Claims Record (% of total membership in each Rating Category)		6 Month Levy January 1/July 1
1	(95%) No Claims 5 Years (and New Calls)	\$1,500.00
2	(.05%) No Claims 3 Years	\$1,845.00
3	-- Category Eliminated	--
4	(4%) One Claim 3 Years	\$2,367.50
5	(.04%) Two Claims 3 Years	\$3,220.00
6	(.005%) Three Claims 4 Years	\$4,360.00
7	(.005%) Four or More Claims 5 Years	\$6,655.00

#### **Levy Increase Based On Conservative Assumptions**

The increase takes into account a number of factors including, in particular, a recognition of the difficult recessionary times faced by many members. Like last year, this increase is the minimum necessary to maintain the integrity of the Fund and to address the concerns of auditors, actuaries, brokers, underwriters and regulators.

The 1993 levy is arrived at on a very conservative basis and anticipates improvement in claims reported during the next year. For example, the special levy set last year at \$215.00 and for next year at \$250.00 will not, as originally anticipated, restore the approximate \$12,000,000.00 surplus with which we started in 1991. Rather it is budgeted simply to eliminate the current deficit of \$19,000,000.00 over the next four years.

#### **New Billing and Surcharge Features Introduced**

The levy program has three new features being introduced January 1, 1993 which should work to the benefit of the program itself and to most members individually. They are:

1. Levies will now be billed and payable in two instalments, the first for the period January 1 to July 1 and the second for the remaining six months of the year.



with a possible levy adjustment - when full results are available from the preceding year.

This will allow for a better matching of revenue and costs to assist in the prudent management of the Fund.

2. To assist in budgeting, members may now pay their levy quarterly. However, rules regarding suspension for non-payment of the levy remain unchanged.
3. Levy surcharges will now be imposed only after an actual claim payment has been made and/or a claim file is closed "unfavourably" (liability assessed). Until now, such surcharges were imposed when a claim was originally reported and subsequently rebated if the file was closed in the member's favour.

### Who is at Risk?

The single most asked question at this time of year by members is "Why me? I haven't had a claim against me in more than five years."

This is true for the vast majority of the profession. Fully 80% of lawyers in the program have had no claim against them in the last five years, with a further 15% having reported claims which were eventually closed in their favour (no liability).

Notwithstanding that a number of members feel that they are at little or no risk given the area of law within which they practice, and should therefore enjoy a lower levy, the statistics shown above lend a strong argument to the maintenance of a single flat levy.

For this reason, your Committee has proposed the continuation of the current levy criteria but is committed to a thorough review of the subject in the new year.

We are aware of the concerns of criminal lawyers, those practising refugee and immigration law, as well as those working part time for special consideration. During the next few months the profession will be surveyed to determine the potential impact of a change from our current program. There is great concern that a shift in burden by rate change could threaten the viability of an inclusive, mandatory program and change significantly the nature of practice for those in smaller, more general practices at a time of their greatest need. Any change in structure must be soundly based on reliable data. You will be kept advised of any proposals made in this connection.

### Claims Areas

While real estate still is the largest single area of claims, other practice areas are not without exposure, such as:

- (a) Family Law - where there are errors in tax advice and related real estate transactions;
- (b) General Practice - where investment and/or tax advice, particularly to more than one client, exposes the lawyer to a number of conflicts;
- (c) Counsel work - where claims arise from failing to properly advise and failing to carry out instructions.

### Loss Prevention Initiatives

The E & O staff, together with professional consultants and the Law Society's Practice Standards and Education Departments, have designed and are now preparing material for a series of loss prevention seminars designed to reach all members commencing in the spring of 1993. It is hoped that this initiative will heighten awareness to loss prevention among all members and improve practice for those with claims. There will be very strong inducement for the latter group to participate.

As members may be aware, a sub-committee of Professional Conduct is responding to suggestions that the conflict rule prevent a lawyer acting on "both sides" of a number of transactions. As this is an area that affects loss prevention, the views of members would be appreciated.

We are aware that the foregoing message is a troubling one for many members at a difficult time. However, the steps being taken are necessary for the maintenance of a financially responsible insurance program providing protection to all members and to the public. If you have questions, arising out of this memorandum or related in any way to the program in general, we will do our best to respond to your queries.

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