

## Key Points Regarding the 2018/2019 Levy:

- Increased claims result in increased levies, while reduced claims result in reduced levies.
- Negligence claims were down this past year, but misappropriation claims were up.
- A one-time payment from the Canada Revenue Agency (CRA), expected to be received due to ALIA's successful resolution of CRA's challenge to ALIA's GST status, will be applied to the program's surplus. This receivable enabled ALIA/ALIEX to reduce this year's levy.
- The Law Society of Alberta (the Law Society), ALIA/ALIEX and each insured lawyer have a role in reducing future levies.
- ALIA/ALIEX and the Law Society continue to work on loss prevention and awareness.
- Insured lawyers can reduce claims by implementing proactive loss management strategies to reduce claims which will result in reduced levies.
- Although ALIA/ALIEX was able to reduce the levy this year, insured lawyers must remain vigilant in attempting to avoid negligence claims.

## The Levy-Setting Process

The ALIEX Advisory Board (the Board) establishes the annual levy after consideration of certain information including claims history, trends, costs of reinsurance, investment income and actuarial projections. The Board also considers the recommendations of ALIEX's Executive Committee, professional advisors and ALIA's management.

In this process, the Board first determines the "theoretical levy", essentially the cost of insuring the risk and operating the insurance program. This is the amount that would have to be paid by each insured lawyer in the absence of any adjustments. Those potential adjustments are changes to the theoretical levy that the Board deems appropriate for reasons including building or reducing the program's surplus. The insurance program is required to maintain a surplus to pay unexpected claims in any given year, but the Board has some discretion in the use of this surplus.

If the Board determines that some of the program's surplus can be used to lower the amount payable by each insured lawyer, it determines that amount and applies it to reduce the theoretical levy. However, if the surplus is lower than it should be, the Board increases the theoretical levy and uses the difference to boost the surplus. The result is the actual levy that is required to be paid by each insured lawyer in exchange for the insurance coverage provided by the program.

## Calculation of the 2018/2019 Levy

ALIEX has set the 2018/2019 at \$4,441.50 (GST inclusive). This is a reduction of \$336 from the 2017/2018 levy.

The levy is determined by our actuary's annual calculation of each insured lawyer's share of the costs of operating the program (including defense costs and payment of claims). This reduction is partly due to the work of Alberta's insured lawyers being more vigilant in preventing negligence claims. Other significant contributing factors included the work of ALIA's management and the Board in:

- adopting a risk philosophy in keeping with a non-profit mandatory insurance program and developing a surplus target for the insurance program; and
- successfully resolving a dispute with the CRA respecting ALIA's GST status, resulting in an expected return of approximately \$4.3 million to the insurance program; this receivable enabled a reduction in this year's levy and will also offset the cost of the levy in future years.

There was a modest reduction in both the frequency and severity of negligence claims in 2017 (the primary basis for calculating the 2018/2019 levy). Specifically, the number of new negligence claims in 2017 was 719, down from 749 in 2016. This represented a reduction in incurred losses in professional liability (negligence) insurance claims from \$13,613,365 in 2016 to \$9,994,935 in 2017.

Unfortunately, the incurred losses on misappropriation insurance claims increased by 328 per cent, from \$35,500 in 2016 to \$152,061 in 2017.

## Levy FAQs

### What is the impact of claims on the levy?

The insurance program is run on a non-profit basis. There is a direct link between the amount the program pays out to defend insured lawyers and satisfy claims against them, and the total amount of the levy assessed on insured lawyers. This means that future levies can be reduced by lowering the frequency and severity of claims made against the insurance program.

### What is ALIA doing to avoid or reduce claims?

ALIA and the Law Society are working to avoid or reduce claims in various ways, including the following:

- Providing ALIAAlerts to warn members about current fraud schemes that are targeting lawyers.
- Auditing new law firms to ensure responsible practices are put in place.
- Enhancing our electronic trust transaction review capabilities and ongoing risk assessments to identify and address unacceptable practices.

- Providing information and resources, such as ALIAdvisory educational articles.
- Supporting the Legal Education Society of Alberta and ASSIST to help Alberta lawyers through educational and supportive resources.

Looking forward, ALIA will be investigating opportunities to reduce the levy by enhancing loss prevention activities and reviewing options for future program funding.

### **What can lawyers do now to reduce the levy?**

Some types of negligence are avoidable, such as some limitation and deadline claims. There is an opportunity for insured lawyers to lower the levy by lowering claim costs over the coming years. As the frequency and severity of claims directly affect the annual levy assessment, we continue to stress the importance of loss prevention and ask lawyers to avoid or minimize claims. Our claims funding model ensures that money saved on claims will result in lower levies in future years.

### **Is anyone exempt from paying the levy?**

Yes, some lawyers are exempt from the levy assessment. Alberta lawyers who are employed by (or who contract with) a government, university, person or enterprise other than a law firm, and who practice solely within the scope of that employment or contract, are not assessed the levy. These lawyers are not covered by the insurance program.

Also, some active lawyers are insured at no charge for *pro bono* services through approved organizations as set out in Rule 148 of the [Rules of the Law Society of Alberta](#).

### **Do all non-exempt lawyers in Alberta pay the same levy?**

All non-exempt lawyers in Alberta have historically shared the burden of incurred losses equally by paying the same levy. However, some lawyers may be subject to special assessments (surcharges) in addition to the base levy due to their claims history. Surcharges are made pursuant to the [Rules of the Law Society of Alberta](#).

### **Is there a deductible?**

Yes, there is a \$5,000 individual deductible for Professional Liability claims.

### **What is covered by ALIA's insurance program?**

The coverage under Alberta's mandatory insurance program is set out in the Alberta Lawyers' Professional Liability and Trust Safety Insurance Group Policy (the "Group Policy"). It includes both errors and omissions coverage (called Professional Liability Insurance) and misappropriation coverage (called Trust Safety Insurance, although it also benefits lawyers who do not operate trust accounts) for insured lawyers providing certain professional services. The details of the coverage, including important terms and applicable exclusions, are set out in the Group Policy, a copy of which is available from [ALIA](#). The summary below is provided for informational purposes and does not override or otherwise affect the interpretation of the Group Policy:

#### Professional Liability Insurance

Coverage of \$1 million per occurrence with the \$2 million aggregate limit per year, subject to an individual deductible of \$5,000 per occurrence. Coverage includes damages that the insured becomes legally obligated to pay (including repair costs) and defence costs.

#### Trust Safety Insurance

Misappropriation limit of \$5 million, with a profession-wide Annual Aggregate Limit of \$25 million.

### **Is it possible to purchase excess coverage?**

Yes. ALIA recommends that all lawyers in private practice consider purchasing optional excess coverage for additional protection and periodically review their excess coverage to ensure it is proportionate with the risk and value of transactions undertaken by the lawyer.

Although excess coverage may be purchased through various brokers, ALIA works with the Canadian Lawyers Insurance Association (CLIA) to assist Alberta lawyers in the purchase of excess coverage. ALIA administers CLIA's Voluntary Excess Program for Alberta lawyers and firms. Applications are available on [CLIA's website](#), or by contacting [ALIA](#).

### **When must claims be reported?**

It is a requirement of the Group Policy that all claims or potential claims must be reported to ALIA during the policy period. This means that for this policy period, all claims or potential claims must be reported to ALIA on or before June 30, 2018. ***Failure to report a claim prior to the June 30 deadline will result in denied coverage.***

### **When is payment due?**

Payment of the levy is due July 3, 2018. Payments can be made in a single payment or by two instalments. Invoices will be made available online through our Lawyer Portal in mid-May 2018. Click here to learn about [2018/2019 Annual Insurance Levy Payment Information](#).

### **What do I do if I have other questions or comments?**

If you have questions or comments regarding the levy, please contact [ALIA](#).

*The Alberta Lawyers Insurance Association ("ALIA") is the member-funded, non-profit corporation that manages the professional liability insurance program for non-exempt Alberta lawyers, providing economic protection to them and compensation to members of the public who have suffered insured losses due to certain covered actions of insured lawyers, including professional errors and misappropriation by lawyers.*