

2019/2020 Levy Information

The levy is going down again this year, despite a jump in the number of negligence claims against Alberta lawyers.

- The Alberta Lawyers Insurance Association (“ALIA”) and the Alberta Lawyers Insurance Exchange (“ALIEX”) have again reduced the base levy payable by lawyers participating in Alberta’s mandatory indemnity program (the “Program”).
- The professional liability/negligence (Part A) levy was reduced from \$3,772 last year to \$3,344, and the trust safety/misappropriation (Part B) levy was reduced from \$458 last year to \$448. This represents a reduction of approximately 10 per cent or \$438.
- The reduction in total base levy was supported by the application of the Program’s surplus funds in the amount of \$4,233,915.
- A further reduction in the professional liability/negligence levy would likely have been possible but for the Alberta Court of Appeal’s 2017 decision in *Humphreys v. Trebilcock* that significantly increased the number of civil actions struck and, accordingly, the costs to the Program.
- The number of negligence claims increased this past year, from 733 to 793, a jump of more than eight per cent. The number of new misappropriation claims fell from 35 to 23.
- The Law Society of Alberta (the “LSA”), ALIA/ALIEX, and each indemnified lawyer have a role in continuing to reduce future levies.
- Although ALIA/ALIEX was able to reduce the levy this year, indemnified lawyers must remain vigilant in attempting to avoid negligence claims by implementing proactive loss management strategies to reduce claims.
- Payment of the levy is due **June 30, 2019**. For more payment information, visit the Lawyer Portal or [click here](#).

The Levy-Setting Process

The Advisory Board (the “Board”) for the Program establishes the annual levy after considering certain information, including claims history, trends, costs of reinsurance, investment income and actuarial projections. The Board also considers the recommendations of the Board’s Executive Committee, professional advisors and ALIA’s management. The actuary’s recommendation is largely based on their annual calculation of each indemnified lawyer’s share of the costs of operating the Program – including defense costs and payment of claims – which is why increased claims costs usually necessitate a higher levy.

In this process, the Board first determines the “theoretical levy”, essentially the cost of covering the risk and operating the Program. This is the amount that would have to be paid by each indemnified lawyer in the absence of any upward or downward 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, a capital pool that is adequate to ensure the financial health of the Program, maintain stability of the levy over time, and reduce the long-term cost of the Program.

In deciding each year whether the Program's surplus is at the right level, the Board receives the recommendation of management and the Program's appointed actuary and uses a surplus target tool specifically developed for the Program by its actuary, Willis Towers Watson. If the Board determines that the surplus is higher than is required, it applies the excess amount to reduce the theoretical levy. However, if the surplus is lower than it should be, the Board increases the theoretical levy to increase the surplus. The result is the actual levy that is required to be paid by each indemnified lawyer in exchange for the coverage provided by the Program.

Calculation of the 2019/2020 Base Levy

For the 2019/2020 policy year (July 1, 2019 to July 1, 2020), the Board accepted the recommendation of management and the Program's appointed actuary and set the theoretical levy for Part A (professional liability negligence) at \$3,962. In accordance with the recommendation of management and the actuary, the Board then used some of the Program's surplus to reduce that amount, resulting in a Part A base levy assessment of \$3,344. This is a reduction of \$428 from the 2018/2019 Part A base levy.

This reduction was possible despite an increase in the number of negligence claims this past year. It is partly due to ALIA resolving some historic claims for less than the reserved amount of those claims, as well as the work of ALIA/ALIEX in actively finding ways to increase the efficiency of the Program including working with the Program's actuary to adopt a risk philosophy in keeping with a non-profit mandatory program and developing an optimal surplus target for the Program.

The number of new negligence claims in 2018 was 793, up significantly from the 733 in 2017. Fortunately, the number of new misappropriation claims fell from 35 to 23.

Levy FAQs

What is the impact of claims on the base levy?

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

What is ALIA doing to avoid or reduce claims?

ALIA and LSA 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 and their firms.
- Auditing new law firms to ensure responsible practices are put in place.
- Enhancing the electronic trust transaction review capabilities and ongoing risk assessments to identify and address unacceptable practices.
- Providing information and resources, such as ALIAdvisory education articles.
- Supporting the Legal Education Society of Alberta and ASSIST to help Alberta lawyers through educational and supportive resources.

Looking forward, ALIA continues to investigate opportunities to reduce the levy by enhancing efficiencies and loss prevention activities and assessing 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. Surprisingly, this is the largest area of losses for the Program and, accordingly, the largest contributing factor to the base levy.

There is an opportunity for indemnified lawyers to lower the levy by lowering costs for all types of claims over the coming years. As the frequency and severity of claims directly affect the annual levy assessment, ALIA continues to stress the importance of loss prevention and asks lawyers to avoid or minimize claims. ALIA's 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 Program and accordingly either they, their employers, or private insurers (if they purchased insurance) would be responsible for any losses.

Additionally, 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. Finally, for a time, lawyers who had practice for over 50 years were exempted from paying the levy as long as they remained claims-free. Although this exemption has been removed, those lawyers who received it at the time have been grandfathered.

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

All non-exempt lawyers in Alberta historically shared the burden of incurred losses equally by paying the same levy. However, some lawyers may be subject to special assessments (called 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 and are set by the Board.

Is there a deductible?

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

What is covered by the Program?

The coverage under Alberta's mandatory 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, and their clients) for indemnified lawyers providing certain professional services.

Misappropriation coverage does cover all private practice lawyers, not just lawyers who have trust accounts. Misappropriation is not restricted to money in a trust account, so coverage is not restricted to members who operate a trust account.

Protection of the public against dishonest lawyers helps protect the reputation and integrity of the profession. When a member of the public suffers a loss as a result of misappropriation by their lawyer and misappropriation coverage remediates that loss, it demonstrates to the public that Alberta's legal profession is responsive and protective of consumers of legal services. This helps to build and maintain trust in the profession.

The details of the coverage, including important terms and applicable exclusions, are set out in the Group Policy, a copy of which is available on the [Law Society/ALIA website](#). The summary below is provided for informational purposes and does not override or otherwise affect the interpretation of the Group Policy:

Professional Liability / Negligence Insurance (Part A)

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

Misappropriation / Trust Safety Insurance (Part B)

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. 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, the year covered by each successive policy. This means that for this current policy period, all claims or potential claims must be reported to ALIA on or before June 30, 2019. For the new policy period, which will be covered by the 2019/2020 levy, all claims or potential claims must be reported to ALIA on or before June 30, 2020.

Failure to report a claim prior to the June 30 deadline in each policy period will result in denied coverage.



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When is payment due?

Payment of the levy is due **June 30, 2019**. 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 2019. Payment information can be [found here](#).

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

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