



ALBERTA LAWYERS
INDEMNITY ASSOCIATION

A Look Back on Over 30 Years of ALIA's History

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Author Note

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History of ALIA

In the late 1960s, Alberta was the first jurisdiction in Canada to implement mandatory professional liability coverage for lawyers. Mandatory coverage was – and is – seen as a way to both protect lawyers from personal financial exposure in the event of an error and to compensate members of the public who have suffered certain financial losses due to the negligence of a lawyer in private practice.

The history that has led the professional indemnity program to where it is today has benefited from the hard work and foresight of many people, with periodic reviews and recalibrations to ensure that it continued – and continues – to meet the needs of its stakeholders. The summary set out below is based on my understanding of historical events as supported by available documentation and commentary by persons involved from time to time¹.

In 1966, the Law Society of Alberta's Benchers (the "**Benchers**") established a special committee chaired by the late Mr. Justice Moir to study the issue of group insurance. His report was presented to the Benchers in January 1968 with the recommendation that the Law Society of Alberta ("**LSA**") provide mandatory group liability coverage. With positive feedback from the Alberta bar, the Benchers adopted the recommendation in 1969.

Initially, LSA purchased coverage from a commercial insurer that issued a master policy to LSA for the benefit of its members (i.e., all participating lawyers); in turn, LSA delivered certificates of insurance to each member. LSA recovered the cost of the coverage through a premium levied on each member (the "**Levy**").

To monitor insurance concerns and address coverage issues, the Benchers established a standing committee (unsurprisingly, called the Insurance Committee). The financial committees of the LSA (the Audit and Finance Committees) established the budgets and financial statements for the insurance program and submitted them to the Benchers for approval. In taking these steps, Alberta became the first jurisdiction in Canada to provide its members with a mandatory group professional indemnity program.

Other Canadian law societies gradually created self-indemnity programs, retaining risk through a deductible on each claim.

Between 1972 and 1983, the professional liability indemnity program was insured through Citadel Assurance Company. The rising cost of claims in Alberta necessitated higher Levies and deductibles. In 1982, the individual deductible was increased from \$2,000 to \$5,000 and the Levy was increased by over 40% from the previous year. Further Levy increases would follow.

¹ I acknowledge, with appreciation, the speaking notes, memoranda, and messages prepared by Lisa Sabo, ALIA's former Director of Insurance, and Don Thompson QC, former Executive Director of the Law Society of Alberta, as well as the minutes of various Law Society of Alberta Benchers committees. I am also grateful for the feedback from ALIA's Board Chair, Steve Raby QC, and its Corporate Secretary, Dale Spackman QC, who provided feedback on a draft of this document. Dale was also instrumental in establishing the investment policy and financial controls for the indemnity program and continues to be instrumental in ensuring its regulatory compliance.



With a threatened Levy increase of 60% in 1985, which would have seen the 1984 Levy of \$1,200 increase to over \$2,000 for the first time, it became apparent that the operation of the indemnity program might not be a sustainable solution.

Law societies, as insurance consumers, only had access to commercial insurance markets and, accordingly, were highly vulnerable to fluctuations in the insurance market. Further, the number of insurers offering coverage was minimal. The fact that law societies – and their members – were at the mercy of the market caused considerable discomfort among the law societies and their members. During the liability insurance market crisis of the mid-1980s, price and availability for this coverage grew increasingly volatile.

In 1985, LSA used its accumulated surplus in its Insurance Fund to offset further potential increases and kept the actual increase to the individual members to 20%. This action set a precedent for using the accumulated surplus to offset the actual cost of the insurance charged to the members. That practice continues to this day.

The LSA looked for other solutions. The first step was to shift some of the costs of the indemnity program to those members who create a disproportionate financial burden to it. In July 1985, the Benchers approved assessing a surcharge to the Levy of members with a paid claims history; an additional levy was to be paid by those members for whom the indemnity program had made indemnity payments to clients or other members of the public.

While these steps were helpful, they were still not a complete solution. In particular, it was clear that using the accumulated surplus to keep the Levy artificially low could only last as long as that fund; when the fund was ultimately depleted, a massive jump in the Levy would be required.

Vulnerable to the changing market, Canadian law societies were unable to modify the programs to keep pace with the increasing need for higher coverage limits, and both the members and the public were increasingly less protected.

Although the claims history in Alberta was worse than most other Canadian jurisdictions, the issue was national: Canadian law societies were facing steep premium hikes for their members. For a few years, the Federation of Law Societies of Canada² (the “**Federation**”) discussed the idea of a national professional liability program.

In late 1985, the Federation requested a feasibility study be done nationally for both the mandatory level and voluntary excess level of professional liability insurance. A preliminary report was prepared by the Wyatt company (then the LSA’s actuary).

Despite the need for a national professional liability program, the report recognized that there could not be a system that would be all things to all people or satisfy all stakeholders. For example, a balance between the defence of lawyers and the payment of claims would have to exist. Further, although the public interest would be generally protected, some types of losses

² The national coordinating body of Canada’s provincial and territorial law societies (currently led by ALIA’s Chair, Steve Raby QC).



would not be covered, and limits on the total amount of payments would be required for the program to be sustainable.

In 1987, a group of Alberta practitioners, led by Donald Bishop QC (former president of LSA), the late Bernard Kelly QC, the Honourable Neil Whitman, Associate Chief Justice for the Alberta Court of Queen's Bench (as he then was), the Honourable Alec Murray, and Sarah Burkett began advocating for a national insurance program for lawyers. The purpose of the program was to make the profession indirectly self-insured or, at the least, provide a competitive purchasing alternative.

At the 1986 midwinter meeting of the Federation, it resolved to gather facts from the law societies through a questionnaire and have an expert proceed with the study and bring forward recommendations. One option was to establish a reciprocal insurance exchange, an unincorporated insurance company in which subscribers exchange policies. By banding together to form such an insurance company, the law societies would have access to direct insurance markets that would recognize the years of Canadian-specific claims history that the law societies had built. Other options considered and rejected included a domestic captive and an offshore captive.

Based on those recommendations, brought back to the Federation in July 1986, the Federation formed an implementation committee in August 1987 to create a national professional liability program.

At a historic meeting in Montréal, the Canadian Lawyers Insurance Association ("**CLIA**") was formed, involving seven provinces, including Alberta. CLIA adopted an implementation date of July 1, 1988. Forged in an insurance crisis over 30 years ago, CLIA provided reliable, stable premiums on a not-for-profit basis. Excess insurance was also marketed, and, in November 1988, Alberta lawyers obtained mandatory insurance liability coverage through CLIA for the first time.

In 1988, when the eyes of the world were on Calgary as host of the Olympic Winter Games, lawyers on behalf of LSA were researching opinions on what form Alberta's indemnity company should take. The decision was made to create the Alberta Lawyers Public Protection Association ("**ALPPA**") as a corporation formed under the not-for-profit provision of the *Companies Act* (Alberta) as a company limited by guarantee.

For the first time, stable and fair rates and a permanent source of coverage were now within reach.

Based on advice from LSA's counsel and Price Waterhouse, in August 1988, it was determined that there should be a separation of financial reporting and internal controls between LSA and ALPPA, with the latter hiring its own employees and operating as a separate entity, effective August 1988.

At their February 1989 Convocation, the Benchers resolved, again based on legal advice, that the indemnity corporation should have its own board of directors and executive. Accordingly, it was resolved that all members of the Benchers' Insurance Committee become members of



ALPPA's Board of Directors. Leading the new entity was its President (Mr. W. S. Sowa), supported by its Insurance Administrator (Ms. Sarah Brickett), and Treasurer (Mr. M. L. Scott).

In July 1999, ALPPA changed its name to become the Alberta Lawyers Insurance Association ("**ALIA**") to remove the incorrect implication that its primary objective was "public protection" and to clarify that its primary objective was to insure lawyers.

In January 2006, ALIA's corporate form was changed by an Order granted by the then Associate Chief Justice of Alberta, Neil Wittmann QC, converting ALIA from a company limited by guarantee to a company limited by shares, with LSA as the sole beneficial shareholder, as contemplated by subsection 99(2)(b) of the Legal Profession Act (Alberta), which section did not exist when ALPPA was formed.

From 1988 through to 2014, CLIA wrote the group policy for Alberta lawyers, with all claims management being handled by ALIA.

Although the CLIA solution was a good one, over time it became less desirable. By the time ALIA left CLIA at the end of June 2014, ALIA was by far the largest participant in that national program. As the largest participant, ALIA had the greatest risk in the program and the highest premiums but did not have proportional control over CLIA.

The decision was made by LSA and ALIA³ to implement a "made in Alberta" solution by creating a reciprocal insurance exchange for the sole benefit of Alberta lawyers. Accordingly, in 2014 the Alberta Lawyers Insurance Exchange ("**ALIEX**") was created to replace Alberta's participation in CLIA.

As a reciprocal insurance exchange, ALIEX was regulated by Alberta's Superintendent of Insurance ("**SOI**"), pursuant to the *Insurance Act* (Alberta). In accordance with the requirements of the *Insurance Act*, the Benchers appointed an Advisory Board for ALIEX, comprised of Steve Raby (Chair), Larry Ohlhauser (Vice-Chair), Carsten Jensen, Anne Kirker, Doug McKenzie, Dale Spackman (Corporate Secretary), Kathleen Waters and Don Thompson, three of whom⁴ continue to serve as directors of the indemnity program.

The ALIEX board was also given responsibility for the operation and administration of the indemnity program including the duty to establish, review and approve the program's budgets and financial statements, manage its investments and develop policies for the governance and oversight of the program.

At the time of the creation of ALIEX, the regulation of reciprocal insurance companies in Alberta was relatively lax. Due to the failure of Alberta reciprocal and other regulatory changes, Alberta became arguably the most heavily regulated jurisdiction for reciprocal insurance companies. The cost of compliance with the directives of the SOI combined with required payments of premium tax and restrictions on ALIEX's investments, contributed to the cost of the Levy paid by Alberta lawyers. ALIEX, ALIA, and LSA determined that the program could operate more

³ Although ALIA's sole shareholder is LSA, ALIA remains a separate corporate entity from LSA.

⁴ Steve Raby QC (Chair), Larry Ohlhauser MD (Vice-Chair) and Dale Spackman QC (Corporate Secretary).



efficiently and effectively outside of the regime created by the SOI and the *Insurance Act* and the plan was put in place to enhance the effectiveness and efficiency of the indemnity program by reorganizing it outside of the auspices of the SOI and the *Insurance Act*.

The plan was successfully implemented and, effective July 1, 2019, ALIEX was wound up into ALIA and renamed “Alberta Lawyers Indemnity Association” to recognize that it was no longer an insurance company. All salient aspects of ALIEX’s operation and the coverage provided to its participating lawyers (and accordingly the benefits to the public) remained the same, before and after the change. Further, all members of ALIEX’s Advisory Board became members of ALIA’s governance board. Even at this early stage, ALIA is already seeing financial benefits from this restructuring, the benefits of which are passed on to all participating lawyers.

Today, ALIA manages Alberta’s mandatory indemnity program for the approximately 7,000 participating Alberta lawyers⁵.

Although ALIA has overcome various challenges over the past 30 years, the obstacles facing ALIA are by no means behind it. For example, we are again seeing a hardening market in lawyers’ professional insurance around the world. This impacts ALIA, as ALIA purchases insurance to limit its losses and to avoid the likelihood of a special assessment on its participating lawyers. Further, with rapid changes to how lawyers will practice in the future, ALIA must be agile in addressing those changes, while ensuring that the program is sustainable.

ALIA has supported and defended the finances and reputation of Alberta lawyers for over 30 years and, over this period, has compensated members of the public who have suffered certain financial losses due to the negligence of an indemnified Alberta lawyer. Further, ALIA has helped the profession weather the global economic crisis, Alberta’s economic downturn, Alberta’s own mortgage fraud crisis from 2008 to 2011, and the vicissitudes of oil and gas prices.

Recently, ALIA has again adapted during COVID-19 – including an expected cashflow shortage by its Subscribers – by temporarily restructuring the Levy payments, giving a one-time additional Levy reduction, and freezing all employee and Board compensation.

ALIA will continue to be there for its stakeholders in the future.

David Weyant QC
President and CEO
Alberta Lawyers Indemnity Association

⁵ Approximately 3500 Alberta lawyers, generally comprised of in-house counsel and government lawyers, are exempt from participating in the mandatory indemnity program. Further, Alberta lawyers who provide pro bono services through specific recognized organizations are indemnified through the indemnity program but do not pay the Levy.