



Assurance
responsabilité
professionnelle

Barreau



PRÆVENTIO

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2017 MANAGEMENT REPORT

The Professional Liability Insurance Fund of the Barreau du Québec ended its twenty-ninth fiscal year as at December 31, 2017 with an annual surplus of \$1.9 million (\$6.5 million in 2016).

These results stem directly from the strategies implemented by the Fund in 2017, particularly as regards the determination of the insurance premium applicable to all its insureds. The Fund aims to set a reasonable premium that remains stable over the years, notwithstanding the volatility of claims.

On April 1, 2017, the insurance premium was reduced to \$970 per insured (\$1,048 in 2016). A premium shortfall of \$208,000 was recorded as a liability.

Notwithstanding the reduced premium, we continued to solidify the Fund's solvency, thereby increasing the flexibility required to properly satisfy the coverage needs of our profession's members. The \$27.5 million deficits suffered during the 2011 and 2012 fiscal years remind us that the Fund's performance essentially depends on the claims faced by our insureds.

In the interests of our members and the public, better control of the risks associated with the practice of law continues to be crucial. In 2017, the Fund once again presented a number of prevention activities aimed at reducing these risks.

Some Figures

Equity increased slightly to \$81.6 million, compared with \$77.9 million in 2016.

The Fund's actuary evaluated the claims liabilities at \$61.4 million on a gross basis, up from \$54.3 million in 2016 and \$52.9 million in 2015.

The reinsurers' share of these provisions increased from \$2.1 million in 2016 to \$4.3 million in 2017.

During the same period, investment income was \$3.9 million (\$4.1 million in 2016). The Fund managed to maintain a favourable rate of return not-

withstanding the drop in bond rates over the past few years, in particular, by adding exchange-traded equity index funds and preferred shares to its portfolio.

Operating risks, including continuity of business, fraud and reputation, continue to be managed in accordance with strict internal control policies that comply with the requirements of the Autorité des marchés financiers.

Given the general coverage of \$10 million per occurrence available to insureds, the Fund continues to cushion its financial risk through reinsurance coverage of \$8 million for claims exceeding \$2 million.

Claims and settlement expenses (provisions and payments) amounted to \$13.7 million (\$11 million in 2016), after deducting the portion assumed by the reinsurers. The increase is due to unfavourable developments related to claims presented prior to 2017.

During the fiscal year, the Fund paid out \$4 million in defence costs and \$2.9 million

as indemnities for the files of all years combined, for a total of \$6.9 million, excluding internal costs (\$8.1 million in 2016).

The number of claim notices (including preventive notices) increased by 2%, rising from 641 in 2016 to 656 in 2017. At the end of the year, there were still 683 active cases (724 in 2016), representing a total of 19,674 notices since the Fund began its operations.

Third parties who had well-founded claims against our insureds were indemnified at the fair value of their claims by way of out of court settlements. From among the cases closed in 2017, the Fund entered into 77 transactions (98 in 2016), of which 61 involved a payment by the Fund (84 in 2016).

Moreover, the Fund fully satisfied its obligation to defend unfounded claims. It entered into 16 out-of-court settlements that did not involve a payment (14 in 2016) and obtained 27 discontinuances (30 in 2016).

The lawyers retained by the Fund were successful in having 29 cases dismissed (26 in 2016), with only one judgment for a modest amount having been rendered against one of our insureds (4 in 2016). We continue our efforts to ensure the Fund implements the best strategies and makes the best decisions regarding whether or not to proceed to trial.

General overhead expenses amounted to \$1.9 million, a decrease compared with \$2.3 million in 2016.

Defence costs increased slightly from \$3.9 million in 2016 to \$4 million in 2017. We continue to hope that the Fund's strategies and the new philosophy behind the *Code of Civil Procedure* will allow us to reduce these costs.

Our insureds once again expressed their satisfaction with the Fund. Our surveys of members after the processing of claims covered by the insurance policy revealed that all our insureds expressed full satisfaction with the services rendered by the Fund.

As at December 31, 2017, the Barreau insured the professional liability of 15,580 members through the Fund (15,316 in 2016). Another 11,214 members (11,071 in 2016) had sought and obtained an exemption from the insurance requirement

on the ground that they worked exclusively for the public service or did not perform any of the acts reserved exclusively for lawyers in Québec.

On the prevention front, the Fund presented 32 free training workshops throughout Québec and online through Webpro, drawing the participation of 1,999 members (1,500 in 2016). These training activities included a new activity dealing with prescription and extinctive time limits, in an effort to reduce a major source of claims.

The *Praeventio* bulletin, always highly valued by our insureds, was published 5 times in 2017. The bulletin included articles discussing the new *Code of Civil Procedure* and the subject of prescription.

The Board of Directors

During the 2017 fiscal year, there were 5 statutory meetings of the Board of Directors and 15 committee meetings.

In addition to its regular activities, this year the Board discussed its governance framework, the Fund's integrated risk management policy, management of the Fund's capital, maintaining the insurance coverage provided to the Fund's insureds and setting the premium for the insurance period beginning April 1, 2018.

Furthermore, the Board of Directors considered the impact of Bill 141, which deals with the regulation of the financial sector, and, more specifically, the impact of its provisions dealing with the governance and functioning of insurance funds. Based on the current text of Bill 141, these provisions provide for the following:

- the elimination of a fund's board of directors that is independent from the order's board of directors;

ANNUAL REPORT 2017

The full text of the *Annual Report 2017* is available at the following link:
<http://www.assurance-barreau.com/en/rapport.html>



■ the creation of a committee of the order referred to as the “professional liability insurance decision-making committee” which is in charge of processing notices of loss;

■ the sharing of certain information between the decision-making committee and the order’s other units, for the purpose of ensuring the protection of the public.

In closing, we thank our directors, each of whom participates wholeheartedly in the guidance and sound governance of the Insurance Fund.

Lastly, we would also like to thank all of the Fund’s staff members for their professionalism and dedication, which are the foundation for our insureds’ trust in the Fund.

We intend to maintain regular and harmonious communications with the Barreau du Québec and hope to be a continued source of pride for the Barreau and its members.

Montreal, February 20, 2018 ☂

Chair of the Board,

Madeleine Lemieux, Ad. E., ASC

Executive Director,

Maria De Michele, Lawyer, ASC

THE YEAR 2018

30 Years of service

By *M^e Maria De Michele*,
Executive Director

The Insurance Fund was created on April 12, 1988 and began its operations on May 1, 1988.

Thirty years later, we can proudly say that the Insurance Fund’s entire team has succeeded in carrying out the Fund’s mission.

Indeed, the Insurance Fund has had the continued support and trust of its insureds, of the Barreau’s various governing bodies and of governmental authorities.

We invite you to participate in the Fund’s activities, including its prevention activities, throughout this 30th anniversary year.

Reduced insurance premium

We are pleased to announce a new reduction in the insurance premium as of April 1, 2018.

The Board of Directors of the Bar has accepted the recommendations of the Insurance Fund and the Sections Coun-

cil to reduce the premium to **\$950** per insured for the period from April 1, 2018 to April 1, 2019. This represents a \$20 reduction over last year’s premium.

We note, once again, that the insurance premium for lawyers practising in Québec is lower than the premium paid by all of our colleagues in the other provinces and territories of Canada. Moreover, the \$10 million coverage without a deductible is the broadest protection in Canada.

Indeed, elsewhere in Canada, base premiums range from \$1,280 to \$4,550 for coverage of \$1 million and, with the exception of two other provinces, insureds must assume a \$5,000 deductible.

Amendment of article 3.11 Of the insurance policy

Article 3.11 of the insurance policy and, more specifically, the short-term cancellation table is amended as of April 1, 2018. The portion of the premium to be retained by the Insurance Fund upon an insured’s cancellation of the policy during the term of the policy will henceforth be established as follows:

Month of cancellation	Portion of the cost of participation to be retained by the Insurance Fund based on the annual cost of participation	Compared to last year’s policy
April	1/12	25%
May	2/12	25%
June	3/12	25%
July	4/12	50%
August	5/12	50%
September	6/12 (50%)	50%
October	7/12	75%
November	8/12	75%

Month of cancellation	Portion of the cost of participation to be retained by the Insurance Fund based on the annual cost of participation	Compared to last year's policy
December	9/12	75%
January	10/12	100%
February	11/12	100%
March	12/12 (100%)	100%

As an example, let us take a lawyer in private practice. On April 1, 2018, he subscribes to the Insurance Fund and pays the \$950 premium. On June 3, 2018, he leaves his job and joins the Federal civil service. On that date, he requests and obtains an exemption from his obligation to subscribe to the Insurance Fund. The insurance policy will therefore be cancelled as of the lawyer's application for an exemption and he will be entitled to a premium refund of \$712.50 (i.e., 9/12 of \$950).

External directors' and officers' liability policy

For the period from April 1, 2017 to April 1, 2018, the Insurance Fund entered into an agreement with a private insurer in order to offer its insureds last resort insurance for the liability of insured lawyers acting as directors and officers of entities other than their firm or employer.

For the period beginning on April 1, 2018, this policy will be underwritten by another insurer, The Guarantee Company of North America. Once we have received the new policy, it will be available for consultation on the Insurance Fund's website.

The insurance Fund's teams

Management of the Insurance Fund oversees three teams of seasoned professional liability professionals:

- The Claims Department, comprised of lawyer analysts.
 - Lawyer analysts receive and review notices of claim and handle claims until they are resolved;

- The Legal Department, comprised of litigation lawyers.

- These litigators, in addition to outside counsel, defend the interests of insureds who are sued for damages.

- The Risk Prevention Department.

- The Coordinator of Prevention Activities offers numerous activities aimed at helping lawyers reduce the number of claims made against them.

These teams are supported by our assistants, whose indispensable qualities include dedication and discretion.

We are pleased to announce that Me Geneviève Ouimet has joined the Insurance Fund as Director of the Claims Department.



Me Ouimet was admitted to the Bar in 2001 and worked primarily in the fields of civil law, penal law, professional liability, and ethics and profes-

sional conduct. Combining her interests in teaching and ethics, she taught ethics at the École du Barreau du Québec.

Me Ouimet's experience will undoubtedly contribute to maintaining the quality of the services provided by the Insurance Fund to its insureds. ☂

Service de prévention

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This Loss Prevention Bulletin is published by the Professional Liability Insurance Fund of the Barreau du Québec.