

**B.C. LAWYERS' COMPULSORY PROFESSIONAL
LIABILITY INSURANCE
POLICY NUMBER: LPL 04-05-01**

INSURER:

**THE LSBC CAPTIVE INSURANCE COMPANY LTD.
(the "Company")**

Administrative Offices, 5th Floor, 845 Cambie Street
Vancouver, B.C. V6B 4Z9

ADMINISTRATOR:

**THE LAW SOCIETY OF BRITISH COLUMBIA
(the "Law Society")**

INSURANCE CONSULTANT:

JARDINE LLOYD THOMPSON CANADA INC.

DECLARATIONS

- | | | |
|----|---|--|
| 1. | Individual Insured | As defined in this policy. |
| 2. | Policy Period | From May 1, 2004 (12:01 A.M. standard time) to January 1, 2005 (12:01 A.M. standard time). |
| 3. | Limits of Liability including damages, claims expenses and deductibles | <p>PART A:</p> <p>(a) \$1,000,000 All claims arising out of an error.</p> <p>(b) \$2,000,000 Aggregate Limit for this policy period but all sums paid on behalf of the Individual Insured for damages, claims expenses and deductibles under Policy Number LPL 04-01-01 shall reduce this Aggregate Limit.</p> <p>PART B:</p> <p>(c) \$12,000,000 Profession-Wide Aggregate Limit for the policy period.</p> |

INSURANCE POLICIES

DEFINITIONS

For convenience, all defined words are in bold print. We, us or our refers to the **Company**. You, your or the **Insured** refers in Part A to the **Individual Insured** or the **Additional Insured**, and in Part B to the **Individual Insured** or the **Innocent Insured**. In this policy:

Additional Insured means:

- (a) each **law firm** in which the **Individual Insured** is or was a partner, employee or associate counsel or that is or was liable for the **Individual Insured**;
- (b) each **law corporation**, law office management corporation and law office management limited partnership, which is or was owned wholly or partly, directly or indirectly, by the **Individual Insured** or his or her spouse, and each present or former officer, director, shareholder or limited partner thereof;
- (c) each present or former **member** who, at the time of the **error**, was insured by us and was the **Individual Insured's** partner or liable for the **Individual Insured**; and
- (d) each present or former employee of the **Individual Insured**, or of any **law firm**, **law corporation**, law office management corporation and law office management limited partnership described in (a) or (b) above, provided such employee was acting within the scope of his or her duties and acting under the supervision of, in a supporting role to, and not independent of the **Individual Insured**.

Apparent partnership means: an expense sharing or other arrangement in which two or more **members** or **law corporations**, or a combination thereof, are or were held out to the public as partners whether or not the partnership in fact exists or existed.

Certificate means: a certificate issued by the **Law Society** to a **member** as evidence of insurance under any previous plan of professional liability insurance for **members** of the **Law Society**.

Claim means: a demand for money, an action, a claim or institution of proceedings against you.

Claimant means:

- (a) Under Part A: a person or **organization** who has made or may make a **claim**; or
- (b) Under Part B: a person who has or alleges to have suffered a monetary loss, and who provides a statutory declaration relating to that loss in a form satisfactory to us.

Claims expenses means:

- (a) fees and disbursements charged by defence counsel appointed by us; and
- (b) all other fees, costs and expenses incurred by us, or by you with our written consent, resulting from the investigation, adjustment, defence and appeal of a **claim** or potential **claim**, including all sums payable under Insuring Agreements A 2 and B 2. **Claims expenses** does not include salaries of our officers, directors and employees or those of the **Law Society**.

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Common-law spouse means: a person not married to the **Individual Insured**, who has lived with the **Individual Insured** in a marriage-like relationship, including a similar relationship between persons of the same gender, for a period of not less than one year.

Compensation program means: those statutory compensation programs as provided for by any legislative act, including but not limited to: the “Special Compensation Fund” as provided under the *Legal Profession Act*, the “Assurance Fund” as provided under the *Land Title Act*, similar funds as established for general public protection against loss consequent on the unlawful acts of third parties under other legislation as may now or subsequently be established; and any substantially similar or equivalent compensation programs established by any government.

Damages means:

- (a) Under Part A: any monetary award, including any pre-judgment interest, post-judgment interest or costs awarded thereon, or settlement or **repair costs**, relating to covered allegations. **Damages** does not include:
 - (i) an order of set-off or any order for the return or reimbursement of any property or benefit that you received or for the return or reimbursement of your legal fees or disbursements, even if claimed as general damages;
 - (ii) any order for punitive, exemplary or aggravated damages;
 - (iii) any fine, sanction or penalty; or
 - (iv) any costs ordered as special costs or ordered pursuant to Rule 57(37) of the Supreme Court Rules or Rule 71 of the Court of Appeal Rules or their equivalents as amended from time to time; or
- (b) Under Part B: any monetary award, including any pre-judgment interest, post-judgment interest or costs awarded thereon, or settlement, for the direct loss only of no more than the value of money or the **deemed value** of other property dishonestly appropriated, but **damages** does not include:
 - (i) any amount for which the **claimant** or **Insured** has:
 - a. or is entitled to claim indemnity under any other policy or form of insurance (including title insurance) or **compensation program**;
 - b. recourse through any other source of recovery including set-offs whether legal or equitable,that would cover such loss in whole or in part in the absence of this policy as this coverage is intended to be last-resort insurance;
 - (ii) any costs ordered as special costs or ordered pursuant to Rule 57(37) of the Supreme Court Rules or Rule 71 of the Court of Appeal Rules or their equivalents as amended from time to time.

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Deemed individual coverage period means: any period after January 1, 2002, 12:01 a.m. P.S.T. during which the **Individual Insured** was a **member** and was performing **sanctioned services**.

Deemed value means: the equivalent of the property's actual cash value or, if the property is not convertible into money, the actual cash value of the property at the time of dishonest appropriation.

Error means:

- (a) Under Part A: an actual or alleged negligent act, negligent error or negligent omission, or **personal injury**. Where there are actual or alleged negligent acts, negligent errors or negligent omissions or **personal injuries** that are related, they will be deemed to be one **error** regardless of the period of time over which they occur. In this definition, related means logically or causally connected or causing a single injury or loss to a **claimant**. A negligent act, negligent error or negligent omission includes a **protocol error**; or
- (b) Under Part B: a dishonest appropriation of money or other property, whether to the use of the **Individual Insured** or a third party, which was entrusted to and received by the **Individual Insured** in his or her capacity as a barrister and solicitor and in relation to the provision of **professional services**.

Family means: spouse (including **common-law spouse**), children, parents or siblings.

Individual coverage period means: any period prior to January 1, 1971, 12:01 a.m. P.S.T. during which the **Individual Insured** was a **member**, any period between January 1, 1971, 12:01 a.m. P.S.T. and January 1, 1998, 12:01 a.m. P.S.T. during which the **Individual Insured** was a **member** and held a **certificate** and any period after January 1, 1998, 12:01 a.m. P.S.T. for which the **Individual Insured** has paid the annual insurance fee.

Individual Insured means: each **member** or former **member** who made or allegedly made the **error**.

Ineligible portion means: that portion that equals the proportionate beneficial ownership of the **organization** held individually or collectively, directly or indirectly, at the time of the **error** by the persons listed in subparagraphs 6.2.1, 6.2.2 and 6.2.3 of Exclusion 6.2 of this policy.

Innocent Insured means: each present or former **member** who:

- (a) is or may be liable for the **Individual Insured**;
- (b) did not personally commit, participate in committing, or acquiesce in the **error**; and
- (c) was insured by us at the time of the **error**.

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Insured means:

- (a) Under Part A: an **Individual Insured** or **Additional Insured**; or
- (b) Under Part B: an **Individual Insured** or **Innocent Insured**.

Law corporation means: a law corporation as defined in the *Legal Profession Act* of British Columbia.

Law firm means: a sole proprietorship owned by a **member**, a **law corporation**, a partnership of **members** or **law corporations** or a combination thereof, or an **apparent partnership**.

Member means: a member in good standing shown on the records of the **Law Society**.

Organization means: any business, business venture, joint venture, proprietorship, partnership, limited partnership, cooperative, society, syndicate, corporation, association or any legal or commercial entity.

Personal injury means:

- (a) false arrest, detention or imprisonment;
- (b) wrongful entry or eviction or other invasion of the right of private occupancy;
- (c) libel or slander, or a publication or utterance in violation of an individual's right of privacy; and
- (d) malicious prosecution.

Policy period means: the period stated in Declaration 2.

Professional services means:

- (a) the practice of law as defined in the *Legal Profession Act* of British Columbia;
- (b) *pro bono* legal services;
- (c) acting as an Official Administrator, a custodian under Part 8 of the *Legal Profession Act* of British Columbia, an arbitrator, mediator or conciliator, by a **member**;
- (d) acting as:
 - (i) a receiver or receiver manager;
 - (ii) an administrator, conservator, executor, guardian, trustee or committee or in any similar fiduciary capacity;
 - (iii) a patent or trademark agent;
 - (iv) agent for any record keeping or filing duty imposed by any provincial or federal statute;

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provided that such services are connected with and incidental to the **Individual Insured's** profession as a lawyer; and

- (e) performing any other activity deemed to be the practice of law by the **Law Society**.

Protocol error means: a building location defect that is not disclosed as a result of an opinion given in compliance with and pursuant to the terms and conditions of the Western Law Societies Conveyancing Protocol (British Columbia) issued by the **Law Society**, Version 2, February 2, 2001 as amended from time to time.

Reciprocal Jurisdiction means: the province or territory of a reciprocating governing body as defined in Rule 2.10.1 of the **Law Society** Rules.

Repair costs means: any costs, other than **claims expenses**, approved or paid by us, incurred attempting to avoid or mitigate a loss arising out of an **error**.

Sanctioned services means: *pro bono* legal services provided to an individual known to you only as a result of performing these services through a *pro bono* legal services program, provided that both the services and the program are approved for the purposes of this policy by the **Law Society**, and that the services are provided solely through the program.

Unauthorized practice means: the practice of law by an **Individual Insured** in contravention of the rules of any other law society or bar.

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This policy is a contract between each **Insured** and the **Company**.

In consideration of the payment of the insurance fee and subject to the terms of this policy, we agree with you that:

INSURING AGREEMENTS

PART A: PROFESSIONAL LIABILITY

1. INSURING AGREEMENT A 1

We shall pay on your behalf all sums which you become legally obligated to pay as **damages** because of any **claim** first made against you and reported to us during the **policy period** arising out of an **error** by you in performing or failing to perform **professional services** for others.

2. INSURING AGREEMENT A 2

2.1 With respect to any **claim** first made or suit first brought within Canada or the United States of America seeking **damages** for which you are entitled to indemnity under Part A of this policy, we shall have the right:

2.1.1 and the duty to defend any suit against you, even if any of the allegations of the suit are groundless, false or fraudulent; and

2.1.2 to select and instruct defence counsel and to investigate and settle any **claim** including the right to elicit, or instruct defence counsel to elicit, offers of settlement. If you object to any settlement recommended by us, we may:

(a) settle the **claim** without your consent and you will remain liable to pay the deductible stated in Declaration 4; or

(b) give you the right to negotiate or defend the **claim** or suit. In this event, any duty we may have had to defend the **claim** ceases and the **damages** and **claims expenses** in excess of the amount for which we could have settled will not be recoverable under this policy.

2.2 With respect to any **claim** that is made or suit that is brought elsewhere than within Canada or the United States of America seeking **damages** for which you are entitled to indemnity under Part A of this policy:

2.2.1 we shall have the right, but not the duty, to investigate, settle, defend or pay **claims expenses** in accordance with Insuring Agreement A 2.1.2; and

2.2.2 if we elect not to investigate, settle or defend a **claim** or suit, you will, under our supervision, investigate and defend as is reasonably necessary and, if we deem

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prudent you will settle such **claim** or suit. We shall reimburse you for the reasonable cost of such investigation, settlement or defence.

- 2.3 With respect to any **claim** for which you are entitled to partial indemnity under Part A of this policy, you agree that we shall each apply our best efforts to agree upon an equitable and appropriate allocation of any **claims expenses** between those matters for which you are entitled to indemnity and those for which you are not. You agree that you will be solely responsible for those **claims expenses** that are related to matters for which you are not entitled to indemnity under this part.
- 2.4 Any negotiated or judicially determined allocation of **claims expenses** shall be applied retroactively to all **claims expenses** notwithstanding any prior payments by you or by us. Any allocation or advancement of **claims expenses** shall not apply to or create any presumption with respect to the allocation between covered and uncovered loss.
- 2.5 Notwithstanding Exclusion 2, we shall have the right and the duty to defend, in accordance with Insuring Agreement A 2.1.2, any **claim** first made against you and reported to us during the **policy period** arising out of a **personal injury** while you were performing or failing to perform **professional services** for others.

3. INSURING AGREEMENT A 3

- 3.1 Part A of this policy applies only to **claims** arising out of **errors** that occurred either during the **individual coverage period** or in relation to **sanctioned services** performed during the **deemed individual coverage period**, and provided that:
 - 3.1.1 the **claim** or potential **claim** is first made against you during the **policy period** and reported to us in writing during the **policy period**; and
 - 3.1.2 you had no knowledge, prior to January 1, 1989 of the **claim** or of an **error** or circumstances occurring prior to January 1, 1986 which you knew or could have reasonably foreseen might be the basis of a **claim**.
- 3.2 A **claim** is first made against you during the **policy period** if during the **policy period**:
 - 3.2.1 you become aware of an **error** or any circumstance which could reasonably be expected to be the basis of a **claim**, however unmeritorious; or
 - 3.2.2 a **claim** is made against you seeking **damages** for which you are entitled to indemnity under this policy.
- 3.3 If Part A of this policy replaces, without interruption of coverage, a policy issued previously by us then a **claim** which was first made against you after January 1, 1989, and reported to us within the **policy period**, will be deemed to be first made against you within the **policy period** of this policy.
- 3.4 Except as provided in Condition 6, if you are not entitled to indemnity or a defence for a **claim**, Part A of this policy will not provide indemnity or a defence for such or similar **claim** to any other **Insured**.

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- 3.5 Where the closest and most real connection to a **claim** or potential **claim** is with a **Reciprocal Jurisdiction**, and the scope of coverage provided by the **Reciprocal Jurisdiction's** compulsory lawyers professional liability insurance (the "**Reciprocal Jurisdiction's** policy") is broader than that provided by Part A of this policy, then we shall provide the same scope of coverage as that of the **Reciprocal Jurisdiction's** policy. For clarity, however, all **claims** and potential **claims** reported under Part A of this policy shall remain subject to the limits of liability stated in Condition 1 and the Declarations of this policy.

The determination of whether a **Reciprocal Jurisdiction** has the closest and most real connection to a **claim** or potential **claim** will be made by us, exercising our discretion reasonably, and considering whether at the time you were performing the **professional services** giving rise to the **claim**:

- (a) you were practicing the law of a **Reciprocal Jurisdiction**;
- (b) you were performing the **professional services** in a **Reciprocal Jurisdiction**;
- (c) your client was in a **Reciprocal Jurisdiction**; and
- (d) the subject matter of the **professional services** was located in or emanated from a **Reciprocal Jurisdiction**.

We will also consider where the proceedings, if any, to advance the **claim** are or are likely to be brought.

This Insuring Agreement applies only if, at the time the **Individual Insured** was performing the **professional services** giving rise to a **claim**, the **Individual Insured** was practicing law in accordance with the inter-jurisdictional practice provisions of the Rules of the **Law Society** and the **Reciprocal Jurisdiction's** law society.

PART B: TRUST PROTECTION

1. INSURING AGREEMENT B 1

Notwithstanding Exclusions 1 and 2 of this policy, we shall pay on your behalf all sums which you become legally obligated to pay to a **claimant** as **damages** because of any **claim** first made against you and reported to us during the **policy period** arising out of an **error** by the **Individual Insured**, provided that the **error** is the sole cause of the **damages**.

2. INSURING AGREEMENT B 2

2.1 With respect to any **claim** first made or suit first brought seeking **damages** that are covered under Part B of this policy:

- 2.1.1 we shall have the right, but not the duty, to defend any suit against you;

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- 2.1.2 if we elect to defend you, we shall have the right to:
 - (a) select and instruct defence counsel; and
 - (b) withdraw from the defence of the suit, without seeking or obtaining your consent, at any time that we, in our sole discretion, deem appropriate;
- 2.1.3 we shall have the right to investigate any **claim** or potential **claim**; and
- 2.1.4 we shall have the right to settle any **claim** without seeking or obtaining your consent, on such terms and conditions and at such time as we, in our sole discretion, deem appropriate.

Coverage under this Part B shall only apply to:

- 1. **Claims** arising out of **errors** that occurred while the **Individual Insured** was a **member**, and provided that the **claim** is first made against you during the **policy period** and reported to us during the **policy period**. A **claim** is first made against you during the **policy period** if during the **policy period**:
 - 1.1 an **Innocent Insured** becomes aware of an **error** or any circumstance which could reasonably be expected to be the basis of a **claim**, however unmeritorious, or a **claim** is made against an **Innocent Insured** seeking **damages** that are covered under Part B of this policy; or
 - 1.2 a **claim** is made against an **Individual Insured** seeking **damages** that are covered under Part B of this policy, and we deem notice of the **claim** given to us by a third party to be notice given by the **Individual Insured**; or
 - 1.3 the **Law Society** gives notice of a **claim** or potential **claim** against an **Individual Insured**, and we deem such notice to be notice given by the **Individual Insured**.
- 2. A **claim** that is first made against you within:
 - 2.1 two (2) years of the **claimant** becoming sufficiently aware of the facts underlying the occurrence of an **error** such that the **claimant** had the means of knowing that an **error** had occurred; and
 - 2.2 in any event, no more than ten (10) years of the time of the **error**.

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EXCLUSIONS

This policy does not apply to:

1. a **claim** arising out of your actual or alleged criminal act;
2. a **claim** arising out of your actual or alleged dishonest, fraudulent or malicious act;
3. a **claim** arising out of any injury to, physical contact with, sickness, disease or death of any person or injury to or destruction of any tangible property, including the loss of use thereof;
4. a **claim** arising out of your activity as a fiduciary with respect to an employee benefit plan or pension plan;
5. a **claim** arising out of your activities as an officer or director except your activities as an officer or director of a **law corporation** or law office management corporation;
6. a **claim**
 - 6.1 arising out of an **error** of an **Individual Insured**, the payment of which would benefit, in whole or in part, directly or indirectly, the **Individual Insured** or the **Individual Insured's family** or **law firm**, provided that this Exclusion 6.1 does not apply to any benefit derived solely from the ownership of an **organization** or to any **claim** that falls within Part B of this policy the payment of which would benefit, in whole or in part, directly or indirectly, the **Individual Insured**; or
 - 6.2 by or in connection with any **organization** in which
 - 6.2.1 the **Individual Insured**,
 - 6.2.2 the **Individual Insured's family**, or
 - 6.2.3 the partners, associates or associate counsel of the **Individual Insured** or of the **Individual Insured's law firm**,individually or collectively, directly or indirectly, had at the time of the **error** or thereafter, effective management or control of the **organization** or beneficial ownership of the **organization** in an amount greater than ten percent (10%), provided that this Exclusion 6.2 applies only to exclude the **ineligible portion** of any payment resulting from any **claim** that falls within Part B of this policy.
 - 6.3 If a **claim** arises out of an **error** which occurred before January 1, 1991, **family** shall be read without the words "(including **common-law spouse**)" and "parents or siblings".

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7. a **claim** arising out of your activity as an employee or partner of any **organization** other than:
 - 7.1. a **law firm**; or
 - 7.2. a trade union, provided that such **claim** is brought against you by a member of the trade union or any employee represented by the trade union; or
 - 7.3. a society, provided that such **claim** is brought against you by a member of the society; or
 - 7.4. a not-for-profit **organization** that provides *pro bono* legal services to the public, provided that:
 - 7.4.1 the **claim** arises out of an **error** that occurred during the **individual coverage period**; and
 - 7.4.2 the **claim** is not brought against you by or on behalf of such **organization**;

except a **claim** that falls within Part B of this policy and is not brought against you by or on behalf of such **organization**;
8. a **claim** against you where the **Individual Insured** is a member of any other law society or bar, except a law society of another province or territory of Canada, arising out of that **Individual Insured's** permanent practice in the other jurisdictions, except that for the purposes of Part B of this policy, the exclusion shall be read without the words "except a law society of another province or territory of Canada"; or
9. a **claim**, except a **claim** that falls within Part B of this policy, against you where the **Individual Insured** is engaged in **unauthorized practice**, arising out of that **unauthorized practice**.

With respect to Part B: Trust Protection only, the following additional exclusions apply.

Part B of this policy does not apply to:

10. **claims, errors** or any circumstances that an **Innocent Insured** or **claimant** knew or reasonably ought to have known could form or did form the basis of a **claim** for compensation to a **compensation program** prior to May 1, 2004;
11. a **claim** that is connected to or arises out of, in whole or in part, the wrongful or unlawful conduct, fault or neglect of the **claimant** or the **claimant's** spouse (including **common-law spouse**);
12. a **claim** by an **organization** that is connected to or arises out of, in whole or in part, the wrongful or unlawful conduct, fault or neglect of an officer, director, employee or agent of the **organization** or an individual who had, directly or indirectly, effective

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management or control of the **organization** or beneficial ownership of greater than a 10% interest in the **organization**;

13. a **claim** where the money or property that was dishonestly appropriated had been unlawfully obtained by the **claimant**; or
14. a **claim** brought by a **claimant** who:
 - 14.1 knew prior to the time of the **error** of any dishonest act by the **Individual Insured**; or
 - 14.2 committed, participated in committing, consented to expressly or impliedly, acquiesced in or was reckless or willfully blind to the **error**.

CONDITIONS

1. LIMITS OF LIABILITY

1.1 LIMIT OF LIABILITY PART A — EACH **ERROR**

1.1.1 The limit of liability stated in Declaration 3(a) shall be the maximum amount payable under Part A of this policy for all **damages, claims expenses** and deductibles for all **claims** arising out of an **error**.

1.1.2 If a **claim** or potential **claim** is reported to us by or on behalf of any **Insured** during the **policy period**, all additional **claims** or potential **claims** reported subsequently that arise out of the same **error** shall be:

- (a) part of the **claim** or potential **claim** first made and reported to us; and
- (b) deemed to be reported within this **policy period**;

and all such **claims** or potential **claims** shall be subject to the terms of this policy and to the one limit of liability applicable to the **claim** or potential **claim** first reported.

1.2 LIMIT OF LIABILITY PART A — AGGREGATE

1.2.1 The limit of liability stated in Declaration 3(b) is the maximum amount payable under Part A of this policy on behalf of each **Individual Insured**, including all related **Additional Insureds**, for all **damages, claims expenses** and deductibles arising out of all **claims** and potential **claims** first reported during the **policy period**. The limit of liability stated in Declaration 3(b) is reduced by all sums paid on behalf of the **Individual Insured**, including all related **Additional Insureds**, for **damages, claims expenses** and deductibles under B.C. Lawyers' Compulsory Professional Liability Insurance Policy Number LPL 04-01-01.

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1.2.2 All payments of **damages, claims expenses** and deductibles reduce the applicable limit of our liability.

1.3 MULTIPLE INSUREDS, CLAIMS OR CLAIMANTS — PART A

One or more **claims**, resulting from an **error** made by one or more **Insureds**, made against one or more **Insureds** or made by one or more **claimants** shall be subject to one limit of liability and shall not increase our limits of liability.

1.4 LIMIT OF LIABILITY PART B — PROFESSION-WIDE AGGREGATE LIMIT

1.4.1 The limit of liability stated in Declaration 3(c) is the maximum amount payable under this policy for the **policy period** on an aggregate basis for all **Insureds** covered by Part B of this policy. For clarity, all **Insureds** covered by Part B of this policy means all present and former **members** of the **Law Society**. All payments by us of **damages** and **claims expenses** arising out of all **claims** and potential **claims** first reported during the **policy period** reduce the Profession-Wide Aggregate Limit for that **policy period** in the amount of the payments.

1.4.2 The **Individual Insureds** and **Innocent Insureds** agree that we may make payments of **damages** and **claims expenses** in reduction of the Profession-Wide Aggregate Limit, even though such payments will reduce or eliminate the limit otherwise available to **Individual Insureds** or **Innocent Insureds** for the **policy period**.

1.5 PRIORITY OF PAYMENTS

All **claims expenses** will be subtracted first from the applicable limit of our liability, with the remainder being the amount available to pay **damages**.

1.6 EXHAUSTION OF LIMITS

We shall not be obliged to pay any **damages** or **claims expenses**, or to undertake or continue the defence of any proceeding after the applicable limit of our liability has been exhausted by payment of **damages, claims expenses** and deductibles or after deposit of the balance of the applicable limit of our liability in a court of competent jurisdiction. In such a case, we shall have the right to withdraw from the further defence by tendering control of the defence to you.

2. DEDUCTIBLES

2.1 If **damages** are payable pursuant to Part A of this policy, you will pay the deductible stated in Declaration 4.

2.2 Our obligation to pay **damages** applies only to **damages** in excess of the deductible and we shall be liable only for the difference between the deductible and the limit of liability.

2.3 When one or more **claims** arising out of an **error** are made jointly or severally against two or more **law firms**, the deductible will apply separately to each **law firm**.

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- 2.4 All the terms and conditions of this policy apply notwithstanding that the amount of the **claim**, potential **claim** or **damages** may be less than the deductible stated in Declaration 4.
- 2.5 If we request, you will make direct payments for **claims** or potential **claims** within the deductible to us or to other parties.
- 2.6 There is no deductible payable by you if **damages** or **claims expenses** are paid pursuant to Part B of this policy.

3. REIMBURSEMENT

- 3.1 We may pay **damages** or **claims expenses** in excess of the limit of liability or within the deductible and you will repay such amounts to us on demand.
- 3.2 If you are not entitled to coverage for a **claim** because of any term, exclusion or breach of a condition of this policy and we pay **damages** or **claims expenses** on behalf of you or any other **Insured** pursuant to this policy, you will reimburse us for all such amounts.
- 3.3. If we pay **damages** or **claims expenses** on behalf of you or any other **Insured** pursuant to Part B of this policy, the **Individual Insured** will reimburse us for all such amounts.
- 3.4 If we pay on behalf of two or more of you pursuant to Condition 3.1, 3.2 or 3.3, your liability to us will be joint and several.

4. NOTICE OF CLAIM OR SUIT

- 4.1 If you become aware of an **error** or any circumstance which could reasonably be expected to be the basis of a **claim**, however unmeritorious, you will give written notice, along with the fullest information obtainable, as soon as practicable, during the **policy period** to:

Lawyers Insurance Fund
5th Floor, 845 Cambie Street
Vancouver, B.C. V6B 4Z9
Attention: Susan I. Forbes, Q.C., Director of Insurance
FAX: (604) 682-5842

- 4.2 If a **claim** is made or suit is brought against you, you will forward immediately to us every demand, writ of summons or other process with the fullest information obtainable.
- 4.3 We may deem notice of an **error** or **claim** given by a third party to be notice given by you.

5. ASSISTANCE AND COOPERATION

- 5.1 You will cooperate with us and with any counsel we retain and assist us in investigating coverage for and the facts and circumstances of **claims** and potential **claims**, in efforts to

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repair **errors**, in making settlements and in the conduct of suits. Upon request, you will also:

- 5.1.1 give written statements to and meet with us or any counsel we retain for the purpose of determining coverage;
- 5.1.2 provide information and documents as necessary to investigate and defend any **claim** or potential **claim**;
- 5.1.3 submit to examination and interview by us or any counsel we retain, under oath if we request;
- 5.1.4 attend hearings, examinations for discovery and trial;
- 5.1.5 assist in securing and giving evidence, including obtaining the attendance of witnesses in the conduct of suits; and
- 5.1.6 assist in effecting all rights of indemnity, contribution or apportionment available to you or us;

all without cost to us.

- 5.2 You will notify us immediately of any settlement offer made on any **claim** or potential **claim**.
- 5.3 You will not, except at your own cost, admit liability, make any payment, settle a **claim** or potential **claim**, assume any obligation, directly or indirectly assist in making or proving a **claim** against you, take any other action that might prejudice our ability to avoid or minimize any **damages**, agree to arbitration or any similar means of resolution of any dispute, waive any rights or incur any expenses without our prior written consent.
- 5.4 We shall be entitled to disclose such information as we deem appropriate to third party auditors, reinsurers and excess insurers.

6. INNOCENT ADDITIONAL INSURED

- 6.1 Whenever coverage under Part A of this policy would be excluded, suspended or lost because of:
 - 6.1.1 the application of Exclusion 1 or 2 to you; or
 - 6.1.2 the failure to give timely notice in accordance with Condition 4;

we shall cover each **Additional Insured** who did not personally commit, participate in committing, acquiesce in or remain passive after having personal knowledge of the act or **error** which is the subject of the Exclusion or the breach of Condition 4 and provided that those **Additional Insureds** who are entitled to the benefit of this Condition comply with all conditions promptly and were **members** at the time of the act or **error**.

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6.2 Condition 6.1 does not apply if the act or **error** which is the subject of Exclusion 1 or 2 is an **error** for the purposes of Part B of this policy.

6.3 Where Exclusion 6.2 applies to a **claim** because, individually or collectively, directly or indirectly, the acquisition by you or your **family** of effective management or control or beneficial ownership greater than 10% of an **organization**:

6.3.1 occurred after the time of the **error**; and

6.3.2 was not related in any way to the legal services giving rise to the **error**;

then, pursuant to the terms of this policy, we shall cover your partners who were **members** at the time of the **error**, or the **law firm** employing you (excluding any **law corporation** wholly owned by you or your **family**) at the time of the **error**.

7. CONFLICTS

In any **claim** or suit in which we provide a defence under a reservation of rights or where our interests may be in conflict with yours, each party will have the right to obtain advice from counsel other than counsel we appoint to defend you. In this event, each party will bear its own costs for such advice.

8. ARBITRATION OR MEDIATION

We shall be entitled to exercise all your rights in the choice of arbitrators, mediators and in the conduct of any arbitration or mediation proceeding involving a **claim** covered by this policy.

9. OTHER INSURANCE OR RECOURSE

9.1 This insurance is excess over any other valid and collectible insurance, whether primary, contributing, excess, contingent or on any other basis or other recourse available to the **Individual Insured** pursuant to any statutory **compensation program**.

9.2 Condition 9.1 does not apply to insurance specifically arranged by the **Individual Insured** to apply as excess insurance over the insurance provided by this policy.

9.3 If you or any non-**member** lawyer practising in your law firm has lawyers professional liability insurance (other than insurance specifically arranged to apply as excess insurance over the insurance provided by this or any other Canadian jurisdiction's policy) under another Canadian jurisdiction's policy (or Canadian jurisdictions' policies) that applies to a **claim** covered by this policy, the total amount of insurance provided under these policies, together, will not exceed the total value of the **claim** or the most that is available under either (any one) of these policies alone, whichever is less. The decision as to which of these policies shall respond, or as to any allocation between (or amongst) the policies, shall be made by us together with the other Canadian jurisdiction, and you agree to be bound by the decision. For clarity, a **Reciprocal Jurisdiction** is also a Canadian jurisdiction.

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9.4 To further clarify the intent and effect of the definition of **damages** under Part B, if the **Insured, claimant** or any other party at interest in any loss covered by Part B of this policy has any bond, indemnity, insurance or recourse to any other source of recovery including set-offs whether legal or equitable, which would cover such loss in whole or in part in the absence of this policy, this policy shall be null and void to the extent of the amount of such other bond, indemnity, insurance or recourse to any other source of recovery including set-offs whether legal or equitable; but this policy shall cover such loss, subject to its exclusions, conditions and other terms, only to the extent of the amount of such loss in excess of the amount of such other bond, indemnity, insurance or recourse to any other source of recovery including set-offs whether legal or equitable.

10. ACTION AGAINST US

No action will lie against us unless, as a condition precedent, you have complied with all the terms of this policy, and until the amount of your obligation to pay has been finally determined either by judgment against you after actual trial or by binding arbitration ruling or by written agreement between you, the **claimant** and us. Neither you nor any other person shall have any right to join us in any proceeding against you.

11. INSOLVENCY, BANKRUPTCY, INCAPACITY, DEATH

Your insolvency, bankruptcy, incapacity or death will not relieve us or you or your estate of any of our respective obligations under this policy.

12. SUBROGATION

In the event of any payment under this policy, we shall be subrogated to all your rights of recovery against any person or **organization** and you will do whatever is necessary to secure such rights. You will do nothing after loss to prejudice such rights, and shall reasonably cooperate with us.

13. CHANGES

Nothing will effect a waiver or a change in any part of this policy or estop us from asserting any right under this policy, nor will the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by our authorized officer.

14. ASSIGNMENT

Your interest in this policy is not assignable.

15. RELEASE OF COVERAGE

We may, in our sole discretion, agree to allow you to assume all of our responsibilities and obligations under this policy and in so doing you shall release us from all such responsibilities and obligations.

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16. INSURANCE FEE ADJUSTMENT

- 16.1 If you become insured during the **policy period**, the insurance fee payable will be determined by the **Law Society** and us on a *pro rata* basis.
- 16.2 If, during the **policy period**, you cease to be a **member** or you are exempted from this compulsory professional liability insurance plan, the insurance fee will be adjusted by the **Law Society** and us on a short-rate basis.
- 16.3 If you are suspended or disbarred, the insurance fee will be deemed to be fully earned and will not be the subject of adjustment.

17. CANCELLATION OF POLICY

- 17.1 This policy may be cancelled by the **Law Society** on your behalf by giving us written notice stating when after the notice the cancellation shall be effective.
- 17.2 This policy may be cancelled by us by giving the **Law Society** not less than 30 days written notice of such cancellation.
- 17.3 If we cancel this policy, earned insurance fees will be computed on a *pro rata* basis.

18. APPLICABLE LAW

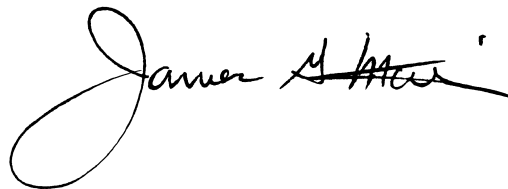
This policy will be exclusively governed by and interpreted in accordance with the laws of British Columbia and any applicable federal laws of Canada, and all disputes arising out of or in connection with this policy, and all **claims** seeking **damages** which would be covered under Part B of this policy, shall be submitted to and be subject to the exclusive jurisdiction of the Courts of British Columbia.

19. TERRITORY

This policy applies to **errors** occurring anywhere in the world.

IN WITNESS WHEREOF, we have caused this policy to be executed.

LSBC Captive Insurance Company Ltd.



James G. Matkin, Q.C. President