



AMENDMENT PAGES

2014: No. 3 December

Highlights

Law Society Rules: Rule changes were adopted based on the report of the Cloud Computing Working Group, in particular, addressing the requirements for: (1) electronic data storage and processing (definitions of “metadata” and “record” and Rules 3-43.1, 3-59, 3-61.1, 3-62, 3-65 and 3-68: pp. 13, 14.2, 72, 86, 88, 88.1 and 88.2); (2) producing records in a complaint investigation (Rule 3-5.01: p. 65) or forensic audit (Rule 4-43: p. 110.8); and (3) third-party storage providers and security (Rules 10-4 and 10-5: pp. 128.1 and 128.2). The fees are updated for 2015 (Schedules 1, 2 and 3: pp. 129-132).

Code of Professional Conduct for British Columbia: Rule 4.2-6 (Former firm of current judge or master) is rescinded, as already covered in another rule and for consistency with the model code; what is meant by “institutional lender” is set out in more specific terms (Appendix C, paragraph 4, commentary [1]: p. 103); the criteria for what is not a “simple conveyance” are expanded (Appendix C, paragraph 4, commentary [2]: p. 104); a paragraph reference is corrected (Appendix C, paragraph 2: p. 103).

Insurance Policies: Insurance Policy No. LPL 15-01-01 replaces Policy No. LPL 14-01-01. Refer to the Spring 2015 *Insurance Issues: Program Report* for details of the policy revisions.

Filing: File the amended pages in your *Member's Manual* as follows:

Manual section	Existing pages to be removed	Amendment pages to be inserted
Law Society Rules	13 – 14, 14.1 – 14.2 65 – 66 71 – 72 85 – 88, 88.1 – 88.2 110.7 – 110.8 128.1 – 128.2, 129 – 132	13 – 14, 14.1 – 14.2 65 – 66 71 – 72 85 – 88, 88.1 – 88.2 110.7 – 110.8 128.1 – 128.2, 129 – 132
Code of Professional Conduct for British Columbia	57 – 58 103 – 106	57 – 58 103 – 106
Insurance Policies	Policy No. LPL 14-01-01 (1 – 26)	Policy No. LPL 15-01-01 (1 – 28)

After filing, insert this sheet at the front of the *Manual* for reference.

[continued over]

Updates: This amendment package updates the *Member's Manual* to **December 8, 2014**. The previous amendment package was 2014: No. 2 September.

To check that your copy of the Manual is up to date, consult the contents checklist on the next page. If you have further questions about updating your Manual, contact Meaghan Lien in the Communications department: telephone 604.697.5838 or toll-free 1.800.903.5300 or email communications@lsbc.org.

Website: The *Legal Profession Act*, Law Society Rules and *Code of Professional Conduct for British Columbia* can be accessed in the Publications section of the Law Society website at lawsociety.bc.ca in both HTML (for online use) and PDF (for printout, including printout of *Member's Manual* replacement pages).

Refer to the Law Society website for the most current versions of the Act, Rules and Code.

MEMBER'S MANUAL CONTENTS CHECKLIST

2014: No. 3 December

The following list of pages and tabs can be used to verify that your *Member's Manual* is complete and up to date.

Section of Manual	Pages	Dated	Section of Manual	Pages	Dated
Divider tab: LEGAL PROFESSION ACT			Text (<i>continued</i>)	75 – 78	deleted
Title page	—	—		79 – 80	[12/06]
Table of Contents	1 – 4	[12/2012]		80.1 – 80.2, 81 – 84	[12/2009]
Text	5 – 8	[03/2014]		85 – 88, 88.1 – 88.2	[12/2014]
	9 – 34, 34.1 – 34.6	[12/2012]		89 – 92, 92.1 – 92.2	[12/06]
	35 – 36	[09/2011]		92.3 – 92.4, 93 – 94	[07/07]
	36.1 – 36.2	[07/07]		94.1 – 94.8	[04/09]
	37 – 38	[12/98]		95 – 96	[09/2013]
	39 – 42	[12/2012]		97 – 100	[09/2012]
	43 – 44	[03/2013]		101 – 102	[06/2013]
	45 – 46	[07/2010]		103 – 104	[09/2012]
	47 – 50	[12/98]		105 – 108	[06/2013]
	51 – 58	[12/2012]		108.1 – 108.2, 109 – 110	[03/2014]
	59 – 60	[09/2014]		110.1 – 110.2	[09/2014]
Divider tab: LAW SOCIETY RULES				110.3 – 110.4	[09/2012]
Title page	—	—		110.5 – 110.6	[03/2014]
Table of Contents	1 – 10	[03/2014]		110.7 – 110.8	[12/2014]
Text	11 – 12	[03/2014]		110.9 – 110.10	[03/2011]
	13 – 14, 14.1 – 14.2	[12/2014]		111 – 112	[03/2014]
	14.3 – 14.4	[12/2012]		113 – 114	[06/2013]
	14.5 – 14.6	[12/2013]		115 – 116, 116.01 – 116.02	[09/2014]
	15 – 16	[09/2012]		116.1 – 116.2	[06/2013]
	17 – 18	[01/04]		116.3 – 116.6	[12/2012]
	19 – 20	[12/2013]		117 – 118	[06/05]
	21 – 22	[03/2010]		119 – 120	[05/07]
	23 – 26	[10/2009]		121 – 122	[06/2013]
	27 – 28	[09/2011]		123 – 124	[06/05]
	29 – 30, 30.1 – 30.2	[12/2013]		125 – 126	[12/2012]
	31 – 32	[09/2014]		127 – 128	[03/2014]
	32.1 – 32.2	[09/2012]		128.1 – 128.2, 129 – 132	[12/2014]
	33 – 34	[09/2013]		133 – 134	[12/2013]
	35 – 36	[06/03]		135 – 136	[12/2012]
	37 – 38	[12/2011]			
	38.1 – 38.2	[03/2014]	Divider tab: CODE OF PROFESSIONAL CONDUCT /		
	38.3 – 38.6	[09/2013]	PROFESSIONAL CONDUCT HANDBOOK		
	39 – 40	[03/2014]	Title page	—	—
	41 – 42, 42.1 – 42.4	[12/2012]	Table of Contents	i – vi	[03/2014]
	42.5 – 42.6	[09/2014]	Text	1 – 2	[12/2013]
	42.7 – 42.8	[12/2013]		3 – 10	[12/2012]
	43 – 44	[04/05]		11 – 14, 14.1 – 14.2	[12/2013]
	45 – 46	[12/2011]		15 – 16	[06/2013]
	47 – 48	[09/2012]		17 – 36	[12/2012]
	49 – 50	[12/2011]		37 – 38	[12/2013]
	50.1 – 50.2	[06/2011]		39 – 40	[06/2013]
	50.3 – 50.4	[07/07]		41 – 42	[12/2012]
	50.5 – 50.6	[03/2014]		43 – 46	[06/2013]
	51 – 52	[12/2012]		47 – 56	[12/2012]
	53 – 54	[03/2014]		57 – 58	[12/2014]
	55 – 56	[12/2012]		59 – 70	[12/2012]
	57 – 58	[09/2012]		71 – 72	[09/2014]
	58.1 – 58.2	[12/2010]		73 – 74	[12/2012]
	59 – 60	[03/2014]		75 – 76, 76.1 – 76.2	[06/2013]
	60.1 – 60.2	[09/2014]		77 – 82	[12/2012]
	60.3 – 60.4	[03/2014]		83 – 84, 84.1 – 84.2	[12/2013]
	61 – 62	[12/04]		85 – 100	[12/2012]
	62.1 – 62.2, 63 – 64	[09/2012]		101 – 102, 102.1 – 102.2	[03/2013]
	65 – 66	[12/2014]		103 – 106	[12/2014]
	66.1 – 66.4	[09/2012]		107 – 116	[12/2012]
	67 – 68	[09/2013]			
	68.1 – 68.2	[09/2014]	Divider tab: INSURANCE POLICIES		
	68.3 – 68.4	[12/2009]	Policy No. LPL 15-01-01	1 – 28	[12/2014]
	69 – 70	[09/2012]			
	70.01 – 70.04	[03/2013]	Divider tab: ARTICLING		
	70.1 – 70.2	[09/2014]	Text	1 – 2	[06/03]
	70.3 – 70.4	[12/06]		3 – 4	[07/09]
	71 – 72	[12/2014]		5 – 8	[06/03]
	73 – 74	[12/2012]			

DEFINITIONS

- “foreign jurisdiction”** means a country other than Canada or an internal jurisdiction of a country other than Canada;
- “Foundation”** means the Law Foundation of British Columbia continued under section 58 (1) of the Act;
- “funds”** includes current coin, government or bank notes, bills of exchange, cheques, drafts, money orders, charge card sales slips, credit slips and electronic transfers;
- “general”** in relation to accounts, books, records and transactions means those pertaining to general funds;
- “general funds”** means funds other than trust funds, received by a lawyer in relation to the practice of law;
- “governing body”** means the governing body of the legal profession in another province or territory of Canada;
- “insolvent lawyer”** means a lawyer who
- (a) is the respondent of a petition for a receiving order under section 43,
 - (b) has made an assignment of all his or her property for the general benefit of the lawyer’s creditors under section 49,
 - (c) has made a proposal under section 50 or 66.11,
 - (d) has filed a notice of intention to make a proposal under section 50.4, or
 - (e) has applied for a consolidation order under section 219
- of the *Bankruptcy and Insolvency Act*, S.C. 1992, c. 27;
- “inter-jurisdictional law firm”** means a firm carrying on the practice of law in British Columbia and in one or more other Canadian or foreign jurisdictions, unless all lawyers in all offices of the firm are practising lawyers;
- “inter-jurisdictional practice”** includes practice by a member of the Society in another Canadian jurisdiction;
- “investigate”** includes authorizing an investigation and continuing an investigation in progress;
- “law clerk”** means a law clerk employed by a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court of Canada or the Tax Court of Canada;
- “lawyer”** means a member of the Society;
- “limited liability partnership”** or **“LLP”** means a limited liability partnership under Part 6 of the *Partnership Act*, including an extraprovincial limited liability partnership registered under that Part;
- “metadata”** includes the following information generated in respect of an electronic record:
- (a) creation date;
 - (b) modification dates;
 - (c) printing information;
 - (d) pre-edit data from earlier drafts;
 - (e) identity of an individual responsible for creating, modifying or printing the record;

- “multi-disciplinary practice”** or **“MDP”** means a partnership, including a limited liability partnership or a partnership of law corporations, that is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and that provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;
- “National Mobility Agreement”** means the National Mobility Agreement, 2013, of the Federation of Law Societies of Canada, as amended from time to time;
- “net interest”** means the total interest earned on a pooled trust account, minus any service charges and transmittal fee that the savings institution charges to that account;
- “officer”** means the Executive Director, a Deputy Executive Director or other person appointed as an officer by the Benchers;
- “Ombudsperson”** means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age, and includes anyone employed by the Ombudsperson to assist in that capacity;
- “panel”** means a panel established in accordance with Part 5;
- “practice review”** means an investigation into a lawyer’s competence to practise law ordered under Rule 3-12(3)(d) or 3-13(1);
- “practice year”** means the period beginning on January 1 and ending on December 31 in a year;
- “practitioner of foreign law”** means a person qualified to practise law in a foreign jurisdiction who provides foreign legal services in British Columbia respecting the laws of that foreign jurisdiction;
- “principal”** means a lawyer who is qualified to employ and employs an articulated student;
- “pro bono legal services”** means the practice of law not performed for or in the expectation of a fee, gain or reward;
- “professional conduct record”** means a record of all or some of the following information respecting a lawyer:
- (a) an order under Rule 2-30(4), prohibiting the lawyer from acting as a principal for an articulated student;
 - (b) any conditions or limitations of practice or articles accepted or imposed under the Act or these Rules;
 - (c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;
 - (c.1) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;
 - (c.2) any suspension or disbarment under the Act or these Rules;
 - (d) recommendations made by the Practice Standards Committee under Rule 3-14;

DEFINITIONS

- (d.1) to (f) [rescinded 11/2008]
- (g) an admission accepted by the Discipline Committee under Rule 4-21;
 - (h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 4-22;
 - (i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-9, and any written dispute of that report considered by the Committee;
 - (j) a decision made under section 38(4)(b) of the Act;
 - (k) an action taken under section 38(5), (6) or (7) of the Act;
 - (l) an action taken by a review board under section 47 of the Act;
- (m) and (n) [rescinded 11/2008]
- (o) a payment made under section 31 of the Act on account of misappropriation or wrongful conversion by the lawyer;
 - (p) an order for costs made against the lawyer under Part 5;
 - (p.1) any failure to pay any fine, costs or penalty imposed under the Act or these Rules by the time that it is to be paid;
 - (q) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these Rules, including a predecessor of either;
 - (r) the outcome of an appeal under section 48 of the Act;
 - (s) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;
 - (t) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;
- “professional corporation”** includes a law corporation and means a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act or that is registered under Part 10 of the *Business Corporations Act*, through which a member of a profession, trade or occupation is authorized under a statute governing the profession, trade or occupation to carry on the business of providing services to the public;
- “Protocol”** means the Inter-Jurisdictional Practice Protocol signed on behalf of the Society on February 18, 1994, as amended from time to time;
- “provide foreign legal services”** means give legal advice in British Columbia respecting the laws of a foreign jurisdiction in which the person giving the advice is qualified;
- “qualification examination”** means an examination set by the Executive Director for the purposes of Rule 2-57;
- “reciprocating governing body”**
- (a) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and
 - (b) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;

LAW SOCIETY RULES

- “**record**” includes metadata associated with an electronic record;
- “**remedial program**” includes anything that may be recommended by the Practice Standards Committee under Rule 3-14(1)(b);
- “**respondent**” means a person whose conduct or competence is
- (a) the subject of a citation directed to be issued under Rule 4-13(1), or
 - (b) under review by a review board under section 47 of the Act;
- “**review board**” means a review board established in accordance with Part 5;
- “**Rule**” or “**subrule**” means a rule or subrule contained in these Rules;
- “**Second Vice-President-elect**” means the Benchler elected under Rule 1-18, from the time of the election until he or she takes office as Second Vice-President;
- “**section**” means a section of the *Legal Profession Act*;
- “**Society**” means the Law Society of British Columbia continued under section 2(1) of the Act;
- “**suspension**” means temporary disqualification from the practice of law;
- “**Territorial Mobility Agreement**” means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time.
- “**training course**” includes any assessments, examinations and remedial work taken during or after the training course, or an educational program required by the Credentials Committee;
- “**trust funds**” includes funds received in trust by a lawyer acting
- (a) in the capacity of a lawyer, including funds
 - (i) received from a client for services to be performed or for disbursements to be made on behalf of the client, or
 - (ii) belonging partly to a client and partly to the lawyer if it is not practicable to split the funds, and
 - (b) as a personal representative of a person or at the request of a person, or as a trustee under a trust established by a person, if the lawyer’s appointment derived from a solicitor-client relationship;
- “**vice chair**” means a person appointed to preside at meetings of a committee in the absence of the chair;
- “**visiting lawyer**” means a member of a governing body who is qualified to practise law in another Canadian jurisdiction.

[amended 09/1999; 11/1999; 05/2000; 06/2001; 03/2003; effective 08/2003; 12/2003; 05/2004; 09/2004; “firm” amended and “limited liability partnership” added effective January 17, 2005; amended 02/2006; 06/2006; 10/2006; 09/2007; 04/2008; “professional conduct record” amended 11/2008; “statement of agreed facts” deleted and “agreed statement of facts” added 04/2009; “appointed Benchler” added 09/2009; “firm” amended and “multi-disciplinary practice” and “professional corporation” added 12/2009, effective 07/2010; “National Mobility Agreement,” “reciprocating governing body” and “Territorial Mobility Agreement” added 12/2011; “pro bono legal services” added 06/2012; “conduct unbecoming a lawyer,” “professional conduct record” and “respondent” amended, “review board” added 09/2012, effective 01/2013; “professional conduct record” amended 10/2012; “practitioner of foreign law” amended, “disciplinary record” and “provide foreign legal services” added 06/2013; “Barreau” and “Chambre” added, “National Mobility Agreement” amended 12/2013; “metadata” and “record” added 10/2014]

PART 3 – PROTECTION OF THE PUBLIC

- (5) When acting under subrule (3), the Executive Director may decline to identify the complainant or the source of the complaint.
 - (6) A lawyer must cooperate fully in an investigation under this Division by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director
 - (a) to the complaint, and
 - (b) to all requests made by the Executive Director in the course of an investigation.
 - (6.1) When conducting an investigation of a complaint, the Executive Director may
 - (a) require production of files, documents and other records for examination or copying,
 - (b) require a lawyer to
 - (i) attend an interview,
 - (ii) answer questions and provide information relating to matters under investigation, or
 - (iii) cause an employee or agent of the lawyer to answer questions and provide information relating to the investigation,
 - (c) enter the business premises of a lawyer
 - (i) during business hours, or
 - (ii) at another time by agreement with the lawyer.
 - (7) Any written response under subrule (6) must be signed by
 - (a) the lawyer personally, or
 - (b) a director of the law corporation, if the complaint is about a law corporation.
 - (8) The Executive Director may deliver to the complainant a copy or a summary of a response received from the lawyer, subject to solicitor and client privilege and confidentiality.
 - (9) [moved to Rule 3-5.1 06/2011]
 - (10) A lawyer who is required to produce files, documents and other records, provide information or attend an interview under this Rule must comply with the requirement
 - (a) even if the information or files, documents and other records are privileged or confidential, and
 - (b) as soon as practicable and, in any event, by the time and date set by the Executive Director.
- [(1) to (3) and (6) to (8) amended, (9) rescinded, (6.1) and (10) added 06/2011;
(1.1) added 06/2012]

Failure to produce records on complaint investigation

- 3-5.01** (1) Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 or 4-43 to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until he or she has complied with the requirement to the satisfaction of the Executive Director.
- (2) When there are special circumstances, the Discipline Committee may, in its discretion, order that

LAW SOCIETY RULES

- (a) a lawyer not be suspended under subrule (1), or
 - (b) a suspension under this Rule be delayed for a specified period of time.
- (3) At least 7 days before a suspension under this Rule can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

[added 10/2014]

Resolution by informal means

- 3-5.1** The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

[added 06/2011]

Action after investigation

- 3-6** (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint
- (a) is not valid or its validity cannot be proved, or
 - (b) does not disclose conduct serious enough to warrant further action.
- (2) The Executive Director may take no further action on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.
- (3) Unless subrule (1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.
- (4) Despite subrule (3), the Executive Director may refer a complaint to the Chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:
- (a) breached a Rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society;
 - (d) breached an order made under the Act or these Rules.

[(4) added 07/2007; (4) amended 10/2010]

Notifying the parties

- 3-7** (1) When a decision has been made under Rule 3-6, the Executive Director must notify the complainant and the lawyer in writing of the disposition.
- (2) When the Executive Director takes no further action on a complaint under Rule 3-6(1), notice to the complainant under subrule (1) must include
- (a) the reason for the decision, and
 - (b) instructions on how to apply for a review of the decision under Rule 3-9.

[(1) amended 10/2007]

PART 3 – PROTECTION OF THE PUBLIC

- (4) For the purpose of subrule (3)(b)(iii), the status of a claim is its stage of progress through the claims handling process, including, but not limited to the following:
 - (a) opened;
 - (b) under investigation;
 - (c) the stage of any litigation commenced;
 - (d) closed.
- (5) In the case of a claim under Part B of the policy of professional liability insurance, the Executive Director may do any of the following:
 - (a) publish the name of a lawyer or former lawyer and the circumstances of a claim when a panel or the Benchers acting under Part 4 or 5 or a court has found that the lawyer or former lawyer has misappropriated property of a claimant;
 - (b) disclose the name of a lawyer or former lawyer and the circumstances of a claim when
 - (i) the lawyer's misappropriation is known to the public,
 - (ii) the claim arises from part of a scheme considered by a panel or the Benchers or a court in the written reasons for a decision, or
 - (iii) the facts are not disputed or are admitted by the lawyer or former lawyer;
 - (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (6) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[added 07/2006]

Division 5 – [rescinded effective 01/2013]

3-28 to 3-39 [rescinded effective 01/2013]

3-40 [rescinded 03/2005]

3-41 and 3-42 [rescinded effective 01/2013]

Division 6 – Financial Responsibility

Application

- 3-43** This Division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:
- (a) a non-practising member;
 - (b) a retired member;
 - (c) an articled student;

LAW SOCIETY RULES

- (d) a practitioner of foreign law;
- (e) a visiting lawyer permitted to practise law in British Columbia under Rules 2-10.2 to 2-12;
- (f) a law corporation.

[amended 11/1999]

Standards of financial responsibility

3-43.1 Instances in which a lawyer has failed to meet a minimum standard of financial responsibility include, but are not limited to, the following:

- (a) a monetary judgment is entered against a lawyer who does not satisfy the judgment within 7 days after the date of entry;
- (b) a lawyer is an insolvent lawyer;
- (c) a lawyer does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-79(2)(b);
- (d) a lawyer does not deliver a trust report as required under Rule 3-72 or 3-75(4);
- (e) a lawyer does not report and pay the trust administration fee to the Society as required under Rule 2-72.2;
- (f) a lawyer does not produce electronic accounting records when required under the Act or these Rules in a form required under Rule 10-4(2).

[added 09/2006; amended 10/2014]

Failure to satisfy judgment

3-44 (1) A lawyer against whom a monetary judgment is entered and who does not satisfy the judgment within 7 days after the date of entry must immediately notify the Executive Director in writing of

- (a) the circumstances of the judgment, including whether the judgment creditor is a client or former client of the lawyer, and
- (b) his or her proposal for satisfying the judgment.

(2) Monetary judgments referred to in subrule (1) include

- (a) an order nisi of foreclosure,
- (b) any certificate, final order or other requirement under a statute that requires payment of money to any party,
- (c) a garnishment order under the *Income Tax Act* (Canada) if a lawyer is the tax debtor, and
- (d) a judgment of any kind against an MDP in which the lawyer has an ownership interest.

PART 3 – PROTECTION OF THE PUBLIC

- (5) A transfer of funds from a pooled trust account to a separate trust account must be authorized by the client and approved in writing signed by a lawyer.

[(1), (2) and (5) amended, (1.1), (1.2) and (3.1) added 02/2003; (2) and (4) amended, (1.3) and (3.2) added 03/2004; (3.2) amended 05/2004; (1.3) amended 06/2005; (3.1) amended 07/2009; (1.3) amended 11/2009]

Payment of fees from trust

- 3-57** (1) In this Rule, “fees” means fees for services performed by a lawyer or a non-lawyer member of the lawyer’s MDP, and taxes on those fees.
- (2) A lawyer who withdraws or authorizes the withdrawal of trust funds under Rule 3-56 in payment for the lawyer’s fees must first prepare a bill for those fees and immediately deliver the bill to the client.
- (3) A bill or letter is delivered within the meaning of this Rule if it is
- (a) mailed to the client at the client’s last known address,
 - (b) delivered personally to the client,
 - (c) transmitted by electronic facsimile to the client at the client’s last known electronic facsimile number,
 - (d) transmitted by electronic mail to the client at the client’s last known electronic mail address, or
 - (e) made available to the client
 - (i) by means that allow the client to review the content of the document and save or print a copy, or
 - (ii) by other means agreed to by the client.
- (4) As an exception to subrule (2), a lawyer need not deliver a bill if the client instructs the lawyer otherwise in writing.
- (5) A lawyer must not take fees from trust funds when the lawyer knows that the client disputes the right of the lawyer to receive payment from trust funds, unless
- (a) the client has agreed that the lawyer may take funds from trust to satisfy the lawyer’s account and the client has acknowledged that agreement in writing or the lawyer has confirmed the client’s agreement in a letter delivered to the client,
 - (b) a bill has been delivered under subrule (3), whether or not the client has directed otherwise under subrule (4),
 - (c) the lawyer has given the client written notice that the fees will be taken from trust unless, within one month, the client commences a fee review under section 70 of the Act or an action disputing the lawyer’s right to the funds, and
 - (d) the client has not commenced a fee review under section 70 of the Act or an action at least one month after written notice is given under paragraph (c).
- (6) Despite subrule (5), if a lawyer knows that the client disputes a part of the lawyer’s account, the lawyer may take from trust funds fees that are not disputed.
- (7) A lawyer must not take fees from trust funds impressed with a specific purpose, if the object of the trust has not been fulfilled, without the express consent of the client or another person authorized to give direction on the application of the trust funds.

[(3) amended 03/2002; (1) amended 12/2009, effective 07/2010; (3) amended 04/2011]

Withdrawal from separate trust account

- 3-58** (1) A lawyer who makes or authorizes the withdrawal of funds from a separate trust account in respect of which cancelled cheques and bank statements are not received from the savings institution monthly and kept in the lawyer's records must first transfer the funds into his or her pooled trust account.
- (2) Rules 3-56 and 3-57 apply to funds that have been transferred into a pooled trust account in accordance with subrule (1).
- (3) A lawyer who disburses trust funds received with instructions under Rule 3-51(3) must keep a written record of the transaction.

[(3) amended 02/2006]

Accounting records

3-59 (0.1) In this Rule, "supporting document" includes

- (a) validated deposit receipts,
 - (b) periodic bank statements,
 - (c) passbooks,
 - (d) cancelled and voided cheques,
 - (e) bank vouchers and similar documents,
 - (f) vendor invoices, and
 - (g) bills for fees, charges and disbursements.
- (1) A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this Division.
- (2) A lawyer must maintain accounting records, including supporting documents, in
- (a) legibly handwritten form, in ink or other duplicated or permanent form,
 - (b) printed form, or
 - (c) an electronic form in compliance with subrule (2.1).
- (2.1) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that
- (a) all records and documents are maintained in a way that will allow compliance with Rule 10-4(2),
 - (b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and
 - (c) there is a clear indication, with respect to each financial transaction, of
 - (i) the date of the transaction,
 - (ii) the individual who performed the transaction, and
 - (iii) all additions, deletions or modifications to the accounting record and the individual who made each of them.
- (3) A lawyer must record transactions in accounting records in chronological order and in an easily traceable form.

PART 3 – PROTECTION OF THE PUBLIC

- (4) A lawyer must retain all supporting documents for both trust and general accounts.

[heading and rule amended, (4) added 12/2003; (4) amended 05/2004; (0.1) and (2.1) added, (2) and (4) amended 10/2014]

Trust account records

3-60 A lawyer must maintain at least the following trust account records:

- (a) a book of entry or data source showing all trust transactions, including the following:
 - (i) the date and amount of receipt or disbursements of all funds;
 - (ii) the source and form of the funds received;
 - (iii) the identity of the client on whose behalf trust funds are received or disbursed;
 - (iv) the cheque or voucher number for each payment out of trust;
 - (v) the name of each recipient of money out of trust;
- (b) a trust ledger, or other suitable system, showing separately for each client on whose behalf trust funds have been received, all trust funds received and disbursed, and the unexpended balance;
- (c) records
 - (i) showing each transfer of funds between clients' trust ledgers, including the name and number of both the source file and the destination file,
 - (ii) containing an explanation of the purpose for which each transfer is made, and
 - (iii) containing the lawyer's written approval of the transfer;
- (d) the monthly trust reconciliations required under Rule 3-65, and any documents prepared in support of the reconciliations;
- (e) and (f) [rescinded 12/2003]
- (g) a current listing of all valuables held in trust for each client.

[heading and rule amended 12/2003; amended 06/2005]

General account records

3-61 (1) A lawyer must maintain at least the following general account records:

- (a) a book of original entry or data source showing
 - (i) the amount, date of receipt and the source of all general funds received, and
 - (ii) the cheque or voucher number, the amount, date and the name of each recipient of each disbursement;
- (b) an accounts receivable ledger or other suitable system to record, for each client, showing all transactions including
 - (i) transfers from a trust account,
 - (ii) other receipts from or on behalf of the client, and
 - (iii) the balance owed by the client.

LAW SOCIETY RULES

- (2) As an exception to subrule (1)(b), a lawyer may enter the information required under that subrule on the trust ledger or other suitable system referred to in Rule 3-60, provided that the entry is clearly identified and distinct from trust account information.

[heading and rule amended 12/2003]

Records of cash transactions

3-61.1 (1) A lawyer who receives any amount of cash for a client that is not the lawyer's employer must maintain a cash receipt book of duplicate receipts and make a receipt in the cash receipt book for any amount of cash received.

- (2) Each receipt in the cash receipt book must
- (a) be signed by
 - (i) the lawyer who receives the cash or an individual authorized by that lawyer to sign the receipt on the lawyer's behalf, and
 - (ii) the person from whom the cash is received,
 - (b) identify each of the following:
 - (i) the date on which cash is received;
 - (ii) the person from whom cash is received;
 - (iii) the amount of cash received;
 - (iv) the client for whom cash is received;
 - (v) the number of the file in respect of which cash is received, and
 - (c) indicate all dates on which the receipt was created or modified.
- (3) A lawyer who withdraws funds in cash from a pooled or separate trust account must make a record of the transaction signed by the person to whom the cash was paid and identifying:
- (a) the date on which the cash was withdrawn,
 - (b) the amount of cash withdrawn,
 - (c) the name of the client in respect of whom the cash was withdrawn,
 - (d) the number of the file in respect of which the cash was withdrawn,
 - (e) the name of the person to whom the cash was paid, and
 - (f) all dates on which the record was created or modified.
- (4) The cash receipt book must be kept current at all times.
- (5) A lawyer is not in breach of this Rule if a receipt is not signed by the person from whom the cash is received if the lawyer makes reasonable efforts to obtain the signature of that person.

[added 06/2005; (2) and (3) amended 10/2014]

Billing records

- 3-62** (1) A lawyer must keep file copies of all bills delivered to clients or persons charged
- (a) showing the amounts and the dates charges are made,
 - (a.1) indicating all dates on which the bill was created or modified,
 - (b) identifying the client or person charged, and

PART 3 – PROTECTION OF THE PUBLIC

- (c) filed in chronological, alphabetical or numerical order.
- (2) For the purpose of subrule (1), a bill includes a receipt issued under Rule 3-63(3).
[amended 12/2003; (1) amended 10/2014]

Recording transactions

- 3-63** (1) A lawyer must record each trust or general transaction promptly, and in any event not more than
- (a) 7 days after a trust transaction, or
 - (b) 30 days after a general transaction.
- (2) A lawyer must record in his or her general account records all funds
- (a) received by the lawyer expressly on account of fees earned and billed or disbursements made by the day the funds are received,
 - (b) subject to a specific agreement with the client allowing the lawyer to treat them as his or her own funds, or
 - (c) that the lawyer is entitled to keep whether or not the lawyer renders any services to or makes any disbursements on behalf of that client.
- (3) A lawyer who receives funds to which subrule (2) applies must immediately deliver a bill or issue to the client a receipt for the funds received, containing sufficient particulars to identify the services performed and disbursements incurred.
- (4) As an exception to subrule (1), a lawyer must record the receipt of interest on a separate trust account within 30 days of payment or of notice that funds have been credited to the account.

[(3) amended, (4) added 12/2003; (2) amended 05/2004]

3-64 [rescinded 12/2003]

Monthly trust reconciliation

- 3-65** (1) A lawyer must prepare a monthly trust reconciliation of the total of all unexpended balances of funds held in trust for clients as they appear in the trust ledgers, with the total of balances held in the trust bank account or accounts, together with the reasons for any differences between the totals.
- (2) The monthly trust reconciliation must be supported by
- (a) a detailed monthly listing showing the unexpended balance of trust funds held for each client, and identifying each client for whom trust funds are held,
 - (b) a detailed monthly bank reconciliation for each pooled trust account,
 - (c) a listing of balances of each separate trust account or savings, deposit, investment or similar form of account, identifying the client for whom each is held,
 - (d) a listing of balances of all other trust funds received pursuant to Rule 3-51(3), and
 - (e) a listing of valuables received and delivered and the undelivered portion of valuables held for each client.

LAW SOCIETY RULES

- (2.1) Each monthly trust reconciliation prepared under subrule (1) must include the date on which it was prepared.
- (3) A lawyer must retain for at least 10 years
 - (a) each monthly trust reconciliation prepared under subrule (1), and
 - (b) the detailed listings described in subrule (2) as records supporting the monthly trust reconciliations.
- (4) A lawyer must make the trust reconciliation required by this Rule not more than 30 days after the effective date of the reconciliation.

[(2) amended 12/2003; 04/2006; (2.1) added, (3) amended 10/2014]

Trust shortage

- 3-66** (1) A lawyer who discovers a trust shortage must immediately pay enough funds into the account to eliminate the shortage.
- (2) A lawyer must immediately make a written report to the Executive Director, including all relevant facts and circumstances, if the lawyer
 - (a) discovers a trust shortage greater than \$2,500, or
 - (b) is or will be unable to deliver up, when due, any trust funds held by the lawyer.
- (3) A trust shortage referred to in this Rule includes a shortage caused by service charges, credit card discounts and bank errors.

[(2) amended, (3) added 12/2003]

3-67 [rescinded 12/2003]

Retention of records

- 3-68** (0.1) This Rule applies to records referred to in Rules 3-59 to 3-62.
- (1) A lawyer must keep his or her records for as long as the records apply to money held in trust and for at least 10 years from the final accounting transaction.
- (2) A lawyer must keep his or her records, other than electronic records, at his or her chief place of practice in British Columbia for as long as the records apply to money held in trust and, in any case, for at least 3 years.

(3) and (4) [rescinded 10/2014]

[heading and rule amended, (0.1), (3) and (4) added 12/2003; heading and (0.1), (1) and (2) amended, (3) and (4) rescinded 10/2014]

Executive Director's modification

- 3-69** (1) Having regard to the accounting and storage systems employed by a specific lawyer, the Executive Director may modify the requirements of that lawyer under Rules 3-60 to 3-62 or 3-68.
- (2) The Executive Director may, at any time, cancel or amend a modification under subrule (1).

PART 4 – DISCIPLINE

- (4) An individual affected, other than the respondent, may apply to the panel for an order under subrule (3) before the written report on findings of fact and determination is issued or oral reasons are delivered.
- (5) [rescinded]
- (6) If a panel orders that a respondent's identity not be disclosed under subrule (3), the panel must state in writing the specific reasons for that decision.
- (7) and (8) [rescinded]

[added 05/2003; (4) amended 02/2004; (8) added 10/2006; (2) to (4) amended, (5), (7) and (8) rescinded 12/2009; (3) and (4) amended 10/2010]

Disclosure of practice restrictions

- 4-38.2** (1) When, under this Part or Part 4 of the Act, a condition or limitation is imposed on the practice of a lawyer or a lawyer is suspended from the practice of law in one or more fields of law, the Executive Director may disclose the fact that the condition, limitation or suspension applies and the nature of the condition, limitation or suspension.
- (2) If a lawyer gives an undertaking that restricts, limits or prohibits the lawyer's practice in one or more areas of law, the Executive Director may disclose the fact that the undertaking was given and its effect on the lawyer's practice.
- (3) If the Executive Director discloses the existence of a condition, limitation or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition, limitation or suspension ceases to be in force.

[added 06/2005; (1) and (3) amended 07/2012]

Disbarment

- 4-39** If a lawyer is disbarred, the Executive Director must strike the lawyer's name from the barristers and solicitors' roll.

Conviction

- 4-40** (1) [rescinded]

- (1.1) In this Rule, "**offence**" means

- (a) an offence that was proceeded with by way of indictment, or
- (b) an offence in another jurisdiction that, in the opinion of the Benchers, is equivalent to an offence that may be proceeded with by way of indictment.

- (2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence, the Committee may refer the matter to the Benchers under subrule (3).
- (3) Without following the procedure provided for in the Act or these Rules, the Benchers may summarily suspend or disbar a lawyer or former lawyer on proof that the lawyer or former lawyer has been convicted of an offence.

[(1) rescinded, (2) amended, (1.1) and (3) added 06/2012]

LAW SOCIETY RULES

Notice

- 4-41** (1) Before the Benchers proceed under Rule 4-40, the Executive Director must notify the lawyer or former lawyer in writing that
- (a) proceedings will be taken under that Rule, and
 - (b) the lawyer or former lawyer may, by a specified date, make written submissions to the Benchers.
- (2) The notice referred to in subrule (1) must be served in accordance with Rule 10-1.
- (3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

[(2) amended 04/2013]

Summary procedure

- 4-42** (1) This Rule applies to summary proceedings before the Benchers under Rule 4-40.
- (2) The Benchers may, in their discretion, hear oral submissions from the lawyer or former lawyer.
- (3) Subject to the Act and these Rules, the Benchers may determine practice and procedure.

Investigation of books and accounts

- 4-43** (1) If the chair of the Discipline Committee reasonably believes that a lawyer or former lawyer may have committed a discipline violation, the chair may order that an investigation be made of the books, records and accounts of the lawyer or former lawyer, including, if considered desirable in the opinion of the chair, all electronic records of the lawyer or former lawyer.
- (1.1) When electronic records have been produced or copied pursuant to an order under this Rule, the lawyer concerned may request that a specific record be excluded from the investigation on the basis that it contains personal information that is not relevant to the investigation.
- (1.2) The lawyer must make a request under subrule (1.1) in writing to a person designated under subrule (2) within 7 days of receiving a copy of the order under this Rule.
- (1.3) An order under this Rule that permits the production or copying of electronic records must provide for a method of evaluating and adjudicating exclusion requests made under subrule (1.1).
- (1.4) A request under subrule (1.1) must be refused unless the records in question are retained in a system of storage of electronic records that permits the segregation of personal information in a practical manner in order to comply with the request.

[(1) amended 10/2010; (1) and (2) amended, (1.1) added 12/2010; (1) and (1.1) amended, (1.2) and (1.3) added 07/2011; (1.4) added 10/2014]

[Rule 4-43 continues on next page]

Duty not to disclose

10-2 A person performing any duty or fulfilling any function under the Act or these Rules who receives or becomes privy to any confidential information, including privileged information,

- (a) has the same duty that a lawyer has to a client not to disclose that information, and
- (b) must not disclose and cannot be required to disclose that information except as authorized by the Act, these Rules or an order of a court.

10-3 [rescinded 07/2008]

Records

10-4 (1) In this Rule, “**storage provider**” means any entity storing or processing records outside of a lawyer’s office, whether or not for payment.

- (2) When required under the Act or these Rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:
 - (a) printed in a comprehensible format;
 - (b) accessed on a read-only basis;
 - (c) exported to an electronic format that allows access to the records in a comprehensible format.
- (3) A lawyer who is required to produce records under the Act or these Rules must not alter, delete, destroy, remove or otherwise interfere with any record that the lawyer is required to produce, except with the written consent of the Executive Director.
- (4) A lawyer must not maintain records, including electronic records, with a storage provider unless the lawyer
 - (a) retains custody and control of the records,
 - (b) ensures that ownership of the records does not pass to another party,
 - (c) is capable of complying with a demand under the Act or these Rules to produce the records and provide access to them,
 - (d) ensures that the storage provider maintains the records securely without
 - (i) accessing or copying them except as is necessary to provide the service obtained by the lawyer,
 - (ii) allowing unauthorized access to or copying or acquisition of the records, or
 - (iii) failing to destroy the records completely and permanently on instructions from the lawyer, and
 - (e) enters into a written agreement with the storage provider that is consistent with the lawyer’s obligations under the Act and these Rules.
- (5) If the Executive Committee declares, by resolution, that a specific entity is not a permitted storage provider for the purpose of compliance with this Rule, no lawyer is permitted to maintain records of any kind with that entity.

[added 10/2014]

LAW SOCIETY RULES

Security of records

- 10-5** (1) A lawyer must protect his or her records and the information contained in them by making reasonable security arrangements against all risks of loss, destruction and unauthorized access, use or disclosure.
- (2) A lawyer must immediately notify the Executive Director in writing of all the relevant circumstances if the lawyer has reason to believe that
- (a) he or she has lost custody or control of any of the lawyer's records for any reason,
 - (b) anyone has improperly accessed or copied any of the lawyer's records, or
 - (c) a third party has failed to destroy records completely and permanently despite instructions from the lawyer to do so.

[added 10/2014]

SCHEDULE 1 – 2015 LAW SOCIETY FEES AND ASSESSMENTS

A. Annual fee	\$
1. Practice fee (Rule 2-70)	1,992.00
2. [rescinded 06/2012]	
3. Liability insurance base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-22(1)):	
(a) member in full-time practice	1,750.00
(b) member in part-time practice	875.00
4. Liability insurance surcharge (Rule 3-26(2))	1,000.00
5. Late payment fee for practising members (Rule 2-72(3))	100.00
6. Retired member fee (Rule 2-4(3))	75.00
7. Late payment fee for retired members (Rule 2-72(4)).....	nil
8. Non-practising member fee (Rule 2-3(2))	300.00
9. Late payment fee for non-practising members (Rule 2-72(5))	25.00
10. Administration fee (Rule 2-75(3))	50.00
 A.1 Trust administration fee	
1. Each client matter subject to fee (Rule 2-72.2(1))	15.00
 B. Special assessments	
 C. Articled student fees	
1. Application fee for enrolment in admission program (Rules 2-27(3)(e) and 2-33(1)(b))	250.00
2. Application fee for temporary articles (Rule 2-42(1)(c))	125.00
3. Application fee for temporary articles (legal clinic) (Rule 2-42(1)(c))	25.00
4. Training course registration (Rule 2-44(4)(a))	
until August 31, 2015	2,250.00
effective September 1, 2015	2,500.00
5. Remedial work (Rule 2-45(7)):	
(a) for each piece of work	50.00
(b) for repeating the training course	
until August 31, 2015	3,500.00
effective September 1, 2015	3,900.00
 D. Transfer fees	
1. Application fee for transfer from another Canadian province or territory – investigation fee (Rule 2-49(1)(f))	1,125.00
2. Transfer or qualification examination (Rules 2-49(6) and 2-58(2))	300.00
 E. Call and admission fees	
1. After enrolment in admission program (Rule 2-48(1)(d))	200.00
2. After transfer from another Canadian province or territory (Rule 2-49(1)(f))....	200.00

LAW SOCIETY RULES

F. Reinstatement fees	\$
1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-52(1)(b))	600.00
1.1 Application fee following 3 years or more as a former member (Rule 2-52(1)(b))	500.00
2. Application fee in all other cases (Rule 2-52(1)(b))	415.00
 G. Change of status fees	
1. Application fee to become retired member (Rule 2-4(2)(b))	30.00
2. Application fee to become non-practising member (Rule 2-3(1)(b))	60.00
3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-4.1(1)(b))	60.00
 H. Inter-jurisdictional practice fees	
1. Application fee (Rule 2-11(2)(b))	500.00
2. Renewal of permit (Rule 2-11(2)(b))	100.00
 I. Corporation and limited liability partnership fees	
1. Permit fee for law corporation (Rule 9-4(c))	300.00
2. New permit on change of name fee (Rule 9-6(4)(c))	75.00
3. LLP registration fee (Rule 9-15(1))	300.00
 J. Practitioners of foreign law	
1. Application fee for practitioners of foreign law (Rule 2-18(1)(b))	600.00
2. Permit renewal fee for practitioners of foreign law (Rules 2-18(1)(b) and 2-22(2)(c))	125.00
3. Late payment fee (Rule 2-22(6))	100.00
 K. Late fees	
1. Trust report late filing fee (Rule 3-74(2))	200.00
2. Professional development late completion fee (Rule 3-18.4(1)(c))	500.00
3. Professional development late reporting fee (Rule 3-18.4(3)(b))	200.00
 L. Multi-disciplinary practice fees	
1. Application fee (Rule 2-23.3(1)).....	300.00
2. Application fee per proposed non-lawyer member of MDP (Rules 2-23.3(1) and 2-23.5(2))	1,125.00

Note: The federal goods and services tax applies to Law Society fees and assessments.

**SCHEDULE 2 – 2015 PRORATED FEES AND ASSESSMENTS
FOR PRACTISING MEMBERS**

	Law Society fee	Liability insurance assessment	
		Payable prior to call	Payable by June 30
Full-time insurance			
January	1,992.00	875.00	875.00
February	1,823.73	729.17	875.00
March	1,660.00	583.33	875.00
April	1,491.72	437.50	875.00
May	1,328.00	291.67	875.00
June	1,159.70	145.83	875.00
July	996.00	875.00	0.00
August	827.73	729.17	0.00
September	664.00	583.33	0.00
October	495.72	437.50	0.00
November	332.00	291.67	0.00
December	163.70	145.83	0.00
Part-time insurance			
January	1,992.00	437.50	437.50
February	1,823.73	364.58	437.50
March	1,660.00	291.67	437.50
April	1,491.72	218.75	437.50
May	1,328.00	145.83	437.50
June	1,159.70	100.00	437.50
July	996.00	437.50	0.00
August	827.73	364.58	0.00
September	664.00	291.67	0.00
October	495.72	218.75	0.00
November	332.00	145.83	0.00
December	163.70	100.00	0.00

Note: The federal goods and services tax applies to Law Society fees and assessments.

LAW SOCIETY RULES

**SCHEDULE 3 – 2015 PRORATED FEES
FOR NON-PRACTISING AND RETIRED MEMBERS**

	Non-practising members fee	Retired members fee
January	300.00	75.00
February	275.00	68.75
March	250.00	62.50
April	225.00	56.25
May	200.00	50.00
June	175.00	43.75
July	150.00	37.50
August	125.00	31.25
September	100.00	25.00
October	75.00	18.75
November	50.00	12.50
December	25.00	6.25

Note: The federal goods and services tax applies to Law Society fees and assessments.

Chapter 4 – Marketing of Legal Services

4.2 Marketing

Application of rule

4.2-3 This section applies to any marketing activity undertaken or authorized by a lawyer in which he or she is identified as a lawyer, mediator or arbitrator.

Definitions

4.2-4 In this Chapter:

“**marketing activity**” includes any publication or communication in the nature of an advertisement, promotional activity or material, letterhead, business card, listing in a directory, a public appearance or any other means by which professional legal services are promoted or clients are solicited;

“**lawyer**” includes a member of the Law Society, and a person enrolled in the Law Society Admission Program.

Content and format of marketing activities

4.2-5 Any marketing activity undertaken or authorized by a lawyer must not be:

- (a) false,
- (b) inaccurate,
- (c) unverifiable,
- (d) reasonably capable of misleading the recipient or intended recipient, or
- (e) contrary to the best interests of the public.

Commentary

[1] For example, a marketing activity violates this rule if it:

- (a) is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient,
- (b) is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results that the lawyer can achieve, or
- (c) otherwise brings the administration of justice into disrepute.

4.2-6 [rescinded 10/2014]

Notary public

4.2-7 A lawyer who, on any letterhead, business card or sign, or in any other marketing activity:

- (a) uses the term “Notary,” “Notary Public” or any similar designation, or
- (b) in any other way represents to the public that the lawyer is a notary public,

must also indicate in the same publication or marketing activity the lawyer’s status as a lawyer.

Designation

4.2-8 A lawyer must not list a person not entitled to practise law in British Columbia on any letterhead or in any other marketing activity without making it clear in the marketing activity that the person is not entitled to practise law in British Columbia.

In particular, a person who fits one or more of the following descriptions must not be listed without an appropriate indication of the person’s status:

- (a) a retired member,
- (b) a non-practising member,
- (c) a deceased member,
- (d) an articled student,
- (e) a legal assistant or paralegal,
- (f) a patent agent, if registered as such under the *Patent Act*,
- (g) a trademark agent, if registered as such under the *Trade-marks Act*, or
- (h) a practitioner of foreign law, if that person holds a valid permit issued under Law Society Rule 2-18., or
- (i) a qualified member of another profession, trade or occupation, provided that the lawyer and the other person are members of a Multi-Disciplinary Practice (MDP) permitted under the Law Society Rules.

4.3 Advertising nature of practice

Preferred areas of practice

4.3-0.1 A lawyer may state in any marketing activity a preference for practice in any one or more fields of law if the lawyer regularly practises in each field of law in respect of which the lawyer wishes to state a preference.

Appendix C – Real Property Transactions

Application

1. This Appendix does not apply to a real property transaction between corporations, societies, partnerships, trusts, or any of them, that are effectively controlled by the same person or persons or between any of them and such person or persons.

Acting for parties with different interests

2. A lawyer must not act for more than one party with different interests in a real property transaction unless:

- (a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,
- (b) the transaction is a simple conveyance, or
- (c) paragraph 9 applies.

[amended 12/2014]

3. When a lawyer acts jointly for more than one client in a real property transaction, the lawyer must comply with the obligations set out in rule 3.4-5 to 3.4-9.

Simple conveyance

4. In determining whether or not a transaction is a simple conveyance, a lawyer should consider:

- (a) the value of the property or the amount of money involved,
- (b) the existence of non-financial charges, and
- (c) the existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

Commentary

[1] The following are examples of transactions that may be treated as simple conveyances when this commentary does not apply to exclude them:

- (a) the payment of all cash for clear title,
- (b) the discharge of one or more encumbrances and payment of the balance, if any, in cash,
- (c) the assumption of one or more existing mortgages or agreements for sale and the payment of the balance, if any, in cash,

Code of Professional Conduct for British Columbia

- (d) a mortgage that does not contain any commercial element, given by a mortgagor to a bank, trust company or credit union to be registered against the mortgagor's residence, including a mortgage that is
 - (i) a revolving mortgage that can be advanced and re-advanced,
 - (ii) to be advanced in stages, or
 - (iii) given to secure a line of credit,
- (e) transfer of a leasehold interest if there are no changes to the terms of the lease,
- (f) the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired, or
- (g) any combination of the foregoing.

[2] The following are examples of transactions that must not be treated as simple conveyances:

- (h) a transaction in which there is any commercial element, such as:
 - (i) a conveyance included in a sale and purchase of a business,
 - (ii) a transaction involving a building containing more than three residential units, or
 - (iii) a transaction for a commercial purpose involving either a revolving mortgage that can be advanced and re-advanced or a mortgage given to secure a line of credit,
- (i) a lease or transfer of a lease, other than as set out in subparagraph (e),
- (j) a transaction in which there is a mortgage back from the purchaser to the vendor,
- (k) an agreement for sale,
- (l) a transaction in which the lawyer's client is a vendor who:
 - (i) advertises or holds out directly or by inference through representations of sales staff or otherwise as an inducement to purchasers that a registered transfer or other legal services are included in the purchase price of the property,
 - (ii) is or was the developer of property being sold, unless subparagraph (f) applies,
- (m) a conveyance of residential property with substantial improvements under construction at the time the agreement for purchase and sale was signed, unless the lawyer's clients are a purchaser and a mortgagee and construction is completed before funds are advanced under the mortgage,
- (n) the drafting of a contract of purchase and sale, or
- (o) a mortgage given by a mortgagor to a mortgagee that is not a bank, trust company or credit union.

Appendix C – Real Property Transactions

[3] A transaction is not considered to have a commercial element merely because one of the parties is a corporation.

[[1] and [2] amended 12/2014]

Advice and consent

5. If a lawyer acts for more than one party in the circumstances as set out in paragraph 2 of this Appendix, then the lawyer must, as soon as is practicable,

- (a) advise each party in writing that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and that, if a conflict of interest arises, the lawyer cannot continue to act for any of them in the transaction,
- (b) obtain the consent in writing of all such parties, and
- (c) raise and explain the legal effect of issues relevant to the transaction that may be of importance to each such party.

Commentary

[1] If a written communication is not practicable at the beginning of the transaction, the advice may be given and the consent obtained orally, but the lawyer must confirm that advice to the parties in writing as soon as possible, and the lawyer must obtain consent in writing prior to completion.

[2] The consent in writing may be set out in the documentation of the transaction or may be a blanket consent covering an indefinite number of transactions.

Foreclosure proceedings

6. In this paragraph, “mortgagor” includes “purchaser,” and “mortgagee” includes “vendor” under an agreement for sale, and “foreclosure proceeding” includes a proceeding for cancellation of an agreement for sale.

If a lawyer acts for both a mortgagor and a mortgagee in the circumstances set out in paragraph 2, the lawyer must not act in any foreclosure proceeding relating to that transaction for either the mortgagor or the mortgagee.

This prohibition does not apply if

- (a) the lawyer acted for a mortgagee and attended on the mortgagor only for the purposes of executing the mortgage documentation,
- (b) the mortgagor for whom the lawyer acted is not made a party to the foreclosure proceeding, or
- (c) the mortgagor has no beneficial interest in the mortgaged property and no claim is being made against the mortgagor personally.

Unrepresented parties in a real property transaction

7. If one party to a real property transaction does not want or refuses to obtain independent legal representation, the lawyer acting for the other party may allow the unrepresented party to execute the necessary documents in the lawyer's presence as a witness if the lawyer advises that party in writing that:

- (a) the party is entitled to obtain independent legal representation but has chosen not to do so,
- (b) the lawyer does not act for or represent the party with respect to the transaction, and
- (c) the lawyer has not advised that party with respect to the transaction but has only attended to the execution and attestation of documents.

8. If the lawyer witnesses the execution of the necessary documents as set out in paragraph 7, it is not necessary for the lawyer to obtain the consent of the party or parties for whom the lawyer acts.

9. If one party to the real property transaction is otherwise unrepresented but wants the lawyer representing another party to the transaction to act for him or her to remove existing encumbrances, the lawyer may act for that party for those purposes only and may allow that party to execute the necessary documents in the lawyer's presence as witness if the lawyer advises the party in writing that:

- (a) the lawyer's engagement is of a limited nature, and
- (b) if a conflict arises between the parties, the lawyer will be unable to continue to act for that party.

**2015 BC LAWYERS' COMPULSORY PROFESSIONAL
LIABILITY INSURANCE
POLICY NUMBER: LPL 15-01-01**

INSURER:

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

Administrative Offices, 8th Floor, 845 Cambie Street
Vancouver, BC 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 January 1, 2015 to January 1, 2016 (12:01 a.m. standard time).
3. **Limits of Liability**
PART A: Professional Liability (for negligence)
 - (a) \$1,000,000 All **claims** arising out of an **error** for **damages, claims expenses** and deductibles.
 - (b) \$2,000,000 Annual Aggregate Limit for **damages, claims expenses** and deductibles, including any payments under Part C.
PART B: Trust Protection (for dishonest appropriation)
 - (c) \$300,000 All **claims** for **damages** by a **claimant** arising out of an **error** or **related errors**

except for inter-jurisdictional practice as provided in Conditions 1.4.3 and 1.6.

INSURANCE POLICIES

- (d) \$17,500,000 Profession-Wide Annual Aggregate Limit for all **claims** for **damages** and **claims expenses**.

PART C: Trust Shortage Liability (for reliance on fraudulent certified cheques)

- (e) \$500,000 All **claims** arising out of an **error** for **damages, claims expenses** and deductibles.
- (f) \$500,000 Annual Aggregate Limit for **damages, claims expenses** and deductibles.
- (g) \$500,000 **Law Firm** Annual Aggregate Limit for all **claims** for **damages, claims expenses** and deductibles.
- (h) \$2,000,000 Profession-Wide Annual Aggregate Limit for all **claims** for **damages, claims expenses** and deductibles.

4. Deductibles

Applicable to PARTS A and C only

Part A: Professional Liability (for negligence)

- (a) \$5,000 Each **error** resulting in the payment of **damages**, except an **error** arising out of your performance of **sanctioned services** or a **protocol error**.
- (b) \$10,000 Each additional **error** reported within a three year period resulting in the payment of **damages**, except an **error** arising out of your performance of **sanctioned services** or a **protocol error**.

PART C: Trust Shortage Liability (for reliance on fraudulent certified cheques)

35% of the total amount of **damages** paid under this policy, subject to Condition 2.2.

5. Insurance Fee

As agreed between the **Company** and the **Law Society**.

This policy governs claims and potential claims reported in 2015 — read carefully. Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

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 Parts A and C to the **Individual Insured** or the **Additional Insured**, and in Part B to the **Individual Insured** or the **Innocent Insured**. Unless otherwise indicated, all specific statutory references are to statutes of British Columbia. 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**;
- (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**; and
- (e) each present or former **MDP partner** who, at the time of the **error**, was insured by us and a partner in a **multi-disciplinary practice** in which all of the members were in compliance with **Law Society Rules 2-23.1 through 2-23.12**.

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.

Canadian legal advisor means: a member admitted as a Canadian legal advisor by the **Law Society**.

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 or C: 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.

INSURANCE POLICIES

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, B 2 and C 2. **Claims expenses** does not include salaries of our officers, directors and employees, or those of the **Law Society**.

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 current or former legislative act, including but not limited to: the “Special Compensation Fund” as formerly 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.

Confidentiality Protocol means: the **Law Society’s** protocol for the preservation of confidentiality of professional liability insurance claims information, as amended from time to time.

Damages means:

- (a) under Part A: any compensatory damages, 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, or accounting for or disgorgement of, any property, benefit, legal fees or disbursements that you received, even if claimed as general damages;
 - (ii) any order for punitive, exemplary or aggravated damages;
 - (iii) any fine, sanction or penalty; or
 - (iv) any order for costs or indemnification for costs made against you in litigation in which you are not a party, or any order for special costs;
- (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. **Damages** does not include:
 - (i) any amount for which the **claimant** or **Insured**:
 - a. is entitled to claim indemnity under any other policy or form of insurance (including title insurance); or

INSURANCE POLICIES

- b. has recourse through any **compensation program** or 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; or

- (ii) any order for costs or indemnification for costs made against you in litigation in which you are not a party, or any order for special costs; or
- (c) under Part C: 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 amount of the trust shortage.

Deemed individual coverage period means: any period after January 1, 2002, 12:01 a.m. standard time 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, including a **protocol error**, or a **personal injury**. Where actual or alleged errors are related, they will be deemed to be one **error**. Errors are related when they:
 - (i) are logically or causally connected;
 - (ii) cause a single loss to one or more **claimants**;
 - (iii) occur in the course of the **Insured(s)** acting as an administrator, executor, guardian, trustee or committee; or
 - (iv) occur in relation to the same or similar underlying facts, events, transactions, activities or undertakings, which, without limiting the generality of the foregoing, include accidents, investment programs or schemes, loan agreements, offerings of ownership interest or debt, corporate reorganizations, tax plans, estates, real estate developments, leases, licences, commercial ventures and litigation matters;

regardless of whether they are made by more than one **Insured** or by **Insured(s)** acting in more than one capacity, occur at different times or in the course of more than one professional service, retainer or client matter, or give rise to **claims** by more than one **claimant**;

- (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** to others; or

INSURANCE POLICIES

- (c) under Part C: a payment to a third party that, as a result of the deposit into a **trust account** of what purports and appears and the **Individual Insured** believes to be a genuine certified cheque, bank draft, credit union official cheque, **law firm** trust cheque or money order that ultimately proves to be counterfeit, forged or materially altered, creates an unintended shortage in client funds that are held in that **trust account** in connection with the performance of **professional services** for others.

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. standard time during which the **Individual Insured** was a **member**, any period between January 1, 1971, 12:01 a.m. standard time and January 1, 1998, 12:01 a.m. standard time during which the **Individual Insured** was a **member** and held a **certificate**, and any period after January 1, 1998, 12:01 a.m. standard time 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** or, for the purposes of Part A of this policy only, each **MDP partner** or former **MDP partner** who made or allegedly made the **error**, provided that all of the members of the **multi-disciplinary practice** were in compliance with **Law Society** Rules 2-23.1 through 2-23.12 at the time of 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**.

Insured means:

- (a) under Part A or Part C: 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*.

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

MDP partner means: a non-lawyer partner in a **multi-disciplinary practice** in which permission to practise law was granted under Rule 2-23.4 of the **Law Society** Rules.

Member means: a member, other than a **Canadian legal advisor**, in good standing shown on the records of the **Law Society**.

INSURANCE POLICIES

Multi-disciplinary practice means: a multi-disciplinary practice as defined in the **Law Society** Rules.

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: malicious prosecution, libel or slander, or a publication or utterance in violation of an individual's right of privacy.

Policy period means: the period stated in Declaration 2.

Professional services means:

- (a) the practice of law as defined in the *Legal Profession Act*;
- (b) *pro bono* legal services;
- (c) acting as an Official Administrator, a custodian under Part 6 of the *Legal Profession Act*, an arbitrator, mediator or conciliator, by a **member**;
- (d) acting as:
 - (i) an administrator, executor, guardian, trustee or committee or in any similar fiduciary capacity;
 - (ii) a patent or trademark agent; or
 - (iii) agent for any record keeping or filing duty imposed by any provincial or federal statute;provided that such services are connected with and incidental to the **Individual Insured's** practice of law and, for the purposes of Part B of this policy only, the **Individual Insured** is also providing legal services;
- (e) performing any other activity deemed to be the practice of law by the **Law Society**; or
- (f) acting as an **MDP partner**, provided that such services support or supplement the practice of law by the **law firm** and are provided under the supervision of a **member**.

Professional services does not include:

- (a) the mere receipt and/or distribution of funds, from trust or otherwise; or
- (b) acting merely as a bailee.

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.

INSURANCE POLICIES

Reciprocal Jurisdiction means: the province, but not the territory, of a reciprocating governing body as defined in the **Law Society** Rules, other than the Barreau du Québec.

Related claimants in Part B means: **claimants** are related if the money or other property dishonestly appropriated was jointly provided or jointly owned by the **claimants**.

Related errors in Part B means: **errors** are related if the money or other property dishonestly appropriated was received in relation to the provision of the same **professional services**, retainer or client matter.

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.

Trust account means: a trust account operated pursuant to and in accordance with Part 3, Division 7, Trust Accounts and Other Client Property, of the **Law Society** Rules.

Unauthorized practice means: the practice of law by an **Individual Insured**:

- (a) in breach of an undertaking given to the **Law Society** or in contravention of a condition or limitation of practice imposed or agreed to under the **Law Society** Rules, for the purposes of Condition 3.3; or
- (b) in contravention of the rules of any other law society or bar, for the purposes of Exclusion 9.

INSURANCE POLICIES

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 (FOR NEGLIGENCE)

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 if you provide security for any **damages** for which you may be liable. The amount and form of security required will be determined by us, in our sole discretion. If we give you the right to negotiate or defend the **claim** or suit, 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

INSURANCE POLICIES

- 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 prudent you will settle such **claim** or suit. Subject to Insuring Agreement A 2.3, we shall reimburse you for the reasonable cost of such investigation, settlement or defence.
- 2.3 For any part of a **claim** for which you are not entitled to coverage under Part A of this policy, you agree that you are responsible for:
- 2.3.1 any **claims expenses** that are solely or substantially attributable to that part; and
- 2.3.2 an equal or, if we agree, less than equal share of any **claims expenses** that are attributable both to that part, and any other part of the **claim** for which you are entitled to coverage under Part A.
- 2.4 The allocation of **claims expenses** under Insuring Agreement A 2.3 shall be determined following final determination of the **claim**.
- 2.5 Notwithstanding Insuring Agreement A 2.4 we may, at any time prior to final determination of a **claim**, require that you contribute, on an interim basis, to **claims expenses** in any proportion or amount that we determine is reasonable having regard to Insuring Agreement A 2.3. Any such payment, demand or failure to make a demand by us shall be without prejudice to our respective rights under Insuring Agreement A 2.4.
- 2.6 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.
- 2.7 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.
- 2.8 Notwithstanding our obligations pursuant to Insuring Agreements A 2.1, A 2.2 and A 2.7, we may decline, at any time, to defend, continue to defend, investigate or pay **claims expenses** where we determine on reasonable grounds that a **claim** does not arise out of an **error** by you in performing or failing to perform **professional services** for others, or that you are not entitled to coverage for a **claim** because of any exclusion, breach of a condition or any other term of this policy. If you disagree with our decision you agree that, at the arbitration of the dispute, each of us may introduce evidence relating to the issues of coverage and your activities and that such evidence shall be considered by the arbitrator in making his or her determination of our respective obligations.

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:

INSURANCE POLICIES

- 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**.
- 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.

INSURANCE POLICIES

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 either in accordance with the inter-jurisdictional practice provisions of the Rules of the **Law Society** and the **Reciprocal Jurisdiction's** law society or as a Canadian legal advisor member of the Barreau du Québec. This Insuring Agreement does not apply if coverage under Part A of this policy would be excluded or limited in any way by the application of Exclusion 7 or 11 to a **claim** or potential **claim**.

PART B: TRUST PROTECTION (FOR DISHONEST APPROPRIATION)

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;

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,

INSURANCE POLICIES

or a **claim** is made against an **Innocent Insured** seeking **damages** that are covered under Part B of this policy;

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** seeking **damages** that are covered under Part B of this policy that is first made against you and of which written notice is given to us by the **claimant** within:

2.1 six (6) months 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**.

We may, in our sole discretion, agree to extend the time limits set out in 2.1 and 2.2.

PART C: TRUST SHORTAGE LIABILITY (FOR RELIANCE ON FRAUDULENT CERTIFIED CHEQUES)

1. INSURING AGREEMENT C 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.

2. INSURING AGREEMENT C 2

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

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

2.1.2 if we elect to defend you, we shall have the right to select and instruct defence counsel;

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** 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:

INSURANCE POLICIES

- (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, if we are defending, defend the **claim** or suit. In this event, the **damages** and **claims expenses** in excess of the amount for which we could have settled will not be recoverable under this policy.

3. INSURING AGREEMENT C 3

- 3.1 Part C of this policy applies only to **claims** arising out of **errors** that occurred during the **individual coverage period**, and provided that the **claim** or potential **claim** is first made against you during the **policy period** and reported to us in writing during the **policy period**.
- 3.2 A **claim** is first made against you during the **policy period** if during the **policy period**:
 - 3.2.1 you first 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 C 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, 2012, 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 C of this policy will not provide indemnity or a defence for such or similar **claim** to any other **Insured**.

INSURANCE POLICIES

EXCLUSIONS

This policy does not apply to:

1. a **claim** arising out of or in any way connected to your actual or alleged criminal act;
2. a **claim** arising out of or in any way connected to your actual or alleged dishonest, fraudulent or malicious act;
3. a **claim** arising out of or in any way connected to 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 or in any way connected to your activity as a fiduciary with respect to an employee benefit plan or pension plan;
5. a **claim** arising out of or in any way connected to 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
 - 6.2 by or in any way connected to 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 per cent (10%), provided that with respect to any payment resulting from a **claim** that falls within Part B of this policy, this Exclusion 6.2 applies only to exclude the **ineligible portion** of such payment.
 - 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”.

INSURANCE POLICIES

7. a **claim** arising out of or in any way connected to your activity as an employee, dependent contractor or partner of any **organization** other than:
 - 7.1 a **law firm**; or
 - 7.2 a trade union, society or not-for-profit **organization** that provides *pro bono* legal services to the public, provided that:
 - 7.2.1 the **claim** arises out of an **error** that occurred during the **individual coverage period**; and
 - 7.2.2 the **claim** is not brought against you by or on behalf of such trade union, society or not-for-profit **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**; or
8. a **claim** against you where the **Individual Insured** is a member of any other jurisdiction's law society or bar, except a law society of another province or territory of Canada, arising out of or in any way connected to that **Individual Insured's** permanent practice in the other jurisdiction. For the purposes of Part B of this policy, this Exclusion 8 shall be read with the words "the Barreau du Québec" substituted for the words "a law society of another province or territory of Canada" and without the word "permanent".

With respect to Part A: Professional Liability (for negligence) only, the following additional exclusions apply.

Part A of the policy does not apply to:

9. a **claim** against you where the **Individual Insured** is engaged in **unauthorized practice**, arising out of or in any way connected to that **unauthorized practice**;
10. a **claim** arising out of or in any way connected to your provision of investment advice or investment services unless as a direct consequence of the performance of **professional services**;
11. a **claim** arising out of or in any way connected to:
 - 11.1 the dishonest appropriation of money or other property; or
 - 11.2 an **error** under Part C of this policy, or any other shortage of funds held in a **trust account** if that shortage is caused by or in any way connected to a dishonest or fraudulent act; or
12. a **claim** arising out of or in any way connected to the collection, use and/or disclosure of any information by a third party, or the receipt by or transmission to a third party of malware or malicious code.

INSURANCE POLICIES

With respect to Part B: Trust Protection (for dishonest appropriation) only, the following additional exclusions apply.

Part B of this policy does not apply to:

13. **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;
14. a **claim** arising out of or in any way connected to the wrongful or unlawful conduct, fault or neglect of the **claimant** or the **claimant's** spouse (including **common-law spouse**);
15. a **claim** by an **organization** arising out of or in any way connected to 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 management or control of the **organization** or beneficial ownership of the **organization** in an amount greater than ten per cent (10%);
16. a **claim** where the money or property that was dishonestly appropriated had been unlawfully obtained by the **claimant**;
17. a **claim** brought by a **claimant** who:
 - 17.1 knew prior to the time of the **error** of any dishonest act by the **Individual Insured**; or
 - 17.2 committed, participated in committing, consented to expressly or impliedly, acquiesced in or was reckless or wilfully blind to the **error**; or
18. a **claim** arising out of or in any way connected to an investment, a purported investment or a Ponzi scheme.

With respect to Part C: Trust Shortage Liability (for reliance on fraudulent certified cheques) only, the following additional exclusions apply.

Part C of this policy does not apply to:

19. a **claim** arising out of or in any way connected to the wrongful or unlawful conduct of a present or former employee of the **law firm** or contractor for the **law firm**;
20. a **claim** arising out of circumstances in which you were required but failed to comply with the client identification and verification procedures set out in Part 3, Division 11, Client Identification and Verification, of the **Law Society Rules**; or
21. **errors** that occurred prior to January 1, 2012.

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 — ANNUAL AGGREGATE LIMIT

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**.

1.2.2 All payments of **damages, claims expenses** and deductibles reduce the limits of our liability stated in Declarations 3(b) and 3(f).

1.3 MULTIPLE INSUREDS, CLAIMS OR CLAIMANTS — PART A

Notwithstanding any other provision of this policy, one or more **claims** resulting from an **error** shall be subject to one limit of liability and shall not increase our limits of liability regardless of whether the **error** is made by more than one **Insured** or by **Insured(s)** acting in more than one capacity and regardless of whether the **claims** are made against more than one **Insured** or made by more than one **claimant**.

1.4 LIMIT OF LIABILITY PART B — EACH ERROR

1.4.1 The limit of liability stated in Declaration 3(c) or, if Condition 1.4.3 applies, then as stated there, shall be the maximum amount payable under Part B of this policy for all **damages** for all **claims** by a **claimant** arising out of an **error** or **related errors**.

INSURANCE POLICIES

1.4.2 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** or **related errors** 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 limit of liability stated in Declaration 3(c) or, if Condition 1.4.3 applies, then as stated there, applicable to the **claim** or potential **claim** first reported.

1.4.3 If the **error** or **related errors** arise out of either your temporary practice in or with respect to the law of a **Reciprocal Jurisdiction** of which you are not a member, or your practice as a Canadian legal advisor member of the Barreau du Québec, the limit of liability stated in Declaration 3(c) shall be \$250,000, and Conditions 1.4.1, 1.4.2 and 1.5 shall be read as if the amount in Declaration 3(c) was \$250,000.

1.5 MULTIPLE INSUREDS, CLAIMS, CLAIMANTS OR ERRORS — PART B

One or more **claims**, resulting from an **error** or **related errors** made by one or more **Insureds**, made against one or more **Insureds** by a **claimant** or by **related claimants**, shall be subject to the one limit of liability stated in Declaration 3(c) or, if Condition 1.4.3 applies, then as stated there. In no case will the limit of coverage for an **error** or **related errors** exceed the limit set out in Declaration 3(c).

1.6 LIMIT OF LIABILITY PART B — INTER-JURISDICTIONAL PRACTICE ANNUAL AGGREGATE LIMIT

The limit of liability that is the maximum amount payable under Part B of this policy on behalf of each **Individual Insured**, including all related **Additional Insureds**, for all **damages** arising out of all **claims** and potential **claims** first reported during the **policy period** arising out of either your temporary practice in or with respect to the law of a **Reciprocal Jurisdiction** of which you are not a member, or your practice as a Canadian legal advisor member of the Barreau du Québec, is \$2,000,000. This limit shall be included within the limit set out in Declaration 3(d).

1.7 LIMIT OF LIABILITY PART B — PROFESSION-WIDE ANNUAL AGGREGATE LIMIT

1.7.1 The limit of liability stated in Declaration 3(d) 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.

INSURANCE POLICIES

1.7.2 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**.

1.8 LIMIT OF LIABILITY PART C — EACH **ERROR**

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

1.8.2 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.

1.9 LIMIT OF LIABILITY PART C — ANNUAL AGGREGATE LIMIT

1.9.1 The limit of liability stated in Declaration 3(f) is the maximum amount payable under Part C 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**.

1.9.2 All payments of **damages, claims expenses** and deductibles reduce the limits of our liability stated in Declarations 3(b) and 3(f).

1.10 LIMIT OF LIABILITY PART C — **LAW FIRM** ANNUAL AGGREGATE LIMIT

The limit of liability stated in Declaration 3(g) is the maximum amount payable under this Part C of this policy for the **policy period** on an aggregate basis for all **Insureds** who, at the time of the **error**, were at the same **law firm**, for all **damages, claims expenses** and deductibles arising out of all **claims** and potential **claims** first reported during the **policy period**.

1.11 MULTIPLE **INSUREDS, CLAIMS OR CLAIMANTS** — PART C

Notwithstanding any other provision of this policy, one or more **claims** resulting from an **error** shall be subject to one limit of liability and shall not increase our limits of liability regardless of whether the **error** is made by more than one **Insured** or by **Insured(s)** acting in more than one capacity and regardless of whether the **claims** are made against more than one **Insured** or made by more than one **claimant**.

INSURANCE POLICIES

1.12 LIMIT OF LIABILITY PART C — PROFESSION-WIDE ANNUAL AGGREGATE LIMIT

1.12.1 The limit of liability stated in Declaration 3(h) is the maximum amount payable under this policy for the **policy period** on an aggregate basis for all **Insureds** covered by Part C of this policy. For clarity, all **Insureds** covered by Part C 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.

1.12.2 The **Individual Insureds** and **Additional 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 **Additional Insureds** for the **policy period**.

1.13 OBLIGATION TO PAY PART C

We shall not be obliged to pay any **damages** or **claims expenses**, or to undertake or continue the defence of any proceeding until you have complied with your obligation to eliminate a trust shortage under Rule 3-66 (1) of the **Law Society** Rules.

1.14 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**.

1.15 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 If **damages** are payable pursuant to Part C of this policy, you will pay the deductible stated in Declaration 4, reduced by the amount you are legally obligated to pay and have paid a savings institution to satisfy any overdraft created in the **trust account**.

2.3 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.

INSURANCE POLICIES

- 2.4 When one or more **claims** arising out of an **error** are made jointly or severally against two or more **law firms** or **Individual Insureds** at separate **law firms**, the deductible will apply separately to each **law firm**.
- 2.5 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.
- 2.6 If we request, you will make direct payments for **claims** or potential **claims** within the deductible to us or to other parties.
- 2.7 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 **Damages** or **claims expenses** may be paid 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** or any part of a **claim** because of any exclusion, breach of a condition, or any other term of this policy and **damages** or **claims expenses** are paid on behalf of you or any other **Insured** pursuant to this policy, you will reimburse us for all such amounts on demand.
- 3.3 If you are engaged in **unauthorized practice** and a **claim** or any part of a **claim** that falls within Part A or C of this policy relates to the **unauthorized practice**, and **damages** or **claims expenses** are paid on behalf of you or any other **Insured** pursuant to this policy, the **Individual Insured** will reimburse us for all such amounts on demand.
- 3.4 If **damages** or **claims expenses** are paid on behalf of you or any other **Insured** pursuant to Part B of this policy:
 - 3.4.1 the **Individual Insured** will reimburse us for all such amounts on demand; and
 - 3.4.2 if any other **Insured** received a benefit from the **error**, that **Insured** will reimburse us on demand for the portion of the **damages** paid that is commensurate with the amount of the benefit.
- 3.5 In relation to Conditions 3.1, 3.2, 3.3 and 3.4:
 - 3.5.1 if payments are made on behalf of two or more of you, your liability to us will be joint and several; and
 - 3.5.2 the timing of any demand made shall be in our sole discretion.

INSURANCE POLICIES

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 immediately, along with the fullest information obtainable, during the **policy period** to:

Lawyers Insurance Fund
8th Floor, 845 Cambie Street
Vancouver, BC V6B 4Z9
Attention: Claims Manager
Fax: 604-682-5842

Such notice is necessary to settle, or defend, any **claim** or anticipated **claim** against you which may be covered under this policy.

- 4.2 If a **claim** is made or suit is brought against you, you will forward immediately to us every demand, notice of civil claim or other process with the fullest information obtainable.
- 4.3 We may deem notice of an **error**, **claim** or potential **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 repair **errors**, in making settlements and in the conduct of suits. Upon request, you will also:
- 5.1.1 give written statements, information and documents to and meet with us or any counsel we retain for the purpose of determining or reviewing 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**.

INSURANCE POLICIES

- 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 keep any information that you provide us confidential in accordance with the **Confidentiality Protocol**. You consent to any permitted disclosure, and agree that such disclosure does not constitute a waiver of privilege with respect to any third parties or, if it does, constitutes a limited waiver of privilege only for the purpose for which it is disclosed.

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.

- 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**.

INSURANCE POLICIES

7. CONFLICTS

Any duty that we may have to defend or indemnify you shall not give rise to an obligation on our part to pay any cost you may incur in relation to:

- 7.1 a dispute arising out of or in connection with this policy or the breach thereof; or
- 7.2 any other actual or potential conflict between us.

You agree that you are solely responsible for any such cost without recourse to us.

8. ARBITRATION OR MEDIATION

We shall be entitled to exercise all your rights in the choice of arbitrators or 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, or right of indemnity, whether primary, contributing, contingent or otherwise, and we will not pay any loss or **claim** until such insurance or recourse is exhausted.
- 9.2 Condition 9.1 does not apply to insurance specifically arranged to apply as excess insurance over the insurance provided by this policy.
- 9.3 If you or any non-**member** lawyer or non-lawyer partner 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.
- 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, right of 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, right of 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, right of indemnity, insurance or recourse to any other source of recovery including set-offs whether legal or equitable.

INSURANCE POLICIES

10. PROCEEDINGS AGAINST US

10.1 No proceeding 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.

10.2 All disputes arising out of or in connection with this policy or the breach thereof, except in relation to reimbursement as provided in Condition 3, and the allocation of **claims expenses** under Insuring Agreement A 2.4 shall be determined by arbitration in Vancouver, British Columbia, before a single arbitrator. You agree to keep all communications, meetings, evidence, materials and hearings relating to the arbitration, and any reasons or award arising from the arbitration, strictly confidential unless we agree otherwise or disclosure is required by law.

11. INSOLVENCY, BANKRUPTCY, INCAPACITY OR 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.

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.

INSURANCE POLICIES

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, and any dispute arising out of or in connection with it or the breach thereof, will be exclusively governed by and interpreted in accordance with the laws of British Columbia and any applicable federal laws of Canada and, in the event any dispute is not governed by Condition 10.2 of this policy, it shall be submitted to and be subject to the exclusive jurisdiction of the Courts of British Columbia in Vancouver, British Columbia.

19. CURRENCY

The deductibles and limits are expressed in Canadian currency.

20. 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.



Susan I. Forbes, QC, Secretary

INSURANCE POLICIES