

# MEMBER'S MANUAL

The Law Society  
of British Columbia



## AMENDMENT PAGES

2016: No. 3 December

### Highlights

**Law Society Rules 2015:**\* Fees are updated for 2017 (Schedules 1, 2 and 3: pp. 217 to 221).

\**Historical notes are now only published in the website version of the Rules.*

**Code of Professional Conduct for British Columbia:** The rules for “limited representation” have been amended to more closely align with the “short-term summary legal services” rules in the Federation of Law Societies’ (FLS) model code (*BC Code* rule 3.1-2, commentary [7.2] and rules 3.4-11.1 to 3.4-11.4, including commentary; pp. 11 and 35); the transferring lawyer rules have also been amended to more closely align with the FLS model code (*BC Code* rule 3.3-7, including commentary, rule 3.4-11, commentary [1], rules 3.4-17 to 3.4-26 and Appendix D, which was rescinded; pp. 24.1, 34 and 36 to 38.3).

**Insurance Policies:** Insurance Policy No. LPL 17-01-01 replaces Policy No. LPL 16-01-01. Refer to the Spring 2017 *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 2015	217 – 222	217 – 222
Code of Professional Conduct for British Columbia	11 – 12 – 33 – 38 107 – 112	11 – 12 24.1 – 24.2 33 – 38, 38.1 – 38.4 107 – 108
Insurance Policies	Policy No. LPL 16-01-01 (1 – 28)	Policy No. LPL 17-01-01 (1 – 28)

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

**Updates:** This amendment package updates the *Member’s Manual* to **November 25, 2016**. The previous amendment package was 2016: No. 2 September.

To check that your copy of the Manual is up to date, consult the contents checklist on the back of this filing page. If you have further questions about updating your Manual, contact the Communications department: telephone 604.697.5838 or toll-free 1.800.903.5300 or email [communications@lsbc.org](mailto: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](http://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

2016: 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> )	195 – 200	[09/2016]
Title page	—	—		201 – 212	[06/2015]
Table of Contents	1 – 8	[06/2016]		213 – 214	[09/2016]
	9 – 14	[12/2012]		215 – 216	[06/2015]
	15 – 16	[06/2016]		217 – 222	[12/2016]
	17 – 20	[12/2012]		223 – 224	[06/2015]
	21 – 22	[06/2016]			
	23 – 24	[12/2012]	Divider tab: CODE OF PROFESSIONAL CONDUCT /		
	25 – 26	[06/2016]	PROFESSIONAL CONDUCT HANDBOOK		
	27 – 30	[12/2012]	Title page	—	—
	31 – 34	[06/2016]	Table of Contents	i – ii	[03/2014]
34.1 – 34.6	[12/2012]			iii – vi	[06/2016]
35 – 36	[09/2011]		Text	1 – 2	[12/2013]
36.1 – 36.2	[07/07]			3 – 10	[12/2012]
37 – 38	[12/98]			11 – 12	[12/2016]
39 – 42	[12/2012]			13 – 14, 14.1 – 14.2	[12/2013]
43 – 44	[03/2013]			15 – 16	[06/2013]
45 – 46	[07/2010]			17 – 24	[12/2012]
47 – 48	[06/2016]			24.1 – 24.2	[12/2016]
49 – 50	[12/98]			25 – 32	[12/2012]
51 – 58	[12/2012]			33 – 38, 38.1 – 38.4	[12/2016]
59 – 60	[09/2014]			39 – 40	[06/2013]
				41 – 42	[12/2012]
Divider tab: LAW SOCIETY RULES				43 – 44	[06/2013]
Title page	—	—		45 – 46	[06/2015]
Table of Contents	1 – 2	[06/2016]		47 – 48	[12/2015]
	3 – 8	[06/2015]		49 – 52	[12/2012]
	9 – 10	[06/2016]		53 – 54	[12/2015]
Text	11 – 16	[06/2015]		55 – 56	[12/2012]
	17 – 26	[12/2015]		57 – 58	[12/2014]
	27 – 28	[06/2015]		59 – 70	[12/2012]
	29 – 38	[12/2015]		71 – 72	[09/2014]
	39 – 88	[06/2015]		73 – 74	[12/2012]
	89 – 94	[09/2016]		75 – 76	[12/2015]
	95 – 98	[06/2015]		76.1 – 76.2	[06/2013]
	99 – 100	[12/2015]		77 – 82	[12/2012]
	101 – 122	[06/2015]		83 – 84, 84.1 – 84.2	[12/2013]
	123 – 124	[06/2016]		85 – 96	[12/2012]
	125 – 128	[06/2015]		97 – 98	[06/2016]
	129 – 132	[09/2016]		99 – 100	[12/2012]
	133 – 134	[06/2015]		101 – 102	[03/2013]
	135 – 136	[12/2015]		102.1 – 102.4	[12/2015]
	137 – 142	[06/2015]		103 – 106	[03/2015]
	143 – 144	[12/2015]		107 – 108	[12/2016]
	145 – 154	[06/2015]		109 – 112	deleted
	155 – 156	[12/2015]		113 – 114	[12/2012]
	157 – 164	[06/2015]		115 – 116	[12/2015]
	165 – 166	[09/2016]			
	167 – 172	[06/2015]	Divider tab: INSURANCE POLICIES		
	173 – 180	[09/2016]	Policy No. LPL 17-01-01	1 – 28	[12/2016]
	181 – 186	[06/2015]			
	187 – 188	[06/2016]	Divider tab: ARTICLING		
	189 – 190	[06/2015]	Text	1 – 2	[06/03]
	191 – 192	[09/2016]		3 – 4	[07/09]
	193 – 194	[06/2016]		5 – 8	[06/03]

## SCHEDULE 1 – 2017 LAW SOCIETY FEES AND ASSESSMENTS

<b>A. Annual fee</b>	<b>\$</b>
1. Practice fee (Rule 2-105 [ <i>Annual practising fees</i> ]) .....	2,125.57
2. Liability insurance base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-40 (1) [ <i>Annual insurance fee</i> ]):	
(a) full-time practice .....	1,750.00
(b) part-time practice .....	875.00
3. Liability insurance surcharge (Rule 3-44 (2) [ <i>Deductible, surcharge and reimbursement</i> ]) .....	1,000.00
4. Late payment fee for practising lawyers (Rule 2-108 (3) [ <i>Late payment</i> ]) .....	100.00
5. Retired member fee (Rule 2-4 (3) [ <i>Retired members</i> ]) .....	75.00
6. Late payment fee for retired members (Rule 2-108 (4)) .....	nil
7. Non-practising member fee (Rule 2-3 (2) [ <i>Non-practising members</i> ]) .....	300.00
8. Late payment fee for non-practising members (Rule 2-108 (5)) .....	25.00
9. Administration fee (R. 2-116 (3) [ <i>Refund on exemption during practice year</i> ]) .....	50.00
<b>B. Trust administration fee</b>	
1. Each client matter subject to fee (Rule 2-110 (1) [ <i>Trust administration fee</i> ]) ..	15.00
<b>C. Special assessments</b>	
<b>D. Articled student fees</b>	
1. Application fee for enrolment in admission program (Rules 2-54 (1) (e) [ <i>Enrolment in the admission program</i> ] and 2-62 (1) (b) [ <i>Part-time articles</i> ]) ..	250.00
2. Application fee for temporary articles (R. 2-70 (1) (c) [ <i>Temporary articles</i> ]) ..	125.00
3. Application fee for temporary articles (legal clinic) (Rule 2-70 (1) (c)) .....	25.00
4. Training course registration (Rule 2-72 (4) (a) [ <i>Training course</i> ]) .....	2,500.00
5. Remedial work (Rule 2-74 (8) [ <i>Review by Credentials Committee</i> ]):	
(a) for each piece of work .....	50.00
(b) for repeating the training course .....	3,900.00
<b>E. Transfer fees</b>	
1. Application fee for transfer from another Canadian province or territory – investigation fee (Rule 2-79 (1) (f) [ <i>Transfer from another Canadian jurisdiction</i> ]) .....	1,125.00
2. Transfer or qualification examination (Rules 2-79 (6) and 2-89 (6) [ <i>Returning to practice after an absence</i> ]) .....	300.00

<b>F. Call and admission fees</b>	<b>\$</b>
1. After enrolment in admission program (Rule 2-77 (1) (c) [ <i>First call and admission</i> ]) .....	200.00
2. After transfer from another Canadian province or territory (Rule 2-79 (1) (f) [ <i>Transfer from another Canadian jurisdiction</i> ]) .....	200.00
 <b>G. Reinstatement fees</b>	
1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-85 (1)(b) [ <i>Reinstatement of former lawyer</i> ]) .....	600.00
2. Application fee following 3 years or more as a former member (Rule 2-85 (1) (b)) .....	500.00
3. Application fee in all other cases (Rule 2-85 (1) (b)) .....	415.00
 <b>H. Change of status fees</b>	
1. Application fee to become retired member (Rule 2-4 (2) (b) [ <i>Retired members</i> ]) .....	30.00
2. Application fee to become non-practising member (Rule 2-3 (1) (b) [ <i>Non-practising members</i> ]) .....	60.00
3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-5 (1) (b)) .....	60.00
 <b>I. Inter-jurisdictional practice fees</b>	
1. Application fee (Rule 2-19 (3) (b) [ <i>Inter-jurisdictional practice permit</i> ]) .....	500.00
2. Renewal of permit (Rule 2-19 (3) (b)) .....	100.00
 <b>J. Corporation and limited liability partnership fees</b>	
1. Permit fee for law corporation (Rule 9-4 (c) [ <i>Law corporation permit</i> ]) .....	300.00
2. New permit on change of name fee (Rule 9-6 (4) (c) [ <i>Change of corporate name</i> ]) .....	75.00
3. LLP registration fee (Rule 9-15 (1) [ <i>Notice of application for registration</i> ]) .....	300.00
 <b>K. Practitioners of foreign law</b>	
1. Application fee for practitioners of foreign law (Rule 2-29 (1) (b) [ <i>Practitioners of foreign law</i> ]) .....	600.00
2. Permit renewal fee for practitioners of foreign law (Rules 2-29 (1) (b) and 2-34 (2) (c) [ <i>Renewal of permit</i> ]) .....	125.00
3. Late payment fee (Rule 2-34 (6)) .....	100.00
 <b>L. Late fees</b>	
1. Trust report late filing fee (Rule 3-80 (2) (b) [ <i>Late filing of trust report</i> ]) .....	200.00
2. Professional development late completion fee (Rule 3-31 (1) (c) [ <i>Late completion of professional development</i> ]) .....	500.00
3. Professional development late reporting fee (Rule 3-31 (3) (b)) .....	200.00

<b>M. Multi-disciplinary practice fees</b>		<b>\$</b>
1. Application fee (Rule 2-40 (1) (b) [ <i>Application to practise law in MDP</i> ]).....		300.00
2. Application fee per proposed non-lawyer member of MDP (Rules 2-40 (1) (c) and 2-42 (2) [ <i>Changes in MDP</i> ]) .....		1,125.00

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

## SCHEDULE 2 – 2017 PRORATED FEES AND ASSESSMENTS FOR PRACTISING LAWYERS

[Rules 2-77 (1) [*First call and admission*], 2-79 (1) [*Transfer from another Canadian jurisdiction*], 2-85 (4) [*Reinstatement of former lawyer*], and 3-45 (1) and (2) [*Application for insurance coverage*]]

	Law Society fee	Liability insurance assessment	
		Payable prior to call	Payable by June 30
<b>Full-time insurance</b>			
January	2,125.57	875.00	875.00
February	1,946.16	729.17	875.00
March	1,771.30	583.33	875.00
April	1,591.88	437.50	875.00
May	1,417.05	291.67	875.00
June	1,237.61	145.83	875.00
July	1,062.80	875.00	0.00
August	883.38	729.17	0.00
September	708.52	583.33	0.00
October	529.10	437.50	0.00
November	354.27	291.67	0.00
December	174.83	145.83	0.00
<b>Part-time insurance</b>			
January	2,125.57	437.50	437.50
February	1,946.16	364.58	437.50
March	1,771.30	291.67	437.50
April	1,591.88	218.75	437.50
May	1,417.05	145.83	437.50
June	1,237.61	100.00	437.50
July	1,062.80	437.50	0.00
August	883.38	364.58	0.00
September	708.52	291.67	0.00
October	529.10	218.75	0.00
November	354.27	145.83	0.00
December	174.83	100.00	0.00

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

**SCHEDULE 3 – 2017 PRORATED FEES  
FOR NON-PRACTISING AND RETIRED MEMBERS**

[Rules 2-3 (1) *[Non-practising members]*, 2-4 (2) *[Retired members]*  
and 2-85 (5) *[Reinstatement of former lawyer]*]

	<b>Non-practising members fee</b>	<b>Retired members fee</b>
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.

**SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS**

[Rule 5-11 [*Costs of hearings*]]

Item no.	Description	Number of units
<b>Citation hearing</b>		
1.	Preparation/amendment of citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the citation to the completion of the discipline hearing, for which provision is not made elsewhere	Minimum 1 Maximum 10
2.	Proceeding under s. 26.01 [ <i>Suspension during investigation</i> ], 26.02 [ <i>Medical examination</i> ] or 39 [ <i>Suspension</i> ] and any application to rescind or vary an order under the Rules, for each day of hearing	30
3.	Disclosure under Rule 4-34 [ <i>Demand for disclosure of evidence</i> ]	Minimum 5 Maximum 20
4.	Application for particulars/preparation of particulars under Rule 4-35 [ <i>Application for details of the circumstances</i> ]	Minimum 1 Maximum 5
5.	Application to adjourn under Rule 4-40 [ <i>Adjournment</i> ] <ul style="list-style-type: none"> <li>• if made more than 14 days prior to the scheduled hearing date</li> <li>• if made less than 14 days prior to the scheduled hearing date</li> </ul>	1 3
6.	Pre-hearing conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts <ul style="list-style-type: none"> <li>• if signed more than 21 days prior to hearing date</li> <li>• if signed less than 21 days prior to hearing date</li> <li>• delivered to Respondent and not signed</li> </ul>	Min. 5 to max. 15 Min. 10 to max. 20 Min. 10 to max. 20
8.	Preparation of affidavits	Minimum 5 Maximum 20
9.	Preparation of Notice to Admit	Minimum 5 Maximum 20
10.	Preparation of response to Notice to Admit	Minimum 5 Maximum 20
11.	All process and correspondence associated with retaining and consulting an expert for the purpose of obtaining opinion(s) for use in the proceeding	Minimum 2 Maximum 10
12.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	Minimum 2 Maximum 10
13.	Interlocutory or preliminary motion for which provision is not made elsewhere, for each day of hearing	10
14.	Preparation for interlocutory or preliminary motion, per day of hearing	20



**[6]** A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

- (a) decline to act;
- (b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or
- (c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

**[7]** The lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

**[7.1]** When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1.1.

**[7.2]** In providing short-term summary legal services under rules 3.4-11.1 to 3.4-11.4, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

**[8]** A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications.

**[9]** A lawyer should be wary of bold and over-confident assurances to the client, especially when the lawyer's employment may depend upon advising in a particular way.

**[10]** In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social complications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[11] In a multi-discipline practice, a lawyer must ensure that the client is made aware that the legal advice from the lawyer may be supplemented by advice or services from a non-lawyer. Advice or services from non-lawyer members of the firm unrelated to the retainer for legal services must be provided independently of and outside the scope of the legal services retainer and from a location separate from the premises of the multi-discipline practice. The provision of non-legal advice or services unrelated to the legal services retainer will also be subject to the constraints outlined in the Rules governing multi-discipline practices.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] **Incompetence, negligence and mistakes** – This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

[[7.1] added 09/2013; [7.2] added 06/2016]

## 3.2 Quality of service

**3.2-1** A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

**3.3-7** A lawyer may disclose confidential information to the extent reasonably necessary to detect and resolve conflicts of interest arising from the lawyer’s change of employment or from changes in the composition or ownership of a law firm, but only if the information disclosed does not compromise the solicitor-client privilege or otherwise prejudice the client.

**Commentary**

[1] As a matter related to clients’ interests in maintaining a relationship with counsel of choice and protecting client confidences, lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice.

[2] In these situations (see rules 3.4-17 to 3.4-23 on Conflicts from transfer between law firms), rule 3.3-7 permits lawyers and law firms to disclose limited information. This type of disclosure would only be made once substantive discussions regarding the new relationship have occurred.

[3] This exchange of information between the firms needs to be done in a manner consistent with the transferring lawyer’s and new firm’s obligations to protect client confidentiality and privileged information and avoid any prejudice to the client. It ordinarily would include no more than the names of the persons and entities involved in a matter. Depending on the circumstances, it may include a brief summary of the general issues involved, and information about whether the representation has come to an end.

[4] The disclosure should be made to as few lawyers at the new law firm as possible, ideally to one lawyer of the new firm, such as a designated conflicts lawyer. The information should always be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship.

[5] As the disclosure is made on the basis that it is solely for the use of checking conflicts where lawyers are transferring between firms and for establishing screens, the disclosure should be coupled with an undertaking by the new law firm to the former law firm that it will:

- (a) limit access to the disclosed information;
- (b) not use the information for any purpose other than detecting and resolving conflicts; and
- (c) return, destroy, or store in a secure and confidential manner the information provided once appropriate confidentiality screens are established.

**[6]** The client's consent to disclosure of such information may be specifically addressed in a retainer agreement between the lawyer and client. In some circumstances, however, because of the nature of the retainer, the transferring lawyer and the new law firm may be required to obtain the consent of clients to such disclosure or the disclosure of any further information about the clients. This is especially the case where disclosure would compromise solicitor-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge).

[rule 3.3-7 and commentary added 11/2016]

## Chapter 3 – Relationship to Clients

**3.4-8** Except as provided by rule 3.4-9, if a contentious issue arises between clients who have consented to a joint retainer,

- (a) the lawyer must not advise them on the contentious issue and must:
  - (i) refer the clients to other lawyers; or
  - (ii) advise the clients of their option to settle the contentious issue by direct negotiation in which the lawyer does not participate, provided:
    - 1. no legal advice is required; and
    - 2. the clients are sophisticated;
- (b) if the contentious issue is not resolved, the lawyer must withdraw from the joint representation.

### Commentary

[1] This rule does not prevent a lawyer from arbitrating or settling, or attempting to arbitrate or settle, a dispute between two or more clients or former clients who are not under any legal disability and who wish to submit the dispute to the lawyer.

[2] If, after the clients have consented to a joint retainer, an issue contentious between them or some of them arises, the lawyer is not necessarily precluded from advising them on non-contentious matters.

**3.4-9** Subject to this section, if clients consent to a joint retainer and also agree that, if a contentious issue arises, the lawyer may continue to advise one of them, the lawyer may advise that client about the contentious matter and must refer the other or others to another lawyer.

### Commentary

[1] This rule does not relieve the lawyer of the obligation, when the contentious issue arises, to obtain the consent of the clients if there is or is likely to be a conflicting interest, or if the representation on the contentious issue requires the lawyer to act against one of the clients.

[2] When entering into a joint retainer, the lawyer should stipulate that, if a contentious issue develops, the lawyer will be compelled to cease acting altogether unless, at the time the contentious issue develops, all parties consent to the lawyer's continuing to represent one of them. Consent given before the fact may be ineffective since the party granting the consent will not at that time be in possession of all relevant information.

### Acting against former clients

**3.4-10** Unless the former client consents, a lawyer must not act against a former client in:

- (a) the same matter,
- (b) any related matter, or
- (c) any other matter, if the lawyer has relevant confidential information arising from the representation of the former client that may reasonably affect the former client.

#### Commentary

[1] This rule prohibits a lawyer from attacking legal work done during the retainer, or from undermining the client's position on a matter that was central to the retainer. It is not improper, however, for a lawyer to act against a former client in a matter wholly unrelated to any work the lawyer has previously done for that person if previously obtained confidential information is irrelevant to that matter.

**3.4-11** When a lawyer has acted for a former client and obtained confidential information relevant to a new matter, another lawyer in the lawyer's firm may act against the former client in the new matter, if the firm establishes, in accordance with rule 3.4-20, that it is reasonable that it act in the new matter, having regard to all relevant circumstances, including:

- (a) the adequacy and timing of the measures taken to ensure that no disclosure of the former client's confidential information to the partner or associate having carriage of the new matter will occur;
- (b) the extent of prejudice to any party; and
- (c) the good faith of the parties.

#### Commentary

[1] The guidelines following commentary [3] to rule 3.4-20 regarding lawyer transfers between firms provide valuable guidance for the protection of confidential information in the rare cases in which, having regard to all of the relevant circumstances, it is appropriate for the lawyer's partner or associate to act against the former client.

[[1] amended 11/2016]

### Short-term summary legal services

**3.4-11.1** In rules 3.4-11.2 to 3.4-11.4 “**short-term summary legal services**” means advice or representation to a client under the auspices of a pro bono or not-for-profit legal services provider with the expectation by the lawyer and the client that the lawyer will not provide continuing legal services in the matter.

[heading and rule amended 06/2016]

**3.4-11.2** A lawyer may provide short-term summary legal services without taking steps to determine whether there is a conflict of interest.

[amended 06/2016]

**3.4-11.3** Except with consent of the clients as provided in rule 3.4-2, a lawyer must not provide, or must cease providing short-term summary legal services to a client where the lawyer knows or becomes aware that there is a conflict of interest.

[amended 06/2016]

**3.4-11.4** A lawyer who provides short-term summary legal services must take reasonable measures to ensure that no disclosure of the client's confidential information is made to another lawyer in the lawyer's firm.

[amended 06/2016]

#### Commentary

[1] Short-term summary legal service and duty counsel programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of the not-for-profit legal services provider and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the short-term summary services described in these rules are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided.

[2] The limited nature of short-term summary legal services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term summary legal services only if the lawyer has actual knowledge of a conflict of interest between the client receiving short-term summary legal services and an existing client of the lawyer or an existing client of the *pro bono* or not-for-profit legal services provider or between the lawyer and the client receiving short-term summary legal services.

[3] Confidential information obtained by a lawyer providing the services described in rules 3.4-11.1 to 3.4-11.4 will not be imputed to the lawyers in the lawyer’s firm or to non-lawyer partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term summary legal services.

[4] In the provision of short-term summary legal services, the lawyer’s knowledge about possible conflicts of interest is based on the lawyer’s reasonable recollection and information provided by the client in the ordinary course of consulting with the pro bono or not-for-profit legal services provider to receive its services.

[[1] to [4] added 06/2016; [2] amended 09/2016]

## Conflicts from transfer between law firms

### Application of rule

**3.4-17** In rules 3.4-17 to 3.4-23:

“**matter**” means a case, a transaction, or other client representation, but within such representation does not include offering general “know-how” and, in the case of a government lawyer, providing policy advice unless the advice relates to a particular client representation.

[amended 11/2016]

### Commentary

[2] Rules 3.4-17 to 3.4-23 apply to lawyers sharing space. Treating space-sharing lawyers as a law firm recognizes:

- (a) the concern that opposing clients may have about the appearance of proximity of lawyers sharing space, and
- (b) the risk that lawyers sharing space may be exposed inadvertently to confidential information of an opposing client.

[[5] updated 07/2015; [2] amended, [3] to [5] rescinded 11/2016]



## Chapter 3 – Relationship to Clients

**3.4-18** Rules 3.4-17 to 3.4-23 apply when a lawyer transfers from one law firm (“former law firm”) to another (“new law firm”), and either the transferring lawyer or the new law firm is aware at the time of the transfer or later discovers that:

- (a) it is reasonable to believe the transferring lawyer has confidential information relevant to the new law firm’s matter for its client; or
- (b)
  - (i) the new law firm represents a client in a matter that is the same as or related to a matter in which a former law firm represents or represented its client (“former client”);
  - (ii) the interests of those clients in that matter conflict; and
  - (iii) the transferring lawyer actually possesses relevant information respecting that matter.

[amended 11/2016]

### Commentary

[1] The purpose of the rule is to deal with actual knowledge. Imputed knowledge does not give rise to disqualification. As stated by the Supreme Court of Canada in *Macdonald Estate v. Martin*, [1990] 3 SCR 1235, with respect to the partners or associates of a lawyer who has relevant confidential information, the concept of imputed knowledge is unrealistic in the era of the mega-firm. Notwithstanding the foregoing, the inference to be drawn is that lawyers working together in the same firm will share confidences on the matters on which they are working, such that actual knowledge may be presumed. That presumption can be rebutted by clear and convincing evidence that shows that all reasonable measures, as discussed in rule 3.4-20, have been taken to ensure that no disclosure will occur by the transferring lawyer to the member or members of the firm who are engaged against a former client.

[2] The duties imposed by this rule concerning confidential information should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.

[3] **Law firms with multiple offices** — This rule treats as one “law firm” such entities as the various legal services units of a government, a corporation with separate regional legal departments and an interjurisdictional law firm.

[[1] to [3] added 11/2016]

**3.4-19** Rules 3.4-20 to 3.4-22 do not apply to a lawyer employed by the federal, a provincial or a territorial government who, after transferring from one department, ministry or agency to another, continues to be employed by that government.

[amended 11/2016]

#### **Commentary**

**[1] Government employees and in-house counsel** — The definition of “law firm” includes one or more lawyers practising in a government, a Crown corporation, any other public body or a corporation. Thus, the rule applies to lawyers transferring to or from government service and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same.

[[1] added 11/2016]

#### **Law firm disqualification**

**3.4-20** If the transferring lawyer actually possesses confidential information relevant to a matter respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, the new law firm must cease its representation of its client in that matter unless:

- (a) the former client consents to the new law firm’s continued representation of its client; or
- (b) the new law firm has:
  - (i) taken reasonable measures to ensure that there will be no disclosure of the former client’s confidential information by the transferring lawyer to any member of the new law firm; and
  - (ii) advised the lawyer’s former client, if requested by the client, of the measures taken.

[amended 11/2016]

#### **Commentary**

**[0.1]** There are two circumstances in which the new law firm should consider the implementation of reasonable measures to ensure that there will be no disclosure of the former client’s confidential information to any member of the new firm:

- (a) if the transferring lawyer actually possesses confidential information respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, and

- (b) if the new law firm is not sure whether the transferring lawyer possesses such confidential information, but it wants to strengthen its position if it is later determined that the transferring lawyer did in fact possess such confidential information.

[1] It is not possible to offer a set of “reasonable measures” that will be appropriate or adequate in every case. Instead, the new law firm that seeks to implement reasonable measures must exercise professional judgment in determining what steps must be taken “to ensure that no disclosure will occur to any member of the new law firm of the former client’s confidential information.” Such measures may include timely and properly constructed confidentiality screens.

[2] For example, the various legal services units of a government, a corporation with separate regional legal departments, an interjurisdictional law firm, or a legal aid program may be able to demonstrate that, because of its institutional structure, reporting relationships, function, nature of work, and geography, relatively fewer “measures” are necessary to ensure the non-disclosure of client confidences. If it can be shown that, because of factors such as the above, lawyers in separate units, offices or departments do not “work together” with other lawyers in other units, offices or departments, this will be taken into account in the determination of what screening measures are “reasonable.”

[3] The guidelines that follow are intended as a checklist of relevant factors to be considered. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.

**Guidelines: How to screen / measures to be taken**

1. The screened lawyer should have no involvement in the new law firm’s representation of its client in the matter.
2. The screened lawyer should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.
3. No member of the new law firm should discuss the current matter or the previous representation with the screened lawyer.
4. The firm should take steps to preclude the screened lawyer from having access to any part of the file.
  - 4.1 The measures taken by the new law firm to screen the transferring lawyer should be stated in a written policy explained to all lawyers and support staff within the firm.
5. The new law firm should document the measures taken to screen the transferring lawyer, the time when these measures were put in place (the sooner the better), and should advise all affected lawyers and support staff of the measures taken.

6. These guidelines apply with necessary modifications to situations in which non-lawyer staff leave one law firm to work for another and a determination is made, before hiring the individual, on whether any conflicts of interest will be created and whether the potential new hire actually possesses relevant confidential information.

**How to determine if a conflict exists before hiring a potential transferee**

[4] When a law firm (“new law firm”) considers hiring a lawyer, or an articulated law student (“transferring lawyer”) from another law firm (“former law firm”), the transferring lawyer and the new law firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the law firm that the transferring lawyer is leaving and with respect to clients of a firm in which the transferring lawyer worked at some earlier time.

[5] After completing the interview process and before hiring the transferring lawyer, the new law firm should determine whether any conflicts exist. In determining whether the transferring lawyer actually possesses relevant confidential information, both the transferring lawyer and the new law firm must be very careful, during any interview of a potential transferring lawyer, or other recruitment process, to ensure that they do not disclose client confidences. See rule 3.3-7 which provides that a lawyer may disclose confidential information to the extent the lawyer reasonably believes necessary to detect and resolve conflicts of interest where lawyers transfer between firms.

[6] A lawyer’s duty to the lawyer’s firm may also govern a lawyer’s conduct when exploring an association with another firm and is beyond the scope of these rules.

[7] Issues arising as a result of a transfer between law firms should be dealt with promptly. A lawyer’s failure to promptly raise any issues may prejudice clients and may be considered sharp practice.

[[2] and [3] amended, [0.1], [1] and [4] to [7] added 11/2016]

**Transferring lawyer disqualification**

**3.4-21** Unless the former client consents, a transferring lawyer referred to in rule 3.4-20 must not:

- (a) participate in any manner in the new law firm’s representation of its client in the matter; or
- (b) disclose any confidential information respecting the former client except as permitted by rule 3.3-7.

[added 11/2016]

## Chapter 3 – Relationship to Clients

**3.4-22** Unless the former client consents, members of the new law firm must not discuss the new law firm's representation of its client or the former law firm's representation of the former client in that matter with a transferring lawyer referred to in rule 3.4-20 except as permitted by rule 3.3-7.

[amended 11/2016]

### **Lawyer due diligence for non-lawyer staff**

**3.4-23** A lawyer or a law firm must exercise due diligence in ensuring that each member and employee of the law firm, and each other person whose services the lawyer or the law firm has retained:

- (a) complies with rules 3.4-17 to 3.4-23; and
- (b) does not disclose confidential information:
  - (i) of clients of the firm; or
  - (ii) any other law firm in which the person has worked.

[heading added, rule amended 11/2016]

#### **Commentary**

[1] This rule is intended to regulate lawyers and articulated law students who transfer between law firms. It also imposes a general duty on lawyers and law firms to exercise due diligence in the supervision of non-lawyer staff to ensure that they comply with the rule and with the duty not to disclose confidences of clients of the lawyer's firm and confidences of clients of other law firms in which the person has worked.

[2] Certain non-lawyer staff in a law firm routinely have full access to and work extensively on client files. As such, they may possess confidential information about the client. If these staff move from one law firm to another and the new firm acts for a client opposed in interest to the client on whose files the staff worked, unless measures are taken to screen the staff, it is reasonable to conclude that confidential information may be shared. It is the responsibility of the lawyer/law firm to ensure that staff who may have confidential information that, if disclosed, may prejudice the interests of the client of the former firm, have no involvement with and no access to information relating to the relevant client of the new firm.

[[1] and [2] added 11/2016]

**3.4-24 to 3.4-26** [rescinded 11/2016]

### Conflicts with clients

**3.4-26.1** A lawyer must not perform any legal services if there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's

- (a) relationship with the client, or
- (b) interest in the client or the subject matter of the legal services.

[amended 11/2013]

#### Commentary

[1] Any relationship or interest that affects a lawyer's professional judgment is to be avoided under this rule, including ones involving a relative, partner, employer, employee, business associate or friend of the lawyer.

**3.4-26.2** The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client is not a disqualifying interest under rule 3.4-26.1.

#### Commentary

[1] Generally speaking, a lawyer may act as legal advisor or as business associate, but not both. These principles are not intended to preclude a lawyer from performing legal services on his or her own behalf. Lawyers should be aware, however, that acting in certain circumstances may cause them to be uninsured as a result of Exclusion 6 in the B.C. Lawyers Compulsory Professional Liability Insurance Policy and similar provisions in other insurance policies.

[2] Whether or not insurance coverage under the Compulsory Policy is lost is determined separate and apart from the ethical obligations addressed in this chapter. Review the current policy for the exact wording of Exclusion 6 or contact the Lawyers Insurance Fund regarding the application of the Exclusion to a particular set of circumstances.

## **Appendix D – Conflicts Arising as a Result of Transfer Between Law Firms**

[Appendix D rescinded 11/2016 – see rules 3.4-17 to 3.4-23]

[The next page is page 113.]

[This page is intentionally left blank.]



**2017 BC LAWYERS' COMPULSORY PROFESSIONAL  
LIABILITY INSURANCE  
POLICY NUMBER: LPL 17-01-01**

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, 2017 to January 1, 2018 (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 or misrepresentations)

- (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 or misrepresentations)

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 2017 — 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*.

## 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 2-38 through 2-49**.

**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: funds established to compensate victims of lawyer defalcation; 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 award including any related pre-judgment or post-judgment interest or costs, 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 related pre-judgment or post-judgment interest or costs, 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 related pre-judgment or post-judgment interest or costs, or settlement, for the direct loss only of no more than the amount by which the **trust account** is short.

**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 creates an unintended shortage in trust funds that are held in a **trust account** in connection with the performance of **professional services** for others, provided that such payment is either:
- (i) the result of the deposit into that **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; or
  - (ii) made only because the **Individual Insured** believes that the payment is legitimate and duly authorized, and provided further that:
    - a. the **Individual Insured's** belief is the result of a fraudulent or dishonest act; and
    - b. the payment does not relate in any way to the **Individual Insured's** mistaken belief that funds have been deposited into trust.

**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 2-38 through 2-49 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*.

## INSURANCE POLICIES

**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 2-41 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**.

**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

## INSURANCE POLICIES

- (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.

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

## INSURANCE POLICIES

- 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 OR MISREPRESENTATIONS)**

#### **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:
    - (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

## INSURANCE POLICIES

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**.

## 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”.
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:

## INSURANCE POLICIES

- 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 the dishonest appropriation of money or other property;
- 12. a **claim** arising out of or in any way connected to any shortage of trust funds held in a **trust account** if that shortage is caused by or in any way connected to a dishonest or fraudulent act by any person, including but not limited to an **error** under Part C of this policy; or
- 13. 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:

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 or misrepresentations) 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 3-74 (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.

### 1.16 NO STACKING OF LIMITS

A **claim** coming under Part A, Part B or Part C of this policy, respectively, is subject only to the limits of coverage applicable to that part. The total amount of insurance available under this policy will not exceed the applicable limits.

## 2. DEDUCTIBLES

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

## INSURANCE POLICIES

- 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.
- 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

## INSURANCE POLICIES

3.5.2 the timing of any demand made shall be in our sole discretion.

### 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  
8<sup>th</sup> 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.

## INSURANCE POLICIES

- 5.2 You will notify us immediately of any settlement offer made on any **claim** or potential **claim**.
- 5.3 You will not, except at your own cost, admit liability, make any payment, settle a **claim** or potential **claim**, assume any obligation, directly or indirectly assist in making or proving a **claim** against you, take any other action that might prejudice our ability to avoid or minimize any **damages**, agree to arbitration or any similar means of resolution of any dispute, waive any rights or incur any expenses without our prior written consent.
- 5.4 We shall 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 and were **members** or **MDP partners** at the time of the act or **error**.

- 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 that is specifically arranged to pay amounts in excess of the limits of liability provided by this policy.
- 9.3 If you, any lawyer or any non-lawyer partner practising in your law firm has lawyers professional liability insurance (other than insurance specifically arranged to pay amounts in excess of the limits of liability 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