

# 2021 BC Lawyers Professional Liability Indemnification Policy

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<b>Indemnitor:</b>	<b>BC Lawyers Indemnity Association (“BCLIA”)</b>
<b>Address for service:</b>	<b>5th Floor, 845 Cambie Street, Vancouver, BC V6B 4Z9</b>
<b>Administrator:</b>	<b>Law Society of British Columbia (“Law Society”)</b>
<b>Manager:</b>	<b>Lawyers Indemnity Fund</b>
<b>Master Policy number:</b>	<b>LPL 21-01-01</b>

INDEMNIFICATION POLICY

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## INDEMNIFICATION POLICY

### DECLARATIONS

**This policy governs claims and potential claims first made and reported in 2021 — please read the policy carefully.**

1. **Individual Covered Party:** As defined in this policy
2. **Policy Period:** January 1, 2021 12:01 a.m. to January 1, 2022 12:01 a.m. (PST)
3. **Individual Coverage Period:** As defined in this policy
4. **Indemnity Fee:** As set by the **Law Society**
5. **Policy Territory:** Worldwide
6. **Limits of Liability and Deductibles:**

Coverage	Limit of Liability	Limit of Liability – Annual Aggregate	Deductible
Part A: Professional Liability (errors & omissions)	\$1,000,000 per <b>error</b> for <b>damages, claims expenses, and deductible</b>	\$2,000,000 per <b>individual Covered Party</b> , including all <b>additional Covered Parties</b> , less any payments made under Part C	\$5,000 per <b>error</b> resulting in payment of <b>damages</b> or \$10,000 for any <b>error</b> reported within three years of the report date of a Part A or C <b>error</b> resulting in another payment of <b>damages</b>
Part B: Trust Protection for dishonest appropriation	\$300,000 per <b>claimant</b> and <b>error</b> , except as provided in Condition 1.4.3 for inter-jurisdictional practice, for <b>damages</b> and <b>claims expenses</b>	\$17,500,000 profession-wide for all <b>claims</b> for <b>damages</b> and <b>claims expenses</b> , with a \$2,000,000 sublimit for inter-jurisdictional practices	Nil
Part C: Trust Shortage Liability arising from <b>social engineering fraud</b> or reliance on fraudulent certified cheques	\$500,000 per <b>error</b> for <b>damages, claims expenses, and deductible</b>	\$500,000 sublimit within the Part A annual aggregate limit per <b>individual Covered Party</b> , including all <b>additional Covered Parties</b>  \$500,000 <b>law firm</b> annual aggregate limit for all <b>claims</b> for <b>damages, claims expenses</b> and deductibles  \$2,000,000 profession-wide for all <b>errors</b> combined	35% of the total amount of <b>damages</b> and <b>claims expenses</b> paid per <b>error</b> , reduced by the amount of any overdraft

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7. **Endorsements:**

End#1 – OPTIONAL BUSINESS INNOCENT COVERED PARTY ENDORSEMENT

**Limits of Liability and Deductibles:**

Coverage	Limit of Liability*	Limit of Liability – Annual Aggregate*	Deductible
Business innocent covered party endorsement	\$1,000,000 per <b>error</b> for <b>damages, claims expenses, and deductible</b>	\$2,000,000 for all <b>additional Covered Parties</b> covered by all <b>BIC endorsements</b> issued to <b>members</b> at the <b>covered firm</b> for all <b>damages, claims expenses</b> and deductible arising from all <b>vicarious liability claims</b> or potential <b>vicarious liability claims</b>	10% of the total amount of <b>damages</b> and <b>claims expenses</b> paid for <b>vicarious liability claims</b> .

\*All payments under Part A for the same **error** or **errors** are within, not in addition to, these limits of liability.

## INDEMNIFICATION POLICY

### DEFINITIONS

For convenience, all defined words are in bold print. We, us or our refers to **BCLIA**. You, your or the **Covered Party** refers in Parts A and C to the **individual Covered Party** or **additional Covered Party**, and in Part B to the **individual Covered Party** or **innocent Covered Party**. Unless otherwise indicated, all specific statutory references are to statutes of British Columbia. In this policy:

**Additional Covered Party** means:

- (a) each **law firm** in which the **individual Covered Party** is or was a partner, employee or associate counsel or that is or was liable for the **individual Covered Party**;
- (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 Covered Party** or their **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 or indemnified by us and was the **individual Covered Party's** partner or liable for the **individual Covered Party**;
- (d) each present or former employee of the **individual Covered Party**, 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 their duties and acting under the supervision of, in a supporting role to and not independent of the **individual Covered Party**; and
- (e) each present or former **MDP partner** who, at the time of the **error**, was insured or indemnified 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 lawyer admitted as a Canadian legal advisor member by the **Law Society**.

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

**Claim** means: a demand for money, or the threat or institution of an action or other proceeding against you.

**Claimant** means:

- (a) under Part A or C: a person or **organization** who has made or may make a **claim**; and
- (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.

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**Claims expenses** means:

- (a) (i) fees and disbursements charged by defence counsel appointed by us; and
  - (ii) 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 Part A 2, Part B 2 and Part C 2, and all fees, costs and expenses we incur in any recovery efforts, but does not include salaries of our officers, directors and employees, or those of the **Law Society**; or
- (b) for the purposes of Part A 2.9 only, reasonable fees and disbursements charged by independent defence counsel and payable by you.

**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 or indemnification claims information, as amended from time to time.

**Costs** means: costs payable to a party pursuant to the Supreme Court Civil Rules, or the civil rules of court of any other Canadian or US jurisdiction, by agreement or by Order, except for **special costs**.

**Covered Party** means:

- (a) under Part A or Part C: an **individual Covered Party** or **additional Covered Party**; and
- (b) under Part B: an **individual Covered Party** or **innocent Covered Party**.

**Damages** means:

- (a) under Part A: any compensatory damages award or settlement, including any related pre-judgment or post-judgment interest or **costs**, 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 compensatory or general damages;
- (ii) any order for punitive, exemplary or aggravated damages, even if claimed as compensatory or general damages;
- (iii) any fine, sanction or penalty;

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- (iv) any order or indemnification for **costs** made against you in litigation in which you are not a party;
  - (v) any order for **special costs**; or
  - (vi) the cost of complying with declaratory, injunctive or other non-monetary relief.
- (b) under Part B: any monetary award or settlement, including any related pre-judgment or post-judgment interest or **costs**, 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 monetary award, settlement or sum for which the **claimant** or **Covered Party**:
    - a. is entitled to claim indemnity under any other policy or form of insurance (including title insurance); or
    - 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 indemnity coverage;
  - (ii) any order or indemnification for **costs** made against you in litigation in which you are not a party, or
  - (iii) any order for **special costs** made against you or at all.
- (c) under Part C: any monetary award or settlement, including any related pre-judgment or post-judgment interest or **costs**, for the direct loss only of no more than the amount by which the **trust account** is short, and any **repair costs** or compensatory damages directly related to covered allegations.

**Damages** does not include:

- (i) any monetary award, settlement or sum for which the **claimant** or **Covered Party** is entitled to claim indemnification under any other policy or form of insurance 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 indemnity coverage;
- (ii) any order or indemnification for **costs** made against you in litigation in which you are not a party, or
- (iii) any order for **special costs**; or
- (iv) the cost of complying with declaratory, injunctive or other non-monetary relief.

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**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 error**. 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 **Covered Party(ies)** acting as an executor or personal representative of a deceased, an administrator, an escrow holder, an attorney appointed under a Power of Attorney, a guardian, a trustee or a 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 **Covered Party** or by **Covered Parties** 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**. When two or more **law firms** are involved, the **errors** are not related.

- (b) under Part B: a dishonest appropriation of money or other property, whether to the use of the **individual Covered Party** or a third party, that was entrusted to and received by the **individual Covered Party** in their capacity as a barrister and solicitor and in relation to the provision of **professional services** to others.
- (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 was either:
  - (i) the result of the deposit into that **trust account** of what purports and appears and the **individual Covered Party** believed 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) the result of **social engineering fraud** and made only because the **individual Covered Party** believed the payment was legitimate and duly authorized, and did not relate in any way to the mistaken belief that funds had been deposited into the **trust account**.



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**Family** means: **spouse**, children, parents or siblings.

**Individual coverage period** means: the period during which an **individual Covered Party** is covered for an **error**, as follows:

- (a) under Part A:
  - (i) any period prior to January 1, 1971, 12:01 a.m. PST during which the **individual Covered Party** was a **member**;
  - (ii) any period between January 1, 1971, 12:01 a.m. PST and January 1, 1998, 12:01 a.m. PST during which the **individual Covered Party** was a **member** and held a **certificate**;
  - (iii) any period after January 1, 1998, 12:01 a.m. PST during which the **individual Covered Party** paid the annual insurance or **indemnity fee**; or
  - (iv) any period after January 1, 2002, 12:01 a.m. PST during which the **individual Covered Party** was a **member** and was performing **sanctioned pro bono services**.
- (b) under Part B: any period during which the **individual Covered Party** was a **member**.
- (c) under Part C: any period after January 1, 2012, 12:01 a.m. PST during which the **individual Covered Party** paid the annual insurance or **indemnity fee**.

**Individual Covered Party** means: each **member** or former **member** who:

- (a) made or allegedly made the **error**; or
- (b) for the purposes of Part A 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 Covered Party** means: each present or former **member** who:

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

**Law corporation** means: an entity incorporated under the *Business Corporations Act* that is governed by, and a valid certificate of authorisation has been issued under, the *Legal Profession Act*.

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**Law firm** means: a sole proprietorship through which a **member** provides **professional services**, 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.

**Network Security breach** means:

- (a) the electronic receipt or transmission of a computer virus or other program via the internet or in any other manner that does or is intended to delete, distort, corrupt, manipulate, impair or gain or prevent access to: internet connections, networks or systems; computer programming; computer, telecommunication or other devices; or electronic data for uses other than those intended for authorized users of such devices, systems or networks; or
- (b) the failure or violation of the security of computer, telecommunication or other devices, systems, or networks.

**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 error** 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 or **sanctioned pro bono services**;
- (c) acting as a custodian under Part 6 of the *Legal Profession Act* or in a similar role, or as an arbitrator, mediator or parenting coordinator;
- (d) performing any other activity deemed to be the practice of law by the **Law Society**;
- (e) 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**; or

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- (f) acting as:
- (i) an executor or personal representative of a deceased, an administrator, an escrow holder, an attorney appointed under a Power of Attorney, a guardian, a trustee, a committee, or in any similar fiduciary capacity;
  - (ii) a patent or trademark agent; or
  - (iii) an agent for any record keeping or filing duty imposed by any provincial or federal statute

provided that such services, and the related appointment or retainer, are connected and incidental to the **individual Covered Party's** practice of law and, for the purposes of Part B of this policy only, the **individual Covered Party** is also providing legal services.

**Professional services** does not include:

- (i)
  - (a) acting as a bailee or conduit of funds, from trust or otherwise, or
  - (b) providing investment advice or investment servicesunless such services, and the related appointment or retainer, are performed in consequence of and incidental to the **individual Covered Party's** practice of law;
- (ii) publishing or communicating on a website, blog or social media platform unless directly connected and incidental to the **individual Covered Party's** practice of law;
- (iii) the services or activities of a "mortgage broker" as defined in the *Mortgage Broker Act*; or
- (iv) with respect to Part A and Part C only, **unauthorized practice** by the **individual Covered Party**.

**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 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.

**Related organization** means: an **organization** that controls, is controlled by, or is under common control with another **organization**.

**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**.

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**Sanctioned *pro bono* 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.

**Seconded lawyer** means: an **individual Covered Party** who is a member of a **law firm**, but who, at the request of the **law firm**, temporarily acts in the capacity of in-house counsel for an **organization** or its **related organization**.

**Social engineering fraud** means: the intentional misleading of an **individual Covered Party** into sending or paying money based on false information that is provided to the **individual Covered Party**.

**Special costs** means: party and party costs ordered to be assessed as special costs (formerly called “solicitor and client costs”) pursuant to Supreme Court Civil Rule 14-1(1), or another similar term in the civil rules of court of any other Canadian or US jurisdiction, or an equivalent type of punitive costs.

**Spouse** means: a person who is or has been married, or a person who is or has been living in a marriage-like relationship for a period of time of not less than one year.

**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:

- (a) for the purposes of Condition 3.3, the practice of law by an **individual Covered Party** 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; or
- (b) for the purposes of the definition of **Professional Services**, the practice of law by an **individual Covered Party** in contravention of the rules of any other law society or bar.

## INDEMNIFICATION POLICY

This policy is a contract between each **Covered Party** and **BCLIA**.

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

### **PART A: PROFESSIONAL LIABILITY FOR ERRORS & OMISSIONS**

#### **1. INDEMNITY AGREEMENT A**

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

#### **2. DEFENCE, EXPENSES AND SETTLEMENT**

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 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 6; 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 have the right, but not the duty, to investigate, settle, defend or pay **claims expenses** in accordance with Part A 2.1.2; and

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

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prudent you will settle such **claim** or suit. Subject to Part A 2.3, we will 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 of a **claim**; 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 Part A 2.3 will be determined following final determination of the **claim**.
- 2.5 Notwithstanding Part 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 Part A 2.3. Any such payment, demand or failure to make a demand by us is without prejudice to our respective rights under Part A 2.4.
- 2.6 Any allocation or advancement of **claims expenses** does not apply to or create any presumption with respect to the allocation between covered and uncovered loss.
- 2.7 Notwithstanding Exclusion 2, we have the right and the duty to defend, in accordance with Part A 2.1.2, any **claim** first made against you and reported to us during the **policy period** arising out of a **personal injury error** while you were performing or failing to perform **professional services** for others.
- 2.8 Notwithstanding our obligations pursuant to Part A 2.1, 2.2 and 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 will be considered by the arbitrator in determining our respective obligations.
- 2.9 We will reimburse **claims expenses** up to a maximum sublimit of \$100,000 to the per **error** limit in Declaration 6 in the:
- 2.9.1 appeal of a penalty assessed against an **individual Covered Party** pursuant to section 163.2 or section 237.3 of the *Income Tax Act*, R.S.C. 1985, c.1 or section 285.1 of the *Excise Tax Act*, R.S.C. 1985, c. E-15; or

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2.9.2 defence of the prosecution of an offence against an **individual Covered Party** under subsection 8(8), section 10.1 or subsection 10.3(1) of the *Personal Information Protection and Electronic Documents Act* (PIPEDA), S.C. 2000, c.5

subject to: the assessment or prosecution occurring in the course of, in consequence of and directly related to the **individual Covered Party's** practice of law; our prior written consent to your choice of independent defence counsel; and an acquittal, a withdrawal of the allegation, or a finding by the Court that the **individual Covered Party** did not commit the acts or omissions that gave rise to the assessment or prosecution.

### 3. CLAIMS FIRST MADE AND REPORTED

3.1 Part A of this policy applies only to **claims** arising out of **errors** that occurred during the **individual coverage period**, and provided that:

3.1.1 the **claim** or potential **claim** is first made against you during the **policy period** and reported to us in writing during the **policy period**; and

3.1.2 you had no knowledge, prior to January 1, 1989 of the **claim** or of an **error** or circumstances occurring prior to January 1, 1986 which you knew or could have reasonably foreseen might be the basis of a **claim**.

3.2 A **claim** or potential **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 professional liability 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 **Covered Party**.

### 4. RECIPROCAL JURISDICTIONS

4.1 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 or indemnity policy (the "**Reciprocal Jurisdiction's** policy") is broader than that provided by Part A of this policy, we will provide the same scope of compulsory coverage as that of the **Reciprocal Jurisdiction's** policy. For clarity, however, all **claims** and potential **claims** reported under

## INDEMNIFICATION POLICY

Part A of this policy remain subject to the limits of liability stated in Condition 1 and the Declarations of this policy.

- 4.2 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**:
- 4.2.1 you were practising the law of a **Reciprocal Jurisdiction**;
  - 4.2.2 you were performing the **professional services** in a **Reciprocal Jurisdiction**;
  - 4.2.3 your client was in a **Reciprocal Jurisdiction**; and
  - 4.2.4 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.

- 4.3 Part A 4.1 and 4.2 apply only if, at the time the **individual Covered Party** was performing the **professional services** giving rise to a **claim**, the **individual Covered Party** was practising 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.
- 4.4 Part A 4.1 and 4.2 do 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. INDEMNITY AGREEMENT B**

Notwithstanding Exclusions 1 and 2 of this policy, we will pay on your behalf all sums that 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 Covered Party**, provided that the **error** is the sole cause of the **damages**.

#### **2. DEFENCE AND SETTLEMENT**

- 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 have the right, but not the duty, to defend any suit against you;
  - 2.1.2 if we elect to defend you, we have the right to:
    - (a) select and instruct defence counsel; and



## INDEMNIFICATION POLICY

- (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 have the right to investigate any **claim** or potential **claim**;
- 2.1.4 we 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; and
- 2.1.5 if you fail to cooperate in the investigation or defence of a **claim**, and you prejudice our ability to investigate or argue potential defences, we have the right to deny coverage for the **claim**.

### 3. CLAIMS FIRST MADE AND REPORTED

3.1 Part B of this policy applies only to:

3.1.1 **claims** arising out of **errors** that occurred while the **individual Covered Party** was a **member**, 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**:

- (a) an **innocent Covered Party** becomes aware of an **error** or any circumstance that could reasonably be expected to be the basis of a **claim**, however unmeritorious, or a **claim** is made against an **innocent Covered Party** seeking **damages** that are covered under Part B of this policy;
- (b) a **claim** is made against an **individual Covered Party** 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 Covered Party**; or
- (c) the **Law Society** gives notice of a **claim** or potential **claim** against an **individual Covered Party**, and we deem such notice to be notice given by the **individual Covered Party**; or

3.1.2 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:

- (a) 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
- (b) in any event, no more than ten (10) years of the date of the **error**.

3.2 We may, in our sole discretion, agree to extend the time limits set out in Part B 3.1.1 and 3.1.2.

## INDEMNIFICATION POLICY

### **PART C: TRUST SHORTAGE LIABILITY ARISING FROM SOCIAL ENGINEERING FRAUD OR RELIANCE ON FRAUDULENT CERTIFIED CHEQUES**

#### **1. INDEMNITY AGREEMENT C**

We will pay on your behalf all sums that 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 the **individual Covered Party**.

#### **2. DEFENCE, EXPENSES AND SETTLEMENT**

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

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

2.1.3 we have the right to investigate any **claim** or potential **claim**; and

2.1.4 we 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 6; or

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

#### **3. CLAIMS FIRST MADE AND REPORTED**

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** or potential **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 that 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.

## INDEMNIFICATION POLICY

- 3.3 If Part C of this policy replaces, without interruption of coverage, a policy issued previously by us then a **claim** that 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 **Covered Party**.

## 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:
  - 3.1 any injury to, physical contact with, sickness, disease or death of any person, except for emotional distress or humiliation of a **claimant** directly resulting from an **error**; or
  - 3.2 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 Covered Party**, the payment of which would benefit, in whole or in part, directly or indirectly, the **individual Covered Party** or their **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 Covered Party**;
    - 6.2.2 the **individual Covered Party's family**; or
    - 6.2.3 the partners, associates or associate counsel of the **individual Covered Party** or their **law firm**;

## INDEMNIFICATION POLICY

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.

7. a **claim** made against you by an **organization** or **related organization** which:
  - 7.1 employs you,
  - 7.2 at which you work as a **seconded lawyer**, or
  - 7.3 at which you are a partner.
8. a **claim** against you where the **individual Covered Party** 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 Covered Party'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 only, the following additional exclusions apply.

Part A of the policy does not apply to:

9. a **claim** arising out of or in any way connected to the collection, use or disclosure of any information by a third party;
10. a **claim** arising out of or in any way connected to damage to or loss of data, disclosure of confidential information, theft or other loss of money or property, or any other loss that arises, directly or indirectly, from a **network security breach** or **social engineering fraud**;
11. a **claim** arising out of or in any way connected to the dishonest appropriation of money or other property by any person including but not limited to an **error** under Part B of this policy;
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 any contractual liability (express or implied, including an indemnity) unless there would be tort liability in the absence of the contract and only to the extent **damages** arise solely from any tort liability.

## INDEMNIFICATION POLICY

With respect to Part B: Trust Protection 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**;
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 Covered Party**;  
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 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 PART A — PER **ERROR**

- 1.1.1 The limit of liability stated in Declaration 6 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**.

## INDEMNIFICATION POLICY

1.1.2 If a **claim** or potential **claim** is reported to us by or on behalf of any **Covered Party** 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 PART A — ANNUAL AGGREGATE

1.2.1 The limit of liability stated in Declaration 6 is the maximum amount payable under Part A of this policy on behalf of each **individual Covered Party**, including all related **additional Covered Parties**, 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 under Part A or Part C reduce the limits of our liability stated in Declaration 6.

### 1.3 PART A — MULTIPLE COVERED PARTIES, CLAIMS OR CLAIMANTS

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 **Covered Party** or by **Covered Party(ies)** acting in more than one capacity and regardless of whether the **claims** are made against more than one **Covered Party** or made by more than one **claimant**.

### 1.4 PART B — PER CLAIMANT AND ERROR

1.4.1 The limit of liability stated in Declaration 6 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 and claims expenses** for all **claims** by a **claimant** arising out of an **error** or **related errors**.

1.4.2 If a **claim** or potential **claim** is reported to us by or on behalf of any **Covered Party** 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 6 or, if Condition 1.4.3 applies, then as stated there, applicable to the **claim** or potential **claim** first reported.

## INDEMNIFICATION POLICY

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 6 shall be \$250,000, and Conditions 1.4.1, 1.4.2 and 1.5 shall be read as if the amount in Declaration 6 was \$250,000.

### 1.5 PART B — MULTIPLE COVERED PARTIES, CLAIMS, CLAIMANTS OR ERRORS

One or more **claims**, resulting from an **error** or **related errors** made by one or more **Covered Parties**, made against one or more **Covered Parties** by a **claimant** or by related claimants, shall be subject to the one limit of liability stated in Declaration 6 or, if Condition 1.4.3 applies, then as stated there. **Claimants** are related if the money or other property dishonestly appropriated was jointly provided or jointly owned by the **claimants** or if the **claimants** are members of one **family**. In no case will the limit of coverage for an **error** or **related errors** exceed the limit set out in Declaration 6.

### 1.6 PART B — INTER-JURISDICTIONAL PRACTICE ANNUAL AGGREGATE

The limit of liability that is the maximum amount payable under Part B of this policy on behalf of all **individual Covered Parties**, including all related **additional Covered Parties**, 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 a sublimit to the Profession-Wide Annual Aggregate Limit set out in Declaration 6 and Condition 1.7.

### 1.7 PART B — PROFESSION-WIDE ANNUAL AGGREGATE

1.7.1 The limit of liability stated in Declaration 6 is the maximum amount payable under this policy for the **policy period** on an aggregate basis for all **Covered Parties** covered by Part B of this policy. For clarity, all **Covered Parties** covered by Part B of this policy means all present and former **members** of the **Law Society**. All payments by us of **damages** and **claims expenses** arising out of all **claims** and potential **claims** first reported during the **policy period** reduce the Profession-Wide Aggregate Limit for that **policy period** in the amount of the payments.

1.7.2 The **individual Covered Parties** and **innocent Covered Parties** 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 Covered Parties** or **innocent Covered Parties** for the **policy period**.

## INDEMNIFICATION POLICY

### 1.8 PART C — PER ERROR

1.8.1 The limit of liability stated in Declaration 6 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 **Covered Party** 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 PART C — ANNUAL AGGREGATE

1.9.1 The limit of liability stated in Declaration 6, a sublimit to the Part A Annual Aggregate limit stated in Declaration 6, is the maximum amount payable under Part C of this policy on behalf of each **individual Covered Party**, including all related **additional Covered Parties**, 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 Declaration 6.

### 1.10 PART C — LAW FIRM ANNUAL AGGREGATE

The limit of liability stated in Declaration 6 is the maximum amount payable under this Part C of this policy for the **policy period** on an aggregate basis for all **Covered Parties** 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 PART C — MULTIPLE COVERED PARTIES, CLAIMS OR CLAIMANTS

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 **Covered Party** or by **Covered Party(ies)** acting in more than one capacity and regardless of whether the **claims** are made against more than one **Covered Party** or made by more than one **claimant**.



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### 1.12 PART C — PROFESSION-WIDE ANNUAL AGGREGATE

1.12.1 The limit of liability stated in Declaration 6 is the maximum amount payable under this policy for the **policy period** on an aggregate basis for all **Covered Parties** covered by Part C of this policy. For clarity, all **Covered Parties** 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 Covered Parties** and **additional Covered Parties** 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 Covered Parties** or **additional Covered Parties** for the **policy period**.

### 1.13 PART C – ELIMINATION OF A TRUST SHORTAGE

We will not pay any **damages** or **claims expenses**, or 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 PARTS A, B AND C – CLAIMS EXPENSES WITHIN LIMITS

All **claims expenses** are within, not in addition to, the applicable limit of liability set out in Declaration 6. **Claims expenses** will be subtracted first from the applicable limit of our liability, with the remainder being the amount available to pay **damages**, subject to deductibles.

### 1.15 PARTS A, B AND C - EXHAUSTION OF LIMITS

We will not pay any **damages** or **claims expenses**, or 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 have the right to withdraw from the further defence by tendering control of the defence to you.

## 2. DEDUCTIBLES

2.1 If **damages** are payable pursuant to Part A of this policy, you will pay the deductible stated in Declaration 6.

2.2 If **damages** or **claims expenses** are paid pursuant to Part B of this policy, no deductible will be paid by you.

2.3 If **damages** or **claims expenses** are payable pursuant to Part C of this policy, you will pay the deductible stated in Declaration 6 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**.

## INDEMNIFICATION POLICY

- 2.4 Our obligation to pay **damages** applies only to **damages** in excess of the deductible and we will be liable only for the difference between the deductible and the limit of liability.
- 2.5 When one or more **claims** arising out of an **error** are made jointly or severally against two or more **law firms** or **individual Covered Parties** at separate **law firms**, the deductible applies separately to each **law firm**.
- 2.6 All of the terms and conditions of this policy apply even if the amount of the **claim**, potential **claim** or **damages** may be less than the deductible stated in Declaration 6.
- 2.7 If we request, you will make direct payments for **claims** or potential **claims** within the deductible to us or to other parties.

### 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 **Covered Party** 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 **Covered Party** pursuant to this policy, the **individual Covered Party** 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 **Covered Party** pursuant to Part B of this policy:
  - 3.4.1 the **individual Covered Party** will reimburse us for all such amounts on demand; and
  - 3.4.2 if any other **Covered Party** received a benefit from the **error**, that **Covered Party** 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 **Covered Parties**, your liability to us will be joint and several; and
  - 3.5.2 the timing of any demand made is in our sole discretion.

## INDEMNIFICATION POLICY

### 4. NOTICE OF CLAIM OR SUIT

- 4.1 If you become aware of an **error** or any circumstance that 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 Indemnity Fund  
5th Floor, 845 Cambie Street  
Vancouver, BC V6B 4Z9  
Attention: Director of Claims

or

Fax: 604-682-5842

or

Email: [LIFclaims@lif.ca](mailto:LIFclaims@lif.ca)

Such notice and the information collected in the notice is necessary to settle or defend any **claim** or anticipated **claim** against you, and you are providing it to us for the dominant purpose of litigation.

- 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

## INDEMNIFICATION POLICY

5.1.6 assist in effecting all rights of indemnity, contribution or apportionment available to you or us;

all without cost to us.

5.2 You will notify us immediately of any settlement offer made on any **claim** or potential **claim**.

5.3 You will not, except at your own cost, admit liability, make any payment, settle a **claim** or potential **claim**, assume any obligation, directly or indirectly assist in making or proving a **claim** against you, take any other action that might prejudice our ability to avoid or minimize any **damages**, agree to arbitration or any similar means of resolution of any dispute, waive any rights, or incur any expenses without our prior written consent.

5.4 We shall keep any information that you provide us strictly 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 COVERED PARTY

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 Part A 3 or Condition 4;

we will cover each **additional Covered Party** 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 Part A 3 or Condition 4, and provided that those **additional Covered Parties** 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 **professional services** giving rise to the **error**;

then, pursuant to the terms of this policy, we will 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**.

## INDEMNIFICATION POLICY

### 7. CONFLICTS

Any duty that we may have to defend or indemnify you does 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 are 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 COVERAGE OR RECOURSE

- 9.1 With respect to Part A, this indemnification policy is excess and we will not pay any **claim, damages or claims expenses** until any other valid and collectible insurance, or right of indemnity, whether primary, excess, contributing, contingent or otherwise, except for insurance that is specifically arranged to pay amounts in excess of the limits of liability provided by this policy, is exhausted.
- 9.2 With respect to Part B, and to further clarify the intent and effect of the definition of **damages** under Part B, if a **Covered Party, 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 will 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 will cover such loss, subject to its 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.
- 9.3 With respect to Part C, and to further clarify the intent and effect of the definition of **damages** under Part C, if other valid insurance, collectible bond, right of indemnity or recourse to any other source of recovery exists and protects the **individual Covered Party** or any other **Covered Party**, other than insurance specifically arranged to pay amounts in excess of the limits of liability provided by this policy, this policy will be null and void in respect of such hazards that are otherwise covered by the other valid coverage, whether the **Covered Party** is specifically named in that coverage or not. However, if the loss exceeds the collective limits of all other valid coverage, whether primary, contributing, excess, contingent or on any other basis at law or in equity, then this policy shall apply as excess, subject to its terms including limits and deductibles, and we will not pay any **claim, damages or claims expenses** until such other valid coverage is exhausted.
- 9.4 If any **Covered Party** has lawyers professional liability insurance or indemnification coverage (other than insurance specifically arranged to pay amounts in excess of the limits

## INDEMNIFICATION POLICY

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 or indemnity 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 will respond, or as to any allocation between (or amongst) the policies, will be made by us together with the other Canadian jurisdiction(s), and you agree to be bound by the decision. For clarity, a **Reciprocal Jurisdiction** is also a Canadian jurisdiction.

### 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 will 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 Part A 2.4, will 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 will 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 you have notice of a **claim** or potential **claim** to prejudice such rights, and will 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.

## INDEMNIFICATION POLICY

### 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 will release us from all such responsibilities and obligations.

### 16. INDEMNITY FEE ADJUSTMENT

16.1 If you become indemnified during the **policy period**, the **indemnity fee** payable will be determined by the **Law Society** and us on a *pro rata* basis.

16.2 If, during the **policy period**, you cease to be a **member** or you are exempted from the compulsory professional liability indemnification program, the **indemnity fee** will be adjusted by the **Law Society** and us on a *pro rata* basis.

16.3 If you are suspended or disbarred, the **indemnity fee** will be deemed to be fully earned and will not be adjusted.

### 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 **indemnity 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 will be submitted and subject to the exclusive jurisdiction of the Courts of British Columbia in Vancouver, British Columbia.

### 19. PAYMENT INTO COURT

If we cannot obtain a sufficient discharge for money for which we admit liability, we may apply to the court without notice to any person for an order for the payment of it into court, and the court may order the payment into court to be made on terms as to costs and otherwise the court directs, and may provide to what fund or name the amount must be credited.

The receipt of the registrar or other proper officer of the court is a sufficient discharge to us for the money paid into court, and the money must be dealt with according to the orders of the court.

### 20. CURRENCY

The deductibles and limits are expressed in Canadian currency.

## INDEMNIFICATION POLICY

### 21. TERRITORY

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

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

BC Lawyers Indemnity Association

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Susan I. Forbes, QC, Director