



## Compulsory Professional Liability Insurance

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### What is compulsory professional liability insurance?

The Law Society, through its wholly-owned subsidiary, the LSBC Captive Insurance Company Ltd., provides compulsory professional liability insurance and trust protection coverage for Law Society members.

A lawyer must not practise law in BC unless the lawyer has paid the annual insurance fee, or is exempt from coverage: see section 30(7) of the Legal Profession Act and Law Society Rule 3-39. See below for discussion of who is exempt from the requirement to maintain insurance.

The Law Society's insurance program is managed by the Lawyers Insurance Fund.

### What is the nature of the insurance coverage?

The compulsory insurance policy provides:

- Professional liability insurance (for negligence) (Part A) to protect lawyers if they are liable for negligence and ensure that clients receive compensation to which they are entitled;
- Trust protection (for dishonest appropriation) (Part B) to ensure that innocent members of the public do not suffer a financial loss through theft by a BC lawyer; and
- Trust shortage liability (for reliance on fraudulent certified cheques or misrepresentations) (Part C) to provide some protection for lawyers if they fall victim to the “bad cheque” or other “social engineering” scams, helping ensure that clients do not suffer a financial loss.

Professional liability insurance provides each insured lawyer with \$1 million of coverage for each error, to an annual maximum of \$2 million for all errors reported during the year. There is a deductible of \$5,000 for the first paid claim and \$10,000 for each subsequently paid claim within three years of the report date of the first claim.

Trust protection coverage offers an annual aggregate, profession-wide coverage of \$17.5 million. Each claimant may recover up to \$300,000 per claim. If the claim arises out of the lawyer's inter-jurisdictional practice, different limits apply.

Trust shortage liability insurance provides a limit of \$500,000 per claim, and per lawyer and firm annually, a profession-wide annual aggregate of \$2 million, and a deductible of 35% of the client trust fund shortage (reduced by the amount of any overdraft). Coverage is contingent upon compliance with the Law Society's client identification and verification rules.

The Lawyers Insurance Fund section of the Law Society website at [lawsociety.bc.ca](http://lawsociety.bc.ca) includes the compulsory insurance policy and information about coverage and insurance issues.

### **Is additional insurance coverage available?**

Lawyers can increase the limits of their coverage by purchasing [excess insurance](#) privately.

[Commercial insurance](#) that protects lawyers from risks not covered by the compulsory policy is also available.

Firms may purchase optional business innocent insured coverage ("BIIC") from the Law Society. This optional insurance coverage is designed to protect innocent lawyers in firms who may face claims that are otherwise uninsured because the business interest of another lawyer at the firm triggers Exclusion 6.2 of the compulsory insurance policy, the "business exclusion" clause. The coverage will apply when partners are unaware, despite reasonable and regular enquiries, that another lawyer in the firm was providing legal services when the business exclusion would apply. Please contact the Lawyers Insurance Fund at 604.682.8911 or by email at [insurance@lsbc.org](mailto:insurance@lsbc.org) for an application form or further information on BIIC.

### **What is the annual insurance fee?**

The basic annual insurance fee for the compulsory insurance policy, set under section 30(3)(a) of the Legal Profession Act, is \$1,890 (\$1,800 plus GST) for the year. The fee is prorated on a monthly basis for lawyers who join the program mid-term. A 50% discount is allowed to lawyers who practice part-time. See below for more information on the part-time discount.

The insurance fee must be paid in two equal annual installments:

- The first installment on or before November 30 of the year preceding the year for which it is paid;
- The second installment on or before June 30 of the year for which it is paid.

A member who has not paid the insurance fee and who is not exempt is prohibited from practicing law: see section 30(7) of the *Legal Profession Act*.

### **How do I apply for insurance coverage?**

To apply for insurance coverage for full-time practice, you should submit the following:

- Application for Insurance for Full-time Practice; and

- The prorated insurance fee as set out in Schedule 2 of the Law Society Rules.

If you are applying to change your insurance coverage from part-time to full-time practice, you should submit the difference between the discounted and non-discounted fees on a prorated basis.

If you are currently exempt from the requirement to maintain insurance or insured for part-time practice, and are now applying for insurance coverage for full-time practice, you will be subject to the Law Society's returning to practice rules. The conditions of returning to practice vary depending on the length of time you have been engaged in the practice of law and the period of time you have been absent from practice. Please see the information sheet *Returning to practice* for more information on the returning to practice rules.

### **What is the part-time insurance discount?**

Part-time lawyers receive a 50% discount on the annual insurance fee. You may apply for the part-time discount if you are engaged in the private practice of law, related professional services and activities that further those services for an average of 25 hours per week or less. The terms "related professional services" and "activities that further those services" included but are not limited to:

- Practice management;
- Administration and promotion;
- Professional duties or representation on bodies such as the Law Society, the Canadian Bar Association, the Continuing Legal Education Society and other organizations.

To be eligible for the discount, you should be continuously employed on a part-time basis. You may occasionally practice more than 25 hours per week, as long as on average, over consecutive six-month periods (January to June; July to December), you practice 25 hours per week or less.

You may not apply for the discount if:

- You practice full-time for a portion of the year and do not practice at all for a portion or the balance of the year;
- You have had a professional liability insurance claim in the past five calendar years in any jurisdiction for which an indemnity payment has been made.

### **How do I apply for the part-time discount?**

To apply for insurance coverage for part-time practice, you should submit the following:

- Application for Insurance for Part-time Practice; and

- Prorated insurance fee as set out in Schedule 2 of the Law Society Rules.

If you are applying to change from full-time to part-time practice, you will receive a refund of the prorated portion of the insurance fee.

The discount reduces each of the two installments, which are payable in November and June. If you apply for and pay the discounted fee in November, the discount will be automatically applied to your June installment, unless you notify the Law Society of a change in your practice status.

If you are currently exempt from the requirement to maintain insurance and are applying for insurance coverage for part-time practice, you will be subject to the Law Society's returning to practice rules. The conditions of returning to practice vary depending on the length of time you have been engaged in the practice of law and the period of time you have been absent from practice. Please see the information sheet *Returning to practice* for more information on the returning to practice rules.

### **Who is exempt from the requirement to maintain insurance?**

You are exempt from the requirement to maintain insurance if you are a non-practising or retired member, or you fall within one of the exemptions set out in Law Society Rule 3-43, and you submit a completed Application for Exemption from Insurance. Otherwise, you must maintain insurance under the compulsory policy.

Please refer to Rule 3-43 to determine whether or not you are exempt. Generally, you will fall within Rule 3-43 if:

- you are employed full-time in a corporation other than a law corporation, in a society, union or similar organization and if you are not engaged in the practice of law other than in the course of such employment. If you are a dependent contractor you are considered employed for the purpose of this classification;
- you are employed full-time in a government department and not engaged in the practice of law other than in the course of such employment, or on contract to a branch of the provincial government or a Crown corporation that has given the Law Society an indemnity;
- you are on contract to a branch of the provincial government or a Crown corporation that has given the Law Society an indemnity;
- you provide research and opinion services solely to an insured member and have no client contact whatsoever (includes law professors rendering research and opinion services to government);

- you are not engaged in the practice of law at present (includes lawyers on sabbaticals, maternity and parental leave, and unemployed lawyers);
- you are engaged in the practice of law for no fee, gain or reward, whether direct or indirect, from the person(s) for whom the service(s) are provided;
- you reside outside British Columbia and are not engaged in the practice of BC law;
- you reside outside British Columbia but not in a reciprocating jurisdiction,\* are engaged occasionally in the practice of BC law, but have professional liability insurance in another jurisdiction that covers the occasional practice of BC law;
- you are entitled to practise law in a reciprocating jurisdiction,\* are a member of that jurisdiction's law society and resident in that jurisdiction and maintain the full professional liability insurance coverage required in that jurisdiction. "Resident" has the meaning, with respect to a province, that it has with respect to Canada in the Income Tax Act (Canada).

*\*All of the provinces except Quebec and territories except Nunavut are reciprocating jurisdictions for the purposes of claiming an exemption.*

### **Employed and Contract Lawyers in the Private Sector\***

Lawyers who are employed fulltime in a non-law corporation and not engaged in the practice of law other than in the course of their employment are exempt from the otherwise compulsory obligation to pay the annual insurance fee. Correspondingly, there is no coverage under the policy for claims arising out of these lawyers' employment activities.

Lawyers who, though not employees, are "dependent" contractors, are still considered employed for the purposes of the exemption, and there is no coverage available to these lawyers under the policy. In determining if a contract lawyer is properly characterized as a dependent contractor, various factors are considered. Factors that suggest a dependent, rather than an independent, contractual relationship, include:

- working under the supervision and control of the contracting party rather than independently;
- providing services exclusively to the contracting party;
- being paid a fixed sum, like a salary, rather than billing the contracting party for services rendered;
- enjoying benefits similar to those extended to the contracting party's employees;
- working from the contracting party's office;
- sending correspondence on the letterhead of the contracting party;

- using equipment, supplies, and other resources of the contracting party; and
- having a relationship with the contracting party that affects the lawyer's professional independence.

Lawyers who are employed (including dependant contractors) may be able to acquire insurance in the private market in respect of their employment activities.

Any lawyer who would like the Insurer's position as to whether the lawyer is considered a dependent or independent contractor for the purposes of the policy is invited to send a detailed description of the circumstances, in writing, to one of the advance ruling advisors, Michael Soltynski, Surindar Nijjar, Kate McLean, Coran Cooper-Stephenson or Margrett George.

*\* If you are a lawyer working for the government, a Crown corporation, union or society, or a not-for-profit organization that provides pro bono legal services to the public, please contact Member Services for information about exemptions and insurance.*

### **How do I apply for the exemption?**

To apply for an exemption from the requirement to maintain insurance, you should submit an Application for Exemption from Insurance.

If you have paid the insurance fee for the current practice year and become exempt, you will receive a refund of the prorated portion of the insurance fee. If your circumstances change, contact a Member Services Representative as soon as possible.

### **I'm currently an exempt lawyer. Do I have the option of paying the insurance fee?**

Generally, if you are employed other than by a law firm, you will not have coverage under the compulsory insurance policy. However, the policy does provide some coverage for lawyers employed by a trade union or society, or by a not-for-profit organization that provides pro bono legal services to the public. Such lawyers may choose to pay the insurance fee for professional liability insurance coverage through the Law Society. Please contact a Member Services Representative for more information.

### **How can I obtain more information?**

If you have any questions about obtaining compulsory professional liability insurance, please contact:

Member Services  
Law Society of British Columbia  
8th Floor, 845 Cambie Street  
Vancouver, BC V6B 4Z9

Tel.: 604.605.5311  
BC Toll-free: 1.800.903.5300  
Fax: 604.687.0135  
Email: [memberinfo@lsbc.org](mailto:memberinfo@lsbc.org)

For information on the provisions of the policy, insurance coverage issues or reporting potential insurance claims, please see the Insurance section of the Law Society website at [lawsociety.bc.ca](http://lawsociety.bc.ca).

*The information in this package is based on the Law Society Rules as they exist at this time. You must comply with the Rules that are in effect at the time you apply and with any changes in the Rules that may occur while you are in the process of applying for compulsory professional liability insurance or an exemption from the insurance requirement. If you have any questions about obtaining compulsory professional liability insurance, contact a Member Services Representative at the Law Society of British Columbia.*

## LAW SOCIETY RULES

### Division 5 – Compulsory Professional Liability Insurance

**3-39** (1) A lawyer must maintain professional liability insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay the insurance fee under Rule 3-40 *[Annual insurance fee]*, unless the lawyer is exempt or ineligible under Rule 3-43 *[Exemption from professional liability insurance]*.

(2) A lawyer is bound by and must comply with the terms and conditions of professional liability insurance maintained under subrule (1).

(3) As soon as practicable, the Executive Director must notify all governing bodies of any change to professional liability insurance under this division that affects the limits of liability or scope of coverage.

[heading and (3) amended 04/2017]

### Compulsory trust protection insurance

**3-39.1** (1) A lawyer must maintain trust protection insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay any fee for trust protection insurance set under Rule 3-40 *[Annual insurance fee]*.

(2) A lawyer is bound by and must comply with the terms and conditions of trust protection insurance maintained under subrule (1).

[added 04/2017]

### Annual insurance fee

**3-40** (1) The insurance fee to be paid under section 23 (1) (c) *[Annual fees and practising certificate]* is calculated as follows:

(a) the appropriate base assessment as specified in Schedule 1; plus

(b) any surcharge for which the lawyer is liable under Rule 3-44 *[Deductible, surcharge and reimbursement]*; minus

(c) any credit to which the lawyer is entitled under Rule 3-42 [*Insurance fee credit*].

(2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time insurance fee specified in Schedule 1.

(3) Subject to subrule (6), a lawyer is not eligible to pay the part-time insurance fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.

(4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time insurance fee specified in Schedule 1.

(5) For the purpose of this rule,

(a) the average number of hours per week that a lawyer engages in the practice of law and associated activities is calculated over successive 6 months periods, beginning on the effective date of the undertaking referred to in subrule (2), and

(b) “**associated activities**” includes practice management, administration and promotion and voluntary activities associated with the practice of law.

(6) The Executive Director may, in the Executive Director's discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time insurance fee or, in extraordinary circumstances, allow the lawyer to pay the part-time insurance fee despite subrule (3).

## Payment of annual insurance fee by instalments

**3-41** (1) A lawyer must pay the insurance fee in two equal annual instalments as follows:

(a) the first instalment on or before November 30 of the year preceding the year for which it is paid;

(b) the second instalment on or before June 30 of the year for which it is paid.

(2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30 (7) [*Insurance*] and surrender to the Executive Director his or her practising certificate and any proof of professional liability insurance issued by the Society.

### Insurance fee credit

**3-42** (1) The Benchers may approve an annual insurance fee credit and set the conditions that a lawyer must meet to be entitled to the credit.

(2) When a lawyer is entitled to an annual insurance fee credit, the first instalment of the insurance fee payable by the lawyer is reduced by the amount of the credit.



### Exemption from professional liability insurance

**3-43** (1) A lawyer is exempt from the requirement to maintain professional liability insurance and pay the insurance fee if the lawyer is

(a) not engaged in the practice of law, other than pro bono legal services, anywhere in his or her capacity as a member of the Society, or

(b) employed by one of the following and is not engaged in the practice of law, other than pro bono legal services, except in the course of that employment:

(i) a government department;

(ii) a corporation other than a law corporation;

(iii) a society, trade union or a similar organization.

(2) A lawyer is not exempt under subrule (1) (b) if the lawyer engages in the practice of law, other than pro bono legal services, in any way other than as described in those provisions.

(3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the lawyer is a member.

(4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer

(a) is resident or is deemed resident under the National Mobility Agreement, and

(b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

(5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.

(6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Chambre that extends to the Canadian legal advisor's practice in British Columbia.

[heading amended 04/2017]

## Deductible, surcharge and reimbursement

**3-44** (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society's insurance program on behalf of the lawyer:

- (a) a deductible amount;
  - (b) any other amount that the lawyer is required to repay or reimburse the insurer under professional liability insurance.
- (2) If indemnity has been paid under the Society's insurance program, the lawyer on whose behalf it is paid must
- (a) pay the insurance surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the insurance fee, and
  - (b) if the payment was made under trust protection insurance, reimburse the Society in full on demand, for all amounts paid.
- (3) The Executive Director may, in the Executive Director's discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

[(1) amended 04/2016; (1) and (2) amended 04/2017]

## Application for insurance coverage

**3-45** (1) A lawyer may apply for insurance coverage by delivering to the Executive Director

- (a) an application for insurance coverage, and
  - (b) the prorated insurance fee as specified in Schedule 2.
- (2) A lawyer who is insured for part-time practice may apply for insurance coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time insurance coverage, and
  - (b) the difference between the prorated full-time insurance fee specified in Schedule 2 and any payment made for part-time insurance coverage for the current year.
- (3) The Executive Director must not grant the insurance coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].

### Confidentiality of insurance claims

**3-46** (1) In this rule, “**claim**” means a claim or potential claim reported under the policy of professional liability and trust protection insurance.

- (2) Unless permitted by this rule, no one is permitted to disclose any information or records associated with a claim.

(3) The Executive Director may do any of the following:

- (a) disclose information about a claim with the consent of the lawyer;
- (b) if a claim has become known to the public, disclose
  - (i) the existence of the claim,
  - (ii) its subject matter,
  - (iii) its status, including, if the claim is closed, the general basis on which it was closed, and
  - (iv) any additional information necessary to correct inaccurate information.

(4) For the purpose of subrule (3) (b) (iii), the status of a claim is its stage of progress through the claims handling process, including, but not limited to the following:

- (a) opened;
- (b) under investigation;
- (c) the stage of any litigation commenced;
- (d) closed.

(5) In the case of a claim under trust protection insurance, the Executive Director may do any of the following:

- (a) publish the name of a lawyer or former lawyer and the circumstances of a claim when a panel or the Benchers acting under Part 4 [*Discipline*] or 5 [*Hearings and Appeals*] or a court has found that the lawyer or former lawyer has misappropriated property of a claimant;
- (b) disclose the name of a lawyer or former lawyer and the circumstances of a claim when
  - (i) the lawyer's misappropriation is known to the public,
  - (ii) the claim arises from part of a scheme considered by a panel or the Benchers or a court in the written reasons for a decision, or
  - (iii) the facts are not disputed or are admitted by the lawyer or former lawyer;
- (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.

(6) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[(1) to (3) and (5) amended 04/2017]