

# MEMBER'S MANUAL

The Law Society  
of British Columbia



## AMENDMENT PAGES

2012: No. 1 March

### Highlights

**Law Society Rules:** The Québec Mobility Agreement, which in 2010 established a special category of membership called the Canadian legal advisor, is expanded to include members of the *Chambres des Notaires* (Rules 2-22.1, 2-22.2(2), 2-49.3 and 3-25: pp. 39, 40, 53 and 70.2); new Rule 2-68.1 allows credentials applications that have become inactive to be deemed abandoned and addresses the disposition of funds deposited as security for costs (p. 60.1); the Table of Contents is updated (pp. 1-8).

**Insurance Policies:** Insurance Policy No. LPL 12-01-01 replaces Policy No. LPL 10-01-01 and the 2010 and 2011 Endorsements. Refer to the Spring 2012 *Insurance Issues: Program Report* for details of the policy revisions, including information on new trust shortage liability (for reliance on fraudulent certified cheques) under Part C of the policy.

**Filing:** File the enclosed sheet in your *Member's Manual* as follows:

Manual section	Existing pages to be removed	Amendment pages to be inserted
Law Society Rules	1 – 8 38.3 – 38.4, 39 – 40 53 – 54 60.1 – 60.4 70.1 – 70.2 [Note: Follows page 70.02]	1 – 8 38.3 – 38.4, 39 – 40 53 – 54 60.1 – 60.4 70.1 – 70.2 [Note: Insert between pages 70.02 and 70.3]
Insurance Policies	2011 Endorsement (1 – 2) 2010 Endorsement (1 – 4) Policy No. LPL 10-01-01 (1 – 22)	Policy No. LPL 12-01-01 (1 – 26)

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

**Updates:** This amendment package updates the *Member's Manual* to **March 5, 2012**. The previous amendment package was 2011: No. 4 December.

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

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

Refer to the Law Society website for the most current version of the Act, Rules and Handbook.

## MEMBER'S MANUAL CONTENTS CHECKLIST

*Updated to March 5, 2012*

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

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	[no rules]	

- (2) The Executive Director may issue to a person applying under subrule (1) a permit to act as a practitioner of foreign law if satisfied that the person
  - (a) is a member of the legal profession in one or more foreign jurisdictions,
  - (b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,
  - (c) is a person of good character and repute,
  - (d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to act as a practitioner of foreign law in British Columbia only under the direct supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years,
  - (e) carries professional liability insurance or a bond, indemnity or other security
    - (i) in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1), and
    - (ii) that specifically extends to services rendered by the practitioner of foreign law while acting as such in British Columbia.
- (3) Subject to subrule (4), the Executive Director may attach conditions to a permit issued or renewed under this Rule.
- (4) The Executive Director may only attach under subrule (3) conditions that are authorized by the Credentials Committee.
- (5) A permit issued under subrule (2) is valid for one year from the issue date shown on it.
- (6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law
  - (a) is suspended as a result of proceedings taken under Part 4, or
  - (b) ceases to comply with any of the requirements of this Part.

[1] amended 12/2011]

#### **Restrictions and limitations**

- 2-19** (1) No one may practise the law of a foreign jurisdiction or market a foreign legal practice in British Columbia without a permit issued under Rule 2-18(2).
- (2) A practitioner of foreign law who holds a current permit issued under Rule 2-18(2) may provide legal services in British Columbia respecting
- (a) the law of the jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and
  - (b) trans-jurisdictional or international legal transactions.

- (3) A practitioner of foreign law must not
  - (a) provide advice respecting the law of British Columbia or another Canadian jurisdiction, or
  - (b) deal in any way with funds that would, if accepted, held, transferred or otherwise dealt with by a lawyer, constitute trust funds, except money received on deposit for fees to be earned in the future by the practitioner of foreign law.
- (4) The Act, these Rules and the *Professional Conduct Handbook* apply to and bind a practitioner of foreign law.
- (5) A practitioner of foreign law must notify the Executive Director promptly if he or she
  - (a) is the subject of criminal or professional discipline proceedings in any jurisdiction,
  - (b) ceases to be a member in good standing of the legal profession in any jurisdiction, or
  - (c) fails to complete satisfactorily any continuing legal education program required of the practitioner of foreign law as a member of the legal profession in a foreign jurisdiction.

**Dual qualification**

- 2-20** A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer holds liability insurance that
- (a) specifically extends to the lawyer's activities as a practitioner of foreign law in British Columbia, and
  - (b) is in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1).

**Marketing of legal services by practitioners of foreign law**

**2-21** A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Professional Conduct Handbook*, Chapter 14, Rule 2:

- (a) use the term “practitioner of foreign law;”
- (b) state the foreign jurisdiction in which he or she holds professional legal qualifications, and the professional title used in that jurisdiction;
- (c) not use any designation or make any representation from which a recipient might reasonably conclude that the practitioner of foreign law is a member of the Society.

**Renewal of permit**

**2-22** (1) In order to renew a practitioner of foreign law permit, a practitioner of foreign law must apply to the Executive Director for a renewal of the permit before his or her permit expires.

- (2) A renewal application must include
  - (a) a completed permit renewal application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society,
  - (b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to comply with the requirements set out in Rule 2-18(2), and
  - (c) the renewal fee specified in Schedule 1.
- (3) The Executive Director may renew the permit of a practitioner of foreign law who has complied with the Act and these Rules.
- (4) Subject to subrule (5), a permit renewed under subrule (3) is valid for one year.
- (5) Rule 2-18(6) applies to a permit renewed under subrule (3).
- (6) A practitioner of foreign law who fails to pay when due the fee for renewal of a permit under subrule (2), including applicable taxes, or any part of it, must pay the late payment fee specified in Schedule 1.

**Canadian legal advisors**

**Scope of practice**

**2-22.1** (1) A Canadian legal advisor who is a member of the Barreau du Québec may

- (a) give legal advice on
  - (i) the law of Québec and matters involving the law of Québec,
  - (ii) matters under federal jurisdiction, or
  - (iii) matters involving public international law,
- (b) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or
- (c) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.

## LAW SOCIETY RULES

- (1.1) A Canadian legal advisor who is a member of the Chambre des notaires du Québec may
- (a) give legal advice on
    - (i) the law of Québec and matters involving the law of Québec,
    - (ii) matters under federal jurisdiction, or
    - (iii) matters involving public international law, or
  - (b) where expressly permitted by federal statute or regulation
    - (i) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or
    - (ii) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.
- (2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1) or (1.1).

[added effective 07/2010; amended, (1.1) added 03/2012]

### Requirements

- 2-22.2** (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these Rules and the *Professional Conduct Handbook*.
- (2) A Canadian legal advisor must
- (a) be a member in good standing of the Barreau du Québec or the Chambre des notaires du Québec authorized to practise law in that Province,
  - (b) undertake to comply with Rule 2-23.1, and
  - (c) immediately notify the Executive Director in writing if he or she ceases to be authorized to practise law in Québec.

[added effective 07/2010; (2) amended 03/2012]

### Non-resident partners

#### Inter-jurisdictional law firms

- 2-23** (1) A lawyer who practises law as a member of an inter-jurisdictional law firm must ensure that the firm does the following respecting the firm's practice of law in British Columbia:
- (a) complies with the Part 3, Division 7 of these Rules;
  - (b) makes its books, records and accounts, wherever they are located, available on demand by the Society or its designated agent.

- (3) To qualify for call and admission, an applicant under this Rule must certify in a prescribed form that he or she has reviewed and understands all of the materials reasonably required by the Executive Director.
- (4) A lawyer called and admitted under this Rule has no greater rights as a member of the Society than
  - (a) the lawyer has as a member of the governing body of his or her home jurisdiction, or
  - (b) any other member of the Society in similar circumstances.

[added effective 07/2003; heading amended 11/2006]

**Transfer as Canadian legal advisor**

- 2-49.3** (1) Subject to subrule (3), a member of the Barreau du Québec or of the Chambre des notaires du Québec may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:
- (a) a completed application for call and admission as a Canadian legal advisor in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
  - (b) a certificate of character;
  - (c) a certificate of standing from the Barreau du Québec or from the Chambre des notaires du Québec and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;
  - (d) an errors and omissions insurance application or exemption form;
  - (e) the following fees:
    - (i) the application fee and call and admission fees;
    - (ii) a prorated practice fee;
    - (iii) a prorated annual insurance fee, unless exempt under Rule 3-25;
    - (iv) a prorated Special Compensation Fund assessment;
  - (f) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.
- (2) Subject to subrule (1), Rules 2-49 to 2-51 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal advisor.
- (3) This Rule does not apply to a member of the Barreau du Québec or of the Chambre des notaires du Québec unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau or from the Chambre, as the case may be.

[added effective 07/2010; (1) amended 12/2011; (1) and (3) amended 03/2012]

**Consideration of application for call and admission**

- 2-50** (1) The Executive Director must consider an application for call and admission by a person meeting the requirements under this division, and may conduct or authorize any person to conduct an investigation concerning the application.
- (2) On an application for call and admission, the Executive Director may

## LAW SOCIETY RULES

- (a) authorize the call and admission of the applicant without conditions or limitations, or
  - (b) refer the application to the Credentials Committee.
- (3) When an application is referred to the Credentials Committee under subrule (2), the Committee may
- (a) authorize the call and admission of the applicant without conditions or limitations,
  - (b) authorize the call and admission of the applicant with conditions or limitations on the practice of the applicant, if the applicant consents in writing to those conditions or limitations, or
  - (c) order a hearing.

### **Barristers and solicitors' roll and oath**

- 2-51** (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.
- (2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,
- (a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and
  - (b) be presented in open court before one or more of the judges of the Supreme Court.
- (3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.
- (4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2)(a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.
- (5) The Executive Director must not renew a practising certificate or a Canadian legal advisor certificate issued under subrule (4) unless the lawyer has been presented in open court as required under subrule (2)(b).
- (6) As an exception to subrule (5), the Executive Director may renew a certificate issued under subrule (2)(b) within four months of its expiry date.

[(1) and (2) amended, (4) to (6) added 11/1999; (4) and (5) amended effective 07/2010]

## **Reinstatement**

### **Reinstatement of a former lawyer**

- 2-52** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
- (a) an application for reinstatement in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
  - (b) the appropriate application fee specified in Schedule 1.



- (3) After submissions under subrule (1), the panel must determine the facts and decide whether to
  - (a) grant the application
  - (b) grant the application subject to conditions or limitations that the panel considers appropriate, or
  - (c) reject the application.
- (4) The panel must prepare written reasons for its findings.
- (5) The Executive Director must promptly deliver a copy of the panel's reasons prepared under subrule (4) to the applicant and counsel for the Society.

[(3) to (5) added 07/2007]

#### **Inactive applications**

- 2-68.1** (1) When the Credentials Committee has ordered a hearing under this Division and the applicant has taken no steps to bring the application to a hearing for one year, the application is deemed abandoned.
- (2) When an application is abandoned under this Rule, Law Society counsel may apply for an order that some or all of the funds paid under Rule 2-62 as security for costs be retained by the Society.
  - (3) An application under subrule (2) is made by notifying the following:
    - (a) the applicant;
    - (b) the Executive Director.
  - (4) On an application under subrule (3), the President may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.
  - (5) The President may designate another Bencher to make a determination under subrule (4).

[added 01/2012]

#### **Variation or removal of conditions or limitations**

- 2-69** (1) A lawyer or articled student on whom conditions or limitations have been imposed by a panel under this Division may apply to the President to have them varied or removed.
- (2) The President must refer an application under subrule (1) to the same panel that conducted the hearing or to the Credentials Committee, as the President considers appropriate.

#### **Publication of credentials decision**

- 2-69.1** (1) Subject to Rule 2-69.2, the Executive Director may publish and circulate to the profession a summary of the circumstances and of any decision of a hearing panel on an application under this Division and the reasons given for the decision.

## LAW SOCIETY RULES

- (2) When a publication is allowed under subrule (1), the Executive Director may also publish generally
  - (a) a summary of the circumstances of the decision of the hearing panel and the reasons given for the decision, or
  - (b) all or part of the report of the hearing panel.
- (3) When the Executive Director publishes a document under this Rule by means of the Society's website, the Executive Director must remove the publication from the part of the website for current decisions and may relocate it to an archive part of the website when 6 months have elapsed from the decision of the hearing panel.
- (4) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[added 02/2004]

### **Anonymous publication**

- 2-69.2** (1) Except as required or allowed under this Rule, a publication under Rule 2-69.1 must identify the applicant.
- (2) If the application that is the subject of the hearing is rejected, the publication must not identify the applicant unless the applicant consents in writing.
  - (3) The panel may order that publication not identify the applicant if
    - (a) the application is approved without limitation or conditions on the practice or articles of the applicant, and
    - (b) publication will cause grievous harm to the applicant or another identifiable individual that outweighs the interest of the public and the Society in full publication.
  - (4) An applicant may apply to the panel for an order under subrule (3)
    - (a) in writing or on the record in the course of a hearing, and
    - (b) no later than 7 days after the written hearing report is issued or oral reasons delivered.
  - (5) The Executive Director must not publish under Rule 2-69.1 until
    - (a) 7 days after a hearing report is issued or oral reasons given, unless the applicant waives the right to apply under subrule (4), or
    - (b) an application under subrule (4) is resolved or withdrawn.
  - (6) If a panel orders that an applicant's identity not be disclosed under subrule (3), the panel must state in writing the specific reasons for that decision.
  - (7) If, on a review of a panel decision rejecting an application, the Benchers approve the application, the applicant may apply to the Benchers under subrule (4), and subrules (3) to (6) apply as if the Benchers were a panel.

[added 02/2004]

### Division 3 – Fees and Assessments

#### Annual practising fees

- 2-70** (1) The annual practising fee, special compensation fund assessment and insurance fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee, special compensation fund assessment and first insurance fee instalment is November 30 of the year preceding the year for which they are payable.

[(2) amended 05/2004]

#### Assessments

- 2-71** (1) The Benchers may, by resolution, set a special assessment of all
- (a) practising lawyers,
  - (b) practising lawyers and applicants,
  - (c) members of the Society, or
  - (d) members of the Society and applicants.
- (2) A resolution under subrule (1) must set a date by which the assessment must be paid.

#### Application fees

- 2-71.1** On application from a person who has paid an application fee under these Rules, the Executive Director may refund all or part of the fee if, in the view of the Executive Director, it is fair to make the refund in all the circumstances, including the extent to which Society resources have been expended to process the application for which the fee was paid.

[added 12/2011]

#### Late payment

- 2-72** (1) A lawyer who fails to pay fees by the date required under Rule 2-70 but pays all required fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this Rule, continues to be a member of the Society.
- (2) The Executive Director may extend the time for a lawyer or class of lawyers to pay fees or a special assessment and, if the lawyer pays
- (a) the annual fee or special assessment by the date to which the time is extended, and
  - (b) the late payment fee under this Rule,
- the lawyer is deemed to be a member of the Society in good standing and to have been in good standing during the period of time that the lawyer's fee or special assessment was unpaid.

LAW SOCIETY RULES

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**Annual insurance fee**

- 3-22** (1) The insurance fee to be paid under section 23(1)(c) of the Act 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 3-26; minus
  - (c) any credit to which the lawyer is entitled under Rule 3-24.
- (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).

[(3) amended, (6) added 06/2003]

**Payment of annual insurance fee by instalments**

- 3-23** (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) of the Act and surrender to the Executive Director his or her practising certificate and any proof of professional liability insurance issued by the Society.

[(2) added 05/2000; (1) amended 07/2004]

**Insurance fee credit**

- 3-24** (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.

## LAW SOCIETY RULES

- (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 liability insurance**

- 3-25** (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 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 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 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, 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 Barreau du Québec or by the Chambre des notaires du Québec that extends to the Canadian legal advisor's practice in British Columbia.

[(3) and (4) added effective 07/2003; (5) and (6) added effective 07/2010; (6) amended 03/2012]

### **Deductible, surcharge and reimbursement**

- 3-26** (1) If a deductible amount has been paid under the Society's insurance program on behalf of a lawyer, the lawyer must reimburse the Society in full.
- (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

**BC LAWYERS' COMPULSORY PROFESSIONAL  
LIABILITY INSURANCE  
POLICY NUMBER: LPL 12-01-01**

INSURER:

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

Administrative Offices, 5th Floor, 845 Cambie Street  
Vancouver, BC V6B 4Z9

ADMINISTRATOR:

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

INSURANCE CONSULTANT:

**JARDINE LLOYD THOMPSON CANADA INC.**

**DECLARATIONS**

1. **Individual Insured** As defined in this policy.
2. **Policy Period** From January 1, 2012 to January 1, 2013 (12:01 a.m. standard time).
3. **Limits of Liability**  
PART A: Professional Liability (for negligence)
  - (a) \$1,000,000 All **claims** arising out of an **error** for **damages, claims expenses** and deductibles.
  - (b) \$2,000,000 Annual Aggregate Limit for **damages, claims expenses** and deductibles, including any payments under Part C.  
PART B: Trust Protection (for dishonest appropriation)
  - (c) \$300,000 All **claims** for **damages** by a **claimant** arising out of an **error** or **related errors**  
  
except for inter-jurisdictional practice as provided in Conditions 1.4.3 and 1.6.

## INSURANCE POLICIES

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

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

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

### 4. Deductibles

Applicable to PARTS A and C only

Part A: Professional Liability (for negligence)

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

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

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

### 5. Insurance Fee

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

**This policy governs claims and potential claims reported in 2012 — read carefully.**



**DEFINITIONS**

For convenience, all defined words are in bold print. We, us or our refers to the **Company**. You, your or the **Insured** refers in Parts A and C to the **Individual Insured** or the **Additional Insured**, and in Part B to the **Individual Insured** or the **Innocent Insured**. Unless otherwise indicated, all specific statutory references are to statutes of British Columbia. In this policy:

**Additional Insured** means:

- (a) each **law firm** in which the **Individual Insured** is or was a partner, employee or associate counsel or that is or was liable for the **Individual Insured**;
- (b) each **law corporation**, law office management corporation and law office management limited partnership, which is or was owned wholly or partly, directly or indirectly, by the **Individual Insured** or his or her spouse, and each present or former officer, director, shareholder or limited partner thereof;
- (c) each present or former **member** who, at the time of the **error**, was insured by us and was the **Individual Insured's** partner or liable for the **Individual Insured**;
- (d) each present or former employee of the **Individual Insured**, or of any **law firm, law corporation, law office management corporation** and law office management limited partnership described in (a) or (b) above, provided such employee was acting within the scope of his or her duties and acting under the supervision of, in a supporting role to and not independent of the **Individual Insured**; and
- (e) each present or former **MDP partner** who, at the time of the **error**, was insured by us and a partner in a **multi-disciplinary practice** in which all of the members were in compliance with **Law Society Rules 2-23.1 through 2-23.12**.

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

**Canadian legal advisor** means: a Canadian legal advisor under the **Law Society Rules**.

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

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

**Claimant** means:

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

## INSURANCE POLICIES

**Claims expenses** means:

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

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

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

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

**Damages** means:

- (a) under Part A: any compensatory damages, including any pre-judgment interest, post-judgment interest or costs awarded thereon, or settlement or **repair costs**, relating to covered allegations. **Damages** does not include:
  - (i) an order of set-off or any order for the return or reimbursement of, or accounting for or disgorgement of, any property, benefit, legal fees or disbursements that you received, even if claimed as general damages;
  - (ii) any order for punitive, exemplary or aggravated damages;
  - (iii) any fine, sanction or penalty; or
  - (iv) any order for costs or indemnification for costs made against you in litigation in which you are not a party, or any order for special costs;
- (b) under Part B: any monetary award, including any pre-judgment interest, post-judgment interest or costs awarded thereon, or settlement, for the direct loss only of no more than the value of money or the **deemed value** of other property dishonestly appropriated. **Damages** does not include:
  - (i) any amount for which the **claimant** or **Insured**:
    - a. is entitled to claim indemnity under any other policy or form of insurance (including title insurance); or

## INSURANCE POLICIES

- b. has recourse through any **compensation program** or other source of recovery including set-offs whether legal or equitable;  
  
that would cover such loss in whole or in part in the absence of this policy as this coverage is intended to be last-resort insurance; or
- (ii) any order for costs or indemnification for costs made against you in litigation in which you are not a party, or any order for special costs; or
- (c) under Part C: any monetary award, including any pre-judgment interest, post-judgment interest or costs awarded thereon, or settlement, for the direct loss only of no more than the amount of the trust shortage.

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

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

**Error** means:

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

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

- (b) under Part B: a dishonest appropriation of money or other property, whether to the use of the **Individual Insured** or a third party, which was entrusted to and received by the **Individual Insured** in his or her capacity as a barrister and solicitor and in relation to the provision of **professional services** to others; or

## INSURANCE POLICIES

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

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

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

**Individual Insured** means: each **member** or former **member** who made or allegedly made the **error** or, for the purposes of Part A of this policy only, each **MDP partner** or former **MDP partner** who made or allegedly made the **error**, provided that all of the members of the **multi-disciplinary practice** were in compliance with **Law Society** Rules 2-23.1 through 2-23.12 at the time of the **error**.

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

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

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

**Insured** means:

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

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

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

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

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

## INSURANCE POLICIES

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

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

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

**Policy period** means: the period stated in Declaration 2.

**Professional services** means:

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

**Professional services** does not include:

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

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

## INSURANCE POLICIES

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

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

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

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

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

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

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

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

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

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

## INSURING AGREEMENTS

### PART A: PROFESSIONAL LIABILITY (FOR NEGLIGENCE)

#### 1. INSURING AGREEMENT A 1

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

**2. INSURING AGREEMENT A 2**

- 2.1 With respect to any **claim** first made or suit first brought within Canada or the United States of America seeking **damages** for which you are entitled to indemnity under Part A of this policy, we shall have the right:
- 2.1.1 and the duty to defend any suit against you, even if any of the allegations of the suit are groundless, false or fraudulent; and
- 2.1.2 to select and instruct defence counsel and to investigate and settle any **claim** including the right to elicit, or instruct defence counsel to elicit, offers of settlement. If you object to any settlement recommended by us, we may:
- (a) settle the **claim** without your consent and you will remain liable to pay the deductible stated in Declaration 4; or
- (b) give you the right to negotiate or defend the **claim** or suit. In this event, any duty we may have had to defend the **claim** ceases and the **damages** and **claims expenses** in excess of the amount for which we could have settled will not be recoverable under this policy.
- 2.2 With respect to any **claim** that is made or suit that is brought elsewhere than within Canada or the United States of America seeking **damages** for which you are entitled to indemnity under Part A of this policy:
- 2.2.1 we shall have the right, but not the duty, to investigate, settle, defend or pay **claims expenses** in accordance with Insuring Agreement A 2.1.2; and
- 2.2.2 if we elect not to investigate, settle or defend a **claim** or suit, you will, under our supervision, investigate and defend as is reasonably necessary and, if we deem prudent you will settle such **claim** or suit. Subject to Insuring Agreement A 2.3, we shall reimburse you for the reasonable cost of such investigation, settlement or defence.
- 2.3 For any part of a **claim** for which you are not entitled to coverage under Part A of this policy, you agree that you are responsible for:
- 2.3.1 any **claims expenses** that are solely or substantially attributable to that part; and
- 2.3.2 an equal or, if we agree, less than equal share of any **claims expenses** that are attributable both to that part, and any other part of the **claim** for which you are entitled to coverage under Part A.
- 2.4 The allocation of **claims expenses** under Insuring Agreement A 2.3 shall be determined following final determination of the **claim**.

## INSURANCE POLICIES

- 2.5 Notwithstanding Insuring Agreement A 2.4 we may, at any time prior to final determination of a **claim**, require that you contribute, on an interim basis, to **claims expenses** in any proportion or amount that we determine is reasonable having regard to Insuring Agreement A 2.3. Any such payment, demand or failure to make a demand by us shall be without prejudice to our respective rights under Insuring Agreement A 2.4.
- 2.6 Any allocation or advancement of **claims expenses** shall not apply to or create any presumption with respect to the allocation between covered and uncovered loss.
- 2.7 Notwithstanding Exclusion 2, we shall have the right and the duty to defend, in accordance with Insuring Agreement A 2.1.2, any **claim** first made against you and reported to us during the **policy period** arising out of a **personal injury** while you were performing or failing to perform **professional services** for others.

### 3. INSURING AGREEMENT A 3

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



For clarity, however, all **claims** and potential **claims** reported under Part A of this policy shall remain subject to the limits of liability stated in Condition 1 and the Declarations of this policy.

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

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

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

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

## **PART B: TRUST PROTECTION (FOR DISHONEST APPROPRIATION)**

### **1. INSURING AGREEMENT B 1**

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

### **2. INSURING AGREEMENT B 2**

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

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

2.1.2 if we elect to defend you, we shall have the right to:

- (a) select and instruct defence counsel; and

## INSURANCE POLICIES

(b) withdraw from the defence of the suit, without seeking or obtaining your consent, at any time that we, in our sole discretion, deem appropriate;

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

2.1.4 we shall have the right to settle any **claim** without seeking or obtaining your consent, on such terms and conditions and at such time as we, in our sole discretion, deem appropriate.

### Coverage under this Part B shall only apply to:

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

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

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

**1. INSURING AGREEMENT C 1**

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

**2. INSURING AGREEMENT C 2**

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

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

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

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

2.1.4 we shall have the right to settle any **claim** including the right to elicit, or instruct defence counsel to elicit, offers of settlement. If you object to any settlement recommended by us, we may:

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

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

**3. INSURING AGREEMENT C 3**

3.1 Part C of this policy applies only to **claims** arising out of **errors** that occurred during the **individual coverage period**, and provided that the **claim** or potential **claim** is first made against you during the **policy period** and reported to us in writing during the **policy period**.

3.2 A **claim** is first made against you during the **policy period** if during the **policy period**:

3.2.1 you first become aware of an **error** or any circumstance which could reasonably be expected to be the basis of a **claim**, however unmeritorious; or

## INSURANCE POLICIES

- 3.2.2 a **claim** is made against you seeking **damages** for which you are entitled to indemnity under this policy.
- 3.3 If Part C of this policy replaces, without interruption of coverage, a policy issued previously by us then a **claim** which was first made against you after January 1, 2012, and reported to us within the **policy period**, will be deemed to be first made against you within the **policy period** of this policy.
- 3.4 Except as provided in Condition 6, if you are not entitled to indemnity or a defence for a **claim**, Part C of this policy will not provide indemnity or a defence for such or similar **claim** to any other **Insured**.

## EXCLUSIONS

This policy does not apply to:

1. a **claim** arising out of your actual or alleged criminal act;
2. a **claim** arising out of your actual or alleged dishonest, fraudulent or malicious act;
3. a **claim** arising out of any injury to, physical contact with, sickness, disease or death of any person or injury to or destruction of any tangible property, including the loss of use thereof;
4. a **claim** arising out of your activity as a fiduciary with respect to an employee benefit plan or pension plan;
5. a **claim** arising out of your activities as an officer or director except your activities as an officer or director of a **law corporation** or law office management corporation;
6. a **claim**:
  - 6.1 arising out of an **error** of an **Individual Insured**, the payment of which would benefit, in whole or in part, directly or indirectly, the **Individual Insured** or the **Individual Insured's family** or **law firm**, provided that this Exclusion 6.1 does not apply to any benefit derived solely from the ownership of an **organization**; or
  - 6.2 by or in connection with any **organization** in which:
    - 6.2.1 the **Individual Insured**;
    - 6.2.2 the **Individual Insured's family**; or

## INSURANCE POLICIES

6.2.3 the partners, associates or associate counsel of the **Individual Insured** or of the **Individual Insured's law firm**;

individually or collectively, directly or indirectly, had at the time of the **error** or thereafter, effective management or control of the **organization** or beneficial ownership of the **organization** in an amount greater than ten per cent (10%), provided that with respect to any payment resulting from a **claim** that falls within Part B of this policy, this Exclusion 6.2 applies only to exclude the **ineligible portion** of such payment.

6.3 If a **claim** arises out of an **error** which occurred before January 1, 1991, **family** shall be read without the words “(including **common-law spouse**)” and “parents or siblings”.

7. a **claim** arising out of your activity as an employee, dependent contractor or partner of any **organization** other than:

7.1 a **law firm**; or

7.2 a trade union, society or not-for-profit **organization** that provides *pro bono* legal services to the public, provided that:

7.2.1 the **claim** arises out of an **error** that occurred during the **individual coverage period**; and

7.2.2 the **claim** is not brought against you by or on behalf of such trade union, society or not-for-profit **organization**;

except a **claim** that falls within Part B of this policy and is not brought against you by or on behalf of such **organization**; or

8. a **claim** against you where the **Individual Insured** is a member of any other law society or bar, except a law society of another province or territory of Canada, arising out of that **Individual Insured's** permanent practice in the other jurisdiction. For the purposes of Part B of this policy, this Exclusion 8 shall be read with the words “the Barreau du Québec” substituted for the words “a law society of another province or territory of Canada” and without the word “permanent”.

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

Part A of the policy does not apply to:

9. a **claim** against you where the **Individual Insured** is engaged in **unauthorized practice**, arising out of that **unauthorized practice**;

10. a **claim** arising out of your provision of investment advice or investment services unless as a direct consequence of the performance of **professional services**;

## INSURANCE POLICIES

11. a **claim** that is connected to or arises out of, in whole or in part:
  - 11.1 the dishonest appropriation of money or other property; or
  - 11.2 an **error** under Part C of this policy, or any other shortage of funds held in a **trust account** if that shortage is caused by or connected to a dishonest or fraudulent act; or
12. a **claim** arising out of or connected to the collection, use and/or disclosure of any information by a third party.

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

Part B of this policy does not apply to:

13. **claims, errors** or any circumstances that an **Innocent Insured** or **claimant** knew or reasonably ought to have known could form or did form the basis of a **claim** for compensation to a **compensation program** prior to May 1, 2004;
14. a **claim** that is connected to or arises out of, in whole or in part, the wrongful or unlawful conduct, fault or neglect of the **claimant** or the **claimant's** spouse (including **common-law spouse**);
15. a **claim** by an **organization** that is connected to or arises out of, in whole or in part, the wrongful or unlawful conduct, fault or neglect of an officer, director, employee or agent of the **organization** or an individual who had, directly or indirectly, effective management or control of the **organization** or beneficial ownership of the **organization** in an amount greater than ten per cent (10%);
16. a **claim** where the money or property that was dishonestly appropriated had been unlawfully obtained by the **claimant**;
17. a **claim** brought by a **claimant** who:
  - 17.1 knew prior to the time of the **error** of any dishonest act by the **Individual Insured**; or
  - 17.2 committed, participated in committing, consented to expressly or impliedly, acquiesced in or was reckless or wilfully blind to the **error**; or
18. a **claim** that is connected to or arises out of, in whole or in part, an investment, a purported investment or a Ponzi scheme.

## INSURANCE POLICIES

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

Part C of this policy does not apply to:

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

## CONDITIONS

### 1. LIMITS OF LIABILITY

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

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

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

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

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

#### 1.2 LIMIT OF LIABILITY PART A — ANNUAL AGGREGATE LIMIT

1.2.1 The limit of liability stated in Declaration 3(b) is the maximum amount payable under Part A of this policy on behalf of each **Individual Insured**, including all related **Additional Insureds**, for all **damages, claims expenses** and deductibles arising out of all **claims** and potential **claims** first reported during the **policy period**.

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

1.3 MULTIPLE INSUREDS, CLAIMS OR CLAIMANTS — PART A

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

1.4 LIMIT OF LIABILITY PART B — EACH **ERROR**

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

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

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

and all such **claims** or potential **claims** shall be subject to the terms of this policy and to the limit of liability stated in Declaration 3(c) or, if Condition 1.4.3 applies, then as stated there, applicable to the **claim** or potential **claim** first reported.

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

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

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



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

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

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

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

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

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

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

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

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

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

1.9 LIMIT OF LIABILITY PART C — ANNUAL AGGREGATE LIMIT

1.9.1 The limit of liability stated in Declaration 3(f) is the maximum amount payable under Part C of this policy on behalf of each **Individual Insured**, including all related **Additional Insureds**, for all **damages, claims expenses** and deductibles arising out of all **claims** and potential **claims** first reported during the **policy period**.

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

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

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

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

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

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

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

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

1.13 OBLIGATION TO PAY PART C

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

1.14 PRIORITY OF PAYMENTS

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

1.15 EXHAUSTION OF LIMITS

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

2. DEDUCTIBLES

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

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

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

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

2.5 All the terms and conditions of this policy apply notwithstanding that the amount of the **claim**, potential **claim** or **damages** may be less than the deductible stated in Declaration 4.

2.6 If we request, you will make direct payments for **claims** or potential **claims** within the deductible to us or to other parties.

2.7 There is no deductible payable by you if **damages** or **claims expenses** are paid pursuant to Part B of this policy.

3. REIMBURSEMENT

3.1 We may pay **damages** or **claims expenses** in excess of the limit of liability or within the deductible and you will repay such amounts to us on demand.

3.2 If you are not entitled to coverage for a **claim** or any part of a **claim** because of any term, exclusion or breach of a condition of this policy and we pay **damages** or **claims expenses** on behalf of you or any other **Insured** pursuant to this policy, you will reimburse us for all such amounts.

## INSURANCE POLICIES

- 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 we pay **damages** or **claims expenses** on behalf of you or any other **Insured** pursuant to this policy, the **Individual Insured** will reimburse us for all such amounts.
- 3.4 If we pay **damages** or **claims expenses** on behalf of you or any other **Insured** pursuant to Part B of this policy:
- 3.4.1 the **Individual Insured** will reimburse us for all such amounts; and
- 3.4.2 if any other **Insured** received a benefit from the **error**, that **Insured** will reimburse us for the portion of the **damages** paid that is commensurate with the amount of the benefit.
- 3.5 If we pay on behalf of two or more of you pursuant to Condition 3.1, 3.2, 3.3 or 3.4, your liability to us will be joint and several.

#### 4. NOTICE OF CLAIM OR SUIT

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

Lawyers Insurance Fund  
5<sup>th</sup> Floor, 845 Cambie Street  
Vancouver, BC V6B 4Z9  
Attention: Claims Manager  
Fax: 604-682-5842

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

- 4.2 If a **claim** is made or suit is brought against you, you will forward immediately to us every demand, writ of summons 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**;

## INSURANCE POLICIES

- 5.1.3 submit to examination and interview by us or any counsel we retain, under oath if we request;
- 5.1.4 attend hearings, examinations for discovery and trial;
- 5.1.5 assist in securing and giving evidence, including obtaining the attendance of witnesses in the conduct of suits; and
- 5.1.6 assist in effecting all rights of indemnity, contribution or apportionment available to you or us;

all without cost to us.

- 5.2 You will notify us immediately of any settlement offer made on any **claim** or potential **claim**.
- 5.3 You will not, except at your own cost, admit liability, make any payment, settle a **claim** or potential **claim**, assume any obligation, directly or indirectly assist in making or proving a **claim** against you, take any other action that might prejudice our ability to avoid or minimize any **damages**, agree to arbitration or any similar means of resolution of any dispute, waive any rights or incur any expenses without our prior written consent.
- 5.4 We shall keep any information that you provide us confidential in accordance with the **Confidentiality Protocol**. You agree that any disclosure does not constitute a waiver of privilege with respect to any third parties or, if it does, constitutes a limited waiver of privilege only for the purpose for which it is disclosed.

### 6. INNOCENT ADDITIONAL INSURED

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

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

- 6.2 Condition 6.1 does not apply if the act or **error** which is the subject of Exclusion 1 or 2 is an **error** for the purposes of Part B of this policy.
- 6.3 Where Exclusion 6.2 applies to a **claim** because, individually or collectively, directly or indirectly, the acquisition by you or your **family** of effective management or control or beneficial ownership greater than 10% of an **organization**:

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

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

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

## 7. CONFLICTS

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

## 8. ARBITRATION OR MEDIATION

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

## 9. OTHER INSURANCE OR RECOURSE

9.1 This insurance is excess over any other valid and collectible insurance, or right of indemnity, whether primary, contributing, contingent or otherwise, and we will not pay any loss or **claim** until such insurance or recourse is exhausted.

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

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

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

extent of the amount of such loss in excess of the amount of such other bond, right of indemnity, insurance or recourse to any other source of recovery including set-offs whether legal or equitable.

**10. PROCEEDINGS AGAINST US**

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

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

**11. INSOLVENCY, BANKRUPTCY, INCAPACITY OR DEATH**

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

**12. SUBROGATION**

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

**13. CHANGES**

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

**14. ASSIGNMENT**

Your interest in this policy is not assignable.

**15. RELEASE OF COVERAGE**

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

## INSURANCE POLICIES

### 16. INSURANCE FEE ADJUSTMENT

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

### 17. CANCELLATION OF POLICY

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

### 18. APPLICABLE LAW

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

### 19. CURRENCY

The deductibles and limits are expressed in Canadian currency.

### 20. TERRITORY

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

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

LSBC Captive Insurance Company Ltd.



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Susan I. Forbes, QC, Secretary