

2002

Professional Liability  
Insurance for Lawyers

Insurance  
Policy No.  
2002-001



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Throughout this POLICY certain words have been capitalized to indicate that they have a specific meaning as defined in this POLICY or as set out in the POLICY Declarations.

Lawyers' Professional Indemnity Company in consideration of the payment of the PREMIUM and in reliance on the Declarations of the INSURED and subject to the LIMITS OF LIABILITY, DEDUCTIBLE and all other terms and conditions of this POLICY, agrees with the INSURED and NAMED INSURED, as follows:

## Part I INSURANCE COVERAGE

### A. DAMAGES:

To pay on behalf of the INSURED all sums which the INSURED shall become legally obligated to pay as DAMAGES arising out of a CLAIM, provided the liability of the INSURED is the result of an error, omission or negligent act in the performance of or the failure to perform PROFESSIONAL SERVICES for others.

### B. Defence, settlement, expenses:

I. Subject to subparagraph no. 2 herein, the INSURER will, in respect of such coverage as provided by this POLICY:

- (a) defend any civil suit against the INSURED;
- (b) investigate any CLAIM against the INSURED and have the right to make such settlement of any CLAIM in the INSURER'S sole and absolute discretion, after giving notice of its intention to settle to the INSURED;
- (c) pay,
  - (i) all expenses incurred by the INSURER for investigation and defence;
  - (ii) all costs awarded against the INSURED in any civil suit defended by the INSURER;
  - (iii) in any civil suit, premiums on required appeal bonds and premiums on bonds to release attachments, for bond amounts not exceeding the applicable LIMIT OF LIABILITY, AGGREGATE LIMIT OF LIABILITY or SUBLIMIT(S) OF LIABILITY of this POLICY, provided that the INSURER shall not have any obligation to apply for or furnish any such bonds; and

(d) pay all reasonable expenses, other than loss of earnings, incurred by the INSURED at the INSURER'S request.

2. Notwithstanding the INSURER'S obligations pursuant to Part I Coverage B, i.e. its obligation to defend, investigate and pay certain expenses and costs, the INSURER may decline to so defend, investigate or pay the expenses or costs as set out in Part I Coverage B, subparagraph no. 1 where it determines on reasonable grounds that the CLAIM does not arise out of an error, omission or negligent act in the performance of or failure to perform PROFESSIONAL SERVICES for others, or that the CLAIM does not comply with Part II or IV of the POLICY, or is excluded pursuant to Part III of the POLICY.

In the event that the INSURED shall disagree with the decision of the INSURER, the dispute or disagreement may be heard by an arbitrator pursuant to Part IV Condition P or upon application or action by either party to the Ontario Superior Court of Justice. The INSURER or the INSURED may introduce evidence relating to the issues of coverage and the activities of the INSURED at such arbitration or on the application or action, which evidence shall be considered by the arbitrator or judge in making his or her determination of the respective obligations of the INSURED and INSURER.

The INSURER'S obligations pursuant to Part I Coverages A and B cease as soon as the LIMIT OF LIABILITY, AGGREGATE LIMIT OF LIABILITY or SUBLIMIT(S) OF LIABILITY have been exhausted.

## Part II

# SPECIAL PROVISIONS

### A. Territory:

The insurance afforded by this POLICY applies:

- (i) to the performance of PROFESSIONAL SERVICES anywhere in Canada, where such services are performed with respect to the laws of Canada, its provinces and territories; and
- (ii) to the performance of PROFESSIONAL SERVICES outside of Canada where such services are performed with respect to the laws of Canada, its provinces and territories, provided either that:
  - (a) such services occupy less than ten percent (10%) of an INSURED'S time docketed or gross billings for PROFESSIONAL SERVICES in each calendar year; or
  - (b) the CLAIM or civil suit brought in relation thereto is made in Canada and the issues thereon, including liability and DAMAGES, are adjudicated on their merits in Canada pursuant to the laws of Canada or a Province thereof by a court in Canada.

### B. POLICY PERIOD:

The insurance afforded by this POLICY covers CLAIMS made against the INSURED for the first time during the POLICY PERIOD no matter when the actual or alleged error, omission or negligent act took place and so long as the INSURED shall:

- (i) report the CLAIM to the INSURER during the POLICY PERIOD;
- (ii) not know or ought not to have known prior to the POLICY PERIOD of such CLAIM or of the circumstances giving rise to such CLAIM; and
- (iii) not have any other valid and collectible insurance available concerning such CLAIM.

Further, if during the POLICY PERIOD, the INSURED gives notice to the INSURER of circumstances of an error, omission or negligent act which any reasonable person or LAW FIRM would expect to subsequently give rise to a CLAIM, the INSURER shall consider these a CLAIM reported during this POLICY PERIOD even if an actual demand or allegation is only advanced as against the INSURED after the POLICY PERIOD.

## Part III

# EXCLUSIONS TO THE INSURED'S COVERAGE

This POLICY does not apply:

- (a) to any CLAIM in any way relating to or arising out of any dishonest, fraudulent, criminal or malicious act or omission of an INSURED;
- (b) to any CLAIM by an EMPLOYER who is an INSURED hereunder against another INSURED who is an

EMPLOYEE of such EMPLOYER, with respect to any alleged or actual damage to the goodwill or reputation of the EMPLOYER;

- (c) to any CLAIM by an EMPLOYER who is not an INSURED hereunder against an EMPLOYEE who is an INSURED hereunder;

- (d) to any CLAIM, in any way relating to or resulting in payment or judgment, where the CLAIM is made by or in connection with:
  - (i) a business enterprise or corporation in which the INSURED and/or the INSURED'S spouse and/or the INSURED'S LAW PARTNERSHIP partner(s) and/or LAW PARTNERSHIP partner's(s') spouse(s) have or, at the time of the error, omission or negligent act, or thereafter, had beneficial ownership in an amount greater than ten percent (10%), to the extent that such payment or judgment represents the share of ownership held by the INSURED and/or the INSURED'S spouse and/or the INSURED'S LAW PARTNERSHIP partner(s) and/or LAW PARTNERSHIP partner's(s') spouse(s); or
  - (ii) a LAW CORPORATION in which the INSURED is a shareholder;
- (e) to any CLAIM in any way relating to or arising out of BODILY INJURY to any person, or to mental anguish, injury, shock, humiliation or sickness, disease or death of any person, or to injury to or destruction or loss of any tangible property, including the loss of use thereof, unless as a direct consequence of the performance of PROFESSIONAL SERVICES;
- (f) to any CLAIM in any way relating to or arising out of any undertaking, agreement or promise by an INSURED, in which the INSURED assumes responsibility for his or her own or another's performance of an undertaking, agreement, promise or payment of a debt;
- (g) to any CLAIM in any way relating to or arising out of an INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM in any way relating to or arising out of circumstances in which an INSURED provided PROFESSIONAL SERVICES in conjunction with the above;
- (h) to any CLAIM in any way relating to or arising out of legal fees, accounts or any fee arrangement involving the INSURED.

## Part IV

# GENERAL CONDITIONS

### A. LIMIT OF LIABILITY:

The INSURER'S LIMIT OF LIABILITY, per CLAIM, shall be governed by this Condition.

With respect to such insurance as is afforded under Coverage A and B of this POLICY, the LIMIT OF LIABILITY or SUBLIMIT(S) OF LIABILITY stated in the Declarations as ITEM 5 or ITEM 8 respectively, inclusive of DEDUCTIBLE, is the total limit of the INSURER'S liability per CLAIM per POLICY PERIOD.

The inclusion of more than one INSURED in this POLICY shall not operate to increase the INSURER'S LIMIT OF LIABILITY or SUBLIMIT(S) OF LIABILITY per CLAIM except where one or more CLAIMS arising out of the same or related error, omission or negligent act are made jointly or severally against two or more INSUREDS who

are members of different LAW FIRMS, then the LIMIT OF LIABILITY or SUBLIMIT(S) OF LIABILITY shall apply separately in respect of each LAW FIRM.

### B. Annual AGGREGATE LIMIT OF LIABILITY:

The INSURER'S AGGREGATE LIMIT OF LIABILITY, per POLICY PERIOD, shall be governed by this Condition.

The AGGREGATE LIMIT OF LIABILITY or SUBLIMIT(S) OF LIABILITY stated in the Declarations as ITEM 6 or ITEM 8 respectively, inclusive of DEDUCTIBLE or DEDUCTIBLES, is the total limit of the INSURER'S liability under Part I Coverages A and B of this POLICY for all CLAIMS reported under the POLICY by the INSURED, and shall include all CLAIMS in respect of any other

INSURED who may have vicarious liability for the CLAIMS of the INSURED, such that the INSURER'S AGGREGATE LIMIT OF LIABILITY or SUBLIMIT(S) OF LIABILITY shall not be increased beyond that otherwise available to a single INSURED.

### C. DEDUCTIBLE:

The INSURER'S obligation to pay on behalf of the INSURED applies only to those amounts in excess of the INSURED'S DEDUCTIBLE as defined in Part V Definition (e), as applicable to each CLAIM, subject to the following additional provisions:

- (i) the terms of the POLICY, including those with respect to notice of CLAIM and the INSURER'S right to investigate, negotiate and settle any CLAIM, apply irrespective of the application of the DEDUCTIBLE amount;
- (ii) in the event of a CLAIM in any way relating to or arising out of a circumstance in which an INSURED provided PROFESSIONAL SERVICES for more than one person or organization having an apparent or alleged conflict in interest, the INSURED'S DEDUCTIBLE shall be double the amount indicated in ITEM 7 of the Declarations.
- (iii) the INSURER may pay any part or all of the DEDUCTIBLE amount to effect settlement of a CLAIM and, upon notification of the action taken, the INSURED shall reimburse the INSURER for payment of the DEDUCTIBLE, failing which the NAMED INSURED shall promptly place the INSURER in funds sufficient to satisfy the DEDUCTIBLE.
- (iv) Where the amount of the INSURED'S DEDUCTIBLE is indicated in ITEM 7 of the Declarations as being \$Nil, it is agreed that the amount of the DEDUCTIBLE shall instead be deemed to be \$500.00 and applicable to indemnity payments (including costs of repairs) only, for CLAIMS, if any, relating to a "real estate transaction" for which no real estate transaction levy surcharge was payable in accordance with Endorsement No. 2 Exclusion (v) of the POLICY. Excepting this, the INSURED'S \$Nil DEDUCTIBLE amount shall apply.

### D. Premium:

- (i) The NAMED INSURED, as agent of the INSUREDS, has arranged for this POLICY and shall pay the premium by levying its members and directing them to pay to the INSURER, as may be agreed between the INSURER and the NAMED INSURED, the base-rated insurance premium levy, the Real Estate Transaction Levy Surcharge in accordance with Endorsement No. 2, the Civil Litigation Transaction Levy Surcharge in accordance with Endorsement No. 3, the Claims History Levy Surcharge in accordance with Endorsement No. 4, the Innocent Party Levy Surcharge in accordance with Endorsement No. 5, and the MULTI-DISCIPLINE PARTNERSHIP levy in accordance with Endorsement No. 8. The base-rated insurance premium levy and Innocent Party Levy Surcharge shall be in accordance with the INSURER'S rating scheme and Endorsement Nos. 1 and 5, as evidenced in ITEM 4 of the Declarations and invoiced to the INSURED. The Real Estate Transaction Levy Surcharge, the Civil Litigation Transaction Levy Surcharge, the Claims History Levy Surcharge and the MULTI-DISCIPLINE PARTNERSHIP levy, shall be in accordance with Endorsement No. 2, Endorsement No. 3, Endorsement No. 4 and Endorsement No. 8 respectively.
- (ii) The NAMED INSURED and the INSUREDS shall provide the INSURER with such applications for insurance and other information by way of form as prescribed by the INSURER, as the INSURER may from time to time require for the purpose of collecting premiums, underwriting and rating this POLICY.

### E. Extended reporting period:

In the case of cancellation of this POLICY, an extended reporting period of ninety (90) days from the date of cancellation is granted for the purpose of giving notice of any CLAIM or circumstances of an error, omission or negligent act which any reasonable person or LAW FIRM would expect to subsequently give rise to a CLAIM, but then only with respect to and arising out of an error, omission or negligent act occurring prior to the date of cancellation of the POLICY.

## **F. Notice of CLAIM:**

If during the POLICY PERIOD the INSURED first becomes aware of any CLAIM or circumstances of an error, omission or negligent act which any reasonable person or LAW FIRM would expect to subsequently give rise to a CLAIM hereunder, such INSURED shall immediately give notice thereof or cause notice to be given to:

Lawyers' Professional Indemnity Company ("LPIC")  
One Dundas Street West, Suite 2200  
Toronto, Ontario M5G 1Z3  
Phone: (416) 598-5899 or 1-800-410-1013  
Fax: (416) 599-8341 or 1-800-286-7639

The INSURED shall furnish promptly thereafter to the INSURER all information on the CLAIM which is in the INSURED'S possession or knowledge.

If a CLAIM is brought against the INSURED, such INSURED shall immediately forward to the INSURER every demand or originating process received by the INSURED.

## **G. Assistance and cooperation of the INSURED:**

The INSURED shall not voluntarily assume any liability or settle any CLAIM. The INSURED shall not interfere in the investigation and defence of any CLAIM, including without limitation any negotiations or settlement, but whenever requested by the INSURER shall aid in securing information and evidence and the attendance of any witness, and shall cooperate with the INSURER in the investigation and defence of any CLAIM. The INSURED shall also cooperate with the INSURER in enforcing any right of contribution or indemnity against any person or organization other than an INSURED'S EMPLOYEE who may be liable to the INSURED because of any CLAIM with respect to which insurance is afforded under this POLICY.

In the event that any INSURED shall refuse to comply with the terms of this condition or fail to report a CLAIM under the POLICY to the INSURER, the NAMED INSURED may, in its sole and absolute discretion, take the place of the INSURED to ensure such compliance or reporting; provided that any act of the NAMED INSURED in so complying or reporting on behalf of an INSURED with the requirements of this or any other condition in respect of any one CLAIM, shall not affect the rights of the INSURER to rely upon a breach of this or any other condition by such INSURED with respect to the CLAIM in question, nor require the NAMED INSURED to perform such substitute compliance or reporting in respect of any other CLAIM.

## **H. Release of coverage:**

Upon agreement with the INSURER, at the INSURER'S sole and absolute discretion, the INSURER may allow the INSURED to assume all of the responsibilities and obligations of the INSURER under the POLICY and in so doing the INSURED shall release the INSURER from all responsibilities and obligations under the POLICY.

## **I. Action against INSURER:**

No proceeding by the NAMED INSURED or the INSURED shall lie against the INSURER unless, as a condition precedent thereto, the NAMED INSURED or INSURED shall have fully complied with all the terms of this POLICY.

## **J. Other insurance:**

If the INSURED has other insurance relating to a CLAIM covered by this POLICY, except insurance specifically arranged to apply as excess over the insurance provided by this POLICY, the insurance hereunder shall apply only as excess insurance over any other valid and collectible insurance and shall not be called upon in contribution, or otherwise.

## **K. Subrogation:**

In case of payment or liability for payment of any CLAIM by the INSURER hereunder, the INSURER shall be subrogated to the INSURED'S right of recovery related thereto against any other person. The INSURED shall cooperate with the INSURER, including executing all papers to secure such rights, and the INSURED shall do nothing to prejudice such rights.

If the INSURED or NAMED INSURED has been required to pay all or part of the DEDUCTIBLE, or any part of any settlement or judgment in respect of which the INSURER has paid, and the net amount recovered pursuant to the INSURER'S subrogated right, after deducting the cost of recovery, is not sufficient to provide a complete indemnity for each of the INSURER, the NAMED INSURED and the INSURED, the net amount shall be apportioned first to the INSURER, then to the NAMED INSURED and finally to the INSURED until each is respectively made whole.

The INSURER shall not, by way of subrogation to the rights of an INSURED or the NAMED INSURED, seek to recover from another INSURED, the NAMED INSURED or EMPLOYEES of either, except to the extent that the INSURER has been prejudiced by the failure of such other INSURED or the NAMED INSURED to comply with the terms of this POLICY, or in the event of any dishonest, fraudulent, criminal or malicious act or omission on the part of another INSURED, the NAMED INSURED or EMPLOYEES of either.

## **L. Changes:**

The terms of this POLICY shall not be waived or changed except by an endorsement issued to form a part of this POLICY, signed by the INSURER and accepted by the NAMED INSURED.

## **M. Assignment:**

The interest hereunder of any INSURED and/or the NAMED INSURED is not assignable. If the INSURED shall die, be adjudged incapable of managing the INSURED'S own affairs or become bankrupt or insolvent, this POLICY shall cover the INSURED'S legal representative as an INSURED with respect to coverage provided by this POLICY. Bankruptcy or insolvency of the INSURED or of the INSURED'S estate shall not relieve the INSURER of any of its obligations hereunder.

## **N. Cancellation and exemption:**

This POLICY may be cancelled prior to its natural expiry by the NAMED INSURED on behalf of all INSUREDS at any time by written notice delivered or sent by registered mail, to the INSURER. Such notice shall be delivered to the INSURER at One Dundas Street West, Suite 2200, Toronto, Ontario, M5G 1Z3.

This POLICY may be cancelled by the INSURER by giving sixty (60) days prior notice in writing to the NAMED INSURED. Such notice shall be delivered or sent by registered mail to the NAMED INSURED at Osgoode Hall, Toronto.

In the event of cancellation the NAMED INSURED shall advise all INSUREDS. Upon cancellation, all coverage under this POLICY afforded to any and all INSUREDS and/or the NAMED INSURED shall terminate concurrently except as provided under Part IV Condition E.

Upon cancellation of this POLICY, the POLICY premium in regard to each INSURED shall be adjusted *pro rata* to the effective date of the POLICY cancellation, subject to a minimum premium equal to 60 days' premium.

Any optional coverage elected or non-mandatory POLICY coverage provided to an INSURED may be cancelled by the INSURER by giving thirty (30) days prior notice in writing to that INSURED. Such notice shall be delivered or sent by registered mail to the INSURED at the address set out in the Declarations, or such other address indicated in the records of the INSURER at the time of cancellation. Premiums relating to the cancelled coverage shall be adjusted *pro rata* to the effective date of the cancellation of coverage, without any minimum premium adjustment.

Upon exemption of an INSURED by the NAMED INSURED or the INSURER from payment of insurance premiums and levies under the POLICY, the INSURED'S POLICY premium shall be adjusted *pro rata* to the date of exemption, subject to a minimum premium or adjustment equal to 60 days' premium applicable to each period of practice or exemption. In no event shall an INSURED be liable to pay more than 365 days' premium during the POLICY PERIOD.

### **O. Compromise or settlement:**

The INSURER may, in its sole and absolute discretion, upon notice to the INSURED, compromise any CLAIM or settle any civil suit without the consent of the INSURED who shall nevertheless remain liable to contribute the INSURED'S DEDUCTIBLE(S) as required by the relevant POLICY terms.

If the INSURED objects to a recommended compromise or settlement by the INSURER, the INSURER may, in its sole and absolute discretion, permit the INSURED to investigate and defend the CLAIM at the INSURED'S own cost in connection with such CLAIM, but only on the condition that the amount payable by the INSURER under this POLICY for such CLAIM or civil suit shall be limited to the amount for which such CLAIM or civil suit could have been compromised or settled, inclusive of costs and expenses incurred up to the date of such objection, subject to all other terms and conditions of this POLICY.

### **P. Arbitration:**

Subject to Part I, Coverage B, subparagraph no. 2, in the event of a dispute between (among) the INSURED(S) and INSURER or between two or more INSUREDS, such dispute shall be decided by binding arbitration before a single arbitrator as mutually agreed upon by the parties in dispute. The INSUREDS and INSURER each agree that the procedure to be followed in every arbitration under this condition shall be set and determined by the arbitrator appointed by the parties in dispute.

### **Q. Reporting to the Law Society:**

The INSURED agrees that, if the INSURER reasonably believes the INSURED to be or to have engaged in activities which the INSURER, in its sole and absolute discretion, considers may be dishonest or criminal or in activities which have had or may have the effect of causing someone to suffer serious damage as a consequence of an apparent breach of the rules of professional conduct, the INSURER may, in its sole and absolute discretion, report such activities to the NAMED INSURED and may, in its sole and absolute discretion, deliver to the NAMED INSURED such information and documents relating thereto that the INSURER, in its sole and absolute discretion, deems appropriate.

### **R. Law, jurisdiction and currency:**

The POLICY is issued in Ontario, and is subject to the laws of the Province of Ontario and any applicable federal laws of Canada. Subject to Part I Coverage B, subparagraph no. 2 and Part IV Condition P, the parties irrevocably attorn to the jurisdiction of the courts of Ontario in the interpretation and enforcement of this POLICY.

Any reference to dollar amounts or monies payable in this POLICY shall only be in the lawful currency of Canada.

## Part V

# DEFINITIONS

(a) **BODILY INJURY** means bodily injury, false arrest, wrongful detention or imprisonment, libel, slander, defamation of character, invasion or violation of privacy, assault, battery, sexual misconduct, harassment, discrimination or wrongful dismissal.

(b) **CLAIM(S)** means:

- (i) a written or oral demand for money or services; or
- (ii) a written or oral allegation of breach in the rendering or failure to render PROFESSIONAL SERVICES;

received by the INSURED and resulting from a single or related error, omission or negligent act in the performance of or failure to perform PROFESSIONAL SERVICES.

All CLAIMS, or circumstances of an error, omission or negligent act which any reasonable person or LAW FIRM would expect to subsequently give rise to a CLAIM, which arise from a single or related error, omission or negligent act, shall be considered a single CLAIM regardless of the number of INSUREDS or the number of persons or organizations making a CLAIM or the time or times the error, omission or negligent act took place.

(c) **CLAIM(S) PAID** means a payment made by the INSURER on behalf of the INSURED pursuant to a judgment, or by way of repair or settlement of a CLAIM.

(d) **DAMAGES** means compensatory damages that the INSURED is legally obligated to pay arising out of a CLAIM, provided the INSURED'S liability is the result of an error, omission or negligent act in the performance of PROFESSIONAL SERVICES for others to which this insurance applies, and shall include subject to the INSURER'S LIMIT OF LIABILITY, AGGREGATE LIMIT OF LIABILITY and SUBLIMIT(S) OF LIABILITY pre-judgment and post-judgment interest, but shall exclude fines or penalties, legal fees, punitive damages, exemplary damages, or aggravated damages and any interest thereon.

(e) **DEDUCTIBLE** means that amount set out in ITEM 7 of the Declarations, subject to Part IV Condition C, and shall be the responsibility of the INSURED and the partners of the LAW PARTNERSHIP and/or shareholders in a LAW CORPORATION in which the INSURED practises as of the date of the CLAIM.

The INSURED'S DEDUCTIBLE shall apply as follows:

- (i) to judgments and/or CLAIM settlements (if any) including those expenditures (if any) incurred in the rectification of any error, omission or negligent act covered within the terms of this POLICY, to be payable at the time the judgment, settlement or rectification expenditure is due; and/or
- (ii) unless otherwise indicated in ITEM 7 of the Declarations, to investigation and defence expenses and costs as described in Part I Coverage B on the basis that 50% of the INSURED'S DEDUCTIBLE shall be payable at such time as a Statement of Defence or responding material is filed to a CLAIM, and that the remaining 50% of the INSURED'S DEDUCTIBLE shall be payable at the time of commencement of examinations for discovery or once examination begins or once the proceeding is set down for hearing if no examination for discovery is held.

(f) **EMPLOYEE** shall include a person who provides services for another under either a contract of service or contract for services on a full-time basis.

(g) **EMPLOYER** means a person or party for whom an INSURED may provide services as an EMPLOYEE and shall include an affiliated company, a controlled company or a subsidiary company, all as defined under the *Securities Act*, R.S.O. 1990, c.S.5.

(h) **INSURED(S)** means both NAMED MEMBER(S) and UNNAMED MEMBER(S).

NAMED MEMBER(S) shall mean:

- (i) each member of The Law Society of Upper Canada who is engaged in the practice of law and has applied for and been granted coverage under this POLICY and who is named in the Declarations as an INSURED;
- (ii) such other members or former members of The Law Society of Upper Canada who have been granted coverage under this POLICY and who are named in the Declarations as an INSURED;
- (iii) each LAW PARTNERSHIP, other than a MULTI-DISCIPLINE PARTNERSHIP, but only with respect to the rendering of PROFESSIONAL SERVICES by the partner(s) and/or EMPLOYEE(S) of such LAW PARTNERSHIP, who are INSUREDS

under this POLICY, and are named in the Declarations as an INSURED; and

- (iv) each LAW CORPORATION, and its officers, directors and/or shareholders who are members of The Law Society of Upper Canada, but only with respect to the rendering of PROFESSIONAL SERVICES by the shareholder(s) and/or EMPLOYEE(S) of such LAW CORPORATION who are named in the Declarations as an INSURED.

Such members, however, who during the POLICY PERIOD become deceased, suspended or disbarred, resign from The Law Society of Upper Canada, become a judge or retired, or become exempt or eligible for exemption, will instead be considered to be an UNNAMED MEMBER for the remaining period in time that the POLICY is in force, unless that member (or legal representative on behalf of the member) subsequently reapplies for coverage and is then named in the Declarations for that remaining period in time that the POLICY is in force.

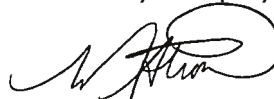
UNNAMED MEMBER(S) shall mean each member and former member of The Law Society of Upper Canada who has not applied for coverage and is not named in the Declarations, provided that the PROFESSIONAL SERVICES that are the subject matter of the CLAIM, were provided by the UNNAMED MEMBER as a member of The Law Society of Upper Canada, and provided further that the UNNAMED MEMBER at the time the PROFESSIONAL SERVICES were provided was a PRACTISING MEMBER.

- (i) **INSURER** means Lawyers' Professional Indemnity Company.
- (j) **LAW CORPORATION(S)** means a professional corporation incorporated under the *Business Corporations Act*, R.S.O. 1990, c.B16 for which practice is governed and a valid certificate of authorization issued under the *Law Society Act*, R.S.O. 1990, c.L.8.
- (k) **LAW FIRM(S)** means a law firm, including a sole proprietorship, association, LAW PARTNERSHIP or LAW CORPORATION.
- (l) **LAW PARTNERSHIP(S)** means a law partnership, in such form(s) permitted by the Law Society of Upper Canada, and including a MULTI-DISCIPLINE PARTNERSHIP.
- (m) **MORTGAGE BROKER** means a person who lends money on the security of real estate, whether the

money is the person's money or that of another person, or holds himself, herself or itself out as or who by an advertisement, notice or sign indicates that the person is a mortgage broker, or a person who carries on the business of dealing in mortgages.

- (n) **MUTLI-DISCIPLINE PARTNERSHIP(S)** means a Multi-Discipline Partnership, authorized by the Law Society of Upper Canada in accordance with By-Law 25 of the *Law Society Act*, R.S.O. 1990, c.L.8, and which is not dissolved.
- (o) **POLICY** means this policy numbered 2002-001 issued by the INSURER to the NAMED INSURED, as well as any related application and exemption forms including attachments, as well as Declarations pages, endorsements and forms issued by the INSURER.
- (p) **PRACTISING MEMBER(S)** means each member of The Law Society of Upper Canada who is engaged in the practice of law, providing PROFESSIONAL SERVICES for others apart from his or her own EMPLOYER which is not an INSURED hereunder, and who is not exempt from the payment of insurance premiums and levies pursuant to By-Law 16 of the *Law Society Act*, R.S.O. 1990, c.L.8.
- (q) **PROFESSIONAL SERVICES** means the practice of the Law of Canada, its provinces and territories and further means those services performed, or which ought to have been performed by or on behalf of an INSURED in such INSURED'S capacity as a lawyer and as a member of The Law Society of Upper Canada, subject to Part II Special Provision A; and shall include, without restricting the generality of the foregoing, those services for which the INSURED is responsible as a lawyer arising out of such INSURED'S activity as a trustee, administrator, executor, arbitrator, mediator, patent or trademark agent.
- (r) **SOLE PRACTITIONER(S)** means a lawyer who practises on her or his own, without partners, associates or employed lawyers, and without other lawyers practising in a LAW CORPORATION.

Signed on behalf of Lawyers' Professional Indemnity Company



President

# Endorsements to Insurance Policy No. **20002-001**

This section contains **POLICY** endorsements including the following information:

- **Definitions of real estate and civil litigation transactions for the purpose of determining surcharges**
- **Definition and description of surcharge that applies to innocent party coverage**
- **Exclusions with respect to the above**
- **Explanations of amounts payable in respect of surcharges and methods of calculation**
- **Due dates for the payment of surcharges**
- **Declarations Page for those insured as UNNAMED MEMBERS**
- **Defence cost coverage to IN-HOUSE CORPORATE COUNSEL for CLAIMS brought by CORPORATE EMPLOYERS**

## Endorsement No. 2

# REAL ESTATE TRANSACTION LEVY SURCHARGE

This POLICY, subject to all its terms and conditions not in conflict with this endorsement, and further to Part IV Condition D (i), shall include the following:

### A. Definition of real estate transaction:

For the purposes of this rule, “real estate transaction” means a transaction that directly or indirectly results in the transfer, charging or insuring of title to land in Ontario, and shall include any one or more of the following services by a solicitor: the receipt of instructions, preparation of documents, searches and/or the providing of one or more opinions or certificates with respect to the title, transfer or charge, and/or with respect to the issuance of any title insurance policy.

### B. Levy surcharge payable:

- (i) Subject to subparagraphs B(ii), (iii), and (iv), and any exclusions contained within this endorsement, each member required pursuant to By-Law 16 of the *Law Society Act*, R.S.O. 1990, c.L.8, to pay a professional liability insurance premium levy, shall pay to The Law Society of Upper Canada \$50 inclusive of taxes, in respect of each real estate transaction in which the member acted for one or more of the following parties, namely the transferor, transferee, chargee, chargor or the title insurer, in respect of either or both of the transferee and chargee.
- (ii) Where more than one member from the same LAW FIRM acted on behalf of the same party on the same real estate transaction, only one member is required to pay the \$50 levy surcharge.
- (iii) Where more than one transfer, charge or title insurance policy is given by or received by the same party in respect of the same real estate transaction, the levy surcharge shall be limited to \$50.
- (iv) Where a real estate transaction involves more than one transferor, transferee, chargor, chargee, or one or more title insurer(s) and two or more of any of them are

represented by different lawyers in different LAW FIRMS, each lawyer shall pay the levy surcharge of \$50.

### C. Exclusions:

No levy surcharge is payable by a member under this endorsement in respect of a real estate transaction if:

- (i) a person transfers land to his or her spouse or to himself or herself and his or her spouse;
- (ii) a person transfers land to any other person(s) in consideration of natural love and affection;
- (iii) a body corporate transfers land to another body corporate of which it is an affiliate within the meaning of “affiliate” in the *Business Corporations Act* R.S.O. 1990, c.B.16, as amended from time to time;
- (iv) a personal representative or its, his or her successor acting as an executor, administrator or trustee, transfers land to a beneficiary or to a successor personal representative; or
- (v) the real estate transaction closes on or after January 1, 1998, and a title insurance policy(ies) is(are) issued in favour of all of the transferees and chargees obtaining an interest in or charge against the land which is the subject of the real estate transaction, provided that:
  - (a) the member does not act for the transferor in respect of the transaction;
  - (b) the title insurer(s) issuing the title insurance policy(ies) has(have) in all cases (except for the member’s gross negligence or willful misconduct):
    - (i) agreed to indemnify and save harmless from and against any claims arising under the title insurance policy(ies); and
    - (ii) waived its right to maintain a negligence claim against;

the member(s) acting as solicitor(s) for the transferee(s), chargee(s) and/or the title insurer(s); and

- (c) the member(s) is(are) not obliged to pay any deductible amount to the title insurer(s) in respect of one or more claims made under the title insurance policy(ies) where the deductible amount is or may be the subject of recovery under the POLICY.

## D. Filings and Payments:

- (i) The real estate transaction levy surcharges payable by a member under this endorsement shall be accumulated,

remitted and paid, with the corresponding Real Estate Transaction Summary Form, quarterly within thirty (30) days of the quarterly period ending on the last day of March, June, September and December. The 2002 Exemption Form from the Real Estate Transaction Levy Surcharge shall be due and remitted to the INSURER by April 30, 2002.

- (ii) The levy surcharge imposed by this endorsement applies to a member in respect of real estate transactions in which files are opened on or after January 1, 2002.

## Endorsement No. 3

# CIVIL LITIGATION TRANSACTION LEVY SURCHARGE

This POLICY, subject to all its terms and conditions not in conflict with this endorsement, and further to Part IV Condition D (i), shall include the following:

## A. Definitions of civil litigation transaction:

For the purposes of this endorsement “civil litigation transaction” means:

- (i) the commencement of a proceeding in Ontario by way of notice of action, statement of claim, originating process, application, petition, notice of appeal, a form prescribed by statute; or
- (ii) the response to a commencement of a proceeding in Ontario by way of statement of defence, defences to third party or subsequent party claims, answers to petitions, a response to an originating process, or notice of appearance in response to an application.

## B. Levy surcharge payable:

- (i) Subject to subparagraphs B(ii), (iii), and (iv) and any exclusions contained within this endorsement, each

member required pursuant to By-Law 16 of the *Law Society Act*, R.S.O. 1990, c.L.8, to pay a professional liability insurance premium levy, shall pay to The Law Society of Upper Canada \$50 inclusive of taxes in respect of each civil litigation transaction in which the member acted for a party in a proceeding as defined in subparagraph A(i) or (ii).

- (ii) Where more than one member from the same LAW FIRM acts on behalf of the same party on the same civil litigation transaction, only one member is required to pay the \$50 levy surcharge.
- (iii) Where more than one proceeding is commenced as per A(i) or responded to as per A(ii) by the same party to a civil litigation transaction, the levy surcharge shall be limited to \$50.
- (iv) Where a civil litigation transaction involves more than one claimant, defendant, or other party, and two or more of them are represented by different lawyers in different LAW FIRMS, each lawyer shall pay the levy surcharge of \$50.

### C. Exclusions:

No levy surcharge is payable by a member pursuant to this endorsement in respect of a civil litigation transaction if:

- (i) proceedings are commenced in Small Claims Court;
- (ii) proceedings are commenced pursuant to Residential Landlord and Tenant matters; or
- (iii) proceedings are funded by the Legal Aid Plan, Office of the Childrens' Lawyer/Office of the Official Guardian, the Public Trustee or the Family Support Plan.

### D. Filings and Payments:

- (i) The civil litigation transaction levy surcharges payable by a member under this endorsement shall be accumulated, remitted and paid, with corresponding Civil Litigation Transaction Summary Form, quarterly within thirty (30) days of the quarterly period ending on the last day of March, June, September and December. The 2002 Exemption Form from the Civil Litigation Transaction Levy Surcharge shall be due and remitted to the INSURER by April 30, 2002.
- (ii) The levy surcharge imposed by this endorsement applies to a member in respect of civil litigation transactions in which files are opened on or after January 1, 2002.

## Endorsement No. 4 CLAIMS HISTORY LEVY SURCHARGE

This POLICY, subject to all its terms and conditions not in conflict with this endorsement, and further to Part IV Condition D (i), shall include the following:

A claims history levy surcharge is payable by an INSURED in addition to the INSURED'S base levy and any other applicable surcharges in an amount as set out below:

(a) One CLAIM PAID in the last five years:	\$2,500
(b) Two CLAIMS PAID in the last five years:	\$5,000
(c) Three CLAIMS PAID in the last five years:	\$10,000
(d) Four CLAIMS PAID in the last five years:	\$15,000
(e) Five CLAIMS PAID in the last five years:	\$25,000
(f) Six CLAIMS PAID in the last five years: plus \$10,000 per CLAIM PAID in excess of six.	\$35,000

## Endorsement No. 5

# INNOCENT PARTY COVERAGE & LEVY SURCHARGE

This POLICY, subject to all its terms and conditions not in conflict with this endorsement, and further to Part I Coverages A and B as well as Part IV Condition D (i), shall include the following where so indicated in ITEM 8 of the INSURED'S Declarations:

### A. Coverage:

Subject to the SUBLIMIT OF LIABILITY, exclusions and other terms and conditions contained herein, any dishonest, fraudulent, criminal or malicious act or omission (hereinafter referred to as "OTHERWISE EXCLUDED ACT(S) OR OMISSION(S)") of an INSURED, or the INSURED'S vicarious liability for the OTHERWISE EXCLUDED ACTS OR OMISSIONS of others, arising out of the provision of PROFESSIONAL SERVICES for others, is deemed to be an "error, omission, or negligent act" as referred to in Part I Coverage A and throughout the POLICY, notwithstanding Part III Exclusion (a) of the POLICY.

#### (I) SUBLIMIT OF LIABILITY

The amount of coverage provided with respect to this endorsed coverage shall be as set out in ITEM 8 of the INSURED'S Declarations as the SUBLIMIT OF LIABILITY. For greater clarity, this SUBLIMIT OF LIABILITY is included within the LIMIT OF LIABILITY and AGGREGATE LIMIT OF LIABILITY of the INSURER, as set out in ITEMS 5 and 6 of the Declarations.

#### (II) EXCLUSIONS

This endorsed coverage shall not apply to any CLAIM (or that part of any CLAIM) arising out of:

- (i) those OTHERWISE EXCLUDED ACTS OR OMISSIONS which are actually committed by the INSURED prior to January 1, 1998, or such later date that this endorsement coverage first came into force with respect to that INSURED; or
- (ii) those OTHERWISE EXCLUDED ACTS OR OMISSIONS of others of which the INSURED had actual knowledge prior to January 1, 1998, or such later date that this endorsement coverage first came into force with respect to that INSURED.

#### (III) NOTICE OF CLAIM AND WAIVER

In the event that the INSURED fails to give notice to the INSURER of a CLAIM or to cooperate with the

INSURER in the investigation or defence of a CLAIM under this endorsed coverage, the INSURER agrees to waive its right to rely on the INSURED'S breach of POLICY condition for the purposes of this endorsed coverage. In either circumstance, the INSURER agrees to accept notice of such CLAIM under this endorsed coverage from the NAMED INSURED.

#### (IV) SUBROGATION

If the INSURER pays any part of any settlement or judgment arising directly or indirectly from any actual or alleged OTHERWISE EXCLUDED ACT OR OMISSION of an INSURED, the INSURER shall be subrogated to the CLAIMANT'S rights, including its right of action against that INSURED.

### B. Mandatory Innocent Party Coverage & Levy Surcharge:

Each INSURED, other than an INSURED acting as a SOLE PRACTITIONER who does not practise in circumstances where he or she is vicariously responsible for the acts or omissions of other lawyers with whom the INSURED practises, is required by The Law Society of Upper Canada to purchase innocent party SUBLIMIT OF LIABILITY coverage of \$250,000 per CLAIM and in the aggregate and to pay the required Innocent Party Levy Surcharge in the amount of \$250 per calendar year.

### C. Definitions:

For the purposes of this endorsement only:

"CLAIMANT" means a person (or entity) who has or alleges to have suffered DAMAGES by reason of an INSURED'S OTHERWISE EXCLUDED ACTS OR OMISSIONS in the performance or failure to perform PROFESSIONAL SERVICES for others, where these OTHERWISE EXCLUDED ACTS OR OMISSIONS are alleged to be dishonest, fraudulent, criminal, or malicious.

To the extent that they do not conflict with this endorsement, all other terms and conditions of the POLICY remain unchanged.

## Endorsement No. 6

# UNNAMED MEMBER DECLARATIONS

The Declarations for each INSURED who is an UNNAMED MEMBER under the POLICY (as defined under Part V Definition (h) of the POLICY), shall be as follows:

### UNNAMED MEMBER Declarations:

**ITEM 1 INSURED**

The UNNAMED MEMBER as defined in Part V Definition (h).

**ITEM 2 NAMED INSURED**

**Name** The Law Society of Upper Canada

**Address** Osgoode Hall, 130 Queen Street West  
Toronto, Ontario M5N 2H6

**ITEM 3 POLICY PERIOD**

From the first of January, 2002, 12:01 a.m. Standard Time at the address of the NAMED INSURED, or such subsequent date and time in 2002 as the member of The Law Society of Upper Canada becomes an UNNAMED MEMBER, to the 31st of December 2002, or such earlier date and time as the member of The Law Society of Upper Canada ceases to be an UNNAMED MEMBER.

**ITEM 4 BASE-RATED INSURANCE PREMIUM FOR THE POLICY PERIOD**

None.

**ITEM 5 LIMIT OF LIABILITY**

\$250,000 per CLAIM.

**ITEM 6 AGGREGATE LIMIT OF LIABILITY**

\$250,000 per POLICY PERIOD, as reduced by all amounts paid or to be paid pursuant to Part I

**ITEM 7 DEDUCTIBLE**

\$5,000 per CLAIM.

**ITEM 8 MODIFICATIONS TO COVERAGE**

There shall be no coverage provided under this POLICY for any CLAIMS arising out of PROFESSIONAL SERVICES provided by the member of The Law Society of Upper Canada while deceased, suspended or disbarred, or after ceasing to be a member of The Law Society of Upper Canada, or while a judge, or retired, or exempt or eligible for exemption from the payment of insurance premiums and levies pursuant to By-Law 16 of the *Law Society Act*, R.S.O. 1990, c.L.8.

Part III Exclusion (a) of the POLICY shall not apply to any INSURED under these UNNAMED MEMBER DECLARATIONS who is not the author of the act, a party to the act nor an accomplice to the act. This exception to Part III Exclusion (a), however, is subject to a SUBLIMIT OF LIABILITY of \$250,000 per CLAIM and in the AGGREGATE per POLICY PERIOD, as well as the LIMIT OF LIABILITY and AGGREGATE LIMIT OF LIABILITY set out under ITEMS 5 and 6 respectively above.

The foregoing UNNAMED MEMBER Declarations replace, for that period in time that the INSURED is an UNNAMED MEMBER, any Declarations issued in regard to the POLICY to the INSURED.

## Endorsement No. 7

# CLAIMS BROUGHT BY CORPORATE EMPLOYERS

This endorsement shall apply where indicated in ITEM 8 of the INSURED'S Declarations, and then only to those INSUREDS who are NAMED MEMBERS pursuant to Part V Definition (h)(i) or (h)(ii) of the POLICY and provided those INSUREDS work as IN-HOUSE CORPORATE COUNSEL during the POLICY PERIOD.

Notwithstanding Part III Exclusion (c) but subject to all other terms and conditions of the POLICY for those INSUREDS to whom this endorsement applies, coverage in accordance with Part I Coverage B of the POLICY is hereby provided for CLAIMS brought by a CORPORATE EMPLOYER against any present or former INSURED EMPLOYEE with respect to PROFESSIONAL SERVICES provided by that INSURED as an EMPLOYEE of the CORPORATE EMPLOYER on or after January 1, 1997.

The additional coverage provided by this endorsement however shall not apply:

- (i) to any CLAIM directly or indirectly made by the INSURED and/or the INSURED'S spouse or immediate family, or any business enterprise or corporation in which the INSURED and/or the INSURED'S spouse or immediate family have or had beneficial ownership in an amount greater than ten percent (10%);
- (ii) to any CLAIM in any way relating to or arising out of the failure or omission to provide, effect or maintain any insurance or bond;
- (iii) to any CLAIM in any way relating to or arising out of the INSURED acting in his or her capacity as a director or officer of the CORPORATE EMPLOYER, except to the extent that the CLAIM is for PROFESSIONAL SERVICES on behalf of the CORPORATE EMPLOYER;
- (iv) to any CLAIM in any way relating to or arising out of any personal profit or advantage to which the INSURED is not legally entitled;

(v) to any CLAIM in any way relating to or arising out of the bankruptcy or insolvency of the INSURED or CORPORATE EMPLOYER;

(vi) to any CLAIM in any way relating to or arising out of any invasion of privacy, wrongful entry, eviction, loss of consortium or wrongful termination of employment.

Nothing, however, in this endorsement shall be interpreted as providing or expanding the coverage provided to any INSURED under the POLICY pursuant to Part I Coverage A.

All coverage provided pursuant to this endorsement is subject to a SUBLIMIT OF LIABILITY of \$250,000 per CLAIM and in the AGGREGATE per POLICY PERIOD for the INSURED.

For the purposes of this endorsement only, the following definitions shall apply:

"IN-HOUSE CORPORATE COUNSEL" is defined to include those INSUREDS who are EMPLOYEES of a single CORPORATE EMPLOYER, and who provide legal services for and on behalf of the CORPORATE EMPLOYER as counsel to the CORPORATE EMPLOYER, which is other than a LAW CORPORATION; and

"CORPORATE EMPLOYER" is defined to include a corporation as well as affiliated, controlled and subsidiary companies of the corporation or other entity of which the INSURED is an EMPLOYEE, where "affiliated," "controlled," and "subsidiary" are as defined under the *Securities Act R.S.O. 1990, c.S.5*.

All other terms and conditions of the POLICY remain unchanged.



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