

1998
PROFESSIONAL
LIABILITY
INSURANCE
FOR LAWYERS



INSURANCE POLICY
No. 98-001

LPIC

NAMED MEMBER DECLARATIONS (SAMPLE)

ITEM 1 INSURED:

Member No. Member Name
LPIC Firm Number:
Firm Name:
Address:

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 1st January, 1998, 12:01 a.m. Standard Time at the address of the NAMED INSURED to the 31st of December 1998, 12:00 midnight.

ITEM 4 INSURANCE PREMIUM FOR THE POLICY PERIOD:

ITEM 5 LIMIT OF LIABILITY:

\$1,000,000 per CLAIM, subject to the SUBLIMIT of liability, if any, described in ITEM 8 of these declarations.

ITEM 6 AGGREGATE LIMIT OF LIABILITY:

\$2,000,000 per POLICY PERIOD, subject to the SUBLIMIT of liability, if any, described in ITEM 8 of these declarations.

ITEM 7 DEDUCTIBLE:

\$ per CLAIM.

ITEM 8 MODIFICATIONS TO COVERAGE:

Innocent Party Coverage - SUBLIMIT of liability of \$ per CLAIM and in the aggregate per POLICY PERIOD, pursuant to endorsement No. 6

[and/or]

Restricted Area of Practice Option

[and/or]

Part-Time Practice Option

[and/or]

CLAIMS brought by CORPORATE EMPLOYERS' SUBLIMIT of liability for IN-HOUSE CORPORATE COUNSEL, pursuant to endorsement No. 8.

[or]

None



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Lawyers' Professional Indemnity Company (LPIC)

One Dundas Street West, Suite 2200

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Toronto, Ontario M5G 1Z3

www.lpic.ca

Tel: (416) 598-5899

Fax: (416) 599-8341

Toll Free: 1-800-410-1013

Throughout this POLICY certain words have been capitalized to indicate that they have a specific meaning as defined in this POLICY.

Lawyers' Professional Indemnity Company (hereinafter called the INSURER) in consideration of the payment of the PREMIUM and in reliance upon 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

1. Subject to subparagraph number "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 as it deems expedient, 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 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 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 Section B of Part I, 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, Section B (1) where it believes 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 or that the CLAIM 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 Clause (P) of Part IV or upon application by either party to the Ontario Court, General Division. 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, 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 Coverages A and B cease as soon as the LIMIT OF LIABILITY or AGGREGATE LIMIT OF LIABILITY have been exhausted, respectively, by payment.

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) that 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 or acts 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 the INSURED may, during the POLICY PERIOD, report to the INSURER circumstances of an error, omission or negligent act or acts which any reasonable person or firm would expect to subsequently give rise to a CLAIM, and accordingly the INSURER will consider these a CLAIM during this POLICY PERIOD even if a formal demand 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 arising directly or indirectly from any dishonest, fraudulent, criminal or malicious act or omission of an INSURED;
- (b) to any CLAIM by any 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 any EMPLOYER who is not an INSURED hereunder against an EMPLOYEE who is an INSURED hereunder;
- (d) to any CLAIM, directly or indirectly resulting in payment or judgment, where the CLAIM is made by:
 - (i) any business enterprise or corporation in which the INSURED and/or the INSURED'S spouse and/or the INSURED'S law partner(s) have or 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 partner(s); or
 - (ii) a law corporation in which the INSURED is a shareholder;
- (e) to any CLAIM resulting from BODILY INJURY to, 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 arising out of any undertaking, agreement or promise by the INSURED in which the INSURED assumes responsibility for his or her own or another's performance of an undertaking or payment of a debt;
- (g) to any CLAIM directly or indirectly arising as a result of the INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM arising from circumstances where the INSURED has provided PROFESSIONAL SERVICES in conjunction with the above;
- (h) to any CLAIM arising out of or with respect to legal fees, accounts or any fee arrangement involving an 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 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 of liability per CLAIM except where one or more CLAIMS arising out of the same or related error, omission or negligent act or acts are made jointly or severally against two or more PARTNERSHIPS, law corporations or sole practitioners, then the LIMIT OF LIABILITY or SUBLIMIT of liability shall apply separately to each PARTNERSHIP, law corporation or sole practitioner.

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 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 Coverages A and B of this POLICY for all CLAIMS to which this POLICY is applicable during the POLICY PERIOD, applicable to each INSURED and to 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 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 arising out of a circumstance in which an INSURED provided PROFESSIONAL SERVICES for more than one person or organization having a conflict in interest, the INSURED shall be responsible for double the INSURED'S DEDUCTIBLE;
- (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 pay the DEDUCTIBLE, failing which the NAMED INSURED shall promptly place the INSURER in funds sufficient to satisfy the DEDUCTIBLE.

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 the insurance premium levy and the Innocent Party Levy Surcharge in accordance with Endorsement No. 6, such insurance premium levy and Innocent Party Levy Surcharge to be in accordance with the INSURER'S rating scheme and as invoiced to the INSURED.
- (ii) The NAMED INSURED shall also levy its members certain other levies, which levies are to be collected and administered on behalf of the NAMED INSURED by the INSURER, such levies to be as follows:

Real Estate Transaction Levy Surcharge	As per Endorsement No. 2
Civil Litigation Transaction Levy Surcharge	As per Endorsement No. 3
Volume Levy Surcharge	As per Endorsement No. 4
Claims History Levy Surcharge	As per Endorsement No. 5

- (iii) 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 knowledge of any circumstance which any reasonable person or 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 circumstance which any reasonable person or 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)
1 Dundas Street West, Suite 2200
Toronto, Ontario M5G 1Z3
Phone: (416) 598-5899 or 1-800-410-1013
Fax: (416) 599-8341

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

If a CLAIM is brought against the INSURED, such INSURED shall immediately forward to LPIC every demand, notice, summons or other process received by the INSURED.

G. ASSISTANCE AND COOPERATION OF THE INSURED:

The INSURED shall not voluntarily assume any liability or settle any CLAIM except at the INSURED'S own cost. The INSURED shall not interfere in any negotiations for settlement or in any legal proceeding, 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 defence of any suit or proceeding or in the prosecution of an appeal. 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, the NAMED INSURED may, at its option, take the place of the INSURED to ensure such compliance; provided that any act of the NAMED INSURED in complying on behalf of an INSURED with the requirements of this condition in respect of any one CLAIM shall not affect the rights of the INSURER to rely upon a breach of this condition by such INSURED, nor require the NAMED INSURED to perform such substitute compliance in respect of any other CLAIM.

H. RELEASE OF COVERAGE:

Upon notice to the INSURER and at the sole discretion of the INSURER, the INSURED may 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 action 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 against a loss 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.

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 execute all papers and shall cooperate with the INSURER 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 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 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 to the INSURER. Such notice shall be delivered to the INSURER at 1 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 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, upon notice to the INSURED, compromise any CLAIM or settle any suit without the consent of the INSURED who shall nevertheless remain liable to contribute the INSURED'S DEDUCTIBLE as required by the relevant POLICY terms.

If the INSURED objects to such compromise or settlement recommended by the INSURER, the INSURER may permit the INSURED to contest or continue legal proceedings at the INSURED'S own cost in connection with such CLAIM, but only on the condition that the amount payable under this POLICY for such CLAIM or suit shall not exceed the amount for which such CLAIM or 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:

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. CURRENCY:

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 false arrest, malicious prosecution, wrongful detention or imprisonment, libel, slander, defamation of character, invasion or violation of privacy, mental anguish, injury, shock, humiliation, harassment, discrimination or wrongful dismissal.
- (b) **"CLAIM" or "CLAIMS"** mean:
- (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 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 might give rise to a CLAIM or CLAIMS, which arise from a single or related error, omission or negligent act or acts 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 or acts took place.
- (c) **"CLAIM(S) PAID"** means a payment made by the INSURER 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 pre-judgment and post-judgment interest, but shall exclude personal fines or penalties, legal fees, punitive damages, exemplary damages, or aggravated damages and any interest thereon.
- (e) **"DEDUCTIBLE"** means those amounts set out in the Declarations and shall be the responsibility of the INSURED and the partners of the firm in which the INSURED practises as of the date of the CLAIM.

The INSURED'S DEDUCTIBLE shall apply as follows:

- (i) to judgments or CLAIM settlements (if any) including those expenditures (if any) incurred in the rectification of any act, error or omission covered within the terms of this POLICY, to be payable at the time the judgment, settlement or rectification expenditure is due;
- (ii) unless otherwise indicated in ITEM 7 of the Declarations, to defence and investigation expenses as described in 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 action is set down for hearing if no examination for discovery is held.

- (f) **“EMPLOYEE”** shall include a person who provides services under a contract of services on a full-time basis.
- (g) **“EMPLOYER”** shall mean 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”** or **“INSUREDS”** means both NAMED MEMBERS and UNNAMED MEMBERS.

“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 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, but only with respect to the rendering of PROFESSIONAL SERVICES by the partner(s) and/or employee(s) of such PARTNERSHIP, who are INSUREDS under this POLICY, including associations of two or more members of The Law Society of Upper Canada who are or appear to be holding themselves out to the public as partners, whether or not a PARTNERSHIP in fact exists, and those who are named in the Declarations as an INSURED; and
- (iv) each law corporation incorporated under the Law Society Act, R.S.O. 1990, c.L.8, and its 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 and those who are named in the Declarations as an INSURED.

Such members, however, who during the POLICY PERIOD become suspended or disbarred, resign from The Law Society of Upper Canada, become a judge or retire, 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 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) **“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.
- (k) **“PARTNERSHIP”** means a partnership or apparent partnership of two or more INSUREDS.
- (l) **“POLICY”** means this policy numbered 98-001 issued by the INSURER to the NAMED INSURED, as well as any related application and exemption forms including attachments, as well as Declarations pages and endorsements issued by the INSURER.
- (m) **“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 other than 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 Rule 50 of the Law Society Act, R.S.O. 1990, c.L.8.
- (n) **“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 Special Provision II (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.

Signed on behalf of Lawyers' Professional Indemnity Company



President

ENDORSEMENTS TO INSURANCE POLICY No. 98-001



This section contains 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*
- *definition and description of surcharges that apply to volume of billings and claims history*
 - *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*
 - *explanation of defence cost coverage to in-house corporate counsel for claims brought by corporate employers*
- *Endorsement No. 1 is not included in this material as it relates to the premium payable by The Law Society of Upper Canada*

LPIC

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(D) (ii), 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 sub-paragraphs B(ii), (iii), and (iv), and any exclusions contained within this endorsement, each member required by Rule 50 to pay a levy for indemnity for professional liability shall pay to The Law Society of Upper Canada \$50 inclusive of GST and PST, 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 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
 - (b) 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. PAYMENT

- (i) The real estate transaction levy surcharges payable by a member under this endorsement shall be accumulated and paid quarterly within thirty (30) days of the quarterly period ending on the last day of March, June, September and December.
- (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, 1998.

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(D)(ii), 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 sub-paragraphs B(ii), (iii), and (iv) and any exclusions contained within this endorsement, each member required by Rule 50 to pay a levy for indemnity for professional liability shall pay to The Law Society of Upper Canada \$50 inclusive of GST and PST in respect of each civil litigation transaction in which the member acted for a party in a proceeding as defined in sub-paragraph 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. PAYMENT

- (i) The civil litigation transaction levy surcharges payable by a member under this endorsement shall be accumulated and paid quarterly within thirty (30) days of the quarterly period ending on the last day of March, June, September and December.
- (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, 1998.

VOLUME
LEVY SURCHARGE

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

A. DEFINITIONS

- (i) For the purpose of this endorsement, “volume levy surcharge” means a levy payable by a law firm, association or sole practitioner calculated as a percentage of the gross billings in the fiscal year of the law firm, association or sole practitioner.
- (ii) Total gross billings refers to the total billings in the fiscal year of a law firm, association or sole practitioner

whether the billings originate as a result of the activities of a partner, associate, sole practitioner or employee of a law firm, association or sole practitioner; (these should appear in the firm’s financial statements for the applicable year as fees billed after bad debt write-offs). The levy surcharge in respect of real estate or civil litigation transactions and all other disbursements are exempt from the total gross billings calculation.

- (iii) The average number of lawyers for the purpose of this endorsement shall be determined by adding the least number of lawyers practising within the law firm, association

or sole practice during each quarter-year of the firm or association's fiscal year and dividing the total by four.

B. LEVY SURCHARGE PAYABLE

- (i) A volume levy surcharge shall represent one-quarter of one percent of the average gross billings of a sole practitioner, law firm or association, where the average gross billings exceed \$125,000 in the fiscal year, multiplied by the average number of lawyers employed in the law firm, association or sole practice in that fiscal year.
- (ii) The average gross billings shall be calculated by dividing the total gross billings of the law firm, association or sole practice by the average number of lawyers within the law firm, association or sole practice.

C. EXCLUSIONS

No volume levy surcharge is payable by a member pursuant to this endorsement where the total gross billings of a sole practitioner or the average gross billings of a law firm or association are less than or equal to \$125,000 in the fiscal year.

D. PAYMENT

The volume levy surcharge payable by the sole practitioner, law firm or association under this endorsement shall be payable within ninety (90) days of the fiscal year end of the law firm, association or sole practice.

ENDORSEMENT No. 5

CLAIMS HISTORY & LEVY SURCHARGE

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

A claims history levy surcharge is payable by a member 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: \$35,000 plus \$10,000 per CLAIM in excess of six.

ENDORSEMENT No. 6

INNOCENT PARTY COVERAGE & LEVY SURCHARGE

This POLICY, subject to all its terms and conditions not in conflict with this endorsement, and further to Part 1 (A) and (B) as well as Part IV (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 "ACT(S) OR OMISSION(S)") of an INSURED, or the INSURED's vicarious liability for the 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 Section A and throughout the POLICY, notwithstanding Part III Exclusion (a) of the POLICY.

(I) LIMITS 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 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 ACTS OR OMISSIONS which are actually committed by the INSURED prior to the date that this endorsement first came into force with respect to that INSURED; or
- (ii) those ACTS OR OMISSIONS of others of which the INSURED had actual knowledge prior to the date that this coverage first came into force.

(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 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 coverage of \$250,000 per CLAIM and in the aggregate and to pay the required innocent party levy surcharge in the amount of \$400 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 ACTS OR OMISSIONS in the performance or failure to perform PROFESSIONAL SERVICES for others, where these ACTS OR OMISSIONS are alleged to be dishonest, fraudulent, criminal, or malicious.

"SOLE PRACTITIONER" means a lawyer who practises on his or her own without partners, associates or employed lawyers.

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

ENDORSEMENT No. 7

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:

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 1st January, 1998, 12:01 a.m. Standard Time at the address of the NAMED INSURED, or such subsequent date and time in 1998 as the member of The Law Society of Upper Canada becomes an UNNAMED MEMBER, to the 31st of December 1998, or such earlier date and time as the member of The Law Society of Upper Canada ceases to be an UNNAMED MEMBER.

ITEM 4 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 of policies numbered 96-001 and 97-001 issued by the INSURER, in regard to CLAIMS thereunder concerning the INSURED as an UNNAMED MEMBER.

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 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 Rule 50 of the Law Society Act, R.S.O. 1990, c.L.8.

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 as a NAMED MEMBER.

ENDORSEMENT No. 8

CLAIMS BROUGHT BY CORPORATE EMPLOYERS

This endorsement shall apply to only those INSUREDS who are NAMED MEMBERS pursuant to Part V Definition (h)(i) or (h)(ii) of the POLICY, provided those INSUREDS work as IN-HOUSE CORPORATE COUNSEL during the POLICY PERIOD of this POLICY.

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 1 Section B. "DEFENCE, SETTLEMENT, EXPENSES" 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 arising out of the failure or omission to provide, effect or maintain any insurance or bond;
- (iii) to any CLAIM 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 arising out of any personal profit or advantage to which the INSURED is not legally entitled;

- (v) to any CLAIM arising out of the bankruptcy or insolvency of the INSURED or CORPORATE EMPLOYER;
- (vi) to any CLAIM 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 Section A. "DAMAGES."

All coverage provided pursuant to this endorsement is subject to SUB-LIMITS 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, as amended from time to time.

All other terms and conditions of the POLICY remain unchanged.

If you have any questions or require additional information on LPIC's 1998 insurance program, please contact our Customer Service Representatives

at

Tel: (416) 598-5899

Fax: (416) 599-8341

or toll free at

1-800-410-1013

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