

**Alberta Lawyers Insurance Exchange  
600, 919 - 11th Avenue South West  
Calgary, Alberta T2R 1P3**

**ALBERTA LAWYERS' PROFESSIONAL LIABILITY AND TRUST SAFETY INSURANCE  
GROUP POLICY**

**DECLARATIONS**

1. POLICY NO.: AB003/17
2. RECIPROCAL INSURANCE EXCHANGE (referred to in this Policy as the Insurer): Alberta Lawyers Insurance Exchange
3. LOCAL ADMINISTRATIVE OFFICE AND ADDRESS FOR SERVICE: Alberta Lawyers Insurance Association  
600, 919 - 11th Avenue S.W.  
Calgary, Alberta T2R 1P3
4. ATTORNEY FOR THE ALBERTA LAWYERS INSURANCE EXCHANGE: Alberta Lawyers Insurance Association  
  
600, 919 - 11th Avenue S.W.  
Calgary, Alberta T2R 1P3
5. PART A - PROFESSIONAL LIABILITY INSURANCE
  - (a) INSURED PARTIES: (i) Law Society of Alberta ("**Law Society**") and its eligible members  
(ii) Alberta Lawyers Insurance Association ("**ALIA**")  
(iii) others identified as **Insureds** in the policy
  - (b) POLICY PERIOD: July 1, 2016 to July 1, 2017, both days at 12:01 a.m. local time at address for service shown in the Declarations
  - (c) LIMITS OF LIABILITY: **Occurrence Limit- \$1,000,000**  
**Aggregate Limit - \$2,000,000**
  - (d) INDIVIDUAL DEDUCTIBLE: \$5,000 per **Occurrence**
  - (e) GROUP DEDUCTIBLE: \$500,000 per **Occurrence** including **Individual Deductible**
  - (f) PREMIUM: As agreed between the **Law Society**, **ALIA** and the **Insurer** based on number of **Law Society** members at beginning of **Policy Period**

6. PART B - TRUST SAFETY  
INSURANCE

- (a) INSURED PARTIES: (i) The **Law Society** and its eligible members  
(ii) **ALIA**  
(iii) others identified as **Insureds** in the policy
- (b) POLICY PERIOD: July 1, 2016 to July 1, 2017, both days at 12:01 a.m. local time at address for service shown in the Declarations
- (c) LIMITS OF LIABILITY: **Misappropriation limit - \$5,000,000**  
**Profession-wide Annual Aggregate Limit - \$25,000,000**
- (d) GROUP DEDUCTIBLE: \$500,000 per Claim
- (e) PREMIUM: As agreed between the **Law Society**, **ALIA** and the **Insurer** based on number of **Law Society** members at beginning of **Policy Period**

## PART A - PROFESSIONAL LIABILITY INSURANCE

### I. DEFINITIONS

In this Part A:

**Additional Insured** means, with respect to a particular **Individual Insured**:

- (a) a present or former partner of the **Individual Insured**;
- (b) any **Law Firm** through which the **Individual Insured** has practised law, whether as partner, associate, employee, counsel, contract lawyer or otherwise; and
- (c) a present or former partner of any **Law Firm** through which the **Individual Insured** has practised law

**Administrative Costs** means:

- (a) **Costs** incurred by the **Insurer** or **ALIA** in managing a **Claim**, including **Costs** of coverage determinations, recovery and subrogation, and adjuster's fees incurred in managing a **Claim**;
- (b) post-judgement interest on that portion of a **Claim** for which the **Insurer** is responsible under this Part A; and
- (c) out-of-pocket **Costs** of an **Insured** in connection with a **Claim** that are authorized for reimbursement by the **Insurer** in advance, including reasonable travel **Costs** to attend trial

**Administrative Employee** means a present or former employee, director, officer, manager, volunteer or committee member of **ALIA**, **ALIEX** or the **Law Society** or a member of its governing body; or an independent contractor retained by **ALIA**, **ALIEX** or the **Law Society** to perform administrative functions; to the extent that a **Person** so described is acting within the scope of his or her duties in the identified capacity

**Aggregate Limit** has the meaning given by clause 2.4(d)

**ALIA** means the Alberta Lawyers Insurance Association

**ALIEX** means the Alberta Lawyers Insurance Exchange, which is a reciprocal insurance exchange under Part 1, Subpart 3 of the *Insurance Act*, RSA 2000, c. I-3. **ALIEX** will be referred to as the **Insurer** in this policy

**Ancillary Activities** means activities of a quasi-legal or non-legal nature (including, without limiting the generality of the foregoing, financial, investment and accounting services, brokerage services, and real estate development and appraisal) that are ancillary to or independent of the practice of law and are provided by an **Insured** for compensation or personal benefit referable specifically to those activities

**Claim** means an allegation of an **Occurrence** or a demand for money, property or services arising out of an actual or alleged **Occurrence**, including the threat or institution of a suit or other legal proceeding that is made against one or more **Insureds**

**Costs** includes charges and expenses

**Damages** means compensatory damages and includes:

- (a) **Repair Costs;**
- (b) pre-judgement interest; and
- (c) costs of a claimant that are taxed or fixed by a court,

but does not include:

- (i) fines or penalties;
- (ii) punitive or exemplary damages; or
- (iii) unpaid or unbilled legal fees or disbursements, or those that have been paid but that an **Insured** is asked to return, even if claimed as general damages

**Defence Costs** means costs incurred by the Insurer, ALIA or the Law Society in defending or settling a **Claim**, including legal fees and disbursements of counsel appointed by the **Insurer**; the fees and disbursements incurred for investigators, experts, appraisers and witnesses; **Costs** of alternative dispute resolution; and adjuster's fees incurred on the instructions of counsel in defending or settling a **Claim**

**Dishonest** means conduct, including without limiting the generality of the foregoing, which a reasonable **Person** would consider to be deceptive or untruthful and morally reprehensible or lacking in candour and integrity and which may occur in the absence of an actual dishonest purpose, motive or intent

**Enterprise** means any proprietorship, partnership, co-operative, society, business, association, joint venture, syndicate, company, corporation, firm or other legal or commercial entity

**Error** means an inadvertent error by act or omission, or a failure to act at all, and includes an alleged error

**Group Deductible** has the meaning given by clause 2.4(b)

**Incidental Services** means services that are connected with and incidental to the practice of law, including services as an executor, administrator, trustee, personal representative, committee, guardian, or patent or trademark agent

**Individual Deductible** has the meaning given by clause 2.4(a)

**Individual Insured** means a **Member** who has caused or is alleged to have caused an **Occurrence** and who is one of the following:

- (a) a **Member** who is required to be insured by mandatory insurance under this Part A; or
- (b) a **Member** or former **Member** who is no longer required to be insured by mandatory insurance under this Part A, but only with respect to **Occurrences** that took place or are alleged to have taken place:
  - (i) while that **Member** was required to be and was insured by mandatory insurance under this Part A, or
  - (ii) before the date of commencement of mandatory insurance

In this definition, "mandatory insurance" means professional liability insurance required by legislation or the rules of the **Law Society** to insure **Members** of the **Law Society**, in the form that was required at the relevant time

**"Individual Insured"** includes a **Professional Corporation** through which the **Individual Insured** was practising law at the time of the **Occurrence**

**Ineligible Costs** means:

- (a) **Costs** incurred and earnings lost by an **Individual Insured** or **Additional Insured** in connection with correcting an **Error** in the rendering of **Professional Services** to prevent or attempt to prevent the advancement of a **Claim**, or in the defence or settlement of a **Claim**, including those associated with:
  - photocopying documents;
  - expending time and effort;
  - preparing for and attending questioning or cross-examinations, or interlocutory proceedings;
  - preparing for and attending alternate dispute resolution;
  - preparing for court and testifying; and
  - otherwise cooperating with the **Insurer** and **ALIA** in the repair, defence or settlement of a **Claim**;
- (b) out-of-pocket **Costs** of an **Individual Insured** or **Additional Insured** that are not authorized for reimbursement by the **Insurer** or **ALIA** in advance, including **Costs** of independent or personal counsel retained by the **Insured** (except in the circumstances set out in Exclusions 3.5, 3.5.1 and 3.5.2) and **Costs** of disputing issues relating to coverage, deductibles or apportionment of liability (subject to an award otherwise by a court or arbitrator); and
- (c) **Costs** awarded personally against an **Insured** as a result of the **Insured's** conduct in litigation, whether or not connected with an **Occurrence**

**Insured** means:

- (a) an **Individual Insured**;
- (b) an **Additional Insured**;
- (c) **ALIA**;
- (d) the **Law Society**;
- (e) an **Administrative Employee**; or
- (f) a **Legal Services Organization Employee**

**Insurer** means the Alberta Lawyers Insurance Exchange ("**ALIEX**")

**Law Firm** means:

- (a) a sole proprietorship through which an **Individual Insured** practises law; or

- (b) two or more **Individual Insureds** who are, or appear to be, holding themselves out to the public as practising law together, whether or not a partnership exists in fact and regardless of the form or forms of business organization through which the practice is conducted

**Law Society** means the **Law Society** of Alberta

**law society** means a law society, barristers' society or similar organization of a jurisdiction other than Alberta

**Legal Services Organization Employee** means a member of the **Law Society** who is acting within the scope of his or her duties as one of the following:

- (a) an employee of the Legal Aid Society of Alberta other than its Executive Director, Northern Director and Southern Director;
- (b) an employee of the Environmental Law Centre (Alberta) Society or Calgary Legal Guidance or the Edmonton Centre for Equal Justice, a project of the Edmonton Social Planning Council; or
- (c) an employee of any organization offering student or volunteer legal services

**Limits of Liability** means the **Occurrence Limit** and **Aggregate Limit**

**Member** means a lawyer who is enrolled with the Law Society pursuant to the *Legal Profession Act*, R.S.A. 2000, c. L-8

**Misappropriation** means a theft, wrongful taking, or wrongful conversion and may include multiple thefts, wrongful takings, or wrongful conversions concurrently, or over time, of **Money, Securities or Property**, whether to the use of an **Insured** or a third party, which was entrusted to or received by an **Individual Insured** or **Additional Insured** in his or her capacity as a barrister or solicitor or such other capacity as the **Law Society** may designate, regardless of the form or forms of business organization through which the practice is conducted

**Mobility Rules** means those rules of a **law society** that govern the ability of members of other Canadian **law societies** to provide **Professional Services** in that jurisdiction on a temporary or permanent basis

**Occurrence** means an **Error** in the rendering of **Professional Services** to others (or, where the **Insured** is **ALIA**, the **Law Society** or an **Administrative Employee**, an **Error** in the actual or intended discharge of that **Insured's** duties, exercise of its rights or conduct of its authorized activities), provided in either case that:

- (a) a sole **Error** shall be considered one **Occurrence** regardless of the number of claimants or **Claims** arising out of the **Error**; and
- (b) two or more **Errors** that are substantially related shall be considered a single **Occurrence**, even if arising from more than one retainer and regardless of:
  - (i) the number of claimants or **Claims** arising out of the errors; or
  - (ii) the number of **Insureds** against whom **Claims** are made in connection with the **Errors**

**Occurrence Limit** has the meaning given by clause 2.4(c)

**Office** means a place of business established by or for the benefit or use of an **Insured** or that **Person's Law Firm** and from which services are provided or are intended to be provided to the public on an ongoing, but not necessarily regular or full-time, basis

**Person** includes an individual and an **Enterprise**

**Policy Period** is that indicated in the Declarations

**Professional Corporation** means a corporation to which a permit has been issued pursuant to subsection 131(3) of the *Legal Profession Act* (Alberta)

**Professional Services** means:

- (a) services normally provided or supervised by a lawyer within the scope of a usual lawyer-client relationship;
- (b) services rendered in alternative dispute resolution as an arbitrator or a mediator or in an equivalent role; and
- (c) **Incidental Services** that are substantially related to services described in paragraph (a),

but does not include

- (i) **Ancillary Activities**; or
- (ii) the mere receipt and distribution of funds by an **Insured**, whether through that **Insured's** trust account or otherwise

**Reciprocal Jurisdiction** means a Canadian jurisdiction the **law society** of which has adopted **Mobility Rules** that are not substantially more restrictive than the **Mobility Rules** of the **Law Society**

**Repair Costs** means **Costs** incurred to correct an **Error** in the rendering of **Professional Services** as reasonably necessary to prevent or attempt to prevent the threat or institution of a suit or other legal proceeding against one or more **Insureds** or the advancement of a more expensive claim for compensatory damages, pre-judgment interest and costs of a claimant that are taxed or fixed by a court.

## II. INSURING AGREEMENTS

In consideration of payment of the premium when due, and subject to the **Limits of Liability**, deductibles, exclusions, conditions and all other terms of this Part A, the **Insurer** agrees with each **Insured** as follows:

### 2.1 Damages

The **Insurer** will pay on behalf of each **Insured** the **Damages** that the **Insured** becomes legally obligated to pay arising out of an **Occurrence**.

### 2.2 Defence and Payment of Costs

In respect of the insurance coverage given by this Part A, the **Insurer** will:

- (a) defend any **Claim** against an **Insured** alleging an **Occurrence** and seeking **Damages** that would fall within the coverage provided by this Part A;
- (b) pay all **Administrative Costs** incurred by the **Insurer** in connection with the **Claim**, it being understood that the payment of **Administrative Costs** by the **Insurer** or **ALIA** will not erode the **Limits of Liability** provided in this Part A;
- (c) pay all **Defence Costs** incurred by the **Insurer** in connection with the **Claim**, it being understood that the payment of **Defence Costs** by the **Insurer** or **ALIA** will erode the **Limits of Liability** provided in this Part A; and
- (d) pay all premiums on appeal bonds and on bonds to release attachments in connection with the **Claim** that have been authorized in advance by the **Insurer**, it being understood that the payment of such premiums will erode the **Limits of Liability** provided in this Part A and that the **Insurer** will have no obligation to furnish, apply for or give security for any such bonds.

### 2.3 Limits on Defence and Payment of Costs

- (a) *Claim within exclusion.* The **Insurer** has no duty to defend an **Insured** against a **Claim** or a part of a **Claim** that falls within an Exclusion of this Part A or that otherwise is not covered by this Part A.
- (b) *Ineligible Costs.* The **Insurer** is not responsible for and will not pay any **Ineligible Costs**.

### 2.4 Coverage Limits

- (a) *Individual Deductible.*
  - (i) Each **Insured** against whom one or more **Claims** are made in respect of an **Occurrence** shall be liable for **Defence Costs** and **Damages** for that **Occurrence** up to a maximum amount of \$5,000.00 (the **Individual Deductible**).
  - (ii) Neither **ALIA** nor the **Insurer** has any liability to a claimant for payment of an **Individual Deductible** although they may pay all or part of the **Individual Deductible** amount to a claimant to effect settlement of a **Claim** or to correct an **Error** in the rendering of **Professional Services**. If **ALIA** or the **Insurer** pay any part or all of the **Individual Deductible** amount to a claimant to effect settlement of a **Claim** or to correct an **Error** in the rendering of **Professional Services**, the **Insured** shall promptly reimburse **ALIA** or the **Insurer** the amount paid.
  - (iii) If a **Claim** is made against more than one **Insured** from the same **Law Firm** in respect of the same **Occurrence**, only one **Individual Deductible** will be charged against that **Law Firm** for that **Occurrence**.
- (b) *Group Deductible.* For each **Occurrence**, **ALIA** is liable for **Damages** and **Defence Costs** up to a maximum amount of \$500,000.00 (the **Group Deductible**) less any **Individual Deductibles** referable to that **Occurrence**.



- (c) **Occurrence Limit.** For each **Occurrence**, the maximum amount payable by ALIA and the **Insurer** collectively for **Damages** and **Defence Costs** combined is \$1,000,000.00 (the **Occurrence Limit**) less the applicable **Individual Deductible**.
- (d) **Aggregate Limit.** The maximum amount payable by ALIA and the **Insurer** collectively for **Damages** and **Defence Costs** combined on behalf of any **Individual Insured**, including all **Additional Insureds**, for all **Claims** made during the **Policy Period**, regardless of the number of **Occurrences**, is \$2,000,000.00 (the **Aggregate Limit**) less the applicable **Individual Deductibles**. The **Aggregate Limit** does not apply to ALIA, the **Law Society** and their **Administrative Employees**.

The **Aggregate Limit** applicable to an **Individual Insured** shall not be eroded by **Claims** made against that **Individual Insured** in his or her role as an **Additional Insured**.

- (e) **Exhaustion of Limits of Liability.** Neither the **Insurer** nor ALIA is obliged to pay any **Damages** or **Defence Costs** or to undertake or continue the defence of any proceeding after their respective **Limits of Liability** have been exhausted by the payment of defence costs, settlements, judgments, or after deposit of the applicable **Limits of Liability** into a court of competent jurisdiction. In such a case, the **Insurer** and ALIA have the right to withdraw from further defence by tendering control of the defence to the **Insured**.

### III. EXCLUSIONS

The insurance coverage given by this Part A does not apply to a **Claim** arising out of or from:

- 3.1 **Professional Services** provided from an **Office** located outside Canada, unless the **Professional Services** provided are in respect of Alberta or Canadian law and are incidental to the **Insured's** Alberta practice;
- 3.2 **Professional Services** provided in an **Insured's** capacity as a member of a non-Canadian **law society**;
- 3.2.1 **Professional Services** provided or supervised by an **Insured** in relation to one or more **Ancillary Activities** conducted by that **Insured** (such services being referred to in Condition 4.5 as "Non-Qualifying Services");
- 3.2.2 the mere receipt and distribution of funds by an **Insured**, whether through that **Insured's** trust account or otherwise;
- 3.3 the theft or **Misappropriation** of trust funds or property or in any way related to such theft or **Misappropriation**;
- 3.4 a **Dishonest**, fraudulent or criminal act or omission that does not fall within Exclusion 3.3;
- 3.5 a malicious act or omission, except that the **Insurer** will reimburse to an **Insured** all reasonable **Defence Costs** incurred by independent counsel retained by the **Insured** in the successful defence of malicious prosecution or another allegedly malicious act;
- 3.5.1 a penalty assessed against an **Insured** under Section 163.2 of the *Income Tax Act*, except that the **Insurer** will reimburse to the **Insured** all reasonable **Defence Costs** incurred by independent counsel retained by the **Insured** in the successful appeal of such penalty;

- 3.5.2 a fine or penalty assessed against an **Insured** under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, except that the **Insurer** will reimburse to the **Insured** all reasonable **Defence Costs** incurred by independent counsel retained by the **Insured** in the successful defence of prosecution of an offence under such *Act*;
- 3.6 the bodily injury, sickness, disease or death of any person (other than mental illness or emotional distress or humiliation of a claimant that is the direct result of an **Occurrence**);
- 3.7 physical damage to tangible property, including physical damage that results in the loss of use of the property, unless such damage is the direct result of an **Occurrence**;
- 3.8 an **Insured's** acting in the capacity of director or officer of any **Enterprise** other than **ALIA**, **ALIEX** or the **Law Society**;
- 3.8.1 damage to or loss of use of tangible or intangible property, loss of data, disclosure of confidential information, or any other loss which is directly or indirectly connected with the receipt or transmission of a computer virus or other damaging program via the internet or in any other electronic manner, or through unauthorized interference with an internet connection, network, computer or telecommunication device;
- 3.9 a **Claim** made against a **Member** who is an employee of, or who contracts with, a government, municipality, university, person or **Enterprise**, other than a **Law Firm**, and who practises law solely within the scope of that employment or contract. This exclusion applies whether the **Member** is employed, or contracts to provide services, individually or through a **Professional Corporation**, and whether or not the **Member's** employment agreement or contract permits the **Member** to provide **Professional Services** outside of the scope of the **Member's** employment or contract. This exclusion does not apply to a **Member** who is an **Administrative Employee** or a **Legal Services Organization Employee**;
- 3.9.1 a **Claim** made against a **Member** who is an employee of, or who contracts with, a government, municipality, university, person or **Enterprise**, other than a **Law Firm**, except to the extent such **Claim** arises from **Professional Services** provided outside the scope of such employment or contract.

In addition, the insurance coverage given by this Part A does not apply to:

- 3.10 a **Claim** against an **Insured** made by the **Insured's** employer;
- 3.11 a **Claim** against an **Insured** made by the **Insured's Law Firm**;
- 3.12 a **Claim** of which proper notice has not been given in accordance with paragraphs (a) and (b) of Condition 4.3;
- 3.13 a **Claim** excluded under *Nuclear Incident Exclusion Clause* (attached);
- 3.14 the ineligible portion of any payment resulting from a **Claim** against an **Insured** by an **Enterprise** in which the **Insured** at the time of the **Occurrence** held a direct or indirect beneficial interest of at least fifty percent (50%). For the purposes of this exclusion:
  - (a) an **Insured** is considered to have an indirect interest if the interest in the **Enterprise** is held by a corporation or other entity that is controlled by the **Insured**, the **Insured's Law Firm**,

or any combination of the foregoing, control being determined by *de facto* dominion or control regardless of legal title or ownership; and

- (b) "ineligible portion" means that portion of the payment equal to the proportionate beneficial interest held by the **Insured** in the **Enterprise** which, as noted above, will be fifty percent (50%) or greater.

This exclusion shall not apply if Exclusion 3.2.1 applies.

#### IV. **CONDITIONS**

The coverage afforded by this Part A is subject to the following conditions:

##### 4.1 **Multiple Insureds, Claims or Claimants**

The maximum liability of the **Insurer** and **ALIA** for each **Occurrence** and for **Claims** made during the entire **Policy Period** is as set forth in clause 2.4 above regardless of the number of **Claims** arising out of a particular **Occurrence**, the number of claimants in respect of the **Occurrence** or the number of **Insureds** against whom **Claims** are made in respect of the **Occurrence**. Multiple **Claims**, claimants or **Insureds** involved in a single **Occurrence** will not increase or cumulate the **Occurrence Limit** or the **Aggregate Limit**.

However, if one or more **Claims** arising out of the same **Occurrence** are made jointly or severally against two or more **Law Firms**, then the **Individual and Group Deductibles** and the **Occurrence and Aggregate Limits** shall apply separately to each **Law Firm** unless the involvement of more than one **Law Firm** is attributable solely to the fact that an **Individual Insured** causing the **Occurrence** has relocated from one **Law Firm** to another.

##### 4.2 **Claims Made and Reported**

- (a) This Part A gives the described coverage to an **Insured** for any **Occurrence** provided that the initial **Claim** is made and reported in writing to the **Insurer** during the **Policy Period**.
- (b) A **Claim** is first made during the **Policy Period**:
  - (i) if, during the **Policy Period**, an **Insured** becomes aware of a **Claim** or any circumstance which could reasonably be expected to give rise to a **Claim**, however unmeritorious; or
  - (ii) a **Claim** is made against an **Insured** for **Damages** that are covered under Part A of this Policy; and

provided, in either case, that the **Insured** had no knowledge before the commencement of the **Policy Period** of the **Claim** or potential **Claim** and could not reasonably have foreseen before the commencement of the **Policy Period** that a **Claim** might arise.

- (c) When the **Policy Period** expires, the **Insurer** shall be free of liability for **Occurrences** except for those in respect of which a **Claim** has been both made and reported during the **Policy Period**.

#### 4.3 Notice Requirements

- (a) *Written notice.* An **Insured** shall, as soon as practicable after learning of a **Claim** or becoming aware of circumstances that might constitute an **Occurrence** or give rise to a **Claim**, however unmeritorious, give written notice to the **Insurer** at the local address for service shown in the Declarations. This is a condition precedent to the **Insurer's** liability under Part II for the **Claim** or **Occurrence** under this Part A.
- (b) *Information.* After notification, the **Insured** shall submit promptly to the **Person(s)** designated by the **Insurer** all information reasonably required by the **Insurer** that the **Insured** is reasonably capable of providing. In addition, the **Insured** shall immediately forward to the **Person(s)** designated by the **Insurer** any demand, notice, summons or other process received by the **Insured** in connection with the **Claim** or **Occurrence**.

#### 4.4 Defence of Claims

- (a) *Conduct of defence.* The **Insurer** and **ALIA** shall have complete and exclusive control over the conduct of the defence of a **Claim**, including appointment and instruction of counsel.
- (b) *Co-operation.* The **Insured** shall co-operate fully with the **Insurer** and **ALIA** and, upon request, shall:
  - (i) assist in investigations;
  - (ii) assist in settlement attempts;
  - (iii) attend at questionings and other interlocutory proceedings;
  - (iv) attend at alternative dispute resolution;
  - (v) assist in enforcing any right of contribution or indemnity against any third party;
  - (vi) attend at hearings and trials;
  - (vii) assist in securing the attendance of witnesses; and
  - (viii) otherwise assist in the repair, defence, or settlement in all other reasonable respects.
- (c) *Non-compliance.* If an **Insured** is unable or unwilling to comply with paragraph (b), **ALIA** may, at its option, take the place of the **Insured** to ensure compliance but is not obliged to do so.
- (d) *Admission of liability.* The **Insured** shall not make any admission nor take any other action that might reasonably be expected to prejudice conduct of the defence unless the **Insurer** and **ALIA** are aware of and consents to the admission or action in advance.
- (e) *Payments, etc.* Any payment, obligation or expense in connection with a **Claim** that is made, assumed or incurred unilaterally by the **Insured**, without obtaining the prior concurrence of the **Insurer** and **ALIA**, shall be the sole responsibility of the **Insured**.

- (f) *Compromise or settlement.* The decision to settle or compromise a **Claim** is within the sole discretion of the **Insurer** and **ALIA**, who have the exclusive right and authority to enter into a compromise or settlement without the consent of the **Insured**. If the **Insured** objects to a compromise or settlement, the **Insured** may request that the **Insured** be permitted to contest or continue legal proceedings in connection with the **Claim**. The **Insurer** and **ALIA** have no obligation to grant such permission, but may do so within the exercise of their sole discretion. Any permission so granted is subject to the express condition that the amount payable under this Part A in respect of the relevant **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Defence Costs** up to the date of the **Insured's** objection, subject to the other Conditions of this Part A.

#### 4.5 **Innocent Insured Provisions**

- (a) *Fraud or malice.* If coverage under this Part A is excluded, suspended or lost for an **Individual Insured** due to the operation of Exclusion 3.4 or 3.5 (that is, a **Dishonest**, fraudulent, criminal or malicious act or omission by the **Individual Insured** other than one relating in any way to theft or **Misappropriation** of trust funds or property), coverage shall continue to apply for the benefit of any **Additional Insured** against whom a **Claim** is made arising out of the **Occurrence** caused by the **Individual Insured**.
- (b) *Failure to notify.* If coverage under this Part A is excluded, suspended or lost for an **Individual Insured** due to that **Individual Insured's** failure to notify the **Insurer** of the **Claim** or **Occurrence** as required by paragraphs (a) and (b) of Condition 4.3, coverage shall continue to apply for the benefit of any **Additional Insured** against whom the **Claim** in question, or a **Claim** arising out of the **Occurrence** in question, is made.
- (c) *Misappropriation outside Alberta.* If coverage under this Part A is excluded, suspended or lost for an **Individual Insured** under Exclusion 3.3 because the **Individual Insured** has misappropriated trust funds or property, but the **Misappropriation** has occurred in the course of providing **Professional Services** in a **Reciprocal Jurisdiction** and in the **Insured's** capacity as a member in good standing of the **Law Society**, then coverage under this Part A shall continue to apply for the benefit of any **Additional Insured** against whom a **Claim** is made arising out of the **Misappropriation**, subject to Conditions 4.6 and 4.7 below.
- (c.1) *Non-Qualifying Services.* If coverage under this Part A is excluded, suspended or lost for an **Individual Insured** under Exclusion 3.2.1 because the **Individual Insured** has rendered Non-Qualifying Services, coverage shall continue to apply for the benefit of any **Additional Insured** against whom a **Claim** is made arising out of the **Occurrence** caused by the **Individual Insured**.
- (d) *Condition of coverage.* It is a condition of the coverage referred to in this Condition 4.5 that the relevant **Additional Insured** not have concealed or acquiesced or participated in the conduct that has disqualified the **Individual Insured**, nor failed to notify the **Insurer** of such conduct after becoming aware of it, nor been guilty of any other breach of this Part A.

#### 4.6 Other Insurance

- (a) *With Insurer.* If an **Insured** has or had at any time insurance (other than excess insurance) under another Canadian **law society's** policy (or Canadian **law societies'** policies) that applies to a **Claim** covered by this Part A, the total amount of insurance provided under these policies together will not exceed the total value of the **Claim** or the most that is available under either (any one) of these policies alone, whichever is less. The decision as to which of these policies will respond, or as to any allocation between (or amongst) the policies, will be made by the **Law Society** together with that other **law society** (or, if more than one, with those other **law societies**) and the **Insured** agrees to be bound by that decision. However, the aggregate coverage provided under all applicable policies will not exceed the applicable limit of coverage as set forth in Clause 2.4 regardless of the number of policies involved.
- (b) *With another insurer.* Except to the extent that Condition 4.6(a) applies, if an **Insured** has or had at any time insurance (other than excess insurance) placed with another insurer that applies to a **Claim** covered by this Part A, this Part A will apply only as excess insurance over the other insurance to the extent that the other insurance is valid and collectible, and will not be called upon in contribution.

#### 4.7 Interjurisdictional Coverage

- (a) If a **Claim** is made against an **Insured** in a **Reciprocal Jurisdiction** in connection with **Professional Services** rendered in that jurisdiction, and the professional liability insurance carried by the **Insured** is narrower in scope than that required of the members of the **law society** of the **Reciprocal Jurisdiction**, then the **Insurer** shall provide coverage for the **Insured**, inclusive of **Defence Costs** and interest, up to the level required by the **Reciprocal Jurisdiction** subject to an **Occurrence Limit** of \$1,000,000.00 and an **Aggregate Limit** of \$2,000,000.00. This condition applies for the benefit only of an **Insured** who was a **Member** at the time the **Professional Services** were rendered.
- (b) For clarity, if a **Member** has obtained an exemption under the rules of the **Law Society** from the professional liability insurance requirements of the **Law Society**, whether pursuant to the **Mobility Rules** or otherwise, this Part A will not respond or be applicable to a **Claim** arising out of an **Occurrence** taking place during the period of exemption.

#### 4.8 Cancellation

- (a) *For all Insureds.* This Part A may be cancelled at any time by agreement between the **Insurer** and **ALIA**, terminating the coverage provided to all **Insureds** without prior notice to any **Insured**.
- (b) *For any Insured.* The **Insurer** may, with the consent of the **Law Society**, terminate the coverage provided by this Part A to a particular **Insured** on 60 days' written notice to that **Insured** delivered by registered mail to the last address of the **Insured** shown on the records of the **Law Society**.
- (c) *No return of premium.* There shall be no return of premium to any **Insured** on the cancellation or termination of this Part A.

#### 4.9 Subrogation

- (a) *General.* If any payment is made under this Part A on behalf of an **Insured**, the **Insurer** shall be subrogated to all of that party's rights of recovery against any **Person** in respect of the payment.
- (b) *Exercise against Insured.* The **Insurer** will not exercise its subrogation rights against any **Insured** except an **Individual Insured** whose conduct has caused payments to be made on behalf of one or more **Additional Insureds** by virtue of the operation of Condition 4.5(a), (b), (c) or (c.1) of this Part A.
- (c) *Preservation of rights.* The **Insured** shall do nothing to prejudice the **Insurer's** subrogation rights and, in addition, shall execute and deliver all documents and take any other action that the **Insurer** considers necessary or appropriate, acting reasonably, to secure those subrogation rights.
- (d) *Application of amounts recovered.* Any amounts recovered through exercise of the **Insurer's** subrogation rights, net of recovery **Costs**, shall be applied as follows:
- first, to repay an **Insured** or an excess insurer who, pursuant to an agreement with the **Insurer**, has paid an amount on the **Insured's** behalf in respect of the **Claim** over and above payments under this Part A;
  - second, to reimburse the **Insurer** (and, on a *pro rata* basis, any other insurers who have contributed to the **Claim** pursuant to an agreement with the **Insurer**, except for those referred to in Condition 4.6(b)) for **Damages** and **Defence Costs** paid in respect of the **Claim**;
  - third, to reimburse **ALIA** for **Damages** and **Defence Costs** paid in respect of the **Claim**; and
  - fourth, to reimburse the **Insured** for deductibles paid that are referable to the **Claim**.

#### 4.10 Miscellaneous Conditions

- (a) *Effect of bankruptcy or insolvency.* The bankruptcy or insolvency of an **Insured** shall not affect the obligations of the **Insurer** under this Part A and shall not relieve an **Insured** of personal responsibility for his or her obligations under this Part A.
- (b) *Effect of death or incapacity.* The death or incapacity of an **Insured** shall not affect the obligations of the **Insurer** under this Part A with respect to **Occurrences** before the death or incapacity. The legal or personal representatives of the **Insured** shall be entitled to enforce any coverage provided by this Part A for the benefit of the **Insured**, but shall be bound by the conduct of the **Insured** in connection with the **Occurrence(s)** in question.
- (c) *Notice of changes.* Notice of matters relevant to the **Insurer** must be given to the **Insurer** at the local address for service shown in the Declarations. Notice to any other **Person** (including the **Law Society**), or knowledge by that **Person**, of such matters does not affect the **Insurer** or its rights under this Part A or the applicability of the terms and conditions of this Part A. Any waiver of or change to the terms and conditions of this Part A must be

made by written endorsement forming part of this Part A and signed by a duly authorized representative of the **Insurer**.

(d) *Action against Insurer.* The following are conditions precedent to an action against the **Insurer** or **ALIA** by an **Insured**:

- (i) the **Insured** must have complied in all respects with the terms and conditions of this Part A; and
- (ii) the amount payable in respect of the **Claim** must have been finally determined by a court of competent jurisdiction or by written agreement or settlement.

(e) *Arbitration.* This provision applies to any dispute as to:

- (i) the interpretation of this Part A;
- (ii) the apportionment of liability; or
- (iii) the payment of **Individual or Group Deductibles**,

that arises between the **Insurer** and **ALIA**, or between an **Insured** and one or more of the following:

- (A) **ALIA**;
- (B) the **Insurer**; or
- (C) another **Insured** who is not presently at the same **Law Firm** as the **Insured** and was not at the same **Law Firm** at the time of the **Occurrence**.

Such a dispute may be adjudicated by arbitration. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act* (Alberta) by a single arbitrator and may be initiated by any party to the dispute on written notice to all other parties at any time after the expiration of 90 days from the date the dispute arose.

(f) *Assignment.* The rights of an **Insured** under this Part A that are exercisable against the **Insurer** or **ALIA** cannot be assigned to any other **Person**.

(g) *Service.* Service of any action to enforce the obligations of the **Insurer** under this Part A shall be made on the Attorney for the **Insurer** at the local address for service shown in the Declarations.

(h) *Currency.* All **Limits of Liability** and deductibles under this policy are stated in lawful currency of Canada and all payments under this policy shall be made in the same currency.

(i) *Governing law.* This Part A shall be governed by and construed in accordance with the laws of the Province of Alberta.



## PART B - TRUST SAFETY INSURANCE

### I. DEFINITIONS

In this Part B:

**Adult Interdependent Partner** has the same meaning as in the *Adult Interdependent Relations Act*, RSA 2000, c. A-4.5

**ALIA** means the Alberta Lawyers Insurance Association

**ALIEX** means the Alberta Lawyers Insurance Exchange, which is a reciprocal insurance exchange under Part 1, Subpart 3 of the *Insurance Act*, RSA 2000, c. I-3. **ALIEX** will be referred to as the **Insurer** in this policy

**Claim** means a demand for money, an action, a claim or institution of proceedings against an **Insured** arising from an alleged **Loss**

**Claimant** means a **Person** alleging a **Loss**

**Compensation Program** means the Assurance Fund as provided under the *Legal Profession Act*, RSA 2000, c. L-8

**compensation program** means:

- (a) any statutory program, as provided for by a legislative act; and
- (b) any fund established by a **law society** to pay for **Losses** from any misappropriation, wrongful conversion or dishonesty by members of a **law society** as may now or subsequently be established

**Costs** includes charges and expenses

**Defence Costs** means costs incurred by the **Insurer**, **ALIA** or the **Law Society** in defending or settling a **Claim**, including legal fees and disbursements of counsel appointed by the **Insurer**; the fees and disbursements of investigators, experts, appraisers and witnesses, and the **Costs** of alternative dispute resolution

**Dishonest** means conduct, including without limiting the generality of the foregoing, which a reasonable **Person** would consider to be deceptive or untruthful and morally reprehensible or lacking in candour and integrity and which may occur in the absence of an actual dishonest purpose, motive or intent

**Enterprise** means any proprietorship, partnership, co-operative, society, business, association, joint venture, syndicate, company, corporation, firm or other legal or commercial entity

**Ineligible Costs** means:

- (i) **Costs** incurred and earnings lost by a **Responsible Lawyer** or an **Innocent Insured** in connection with investigation, defence, or settlement of a **Claim**, including those associated with:

- photocopying documents;
  - expending time and effort;
  - preparing for and attending questioning or cross-examinations;
  - preparing for and attending alternate dispute resolution;
  - preparing for court and testifying; and
  - otherwise cooperating with the **Insurer** and **ALIA** in the investigation, defence or settlement of a **Claim**;
- (ii) out-of-pocket **Costs** of a **Responsible Lawyer** or **Innocent Insured** that are not authorized for reimbursement by the **Insurer** in advance, including **Costs** of independent or personal counsel retained by the **Insured** and **Costs** of disputing issues relating to coverage; and
- (iii) **Costs** awarded personally against an **Insured** as a result of the **Insured's** conduct in litigation, whether or not connected with a **Misappropriation**

**Innocent Insured**, with respect to one or more **Responsible Lawyers**, means:

- (a) a present or former partner of the **Responsible Lawyer(s)**;
- (b) any **Law Firm** through which the **Responsible Lawyer(s)** have practised law, whether as partners, associates, employees, counsel, contract lawyers or otherwise; and
- (c) a present or former partner of any **Law Firm** through which the **Responsible Lawyer(s)** have practised law

provided that the **Innocent Insured** did not conceal, acquiesce, or participate in the conduct of the **Responsible Lawyer(s)** that gave rise to a **Loss**.

**Insured** means:

- (a) **ALIA**;
- (b) the **Law Society**;
- (c) an **Innocent Insured**; and
- (d) a **Responsible Lawyer**

**Insurer** means the Alberta Lawyers Insurance Exchange ("**ALIEX**")

**Law Firm** means:

- (i) a sole proprietorship through which a **Responsible Lawyer** practises law; or
- (ii) two or more **Members** who are, or appear to be, holding themselves out to the public as practising law together, whether or not a partnership exists in fact and regardless of the form or forms of business organization through which the practice is conducted

**law society** means a law society, barristers' society or similar organization of a jurisdiction other than Alberta

**Law Society** means the Law Society of Alberta

**Limits of Liability** means the **Misappropriation Limit** and the **Profession-wide Annual Aggregate Limit**

**Loss** means direct financial loss sustained by a **Person** of no more than the value of **Money** or the equivalent cash value of **Securities and Property** that is the subject of a **Misappropriation** by a **Responsible Lawyer(s)**, but does not include any amount for which the **Claimant** or **Insured** has or is entitled to claim under any other policy or form of insurance, title insurance, or any **compensation program**

**Member** means a **lawyer** who, at the date of the **Misappropriation**, was enrolled with the **Law Society** pursuant to the *Legal Profession Act*, RSA 2000, c. L-8

**Misappropriation** means a theft, wrongful taking, or wrongful conversion and may include multiple thefts, wrongful takings, or wrongful conversions concurrently, or over time, by a **Responsible Lawyer** of **Money, Securities or Property**, whether to the use of the **Responsible Lawyer** or a third party, which was entrusted to or received by that **Responsible Lawyer** in his or her capacity as a barrister or solicitor or such other capacity as the **Law Society** may designate, regardless of the form or forms of business organization through which the practice is conducted

**Misappropriation Limit** has the meaning given by clause 2.4(b)

**Money, Securities or Property** means:

- (a) Money including currency, coins, and bank notes having a face value and in current use;
- (b) Securities including all negotiable and non-negotiable instruments or contracts representing Money and includes revenue and other stamps, tokens and tickets in current use; and
- (c) Property including trust Money, in cash or on deposit, and chattels, which have been entrusted

**Occurrence** has the same meaning as in Part A of this policy

**Person** includes an individual and an **Enterprise**

**Policy Period** is that indicated in the Declarations

**Profession-wide Annual Aggregate Limit** has the meaning given by clause 2.4(c) and is \$25,000,000

**Responsible Lawyer** means a **Member** who has committed or is alleged to have committed a **Misappropriation**

**Spouse** means the husband or wife of a married person

## II. INSURING AGREEMENTS

In consideration of payment of the premium when due, and subject to the **Limits of Liability**, exclusions, conditions and all other terms of this Part B, the **Insurer** agrees with each **Insured** as follows:

### 2.1 Payment of Loss

The **Insurer** will pay to the **Claimant**:

- (a) all sums that the **Insured** is legally obligated to pay to the **Claimant** as a result of a **Loss** caused by a **Misappropriation** discovered and reported during the **Policy Period**; or
- (b) the amount of the **Loss** suffered by a **Claimant** as determined by the **Law Society** and/or **ALIA** and subject to the approval of the **Insurer**.

## 2.2 Defence of Claims

In respect of the insurance coverage given by this Part B:

- (a) the **Insurer** has the right, but not the duty, to defend any **Claim** against an **Insured** alleging a **Loss** that would fall within the coverage provided by this Part B;
- (b) if the **Insurer** elects to defend a **Claim** against an **Insured** alleging a **Loss** that would fall within the coverage provided by this Part B, the **Insurer** has the right to:
  - (i) investigate the **Claim** alleged to have caused the **Loss**;
  - (ii) select and instruct defence counsel; and
  - (iii) withdraw from the defence of the **Claim** without seeking the consent of the **Insured**;
- (c) the decision to settle or compromise a **Claim** is within the sole discretion of the **Insurer**, who has the exclusive right and authority to enter into a compromise or settlement without the consent of the **Insured**.

## 2.3 Limits on Payment of costs

The **Insurer** is not responsible and will not pay for **Ineligible Costs**.

## 2.4 Coverage Limits

- (a) **Group Deductible:** For each **Claim**, **ALIA** is liable for **Losses** and **Defence Costs** up to a maximum amount of \$500,000.00 (the **Group Deductible**).
- (b) **Misappropriation Limit:** The maximum amount payable by **ALIA** and the **Insurer** collectively for all **Losses** and **Defence Costs** in respect of any **Misappropriation** is \$5,000,000, regardless of the number of **Claims** made or **Losses** arising from the **Misappropriation** or the number of **Claimants**, or the number of **Responsible Lawyers** or **Innocent Insureds** involved, or alleged to be involved, in the **Misappropriation**. For clarity, multiple **Claims**, **Losses**, **Claimants**, **Responsible Lawyers** or **Innocent Insureds** involved in any **Misappropriation** will not increase or cumulate the **Misappropriation Limit**.
- (c) **Profession-wide Annual Aggregate Limit:** The maximum amount payable by **ALIA** and the **Insurer** collectively for all **Losses** and **Defence Costs** on an aggregate basis for all **Losses** and **Claims** made and reported in the policy period is \$25,000,000. For clarity, all payments by **ALIA** and the **Insurer** of all **Losses** and **Defence Costs** incurred during the **Policy Period** will reduce the **Profession-wide Annual Aggregate Limit** for that **Policy Period** in the amount of those payments.

### III. EXCLUSIONS

The insurance coverage given by this Part B does not apply to:

- 3.1 any **Claim** that falls within Part A of this policy;
- 3.2 an **Occurrence** to which Part A of this policy responds, regardless of the **Limits of Liability** of Part A of this policy; compliance, or lack thereof, with the notice and/or reporting requirements of Part A of this policy; and whether Part A of this policy has been cancelled;
- 3.3 bodily injury, sickness, disease or death of any person;
- 3.4 physical damage to tangible property, including physical damage that results in the loss of use of the property;
- 3.5 a **Claim** or **Loss** resulting from a **Misappropriation** reported to the Law Society or which formed the basis of a claim for compensation under the **Compensation Program** or any other **compensation program** prior to July 1, 2014.
- 3.6 a **Claim** or **Loss** that is connected to or arises out of, in whole or in part, the **Dishonest** or unlawful conduct, fault or neglect of the **Claimant** or the **Claimant's Spouse** or **Adult Interdependent Partner**;
- 3.7 a **Claim** by an **Enterprise** that is connected to or arises out of, in whole or in part, the wrongful or unlawful conduct, fault or neglect of an officer, director, employee or agent of the **Enterprise** or an individual who had directly or indirectly, effective control of the **Enterprise** or beneficial ownership of the **Enterprise** in an amount greater than ten per cent (10%);
- 3.8 a **Claim** brought by a **Claimant** who knew prior to the time of the **Misappropriation** of any **Dishonest** act by the **Responsible Lawyer(s)**;
- 3.9 a **Claim** or **Loss** sustained by any **Person** or **Persons** who committed, participated in committing, consented to (expressly or implicitly), or acquiesced in the **Misappropriation**, or were reckless or wilfully blind to the **Misappropriation**;
- 3.10 a **Claim** or **Loss** sustained by any **Person** or **Persons** who had unlawfully obtained the **Money, Securities or Property** that were the subject of the **Misappropriation**;
- 3.11 a **Loss** that does, or is alleged to arise out of or from, a purported investment or a Ponzi or similar investment scheme in which the **Responsible Lawyer** merely received and distributed money, whether through his or her trust account or otherwise;
- 3.12 a **Claim** against a **Responsible Lawyer** made by or on behalf of the **Responsible Lawyer's Law Firm** or its partners;
- 3.13 a **Claim** against a **Responsible Lawyer** made by or on behalf of the **Responsible Lawyer's** employer or any government, municipality, university, person or **Enterprise** with whom the **Responsible Lawyer** contracts; and
- 3.14 a **Claim** of which proper notice has not been given in accordance with clause 4.2.

#### IV. CONDITIONS

The coverage afforded by this Part B is subject to the following conditions:

##### 4.1 Claims Made and Reported

- (i) Coverage under this Part B shall only apply to **Claims** or **Loss** arising out of **Misappropriations** that occurred while the **Responsible Lawyer** was a **Member** and provided that the **Claim** is made and reported in writing to **ALIA** and the **Insurer** during the **Policy Period**.
- (ii) A **Claim** is first made during the **Policy Period**:
  - (i) if, during the **Policy Period**, an **Insured**, other than a **Responsible Lawyer**, becomes aware of any **Misappropriation** or any circumstance which could reasonably be expected to give rise to a **Claim**, however unmeritorious; or
  - (ii) a **Claim** is made against an **Insured** for **Losses** that are covered under Part B of this Policy; and

provided, in either case, that the **Insured** had no knowledge before the commencement of the **Policy Period** of the **Claim** and could not reasonably have foreseen before the commencement of the **Policy Period** that a **Claim** might arise.

- (iii) When the **Policy Period** expires, the **Insurer** shall be free of liability for all **Losses** except for those in respect of which a **Claim** has been both made and reported during the **Policy Period**.

##### 4.2 Notice Requirements

- (a) *Written notice.* An **Insured** shall, as soon as practicable after learning of a **Claim** or becoming aware of circumstances that might constitute a **Misappropriation** or any circumstance which could reasonably be expected to give rise to a **Claim**, however unmeritorious, give written notice to the **Insurer** at the local address for service shown in the Declarations. This is a condition precedent to the **Insurer's** liability under this Part B.
- (b) *Information.* After notification, the **Insured** shall submit promptly to the **Person(s)** designated by the **Insurer** all information reasonably required by the **Insurer** that the **Insured** is reasonably capable of providing. In addition, the **Insured** shall immediately forward to the person(s) designated by the **Insurer** any demand, notice, summons or other process received by the **Insured** in connection with the **Claim** or **Misappropriation**.

#### 4.3 **Co-operation of Insured**

The **Insured** shall co-operate fully with the **Insurer** and, upon request, shall:

- (i) assist in investigations;
- (ii) assist in settlement efforts;
- (iii) attend at questionings and other interlocutory proceedings;
- (iv) attend at alternative dispute resolution;
- (v) assist in enforcing any right of contribution or indemnity against any third party;
- (vi) attend at hearings and trials;
- (vii) assist in securing the attendance of witnesses; and
- (viii) otherwise assist in any investigation, defence or settlement efforts in all other reasonable respects.

#### 4.4 **Other Insurance**

- (a) If a **compensation program** (or programs) provided by another Canadian **law society** (or Canadian **law societies**) other than the **Law Society** applies to a **Loss** covered by this Part B, the total amount of insurance provided under this Part B and those **compensation programs** together will not exceed the total value of the **Loss** or the most that is available under either (any one) of this Part B or those **compensation programs** alone, or, whichever is less. The decision as to which policy or **compensation program** will respond, or as to any allocation between (or amongst) them, will be made by the **Insurer** together with the other **law society** (or, if more than one, with those other **law societies**) and the **Insured** agrees to be bound by that decision.
- (b) Except to the extent that Condition 4.4(a) applies, if there is available to an **Insured** or a **Claimant** any other insurance or indemnity against the **Loss**, this Part B will apply only as excess insurance over the amount recoverable or recovered under such other insurance or indemnity and will not be called upon in contribution.

#### 4.5 **Cancellation**

- (a) *For all **Insureds**.* This Part B may be cancelled at any time by agreement between the **Insurer** and the **Law Society**, terminating the coverage provided to all **Members** without prior notice to any **Member**. There shall be no return of premium paid for this Part B coverage to any **Member** on the cancellation of this Part B.
- (b) *For any **Insured**.* The **Insurer** may, with the consent of the **Law Society**, terminate the coverage provided by this Part B to a particular **Insured** on 60 days' written notice to that **Insured** delivered by registered mail to the last address of the **Insured** shown on the records of the **Law Society**.

4.6 **Insurer's Right to Recover Payments (Subrogation)**

- (a) If a **Responsible Lawyer** is determined to have committed a **Misappropriation**, it is agreed between the **Insurer** and the **Insureds** that the **Insurer** has the right to recover all **Losses** and **Defence Costs** paid from that **Responsible Lawyer**.
- (b) In the event of any payment under this Part B the **Insurer** shall be subrogated to:
  - (i) all of the **Claimant's** rights of recovery therefore against any **Person**, including the **Responsible Lawyer(s)**, in respect of said payment and the **Claimant** shall execute and deliver instruments and papers and render assistance to secure such rights. The **Claimant** shall do nothing after the **Loss** to prejudice such rights;
  - (ii) all of the **Innocent Insured's** rights of recovery against any **Person**, including the **Responsible Lawyer(s)**, in respect of said payment and the **Innocent Insureds** shall execute and deliver instruments and papers and render assistance to secure such rights. The **Innocent Insureds** shall do nothing after the **Loss** to prejudice such rights. The **Innocent Insured's** rights to which the **Insurer** is subrogated, shall extend to the value of any **Responsible Lawyer's** interest in any **Law Firm** as determined by the **Law Firm's** books as of the date of the discovery of the **Loss** by an **Insured**, including any amounts owing to the **Responsible Lawyer** by the **Law Firm**. The **Insurer** acknowledges that it waives all rights of recovery against any **Innocent Insured(s)** in respect of the **Misappropriation** resulting in any **Loss** paid under this Part B, unless the **Loss** was caused or contributed to by the fault or neglect of the **Innocent Insured(s)**.
- (c) Any amounts recovered through exercise of the **Insurer's** subrogation rights and/or by salvage net of recovery **costs**, shall be applied as follows:
  - (i) first, to reimburse the **Insurer** for payments under this Part B; and
  - (ii) second, to the satisfaction of the **Losses** which would have been paid but for the fact that the **Loss** is in excess of the **Limit of Liability** under this Part B.

4.7 **Miscellaneous Conditions**

- (a) *Effect of bankruptcy or insolvency.* The bankruptcy or insolvency of any **Responsible Lawyer** or **Innocent Insured(s)** will not affect the obligations of the **Insurer** under this Part B and will not relieve the **Insurer** of responsibility for its obligations under this Part B.
- (b) *Effect of death or incapacity.* The death or incapacity of any **Responsible Lawyer** or **Innocent Insured** will not affect the obligations of the **Insurer** under this Part B with respect to **Misappropriations** before the death or incapacity.
- (c) *Notice of changes.* Notice of matters relevant to the **Insurer** must be given to the **Insurer** at the local address for service shown in the Declarations. Notice to any other **Person**, or knowledge by that **Person**, of such matters does not affect the **Insurer** or its rights under this Part B or the applicability of the terms and conditions of this Part B. Any waiver of or change to the terms and conditions of this Part B must be made by written endorsement forming part of this Part B and signed by a duly authorized representative of the **Insurer**.



- (d) *Arbitration.* This provision applies to any dispute that arises between the **Insurer** and the **Insured** under this Part B. Such a dispute may be adjudicated by arbitration. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act* (Alberta) by a single arbitrator and may be initiated by any party to the dispute on written notice to the other party at any time after the expiration of 90 days from the date the dispute arose.
- (e) *Assignment.* The rights of the **Insured** under this Part B that are exercisable against the **Insurer** cannot be assigned to any other **Person**.
- (f) *Service.* Service of any action to enforce the obligations of the **Insurer** under this Part B shall be made on the Attorney for the **Insurer** at the local address for service shown in the Declarations.
- (g) *Currency.* All **Limits of Liability** under this policy are stated in lawful currency of Canada and all payments under this policy shall be made in the same currency.
- (h) *Governing law.* This Part B shall be governed by and construed in accordance with the laws of the Alberta.

In Witness Whereof the **Insurer** has caused this policy to be executed the 27 day of June 2016 by its Attorney.

**ALBERTA LAWYERS INSURANCE EXCHANGE**

Per:   
Attorney

**NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD)-CANADA**  
(For use with all Public Liability Policies except Personal, Farmers' and Storekeepers')

It is agreed that this policy does not apply:

- (b) to liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof; nor
- (c) to bodily injury or property damage with respect to which an Insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; nor
- (d) to bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
  - (i) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an Insured;
  - (ii) the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
  - (iii) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

As used in this policy:

1. The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material.
2. The term "radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by or pursuant to any law, act or statute, or law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.
3. The term "nuclear facility" means:
  - (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
  - (b) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or utilising spent fuel, or (iii) handling, processing or packaging waste;

- (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if, at any time, the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

- 4. The term "fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- 5. With respect to property, loss of use of such property shall be deemed to be property damage.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this Clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

**ENDORSEMENT NO. 1**

**(Applies to Part A Only)**

It is understood and agreed that, for the purposes of Condition 4.7(a), coverage provided under "Part B: Trust Protection" of the Law Society of British Columbia's professional liability insurance policy shall not be considered to be insurance required of the members of the Law Society of British Columbia. For greater certainty, it is understood and agreed that Condition 4.7(a) shall not apply to broaden coverage under Part A as a result of the provisions of "Part B: Trust Protection" in the Law Society of British Columbia's professional liability insurance policy.

All other terms, conditions, exclusions and limitations remain unchanged.

Attached to and forming part of Policy Number AB003/17 of the Alberta Lawyers Insurance Exchange.

This endorsement shall be effective from July 1, 2016, 12:01 a.m. at Calgary, Alberta.

**ALBERTA LAWYERS INSURANCE EXCHANGE**

Per: *Paula Haney*  
Attorney

**ENDORSEMENT NO. 2**

**(Applies to Part A Only)**

It is understood and agreed that coverage under this policy is extended to:

- 1) notwithstanding Exclusion 3.9, active members of the **Law Society** who are employed by or contract with a **Person** other than a **Law Firm**, and who otherwise practise law solely within the scope of that employment or contract;
- 2) active members of the **Law Society** who have undertaken that they are not otherwise engaged in the practice of law; and
- 3) retired and inactive members of the **Law Society** who have undertaken that they are not otherwise engaged in the practice of law;

for an **Occurrence** arising out of **Professional Services** performed on a pro bono basis through i) the Volunteer Lawyers Services Program, ii) the Calgary Legal Guidance, iii) the Edmonton Community Legal Centre, iv) the Central Alberta Community Legal Clinic, v) Lethbridge Legal Guidance, vi) the Children's Legal and Educational Resource Centre, and vii) Grande Prairie Legal Guidance.

It is further understood and agreed that a lawyer referred to in the foregoing paragraph will not, for the sole reason of performing **Professional Services** on a pro bono basis as described above, be included in determining the number of lawyers for the purpose of the Premium set out as Item 5(f) of the Declarations.

All other terms, conditions, exclusions and limitations remain unchanged.

Attached to and forming part of Policy Number AB003/17 of the Alberta Lawyers Insurance Exchange.

This endorsement shall be effective from July 1, 2016, 12:01 a.m. at Calgary, Alberta.

**ALBERTA LAWYERS INSURANCE EXCHANGE**

Per:   
Attorney