

Legal Expense Insurance (Occurrence Form)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

1. Insuring Agreement

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the Insurer, including the statements made in the application, and subject to all the terms, conditions and limitations of this form, the Insurer agrees to reimburse the "Insured" for:

- 1.1. "Legal expenses" incurred by the "Insured; and
- 1.2. for costs of "Legal consultation";

both arising from, or in connection with, a "covered proceeding", but only if such "covered proceeding" results from an "occurrence" that takes place within the "territorial limits" and during the "policy period".

2. Extensions

Subject otherwise to the terms hereof, this form shall respond to a "Claim" made against the estates, heirs, or legal representatives of deceased "Insured" and the legal representatives of "Insured" in the event of their incompetency, insolvency or bankruptcy, who were insured at the time notice of the "Claim" is received by the "Insured".

3. Limits of Insurance

The limits of insurance and rules described below fix the most the Insurer will pay regardless of the number of insureds, "claims" made, or persons or organizations making "claims".

The maximum amounts in respect of which the Insurer will reimburse the "Insured" are as follows, unless otherwise indicated on the "Declaration Page(s)":

- (a) Twenty-Five Thousand Dollars (\$25,000.00) for "legal expenses" arising out of any one "Claim" subject to a maximum of Fifty Thousand Dollars (\$50,000.00) during any one "policy period". Multiple "claims" arising out of or related to one "occurrence" shall be treated as one "claim".
- (b) Five Thousand Dollars (\$5,000.00) per "Claim" or in the aggregate, per "Policy Period" in respect of the cost of retaining an "Expert Witness" for purposes of the defence of a "Claim".
- (c) Five Thousand Dollars (\$5,000.00) during any one "Policy period" in respect of costs incurred by the "Insured" for "Legal Consultation".

The limits of insurance applicable to this form apply separately to each, unless the "policy period" is extended after issuance for an additional period of less than 12 months. In that case the additional period will be deemed to be part of the last preceding "policy period" for purposes of determining the limits of insurance.

4. Definitions

(a) **"Civil Proceeding"** means a proceeding instituted in a court of competent jurisdiction in Canada seeking compensatory, aggravated, punitive or exemplary damages and/or declaratory or injunctive relief in connection therewith and judgment against an "Insured" for such damages, declaratory or injunctive relief, together with legal costs, pre- and post-judgment interest and further and other relief.

(b) **"Claim"** means receipt by the "Insured" of, or the filing of, a notice or complaint against the "Insured", alleging that the "Insured" has contravened any Federal or Provincial statute, any regulation or order passed pursuant thereto, or any by-laws, rules and regulations passed by or by any organization, association, corporation or entity which governs members of the "Insured Profession" including the manner in which they conduct themselves within their "Insured Practice".

"Claim" does not include :

- (1) any form of relief pursued by way of a "Civil Proceeding";
- (2) any allegation, complaint, charge, or relief claimed in connection with a "Criminal Proceeding".

(c) **"Covered Proceeding"** means a "claim" instituted and conducted in Canada before a legally constituted tribunal, board, board of inquiry, board of review, commission, committee or commissioner with jurisdiction to hear and/or review evidence, documentary or otherwise, make findings of fact in relation thereto, make a determination or render a decision as to whether the "Insured" is guilty of contravening the statutes, regulations, orders or by-laws governing the conduct of members of the "Insured Profession", or has otherwise failed to meet the standards of the "Insured Profession", and to impose any form of disciplinary sanction, including suspension of the "Insured's" license or ability to practice the "Insured Profession", or expulsion from the "Insured Profession", or to impose a fine, penalty or other monetary sanction (not including any form of damages, compensatory or otherwise) upon the "Insured" as a result thereof.

"Covered Proceeding" does not include:

- (1) a "Civil Proceeding";
- (2) a "Criminal Proceeding".

(d) **"Criminal Proceeding"** means a proceeding instituted by means of the swearing of an information, the laying of a charge or the return of an indictment, before a Court of competent jurisdiction in Canada with jurisdiction to hear and determine the charges referred to therein, alleging or charging that the "Insured" has contravened the provisions of any Provincial or Federal statute, including the *Criminal Code*, R.S.C. 1985 ch. C-46 as amended, which creates an offence or crime and which provides for conviction thereunder, whether by way of summary conviction or indictment, and as a result of which the "Insured" is liable to be convicted, fined or sentenced to some form of imprisonment or other punishment.

(e) **"Declaration Page(s)"** means the "Declaration Page(s)" applicable to this form.

(f) **"Expert Witness"** means a person who is qualified by education, training and/or experience, to provide evidence with respect to the practice of, or the standard of practice required by, the "Insured Profession" and to opine concerning whether the "Insured" has met or exceeded such standard, whether the "Insured" contravened or breached any statute, regulation or by-law governing the conduct of the "Insured Profession", or upon any other issue material to the "Covered Proceeding".

(g) **"Insured"** is the Named Insured(s) shown in the "Declaration Page(s)" and includes the Named Insured's employees, but only for acts within the scope of their employment by the Named Insured, or any student working under the supervision of the Named Insured.

- (h) **"Insured Profession"** or **"Insured Practice"** means the profession described in the "Declaration Page(s)", performed in accordance with the legislation regulating the practice of such profession.
- (i) **"Legal Consultation"** means the obtaining of legal advice by the "Insured" in relation to his or her legal obligation to release confidential information, documentary or otherwise, created, obtained, received and/or held by the "Insured" in connection with his or her "Insured Practice" and in his or her capacity as a member of the "Insured Profession".
- (j) **"Legal Expenses"** means:
 - (1) fees, not to exceed \$250.00 per hour, charged by a lawyer qualified to practice in the jurisdiction in which the "Covered Proceeding" is instituted, in respect of time spent in defending a "Covered Proceeding", including fees charged for the services of articling students, paralegals, clerks and other professional staff working with and under the direction of such lawyer, but not including any overtime charges or charges in respect of any secretarial or other office support staff;
 - (2) all necessary disbursements incurred in defence of a "Covered Proceeding", including photocopying and binding charges, courier or messenger services, long distance telephone and telecopier charges, filing and postage charges, the cost of summonses, other than costs for retaining an "Expert Witness", amounts paid to process servers, charges for obtaining transcripts of evidence or reasons for decision in connection with the "Covered Proceeding", and necessary transportation, accommodation and meal charges incurred in connection with the "Covered Proceeding";
 - (3) Goods and Services Tax payable as required by law on the fees and disbursements in (1) and (2) above;
 - (4) legal costs including court costs awarded against the "Insured" in a "Covered Proceeding", excluding any fines or penalties or costs assessed against the "Insured" in connection with a "Covered Proceeding", except those costs which are specifically included within the definition of "Legal Expenses";
 - (5) any other expense not included in (1), (2), (3) or (4) except costs for "Legal Consultation" or costs for retaining any "Expert Witness" which, in the opinion of the lawyer retained by the "Insured" to defend a "Covered Proceeding", is necessary for such defence but only where specific approval has been sought from the Insurer, and provided in writing, in advance of such expense being incurred.
- (k) **"Occurrence"** means an event or incident resulting from the manner in which the "Insured" conduct themselves within their "Insured Practice". Furthermore, if there is more than one event arising at different times from the same originating cause, the date of occurrence is the date of the first of these events, or if there is a series of related incidents, then the date of occurrence is the earliest date of the related incidents.
- (l) **"Policy Period"** means the period stated in the "Declaration Page(s)" or such lesser period in the event that this policy is cancelled.
- (m) **"Territorial Limits"** means Canada, including all provinces, Yukon, Northwest Territories and Nunavut.

5. Exclusions

This insurance does not apply to:

- (a) "Legal Expenses" in respect of a "Claim" instituted against or notified to the "Insured", or amounts incurred for "Legal Consultation" or for any "Expert Witness" arising out of a demand or request received by the "Insured", prior to the inception of the "Policy Period", or arising from any matter, circumstance or situation known to the "Insured" prior to inception of the "policy Period";
- (b) "Legal Expenses", costs of "Legal Consultation" or costs for any "Expert Witness" in relation to, or arising out of, any intentional or deliberate violation or contravention by the "Insured" of any statute, regulation, order or by-law in force in the "Territorial Limits" or anywhere else in the world;
- (c) "Legal Expenses", costs of "Legal Consultation" or costs for any "Expert Witness" incurred to defend "Covered Proceedings" instituted, commenced, brought or transferred outside the "Territorial Limits";
- (d) any "Legal Expenses", costs of "Legal Consultation" or costs for any "Expert Witness" incurred without the consent by the Insurer having been provided in accordance with Section 6 of this form;
- (e) "Legal Expenses" incurred to defend a "Covered Proceeding", costs of "Legal Consultation", or costs for any "Expert Witness" arising from any actual or alleged dishonesty, fraud or malicious conduct on the part of the "Insured", provided however, that if the "Insured" is found by the trier of fact in the "Covered Proceeding" not to have acted in a dishonest, fraudulent or malicious manner, the "Insurer" will reimburse the "Insured" in accordance with all terms and conditions of this form within a reasonable time after such "Covered Proceeding" and any appeal therefrom relating to such findings have been concluded;
- (f) "Legal Expenses", costs of "Legal Consultation" or costs for any "Expert Witness" incurred to appeal or seek review of a decision rendered at first instance in a "Covered Proceeding", unless the Insurer specifically agrees in writing that such appeal or review should be taken;
- (g) "Legal Expenses", costs of "Legal Consultation" or costs for any "Expert Witness" covered by any other valid policy of insurance covering and available to the "Insured" in respect of the defence of a "Covered Proceeding" or for purposes of obtaining "Legal Consultation" or for retaining any "Expert Witness".

6. Conditions

1. Notice

- (a) In the event of a "Claim" is received by the "Insured" during the "Policy Period", the "Insured" shall promptly, provide notice in writing to the Insurer of such "Claim", together with a copy of the "Claim" or any other document in relation thereto, sufficient to apprise the Insurer of the nature of the "Claim" and to enable a determination to be made by the Insurer as to whether coverage is provided under this policy and, if so, to consent to "Legal Expenses", or costs for retaining an "Expert Witness" being incurred.
- (b) In the event that during the "Policy Period" the "Insured" receives a demand or request to release confidential information and reasonably feels that he or she requires "Legal Consultation" in connection with such demand or request, the "Insured" shall promptly, provide notice thereof in writing to the Insurer, together with a copy of any written demand or request, which notice shall be in a form sufficient to apprise the Insurer of the nature of the demand or request and to enable the "Insurer" to make a determination as to whether coverage is provided under this form and, if so, to consent to costs of such "Legal Consultation".
- (c) Within a reasonable time after receipt of notice from the "Insured" under Sections 1(a) and 1(b) hereof, if the The Insurer accepts coverage under this form for "Legal Expenses", "Legal Consultation" or for retaining any "Expert Witness", the Insurer shall provide its written consent to the "Insured" incurring "Legal Expenses", costs of "Legal Consultation" or costs of retaining any "Expert Witness" subject to all terms and conditions of this form.
- (d) If notice as required by this Section is not provided by the "Insured" to the Insurer, or if the The Insurer determines that there is no coverage under this form for the "Claim", request or demand, the Insurer will so advise the "Insured", within a reasonable time after such notice, in writing, and no coverage will be provided under this form in respect of such "Claim", demand or request. Failure of the "Insured" to comply with the notice requirements of this Section in respect of any "Claim", demand or request shall not invalidate the "Insured's" right to seek reimbursement in respect of any other "Claim", demand or request received during the "Certificate Period" and notified to the Insurer as required by this Section.

2. Conduct of "Covered Proceedings" and "Legal Consultation"

- (a) The "Insured" shall have the right to select the lawyer by whom the "Legal Expenses" will be incurred or who will provide "Legal Consultation" or will arrange for the retention of any "Expert Witness" as contemplated by this form. The "Insured" shall advise the Insurer of the identity of such lawyer, his or her address, and any other information concerning such lawyer which is reasonably requested by the Insurer.
- (b) The lawyer referred to in 2 (a) above shall report jointly to the "Insured" and the Insurer, as required, with respect to the status of the "Covered Proceeding" in order to apprise the Insurer of such information as it reasonably requires to monitor the "Covered Proceeding"

and "Legal Expenses" being incurred in connection therewith. The lawyer providing "Legal Consultation" or arranging for the retention of any "Expert Witness" shall confirm to the Insurer in writing the nature of the demand or request concerning which the "Legal Consultation" or retention of any "Expert Witness" was made necessary.

- (c) Accounts rendered by the lawyers referred to in 2 (a) and 2 (b) above shall identify in respect of each attendance: the nature of the work performed, the person performing the service, the date upon which the service was performed, the time spent and the hourly rate of each person performing services as contained in the account. Accounts shall also contain details as to disbursements incurred and copies of receipts. Accounts shall be rendered to, and paid at first instance by, the "Insured" who shall, subject to all other terms and conditions of this form and to proof of payment, be entitled to reimbursement from the Insurer in respect thereof.
- (d) The "Insured" shall take all reasonable steps to minimize the "Legal Expenses" being incurred and/or the cost of "Legal Consultation", and/or the costs of retaining any "Expert Witness" consistent with maintaining the "Insured's" status in the "Insured Profession" and the "Insured's" right to engage in his or her "Insured Practice".

3. Coverage Territory

Coverage provided by this form applies to amounts incurred for "Legal Expenses", costs of "Legal Consultation" retaining any "Expert Witness" only in relation to the defence of "Covered Proceedings" within the "Territorial Limits".

4. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this form or stop the Insurer from asserting any right under the terms of this form; nor shall the terms of this form be waived or changed, except by endorsement issued to form a part of this form.

5. Other Insurance

In the event that the "Insured" is entitled to reimbursement for "Legal Expenses", for the cost of "Legal Consultation", or for the costs of retaining any "Expert Witness", or is entitled to be afforded a defence under any other valid insurance policy or policies, the coverage provided by this form shall be excess of and will not contribute, in any manner whatsoever, to such other valid and collectable insurance.

6. Termination

This policy may be terminated:

- (1) By the Insurer giving to the "Insured" excluding the "Insured" residing in the province of Quebec:
 - (i) 30 days' written notice of termination by registered mail at his or her last known address;
 - (ii) 5 days' written notice of termination personally delivered;
 - (iii) 15 days' written notice of termination by registered mail at his or her last known address when cancelling for nonpayment of premium;
- (2) By the Insurer giving to the "Insured" residing in the province of Quebec:
 - (i) 30 days' written notice of termination by registered mail at his or her last known address;
 - (ii) 15 days' written notice of termination by registered mail at his or her last known address when cancelling for nonpayment of premium;
- (3) By the "Insured" upon written notice. The cancellation takes effect upon receipt of the notice by the Insurer.

7. Notice of "Claim"

The "Insured", upon knowledge of loss, shall give immediate notice thereof to the Insurer or to the authorized representative through whom the policy was issued.

8. Subrogation

In the event of any payment under this form, the Insurer shall be subrogated to all the "Insured's" rights of recovery therefore against any person or organization and the Insured shall execute and deliver instruments and papers to do whatever else is necessary to secure such rights. The "Insured" shall do nothing after loss to prejudice such rights.

9. Assignment

Assignment of interest under this form shall not bind the Insurer until its consent is endorsed hereon; if, however, the "Insured", excluding the "Insured" residing in the province of Quebec, shall die or be adjudged bankrupt or insolvent within the "Policy period", this form, unless cancelled, shall, if written notice be given to the Insurer within sixty days after the date of such death or adjudication, cover the "Insured's" legal representative as the "Insured".

In the case of death of the "Insured" residing in the province of Quebec, bankruptcy or assignment of insurance between the persons co-insured, the insurance coverage will be passed on to the heir, to the trustee or to the remaining persons insured.

10. Action against the "Insurer"

No suit shall be brought by the "Insured" living in the Territorial Limits excluding Quebec under this form until ninety days after proof of loss as required herein has been furnished nor at all unless commenced within two (2) years from the date upon which the loss was discovered by the "Insured".

No suit shall be brought by the "Insured" living in the province of Quebec under this form until ninety days after proof of loss as required herein has been furnished nor at all unless commenced within three (3) years from the date upon which the loss was discovered by the "Insured".

11. Representation

By accepting this insurance, the "Insured" agrees:

The statements on the "Declaration Page(s)" are accurate and complete;

- (a) Those statements are based upon representations the Named Insured made to the Insurer in the application(s) for this insurance; and
- (b) The Insurer has issued this insurance in reliance upon the Named Insured's representations.

12. Currency

All limits of insurance, premiums and other amounts as expressed in this form are in Canadian currency.

Words and phrases that appear in bold and/or in quotation marks are defined within the present endorsement or in the Definitions section of the present policy.

All other terms and conditions of the policy remain unchanged.