

**CANADIAN LAWYERS LIABILITY ASSURANCE SOCIETY  
(CLLAS)**

**CONFLICT OF INTEREST POLICY**

1. A member firm of CLLAS (a “member”) may act for claimant against another member firm (the “insured member”) if such member complies with the applicable conflict of interest rules of the governing law society and the requirements of this Schedule.
2. If a claim, including anticipated defence cost, (collectively, a “claim”) is less than \$1,000,000, then the member need not disclose the provisions of this Schedule to the claimant but should do so if circumstances change and it becomes apparent that the claim could exceed such amount.
3. If a claim exceeds or is expected \$1,000,000, the following provisions will be applicable:
  - (a) The Advisory Board will approve from time to time
    - (i) a disclosure statement (“disclosure statement”) describing the insurance operations of CLLAS and the financial responsibility of its members, and
    - (ii) a form of consent (the “prescribed consent”) which must be given by a claimant wishing to retain the services of a member to represent the interest of the claimant in pursuing a claim against an insured member.
  - (b) Before agreeing to act or, in the case of a claim which in the course of proceedings develops into one likely to exceed \$1,000,000, continuing to act for the claimant, the member shall make full disclosure to the claimant of its membership in CLLAS and of the financial interest that the member may therefore have in the claimant’s claim against the insured member. The member shall inform the claimant that the applicable Law Society Rules of Professional Conduct preclude the member from representing the interest of the claimant without the claimant’s written consent and that the conflict of interest rules of CLLAS require a prescribed consent.
  - (c) If, following such disclosure, the claimant is still interested in retaining the member’s services in respect of the claim and giving the prescribed consent, the member shall provide the claimant with a copy of the disclosure statement and prescribed consent and shall recommend that the claimant obtain independent legal advice with respect to the execution of the consent. It will be the claimant’s choice as to whether or not such independent legal advice is obtained.
  - (d) A copy of the prescribed consent signed by the claimant shall be filed with the chair of the Claims committee or the manager of CLLAS promptly following notification of the claim to CLLAS by the insured member or the claim becoming public knowledge, whichever is the earlier. It shall be the responsibility of the insured member to inform the member of the giving of such notification promptly after the insured member becomes aware that the member is acting for the claimant.

- (e) No member of the Advisory Board shall have a direct involvement in the legal proceedings commenced by the claimant, nor shall he or she give any advice to the claimant or others in respect of the claim.
  - (f) The member (including its employees and agents) representing the claimant is precluded from discussing the claim and related issues with the manager of CLLAS or any of its employees or any other members of CLLAS, other than the insured member.
4. The Advisory Board may, on the application of the member, approve modifications or waivers of the foregoing requirements in any particular conflict of interest situation.

**PRESCRIBED CONSENT**  
**(Letterhead of Claimant)**

\_\_\_\_\_  
(Date)

[Name and Address of Member Firm]

Dear :

Re:     Conflict of Interest Posted by Financial Interest in  
          Canadian Lawyers Liability Assurance Society (CLLAS)

As we previously informed you, we wish to retain the services of your firm to represent our interest against \_\_\_\_\_ (the “CLLAS member”) in a matter which may give rise to the CLLAS member making a claim against CLLAS under its policy of professional liability insurance. You have informed us that the CLLAS member is one of the ten member firms of CLLAS, along with your firm.

We confirm having received and considered the Conflict of Interest Policy of CLLAS, a copy of which is attached as Schedule A, section 3 of which prescribes the conditions on which your firm may act for us in this matter.

For the record, we also attach, as Schedule B, a copy of the disclosure statement which you provided to us outlining your involvement in CLLAS and the involvement of your firm/affiliate in Colchester Reinsurance Limited, one of CLLAS’s reinsurers.

For our part we accept the conditions set forth in section 3 of CLLAS’s Conflict of Interest Policy and confirm that your firm has met its obligations to us as contemplated in the conditions.

We are satisfied that full disclosure of your financial interest in CLLAS has been made to us and, in full awareness thereof, we wish to have you represent our interest in this matter.

Yours very truly,

01/07/20

## **CANADIAN LAWYERS LIABILITY ASSURANCE SOCIETY**

### **DISCLOSURE STATEMENT**

(Date)

(Name of Defendant Firm)

(the “CLLAS Member”)

(Name of Firm to be Retained)

(the “Retained Firm”)

(Name of Claimant)

(the “Claimant”)

The following information is provided by the Retained Firm in accordance with the provisions of Section 3 of the Conflict of Interest Policy of the Canadian Lawyers Liability Assurance Society (“CLLAS”) in connection with the Claimant’s proposal to retain the Retained Firm to represent its interests in pursuing a professional liability claim against the CLLAS Member:

1. CLLAS is a reciprocal insurance exchange licensed in Alberta and certain other Canadian jurisdictions. It commenced operations on July 1, 1987 to provide professional liability protection to its members in excess of the primary coverage (\$1,000,000 outside of Quebec and, as of July 1, 2003, \$10,000,000 in Quebec) provided by the compulsory insurance programs of the Law Societies.
2. A reciprocal insurance exchange is not an incorporated entity and differs from a typical insurance company in several important respects:
  - (a) It is a contractual arrangement among the member firms and the insurance risk is assumed by such members. In essence, reciprocal insurance exchange is a self- insurance arrangement among the member firms.
  - (b) The members must accept one another as risks and it is important that each member has good credit worthiness and represents a preferred insurance risk.
  - (c) A reciprocal is a non-profit organization.
  - (d) A reciprocal requires little capital and is founded on the mutual agreement of all members to contribute to the losses incurred by any of them.

3. CLLAS operates under five-year “Underwriting Periods” and during the current five-year period, membership in CLLAS consists of the following law firms:

Member Firm

Borden Ladner Gervais LLP  
Cassels Brock & Blackwell LLP  
Davies Ward Phillips & Vineberg LLP  
Fasken Martineau DuMoulin LLP  
Goodmans LLP  
McCarthy Tétrault LLP  
McMillan LLP  
Osler, Hoskin & Harcourt LLP  
Torys LLP  
WeirFoulds LLP

4. Like conventional insurance companies that offer insurance to the public, CLLAS charges a premium to the member firms for the professional liability insurance coverage provided. The coverage provided by CLLAS, which is subject to comprehensive reinsurance (see paragraphs 5 and 6), is described below:
  - (a) CLLAS provides coverage to each member firm of \$50,000,000 each claim and in the annual aggregate including the primary law society coverage.
  - (b) Beyond the coverage described in (a), firms purchase not less than \$15,000,000 of excess insurance in the commercial markets. CLLAS also provides optional excess layers of coverage.
  - (c) Finally, CLLAS provides a shared “umbrella” layer to the firms collectively. This layer is excess of all other professional liability insurance coverage arranged by each firm.
5. CLLAS retains some risk which is shared among the CLLAS members. CLLAS reinsures a significant portion of the risk in the commercial reinsurance markets of the insurance coverage provided by CLLAS in respect of each claim, with CLLAS retaining \$975,000 of the insurance coverage between \$1,000,000 and \$25,000 in the event that coverage “drops down” as a result of the coverage being provided by the compulsory insurance program of the Law Societies being narrower in scope than the CLLAS policy.
6. Aggregate reinsurance protection is provided to CLLAS by Colchester Reinsurance Limited (“Colchester”) which is owned by the member firms of CLLAS or their affiliates.
7. If CLLAS were required to pay any claim involving any of the member firms, such claim would be paid first out of CLLAS’ resources, including its rights against reinsurers. If any such claim exhausted such resources, the member firms of CLLAS would be required to make up the difference. The member firms of CLLAS, therefore, also retain the security risk that a reinsurer will be unable or unwilling to pay a claim.

8. Each of the member firms in CLLAS and Colchester has a financial interest in the outcome of any professional liability claim which is brought against a member firm and which is covered by CLLAS. More specifically, if the claim of the Claimant against the CLLAS Member results in a judgment in excess of the applicable primary law society coverage (or \$25,000 in the case of the “drop down” coverage), the partners of the Retained Firm may have personal liability, along with the partners of the other member firms of CLLAS, for payment of part of the excess amount, as outlined in paragraphs 5 to 7 above.