

The French text of the policy prevails



**INSURANCE POLICY
DECLARATIONS**

- 1 - **Named Insured:**
- 2 - **Address:**
- 3 - **Period of insurance:**
- 4 - **Limits of coverage per Loss:
Coverages A and B:**
- \$10,000,000 subject to a limitation of:
- \$1,000,000 for interjurisdictional services (see 2.02.1);
 - \$1,000,000 respecting damage to property handed over to an **Insured** (see 2.02.2);
 - 1 000 000 \$ respecting Special permit and Solicitor (see 2.02.3).
- Coverage C – a): \$1,000,000
C – b): \$1,000,000
- 5 - **Cost of participation:** Established by resolution of the Board of Directors of the Quebec Bar
- 6 - **Notice to Insurer:** must be given to:
- Fonds d'assurance responsabilité
professionnelle du Barreau du Québec
445, boulevard St-Laurent, bureau 300
Montréal (Québec) H2Y 3T8
assuranceresponsabilite@farpbq.ca

**FONDS D'ASSURANCE RESPONSABILITÉ
PROFESSIONNELLE DU BARREAU DU QUÉBEC**

By: Maria De Michele, lawyer

STANDARD COMPULSORY PROFESSIONAL LIABILITY INSURANCE POLICY

FONDS D'ASSURANCE RESPONSABILITÉ PROFESSIONNELLE DU BARREAU DU QUÉBEC

SECTION I - DEFINITIONS

The following terms which appear in Bold Characters in this policy shall have the following meaning:

1.01 - INSURER: The Barreau du Québec, solely through the **Fonds d'assurance**, created for that purpose.

1.02 - FONDS D'ASSURANCE: The Fonds d'assurance responsabilité professionnelle du Barreau du Québec set up by the Barreau du Québec and governed by the *Insurers Act*, CQLR, c. A-32.1.

1.03 - INSURED: The named insured in Item 1 of the Declarations and his legal heirs or successors, as well as the **C.O.L.L.P.**

1.04 - PROFESSIONAL SERVICES:

a) When the named Insured is entered on the Roll without holding a Special permit and is not admitted as a Solicitor:

All services, which have or should have been rendered by the named Insured, directly or indirectly, solely in his capacity as a lawyer and as a member in good standing of the Barreau du Québec, while he was not exempt from the obligation to subscribe to the **Fonds d'assurance**;

b) When the named Insured is entered on the Roll while holding a Special permit or is admitted as Solicitor and is not exempt from the obligation to subscribe to the **Fonds d'assurance**:

Only services authorized in accordance with the permit or as such, which have or should have been rendered in Québec by the named Insured.

c) Such services do not include, namely, but not limited to:

- i) **Investment Services** ; and
- ii) **Real Estate Brokerage**.

1.05 - REAL ESTATE BROKERAGE: Acting as intermediary between two or more parties in a real estate transaction for the purpose of earning a commission on the amount of the transaction.

1.06 - PERIOD OF INSURANCE: The period stipulated in Item 3 of the Declarations, and in the case of uninterrupted renewal, any prior uninterrupted consecutive insurance period with the **Insurer**.

1.07 - LOSS: One or more **Claims** resulting from the same circumstances or the same events relating to **Professional Services** which have or should have been rendered to one or more persons.

1.08 - PARTNERSHIP: Any group which is not a **C.O.L.L.P.**, consisting of the **Insured** and one or more other members of the Barreau du Québec and/or of a Law Society of another province or territory in Canada who hold themselves out publicly as partners whether or not the **Partnership** has a legal existence.

1.08.1 – COMPANY OR LIMITED LIABILITY PARTNERSHIP (“C.O.L.L.P.”): A duly constituted joint-stock company or limited liability partnership within the meaning of Chapter VI.3 of the *Professional Code*, CQLR, c. C-26 in which the named Insured is or has been carrying on his professional activities in compliance with said Chapter and the *Regulation Respecting the practice of the profession of advocate within a limited liability partnership or a joint-stock company and in multidisciplinary*, CQLR, c. B-1, r. 9.

1.09 - CLAIM:

- a) Any written or verbal monetary demand,
- b) any written or verbal allegation,

received by the **Insured**, with respect to failure to render **Professional Services** or to an error or omission in rendering such services under coverages A and B., or with respect to a misappropriation of funds required to be deposited in trust under coverage C.

1.10 - CLAIM MADE:

- a) Any **Claim** made against the **Insured**, or
- b) any facts or circumstances which may give rise to a **Claim** against the **Insured**

of which notice has been given by the **Insured** in accordance with article 3.01 of Section III - General Provisions. If several **Claims** result from the same circumstances or the same events, all such **Claims** shall be deemed to have been made at the date of the first notice.

If during the period of insurance stipulated at Item 3 of the Declarations, notice is given to the **Insurer** of facts or circumstances which may engage the liability of the **Insured** and suit is not brought until after the expiry of such period, the **Claim** will be deemed to have been made during the period in which notice was given.

1.11 – DAMAGES: Compensatory damages.

1.12 – PROPERTY DAMAGE: Any **Damage** resulting from, without limitation, the damage, destruction, theft, disappearance (explained or unexplained) or loss of **Property**, including the loss of enjoyment thereof.

1.13 – PROPERTY: Any property including a sum of money or security.

1.14 – INVESTMENT SERVICES: Any advice, opinion, service or recommendation in matters of placements, investments or foreign exchange operations, namely with respect to, but not limited to, the performance or return of such placements, investments or foreign exchange operations.

SECTION II - NATURE AND EXTENT OF COVERAGE

2.01 – INSURER’S OBLIGATION: The only **Claims** covered shall be those of which notice has been given to the **Insurer** for the first time while this policy is in force or during any extension of it under the terms hereof.

With regards to **C.O.L.L.P.**, the only **Claims** covered are the **Claims Made** resulting from **Professional Services** which have or should have been rendered within the **C.O.L.L.P.** or the limited partnership that it continues within the meaning of Section 187.16 of the *Professional Code*, CQLR, c. C-26.

Subject to the conditions of this policy, in reliance on representations made by the **Insured** and in consideration of the amount provided for in Item 5 of the Declarations, the **Insurer** agrees:

COVERAGE A – INSURED’S LIABILITY:

to pay on behalf of the **Insured** any amount which the latter is legally obligated to pay to third parties as **Damages** under a judgment rendered or a settlement made in order to avoid a suit or a judgment, and arising from any **Claim Made** during the **Period of Insurance** and resulting from **Professional Services** or the collection of the **Insured’s** fee account related to such **Professional Services**.

COVERAGE B – LIABILITY OF THE NAMED INSURED AS A MEMBER OR EMPLOYEE OF A PARTNERSHIP:

to pay on behalf of the named Insured any amount which the latter is legally obligated to pay to third parties as **Damages** under a judgment rendered or a settlement made in order to avoid a suit or a judgment, and arising from any **Claim Made** during the **Period of Insurance** and resulting from the same **Professional Services** if such **Claim** is made:

- a) jointly or severally against the named Insured and one or more members of a **Partnership**,
- b) against the named Insured and a **Partnership**,
- c) against a **Partnership** itself,
- d) against the named Insured only because he is or was a member of a **Partnership** or of a **C.O.L.L.P.**, for **Professional Services** which have or should have been rendered by another member of this **Partnership** or of this **C.O.L.L.P.**

COVERAGE C – FIDELITY INSURANCE AND RESULTING LEGAL COSTS:

- a) to pay on behalf of the named Insured, provided that he neither committed such acts nor was an accomplice to them, any amount which the latter is legally obligated to pay to third parties for a financial loss resulting from the misappropriation of funds required to be deposited in trust, committed by a member or an employee of the **Partnership**, while rendering **Professional Services**.

This coverage applies only to that part of the misappropriation that cannot be compensated by the *Fonds d’indemnisation du Barreau du Québec*.

- b) to pay or reimburse reasonable investigation, defence, transaction or settlement expenses incurred with respect to the possible application of paragraph a) of **Coverage C** and with the consent of the **Insurer**.

2.02 - LIMIT OF COVERAGE: The coverage per **Loss** is limited to the amount stipulated in Item 4 of the Declarations, regardless of the number of members in the **C.O.L.L.P.** Neither the plurality of **Insureds** nor the plurality of claimants presenting **Claims** shall increase the **Insurer’s** Limit of Coverage per **Loss**.

- a) If one or more **Claims** resulting from the same **Professional Services** are made:

- i) against the **Insured** and against one or more lawyers members of the same **Partnership** of which the **Insured** is a member or has been a member, insured under another policy issued by the **Insurer** covering the same circumstances or the same events,

or

- ii) against more than one **Insured**

the Limit of Coverage offered by this policy and that offered by such other policy or policies may not be cumulated. In such a situation, the applicable Limit of Coverage will be that Limit which is the highest of those policies applicable.

- b) If one or more **Claims** resulting from the same **Professional Services** are made:

- i) against the **Insured** and
- ii) against one or more sole practitioners or one or more lawyers members of a partnership of which the **Insured** is not a member and has never been a member, insured under another contract issued by the **Insurer**, covering the same circumstances or the same events,

then the Limit of Coverage offered by such other policy will apply separately to such other sole practitioner or partnership.

2.02.1 - INTERJURISDICTIONAL LIMITATION: The coverage per **Loss** is limited to \$1,000,000 for **Claims Made** against an **Insured**, subject to an excess Limit of Coverage of \$1,000,000 for a **Claim Made** against a **C.O.L.L.P.** regardless of the number of members in the **C.O.L.L.P.**

- a) arising from **Professional Services** which have or should have been rendered by the named Insured outside Quebec, in its capacity as a member in good standing of the Barreau du Québec;
- b) arising from **Professional Services** which have or should have been rendered by the **Insured** in Quebec and which give rise to a suit brought outside Quebec and to any judgment rendered outside Quebec or to any judgment in recognition of a judgment rendered outside Quebec;
- c) against the named Insured only because he is a member of a partnership, and is legally obligated to pay under a judgment rendered outside Quebec, and resulting from **Professional Services** which have or should have been rendered by an insured member of the Barreau du Québec or by a member of a Law Society of another province or territory in Canada
- d) against the named Insured only because he is a member of a partnership, and is legally obligated to pay under a judgment rendered in Quebec and resulting from **Professional Services** which have or should have been rendered by a member of a Law Society of another province or territory in Canada; or

- e) arising from any suit brought outside Quebec and from any judgment rendered outside Quebec or from any judgment in recognition of a judgment rendered outside Quebec resulting from **Professional Services** which have or should have been rendered by an insured member of the Barreau du Québec or by a member of a Law Society of another province or territory in Canada.

2.02.2 – LIMITATION RESPECTING DAMAGE TO PROPERTY HANDED OVER TO AN INSURED: The coverage per **Loss** is limited to \$1,000,000 for a **Claim Made** against an **Insured**, subject to an excess limit of coverage of \$1,000,000 for a **Claim Made** against a **C.O.L.L.P.**, regardless of the number of members in the **C.O.L.L.P.**, for any **Claim** arising from **Property Damage** to a **Property** handed over to the **Insured** for any account whatsoever.

2.02.3 – LIMITATION RESPECTING SPECIAL PERMIT AND SOLLICITOR: The coverage per **Loss** is limited to \$1,000,000 for a **Claim Made** against an **Insured**, subject to an excess limit of coverage of \$1,000,000 for a **Claim Made** against a **C.O.L.L.P.**, regardless of the number of members in the **C.O.L.L.P.**, for any **Claim** arising from **Professional Services** as defined in article 1.04 b).

If the **Claim Made** is covered by both this article and **COVERAGE C** of this policy, the Limits of Coverage offered by the two provisions may not be cumulated.

2.03 - ADDITIONAL COVERAGE: In respect of the coverage offered by this policy, the **Insurer** also undertakes:

- a) to defend the **Insured** in any suit instituted and seeking the latter's civil liability whether rightly or wrongly, as a result of a **Loss** covered by this policy;
- b) to pay the premium on any bond required to obtain the release of any seizure or the right of appeal in the defence of a contested suit provided the amount of the bond does not exceed the Limit of Coverage, but the **Insurer** has no obligation to request, obtain or provide such bond;
- c) to pay, in addition to the Limit of Coverage, the interest on the amount of coverage and the taxable costs payable to third parties;
- d) to pay or reimburse:
 - i) the investigation, defence, transaction or settlement expenses related to any **Claim** which may be covered under this policy and incurred with the **Insurer's** consent;
 - ii) the legal fees set by the **Insurer** and the reasonable expenses incurred by the **Insured** at the specific request of the **Insurer** in a **Claim** covered under the policy.

However, the obligations of the **Insurer** towards the **Insured** under article 2.03 cease as soon as the Limit of Coverage has been reached as a result of payments made in accordance with a judgment or settlement. The **Insurer** also undertakes to pay the expenses and interests incurred until this time.

2.04 - EXCLUSIONS: This policy does not apply to a **Claim** or part of a **Claim**:

- a) of which the **Insured** was aware prior to the **Period of Insurance**;

- b) arising from circumstances of which the **Insured** was aware prior to the **Period of Insurance** and which were likely to give rise to a **Claim**;
- c) made by any business or corporation which is wholly owned by the **Insured** or of which the **Insured** is a partner, or which is controlled operated or managed by the **Insured**. For the purposes of this exclusion, the "**Insured**" includes any person or company connected with the **Insured** in his professional practice;
- d) arising from acts or omissions of the **Insured** in his capacity as an officer or director;
- e) arising from fraudulent, dishonest or criminal acts, false statements or misrepresentations wilfully made by the **Insured** or out of any other intentional acts, whether or not the **Insured** intended to cause the damages; however, when the demand arising from a **Claim** alleging the above-mentioned acts comes to an end:
 - without any payment being required of the **Insured**; and
 - without any fraudulent, dishonest or criminal act, false statements or misrepresentations wilfully made by the **Insured** or out of any other intentional acts, whether or not the **Insured** intended to cause the damages, being attributed to the **Insured**,

the **Insurer** shall reimburse retroactively all reasonable costs incurred by the **Insured** in his defense.

This exclusion does not apply to any **Insured** who neither committed such acts nor was an accomplice to them;

- f) for the payment of fines, penalties, exemplary or punitive damages;
- g) arising from **Real Estate Brokerage**, irrespective of whether **Professional Services** resulted therefrom or preceded thereto;
- h) arising from the fact that the **Insured** has not disclosed the identity of his mandator, or the fact that his mandator is insolvent, is a minor or is under protective supervision, to the knowledge of the **Insured**; however, this exclusion does not apply to any **Insured** who acted within the scope of a patent mandate;
- i) for the reimbursement of the fees of the **Insured** or of a **Partnership** of which he is or has been a member or by which he is or has been employed;
- j) arising from **Investment Services**, irrespective of whether **Professional Services** resulted therefrom or preceded thereto;
- k) arising from acts or omissions of the **Insured** as member of a pension committee set up in virtue of the *Supplemental Pension Plans Act*, CQLR, c. R-15.1 or of any committee of the same nature;

- l) arising while the **Insured** is in any of the situations described in section 2 of the *Regulation respecting compulsory contribution to the Professional Liability Insurance Fund of the Barreau du Québec*, CQLR, c. B-1, r. 20 and benefits from an undertaking or obligation whereby his employer or any other agency will stand as his surety, take up his defence or accept financial responsibility for the consequences of any error or omission committed by him in the performance of his duty.

SECTION III - GENERAL PROVISIONS

3.01 - NOTICE TO THE INSURER: The **Insured** shall notify the **Insurer** in writing of any fact or circumstances which may give rise to a **Claim** as soon as the **Insured** has knowledge thereof. He shall also forward to the **Insurer** without delay any **Claim** he has received.

If a Notice of Claim given in compliance with article 3.01 during the period of insurance stipulated in Item 3 of the Declarations concerns a **Claim** of which the **Insured** had knowledge before the coming into force of that period but while he was insured under a policy issued by the **Insurer**, the **Insurer** will provide nevertheless the liability coverages and additional coverages in accordance with the Limits, Provisions and Conditions which were in force with the **Insurer** at the date when the **Insured** first had such knowledge.

Notwithstanding the foregoing, the delay or failure to give notice as required by the present article 3.01, is a cause of forfeiture of the rights of the **Insured** under the policy if the breach of that obligation has caused prejudice to the **Insurer**.

3.02 - FORM OF NOTICE: Any notice by the **Insured** to the **Insurer** shall be sent in writing to the address indicated in Item 6 of the Declarations or, if applicable, to any other address of which the **Insured** has been notified in writing.

Any notice given by the **Insurer** to the named Insured shall be sent in writing to the last address indicated on the "Tableau de l'Ordre" or to any other address of which the **Insurer** has been notified in writing.

3.02.1 - OPENING OF FILE: The **Insurer** opens a file upon receipt of a written notice of a **Claim** or of a written notice of facts or circumstances that may give rise to a **Claim**.

3.02.2 - ACKNOWLEDGMENT OF RECEIPT: The **Insurer** acknowledges receipt to the **Insured** or a third-party claimant, as the case may be, within ten (10) days of the date of receipt of a written notice of a **Claim**.

3.02.3 - ANALYSIS: As soon as possible, the **Insurer** analyzes the **Claim** made.

3.02.4 - COMMUNICATION OF THE INSURER'S POSITION: The **Insurer** informs the **Insured** or the third-party claimant, as the case may be, of its position with respect to the **Claim** made.

3.03 - COOPERATION: The **Insured** shall cooperate with the **Insurer**, upon the latter's request, in the investigation, settlement or defence of a **Claim**. He shall not voluntarily admit his liability and shall refrain from offering or effecting any settlement or incurring any expense, unless the **Insurer** consents thereto.

3.04 - INVESTIGATION, DEFENCE AND SETTLEMENT: The **Insurer** reserves the right to act as it deems expedient in the investigation of a **Claim** and negotiation with third parties, but may not settle a **Claim** without the **Insured's** consent.

The **Insurer** also reserves the right to conduct and direct, on behalf of the **Insured**, the defence of any suit.

Should the **Insured** refuse to authorize a reasonable settlement proposed by the **Insurer** and acceptable to the claimant, the **Insured** will then be responsible for conducting his own defence; the **Insurer's** liability shall then be limited to the amount of the settlement which would have been effected, as well as the interest on such amount and the expenses incurred until the time of the said refusal.

3.05 – OTHER INSURANCE: If there are other concurrent insurance policies in force and applicable to a **Claim Made**, this policy will avail in proportion to all the insurance in force up to the amount of the **Loss**.

If the **Claim Made** is covered both by this policy and by a previous policy which has been cancelled or expired but which the **Insured** may still invoke, this policy will contribute only in excess of those other policies and only to the extent necessary to attain the Limit of Coverage stipulated in Item 4 of the Declarations.

If the **Claim Made** falls within the limitation under article 2.02.1 of the present policy, this policy will contribute only in excess of any other applicable policies and only to the extent necessary to attain the applicable Limit of Coverage.

3.06 - SUBROGATION: The **Insurer** shall be subrogated in all the **Insured's** recourses, up to the amount paid hereunder. The **Insured** shall sign and deliver any document required by the **Insurer** and necessary to the exercise of such rights and recourses.

The **Insurer** waives the right to exercise its right of subrogation against an employee of the **Insured** except in case of fraudulent, dishonest or criminal acts or of an intentional fault on the part of such employee.

The **Insurer** waives the right to exercise its right of subrogation against one or more members of the Barreau du Québec or their legal heirs or successors insured under another similar policy issued by the **Insurer** except in case of fraudulent, dishonest or criminal acts or of an intentional fault on the part of such member.

3.07 – RECOURSE OF THE INSURER AGAINST THE INSURED: The **Insurer** reserves the right to exercise its recourses against an **Insured**:

- a) who commits or is an accomplice to fraudulent, dishonest or criminal acts or an intentional fault and because of which the **Insurer** has been obliged to make a payment; or
- b) if the **Insured** causes prejudice to the **Insurer** as a result of a violation of the terms and conditions of this policy; or
- c) if the **Insurer** has been obliged to pay an indemnity notwithstanding the fact that the **Insured** was not entitled to the benefit of the insurance coverage.

3.08 - 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 policy nor prevent the **Insurer** from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed except in writing or by endorsement issued to form a part of this policy.

3.09 - BANKRUPTCY OF THE INSURED: Bankruptcy or insolvency of the **Insured** shall not release the **Insurer** from its obligations hereunder.

3.10 - EXTENSION: If the named Insured dies, is disbarred, ceases either permanently or for a limited period to exercise his profession or continues to exercise his profession while being exempted from the obligation to subscribe to the **Fonds d'assurance**, the coverage will remain in force indefinitely and with no additional cost to the **Insured** as long as the **Fonds d'assurance** shall exist.

If the named Insured continues to exercise his profession after having left the **C.O.L.L.P.** and without being exempt from the obligation to subscribe to the **Fonds d'assurance**, the coverage in force when he left the **C.O.L.L.P.** will remain in force indefinitely and with no additional cost to the **Insured**, as long as the **Fonds d'assurance** shall exist.

3.11 - CANCELLATION: This policy cannot be cancelled by the **Insurer** during the **Period of Insurance**.

This policy may be cancelled by the named Insured at any time during the period of insurance stipulated in Item 3 of the Declarations but in such case the **Insured** will be entitled to be reimbursed only that part of the agreed annual Cost of Participation which is in excess of the earned Cost of Participation for the number of days the policy has been in force calculated according to the Short-Term Cancellation Table hereunder.

SHORT-TERM CANCELLATION TABLE

| Part of the Cost of participation to be retained by the Fonds d'assurance based on the annual Cost of participation | |
|--|--------------|
| Month of cancellation | |
| April | 1/12 |
| May | 2/12 |
| June | 3/12 |
| July | 4/12 |
| August | 5/12 |
| September | 6/12 (50%) |
| October | 7/12 |
| November | 8/12 |
| December | 9/12 |
| January | 10/12 |
| February | 11/12 |
| March | 12/12 (100%) |

3.12 – CHOICE OF LAW AND OF JURISDICTION: The present policy is governed by the laws of Quebec and the parties agree that any dispute or litigation in relation to the present policy will be submitted to the exclusive jurisdiction of the courts and authorities having jurisdiction in Quebec.

IN WITNESS WHEREOF, the **Insurer** has executed this policy on the day designated in the Declarations.

**FONDS D'ASSURANCE RESPONSABILITÉ
PROFESSIONNELLE DU BARREAU DU QUÉBEC**