

EDUCATORS' PROFESSIONAL LIABILITY POLICY – "CLAIM(S)" MADE AND REPORTED

THIS IS A "CLAIM(S)"-MADE AND REPORTED POLICY. Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered. Any amounts paid or payable as "Loss" and "Costs, Charges and Expenses" shall reduce and may exhaust the Limit of Liability provided by the Policy. Words and phrases that appear in quotation marks have special meaning.

SECTION I - INSURING AGREEMENTS

In consideration of the payment of the premium, and in reliance upon the statements made in the application, the supplementary applications and any additional document(s) for this insurance which are made a part thereof, the Insurer agrees to provide insurance as follows:

1 (a) EDUCATIONAL PRACTICES LIABILITY

The Insurer will pay on behalf of the "Insured(s)" all "Loss" which the "Insured(s)" shall become legally obligated to pay resulting from "Claim(s)" first made against the "Insured(s)" during the "Policy Period" and reported to the Insurer in accordance with Section IV Item 11 – NOTICE OF "CLAIM(S)" by reason of an alleged or actual "Educational Practices Wrongful Act"

(b) EMPLOYMENT PRACTICES LIABILITY

The Insurer will pay on behalf of the "Insured(s)" all "Loss" which the "Insured(s)" shall become legally obligated to pay resulting from "Claim(s)" first made against the "Insured(s)" during the "Policy Period" and reported to the Insurer in accordance with Section IV Item 11 – NOTICE OF "CLAIM(S)" by reason of an alleged or actual "Employment Practices Wrongful Act"

(c) DIRECTORS' & OFFICERS' & EDUCATIONAL INSTITUTION LIABILITY

The Insurer will pay on behalf of the "Directors & Officers and Educational Institution" all "Loss" which the "Insured(s)" shall become legally obligated to pay resulting from "Claim(s)" first made against the "Insured(s)" during the "Policy Period" and reported to the Insurer in accordance with Section IV Item 11 – NOTICE OF "CLAIM(S)" by reason of an alleged or actual "Directors or Officers Wrongful Act"

2. DEFENCE AND SETTLEMENT

With respect to "Claim(s)" covered under Section I, Item 1, the Insurer shall have the right and duty to:

- (a) defend any suit or arbitration proceeding against the "Insured(s)" payable under the terms of this Policy even if any of the allegations of the suit, or arbitration proceeding are groundless, false or fraudulent;
- (b) investigate and negotiate the settlement of any "Claim(s)" or suit as it deems expedient.

The Insurer shall not settle any "Claim(s)" without the consent of the "Insured(s)". If, however, the "Insured(s)" does not consent to any settlement recommended by the Insurer and shall elect to contest the "Claim(s)" or continue any legal proceedings in connection with such "Claim(s)", then the Insurer's liability for the "Claim(s)" shall not exceed the amount for which the "Claim(s)" could have been so settled with its consent up to the date of such refusal.

3. LIMIT OF LIABILITY AND DEDUCTIBLE

The Limit of Liability stated in the Declarations is the most the Insurer will pay under Section I, Item 1, for all "Claim(s)" made against the "Insured(s)" during the "Policy Period", regardless of the number of "Insured(s)" or the number of claimants.

Any amounts paid or payable under Section I, Item 2 as "Costs, Charges and Expenses" to investigate and defend any suit or arbitration proceeding against the "Insured(s)" and under Section I, Item 4 as Supplementary & Additional Payments shall be within, and not in addition to, the Limit of Liability applicable to each "Claim(s)" as stated in the Declarations. The Deductible stated in the Declarations will apply to "Loss" for each "Claim(s)" under Section I, Item 1, and the Insurer will only be responsible in excess of this amount. The full Limit of Liability will apply over the Deductible.

The Deductible will not apply to Section I, Items 2 and 4.

One or more "Claim(s)" arising out of the same or related "Wrongful Act(s)" is an "Inter-Related Wrongful Act(s)" and will be considered a single "Claim(s)", first made as stated in Section IV, Item 11 – Notice of "Claim(s)" and subject to a single Limit of Liability.

4. SUPPLEMENTARY & ADDITIONAL PAYMENTS

With respect to "Claim(s)" covered under Section I, Item 1, the Insurer shall pay or reimburse:

- (a) all premiums on bonds to release attachments for an amount not in excess of the Limit of Liability shown in the Declarations;
- (b) all premiums on appeal bonds required in any defended suit, but without any obligation to apply for or furnish such bonds;
- (c) all costs taxed against the "Insured(s)" in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the Limit of Liability;
- (d) all reasonable expenses (other than loss of earnings) incurred by the "Insured(s)" at the Insurer's request.

5. TERRITORY & RETROACTIVE DATE

Unless otherwise endorsed hereon, this Policy applies to "Claim(s)" world wide, provided that all suits, or arbitration proceedings to recover are brought in Canada.

6. AUTOMATIC EXTENDED REPORTING PERIOD

This policy shall automatically provide the "Insured(s)" an extended reporting period of (30) thirty days, following the termination of this Policy, for the reporting of any "Claim(s)", but only with respect to any "Wrongful Act(s)" committed after the Retroactive Date and prior to such termination date. It is a condition precedent to coverage pursuant to this clause that the "Insured(s)" report any "Claim(s)" to the Insurer within the extended 30-day reporting period. This extended 30-day reporting period will not apply if the Policy is cancelled because of non-payment of the premium by the "Insured(s)" or if replacement coverage is obtained from the Insurer

7. DISCOVERY PERIOD

If the Insurer or the "Educational Institution" shall cancel or refuse to renew this Policy and provided that the premium has been fully paid, the "Insured(s)" shall have

the right, upon payment of an additional premium, to an extension of the coverage granted by this Policy in respect of "Claim(s)" first made against the "Insured(s)" during the twelve (12) months after the termination of the Policy, but only with respect to any "Wrongful Act(s)" committed after the Retroactive Date if twelve (12) month period is hereinafter referred to as the Discovery Period. The additional premium to be charged will be determined upon request of this extension and will remain at the discretion of the Insurer; however, such additional premium shall not exceed 100% of the previous annual premium. This right of extension shall cease unless written notice is given to the Insurer within (30) thirty days after the termination date, together with full payment of the premium for this extension. The Discovery Period will be part of the immediately preceding "Policy Period" and a single aggregate Limit of Liability will apply to such "Policy Period", including the Discovery Period.

The additional premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period, once effected, is not cancellable.

For the purposes of this clause, the Insurer's quotation of differing terms is not a refusal to renew this Policy.

SECTION II - EXCLUSIONS

This Policy does not apply to:

1. **Abuse:**
Any "Claim(s)" arising directly or indirectly from "Abuse" or sexual harassment committed or alleged to have been committed by an "Insured(s)". However, this exclusion shall not apply to any "Claim(s)" for an "Employment Practices Wrongful Act".
2. **Bodily Injury – Property Damage:**
Any "Claim(s)" arising directly or indirectly from "Bodily Injury" or "Property Damage". However this exclusion shall not apply to any:
(a) "Employment Practices Wrongful Act" "Claim(s)" in respect of mental anguish, emotional distress or personal Injury ; or,
(b) "Educational Practices Wrongful Act" "Claim(s)" in respect of mental anguish or emotional distress.
3. **Contractual:**
The liability of others assumed by the "Insured(s)" under any contract or agreement unless such liability would have attached to the "Insured(s)" even in the absence of such contract or agreement. However this exclusion shall not apply to "Costs, Charges and Expenses" arising out of any "Claim(s)" for an "Employment Practices Wrongful Act".
4. **Failure to Maintain Insurance:**
Failure to effect or maintain any insurance or bond.
5. **Fraud:**
Any fraudulent, dishonest, criminal act or wilful act, error or omission committed by any "Insured(s)".
6. **Medical Service(s):**
"Claim(s)" based on or arising out of the provision or failure to provide medical services.
7. **Claims Brought by the Insured(s):**
"Claim(s)" brought by the or on behalf of any other "Insured(s)". However this exclusion shall not apply to any:

(a) "Claim(s)" that is a derivative action brought by or on behalf of the "Educational Institution", if such action is brought independently and without the solicitation or participation of any "Insured(s)"; or,
(b) "Claim(s)" brought by a trustee in bankruptcy of the "Educational Institution" pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c-B-3, or a liquidator appointed pursuant to the Winding-up and Restructuring Act, R.S.C. 1985, c.W-11, or a receiver or receiver manager appointed pursuant to the Courts of Justice Act, R.S.O 1990, c.C43, or pursuant to any other similar federal or provincial legislation; or,
(c) "Claim(s)" brought by an "Employee" or student of the "Educational Institution" for a "Wrongful Act"; or
(d) "Claim(s)" brought by any "Insured(s)" who is not a director, officer or trustee of the "Educational Institution" for an "Employment Practices Wrongful Act".

8. **Guarantees or Warranties:**
The "Insured(s)" provision of any express warranty or guarantee which increases the "Insured(s)" liability, however this exclusion shall not apply to liability which would have attached to the "Insured(s)" in the absence of such express warranty or guarantee.
9. **Personal Profit or Gain:**
The gaining in fact of any personal profit, gain or advantage to which the "Insured(s)" is not legally entitled, or out of any dispute involving the "Insured(s)" fees, commissions or charges.
10. **Outside Directorship:**
Based upon or arising out of, or attributable to an "Insured(s)" service as a director or officer, or employee of any other entity other than the "Educational Institution", even if such service is at the direction of the "Educational Institution".
11. **Retroactive Date:**
Any alleged or actual "Wrongful Act(s)" undertaken that occurred prior to the Retroactive Date stated in the Declarations.
12. **"Fungi":**
(a) Any "Claim(s)" arising directly or indirectly from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "Fungi" or "Spore(s)" however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of "Fungi" or "Spore(s)";
(b) Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with (a) above; or
(c) Any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in (a) or (b) above.
13. **Asbestos:**
Any actual or alleged liability for any "Claim(s)" related to or arising from any actual or alleged liability for any legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, "Cost, Charges and Expenses" or other costs, or expenses of any kind) in respect of actual or threatened loss, damage, cost or expense directly or indirectly caused by, resulting from, in consequence of, or in any way

involving asbestos, or any materials containing asbestos in whatever form or quantity.

14. Pollution:

- (a) Any "Claim(s)" which arises out of or would not have occurred in whole or in part but for the actual, alleged or threatened spill, discharge, emission, disbursement, seepage, leakage, migration, release or escape of "Pollutant(s)" at any time;
- (b) Any loss, cost or expense arising out of any:
 - (i) request, demand or order that any "Insured(s)" or others test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "Pollutant(s)";
 - (ii) "Claim(s)" or action by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, decontaminating, stabilizing, remediating, neutralizing, or in any way responding to, or assessing the effects of "Pollutant(s)".

15. Nuclear:

Based upon or arising out of, directly or indirectly, any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance, or the hazardous properties of radioactive material(s).

Severability of Exclusions: With respect to the exclusions of this Policy, no fact pertaining to, or knowledge possessed by any "Insured(s)" shall be imputed to any other "Insured(s)" to determine if coverage is available. Only facts pertaining to, or knowledge possessed by a "Director or Officer" of the "Educational Institution" shall be imputed to the "Educational Institution" for the purposes of applying the exclusions of the Policy.

SECTION III - DEFINITIONS

As used in this Policy, the following words or expressions shall mean:

- 1. **"Abuse":**
Any actual or alleged sexual abuse, harassment, misconduct or interference.
- 2. **"Bodily Injury":**
Means any bodily injury, sickness, mental anguish, emotional distress or death of any person.
- 3. **"Claim(s)":**
Any verbal or written demand(s) received by the "Insured(s)" for monetary damages or non-monetary damages, injunctive relief or other relief arising out of an alleged "Wrongful Act(s)".
- 4. **"Costs, Charges and Expenses":**
Any reasonable and necessary legal fees incurred in the investigation and defence of a "Claim(s)", pre-judgment interest and assessable costs and disbursements but shall not include:
 - (a) salaries, wages, fees, overhead or benefit expenses of an "Insured(s)", or
 - (b) any amounts incurred in the defence of a "Claim(s)" for which any other insurer has a duty to defend.
- 5. **" Director or Officer":**
 - (a) any person who was, is presently, or shall be a director, officer, governor, superintendent, head of school, principal or vice principal of the "Educational

Institution" or any other equivalent position of corporate governance;

- (b) any person who was, is presently, or shall be a member of a duly constituted committee, board, commission or administrative assembly of the "Educational Institution" while acting on behalf of the "Educational Institution";
- (c) any "Employee" of the "Educational Institution", but only if a "Claim(s)" is brought and continuously maintained against such "Employee" and one or more "Directors and Officers" of the "Educational Institution".

6. "Directors or Officers Wrongful Act(s)":

Any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by any "Director or Officer" in their capacity as such for the "Educational Institution".

7. "Educational Institution":

Means the "Insured(s)" as stated in the Declaration Page of this Policy.

8. "Educational Practices Wrongful Act":

Any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by the "Educational Institution, or by any other "Insured(s)" solely in the performance of their duties on behalf of the "Educational Institution".

9. "Employee":

Any person who is not a "Director or Officer" of the "Educational Institution", engaged by the "Educational Institution" as instructors, teachers and administration staff whether employed full-time or part-time. However "Employee" does not include independent contractors.

10. "Employment Practices Wrongful Act":

Means any actual or alleged:

- (a) wrongful dismissal or termination of employment, either actual or constructive, including breach of a contract of employment;
- (b) employment-related misrepresentation;
- (c) employment-related libel or slander;
- (d) any sexual or workplace harassment;
- (e) wrongful discipline and negligent evaluation;
- (f) failure to grant tenure;
- (g) failure to provide or enforce employment or workplace policies and procedures relating to (a) through (f) above, but only if the "Employment Practices Wrongful Act" relates to an "Insured (s)". However, in no event shall "Employment Practices Wrongful Act" mean any labour or grievance proceeding which is subject to a collective bargaining agreement.

11. "Financial Impairment":

Means the status of the "Educational Institution" resulting from:

- (a) the appointment of a federal or provincial agency or court receiver, liquidator, trustee or similar official to take control of the "Educational Institution";
- (b) the appointment by a creditor exercising its rights pursuant to any written instrument of any agent, receiver and/or receiver and manager;
- (c) a reorganization proceeding against the "Educational Institution" brought in Canada under the Companies' Creditors Arrangement Act, R.S.C.1985, c.C-36, or similar federal or provincial legislation;

12. "Insured(s)":

- (a) means the "Educational Institution";
- (b) any "Director or Officer" and ;
- (c) any "Employee", but only with respect to coverage provided by Section I, Item 1(a)

- 13. "Inter-related Wrongful Act(s)":**
Any "Wrongful Act(s)" that has as a common nexus, any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.
- 14. "Loss":**
Any damages, settlements and judgments including taxable costs, pre-judgment interest and any post-judgment interest, liabilities arising out of the "Financial Impairment" of the "Educational Institution" which the "Educational Institution" is unable to pay by reason of its "Financial Impairment" for which the "Insured(s)" are liable under the laws of Canada, provided however, that "Loss" shall not include:
- (a) punitive, exemplary or the multiple portion of multiplied damages;
 - (b) criminal or civil fines;
 - (c) penalties imposed by law;
 - (d) liability for matters which are uninsurable under the law pursuant to which this Policy shall be construed.
- 15. "Policy Period":**
The period shown on the Declarations Page. If this Policy is cancelled, the "Policy Period" shall be amended accordingly. If the Discovery Period is exercised in accordance with Section I, Item 7, it shall be part of the last "Policy Period" and not an additional period.
- 16. "Pollutant(s)":**
Any solid, liquid, gaseous or thermal irritant or contaminant including smoke, odour, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 17. "Property Damage":**
Any damage, loss or destruction of tangible property including loss of use thereof.
- 18. "Wrongful Act(s)":**
Means:
- (a) a "Directors or Officers Wrongful Act";
 - (b) an "Educational Practices Wrongful Act";
 - (c) an "Employment Practices Wrongful Act".

SECTION IV – CONDITIONS

- 1. ACTION AGAINST THE INSURER**
No action or legal proceedings may be initiated against the Insurer. All disputes under the Policy shall be resolved by way of arbitration in accordance with Section IV, Item 3.
- 2. ADJUSTMENT CLAUSE**
This Policy is issued and the premium computed on the basis of the information submitted to the Insurer as part of the Application referred to in the Declarations. The Insurer may require premium adjustment and coverage revision in the event:
- (a) the "Educational Institution" acquires any other entity or
 - (b) the "Educational Institution" creates or acquires a subsidiary subsequent to the inception date of this Policy. The "Educational Institution" agrees to give notice to the Insurer in writing as soon as practicable of the happening of either of the foregoing and furnish such information in connection therewith as the Insurer may require.
- 3. ARBITRATION**

Any dispute between the "Insured(s)" and the Insurer arising in connection with or relating to this Policy shall be submitted to binding arbitration in accordance with the legislation that applies in the jurisdiction of the "Educational Institution" domicile as enumerated in the declarations page. The arbitration panel shall consist of one arbitrator selected by the "Insured(s)", one arbitrator selected by the Insurer and a third independent arbitrator selected by the first two arbitrators. If all parties consent, the arbitration can proceed with a single arbitrator.

In any such arbitration, each party will bear its own legal fees and expenses and the costs and expenses of the arbitration, including the arbitrators, shall be shared equally by the parties to the dispute unless otherwise agreed.

4. ASSIGNMENT

Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.

5. ASSISTANCE AND CO-OPERATION

The "Insured(s)" shall co-operate with the Insurer in the investigation and defence of any "Claim(s)" or action, give to the Insurer such information and written statements as the Insurer may require, and shall attend examinations for discovery, hearings and trials and give evidence in connection with the defence of such action, all without charge to the Insurer. The "Insured(s)" shall not voluntarily make any payment, assume any liability or obligation or incur any expense, unless with the written consent of the Insurer.

6. AUTHORIZATION CLAUSE

By acceptance of this Policy, all "Insured(s)" agree that the "Educational Institution" shall act on their behalf with respect to the giving or receiving of any notice provided for in this Policy, the payment of premiums and the receiving of return premiums and the negotiation and acceptance of any endorsement.

7. CANADIAN CURRENCY

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

8. CANCELLATION

This Policy may be cancelled:

- (a) by the Insurer giving to the "Named Insured(s)" by registered mail notice of cancellation as follows:
 - (i) 15 days' notice of cancellation, if cancellation is due to non-payment of premium;
 - (ii) 30 days' notice of cancellation, if cancellation is due to any other reason, such notice to be accompanied by a pro rata return of premium.
- (b) by the "Educational Institution", giving written notice at any time. Cancellation will take effect on the date of the "Named Insured(s)" written notice is received by the Insurer or at a later date if specified therein. The Insurer will refund the unearned premium on a short-rate basis, but in no event shall the short-rate premium for the expired time be deemed to be less than any minimum retained premium specified. This Policy may not be cancelled during the Discovery Period.

9. CHANGES

This Policy contains all the agreements between the "Educational Institution" and the Insurer concerning the insurance afforded. The terms of this Policy may be amended or waived only by endorsement issued by the Insurer and made a part of this Policy.

10. "INTER-RELATED WRONGFUL ACT(S)" AND DATE OF "CLAIM(S)" CLAUSE

More than one "Claim(s)" involving either the same "Wrongful Act(s)" or an "Inter-related Wrongful Act(s)" shall constitute a single "Claim(s)" and such single "Claim(s)" shall be deemed to have been first made at the earliest of either:

- (a) the time the earliest "Claim(s)" was made; or
- (b) the earliest time in which notice was given under any insurance Policy of any actual or alleged "Wrongful Act(s)" which is the basis of any "Claim(s)".

11. NOTICE OF "CLAIM(S)"

It is a condition precedent to coverage that the "Insured(s)" shall give immediate notice in writing of any "Claim(s)" first made against the "Insured(s)" to the Insurer. Such notice shall in any event be given not later than 30 days after the expiration of the final "Policy Period".

If during the period of this insurance the "Insured(s)" shall first become aware of any facts or circumstances which might reasonably be expected to give rise to a "Claim(s)" against the "Insured(s)" and shall during the period of this insurance give written notice to the Insurer of such facts or circumstances, then any such "Claim(s)" which is subsequently made shall be deemed to have been made on the date that the Insurer was first advised of the facts or circumstances.

12. OTHER INSURANCE

If other valid and collectable insurance is available to an "Insured(s)" for any loss that is covered under this Policy, the Insurer under this Policy shall be liable for only the excess, if any, of any loss over the applicable limit of the other insurance covering such loss.

This Policy shall not contribute to any "Claim(s)" that is less than or equal to the applicable limit of the other insurance covering such "Claim(s)".

In the event that any part of such other valid and collectible insurance is provided by another Policy of any member company of the Co-operators Group, the Insurer's liability hereon shall be reduced by the amount payable under such other Policy.

13. SEVERABILITY CLAUSE

In the event that the Application contains misrepresentations or material non-disclosures which materially affect either the acceptance of the risk or the hazard assumed by the Insurer under this Policy, this Policy shall be void and of no effect whatsoever, but only as against any "Insured(s)" who completed or signed the Application or had actual knowledge of such misrepresentations. Nothing in this clause shall increase the Insurer's maximum liability as set forth in Section I, Item 3 of this Policy.

14. STATUTORY CONFORMITY

Terms of this Policy which are in conflict with the statutes of the province where the "Insured(s)" is domiciled as enumerated in the declarations page are hereby amended to conform to such statutes.

15. SUBROGATION

In the event of any "Claim(s)" under this Policy, the Insurer shall be subrogated to all the "Insured(s)" rights to recovery thereof, and the "Insured(s)" shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The "Insured(s)" shall do nothing to prejudice such rights.

