



## CANADIAN LAWYERS LIABILITY ASSURANCE SOCIETY

### Defence Counsel Rates Policy

Last Updated  
December 11, 2018

**FINAL**



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## DEFENCE COUNSEL RATES POLICY

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Effective date: December 11, 2018

### 1. Purpose and Scope

CLLAS takes the view that member firms should have the ability to retain defence counsel of their choice even if the rates per hour for the defence team exceed the maximums permitted by the underlying law society insurance program. The purpose of this policy is to document CLLAS' policy with respect to payment of defence counsel fees in these circumstances.

### 2. CLLAS' Approach to "Topping-up" Legal Fees

- (a) If any member of the defence team has agreed to work with the underlying law society insurance program at a specified rate, that will be the rate applicable to any invoices paid by CLLAS after exhaustion of the underlying limit.
- (b) If any member of the defence team is retained by the insured firm at a rate which exceeds the maximum rate permitted by the underlying law society program, the insured firm will be responsible for any difference in the cost of the defense counsel and the LawPRO rates, subject to the following:
  - i. If the claim (including defence costs incurred by the underlying law society program but not by the insured firm) ultimately resolves at \$1 million or less, the insured firm will remain responsible for any difference in the rates.
  - ii. If indemnity payments and defence costs incurred by the underlying law society program (but not by the insured firm) exceed \$1 million, CLLAS will reimburse the insured firm for the difference in rates, and will pay future accounts, pursuant to the terms of the applicable insurance policy, at the rates agreed to by the insured firm at the outset of the claim.

In order to effectively manage its claims reserves and its relationship with its reinsurers, CLLAS needs to be able to track its exposure to the reimbursement of defence counsel fees. As a result, it is a pre-condition of reimbursement that, on request, the insured firm provide CLLAS with copies of all legal accounts processed to the date of the request, as well as copies of all legal accounts processed going forward from the date of the request.

From a process perspective, when a claim file first exceeds the reporting threshold (\$500,000 in the underlying layer), CLLAS will remind the insured firm in writing of the policy and request (1) to be provided with all legal accounts paid to date, and (2) to be copied on all legal accounts paid in the future. In the event that an insured firm chooses to not provide the accounts after being so



requested, CLLAS would advise that the entitlement to the top-up is conditional on providing the accounts in a timely manner.

### **3. Authority**

The Board has the authority to make revisions to this policy.

### **4. History of Modifications**

This Policy was first approved by CLLAS on December 11, 2018.