

New South Wales
Law Reform Commission

The Legal Profession

BACKGROUND
PAPER ~ II

1980

The Law Reform Commission is constituted by the Law Reform Commission Act 1967. The Commissioners are -

Chairman: The Honourable Mr. Justice J.H. Wootten

Deputy

Chairman: Mr. R.D. Conacher

Mr. J.H.P. Disney

Mr. D. Gressier

His Honour Judge T.J. Martin, Q.C.

Mr. John Bennett is Executive Member of the Commission.

The Secretary of the Commission is Mr. Bruce Buchanan, and its offices are at 16th Level, Goodsell Building, 8-12 Chifley Square, Sydney, N.S.W. 2001.

PREFACE

The Commission has a reference from the Attorney General and Minister for Justice, the Honourable F.J. Walker, LL.M., M.P., to inquire into and review the law and practice relating to the legal profession. The terms of reference are set out in Appendix I to our Legal Profession Inquiry Discussion Paper No. 1 - General Regulation.

This Paper is intended to complement the Discussion Paper No.3 on Professional Indemnity Insurance, which we have issued in the course of our Legal Profession Inquiry. It contains material which we consider particularly useful to a consideration of the issues raised in that Paper but which would not otherwise be readily accessible to most readers. It is not intended to be an exhaustive or comprehensive compilation of material used in the preparation of the Discussion Paper.

Several current indemnity insurance policies for lawyers were reproduced in Appendices to the Discussion Paper. In this Background Paper we include several policies from other jurisdictions, the terms of which differ significantly from those in the Appendices.

This Paper also includes statistical information obtained by the Commission from bodies responsible for the management of indemnity insurance schemes for lawyers in New South Wales, Victoria and England. In some instances we have compiled tables based on these statistics, in order to illustrate specific aspects of claims experience.

The Commission's bibliographical files contain a considerable amount of material relating to professional indemnity insurance. Much of this material, and other material relating to our Legal Profession Inquiry, is readily available for perusal in the Commission's public reading room.

Correspondence concerning our Legal Profession Inquiry should be addressed to Mr. Bruce Buchanan, Secretary, New South Wales Law Reform Commission, Box 6, G.P.O., Sydney, 2001. Telephone 238-7213.

LEGAL PROFESSION INQUIRY PUBLICATIONS

Discussion Papers

1. General Regulation.
2. Complaints, Discipline and Professional Standards - Part I.
3. Professional Indemnity Insurance.

Background Papers

1. Background Paper - I.
2. Background Paper - II.

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Part 1

Selected
Indemnity Insurance
Policies
for
Lawyers

A. England

The compulsory indemnity insurance scheme for English solicitors commenced on 1st September, 1976. It provided the model for the schemes now operating in Victoria and Queensland, and for other proposed schemes elsewhere in Australia. The English scheme is therefore an important point of reference in considering the type of compulsory indemnity insurance which should be introduced in New South Wales. The English Master Policy and Certificate of insurance are broadly similar to their Victorian counterparts which appear in Appendix III to our Discussion Paper, Professional Indemnity Insurance. They do however differ in points of detail. Furthermore, some important additions have been made to the English Master Policy since the commencement of the scheme, in the light of actual claims experience. These concern the variation of individual premiums to reflect the claims history of each practice, and the imposition of a premium loading on Inner London Practices. No comparable provisions have yet been incorporated into Australian schemes.

The wording of the 1979-80 Master Policy and Certificate of Insurance for English solicitors is as follows.

1. Master Policy

1. The Insurers agree with The Law Society on behalf of all solicitors from time to time required to be insured by Indemnity Rules made under s.37 of the Solicitors' Act 1974, and on behalf of former solicitors, to provide such insurance in accordance with the terms of the Certificate attached hereto. Subject as hereinafter appears in respect of former solicitors, such Certificate will be issued annually on request on receipt of the premium payable in accordance with Clauses 2 and 3 hereof.

2. This Policy commences on the 1st day of September 1979. This Policy can be extended for successive periods of one year on each 1st day of September subject to the rates of premium for each renewal being agreed by the Insurers and The Law Society at least six months before such renewal. In the event of any failure so to agree such rates of renewal premium all cover under this Policy shall cease on the 31st August 1980 or (if later) on the expiry of the period for which the Policy was last extended.

3. (1) Subject to the provisions of sub-section (2) below
- (a) the premium payable hereunder shall be 712 per solicitor per annum save that for any solicitor who carries on practice or holds himself or herself out as carrying on practice or is a partner in any firm carrying on practice or holding itself out as carrying on practice from any address within the Inner London Area the premium shall be 926 per annum per solicitor
 - (b) for the purposes hereof the 'Inner London Area' means those areas included by the Post Office as at 1 September 1979 within the postal districts designated by the Post Office EC1, 2, 3, 4; WC1, 2; N1; NW1; W1, 2, 8; SW1, 3, 5, 6, 7, 10; SE1 inclusive
 - (c) the premiums for solicitors who are first required to be insured hereunder during the period of insurance shall be calculated pro rata to the premiums which applied at the beginning of the relevant period of insurance
 - (d) for low earning sole practitioners the premium shall be calculated in accordance with the following scale:
Gross Fee Income for
the Solicitors Financial
Year ended before the
commencement of the Period
of Insurance

Premium

£0-£1000	£50
£1001-£2500	£100
£2501-£5000	£250

- (2) For the purposes of this sub-section
- (i) (a) 'Premium Pool' shall mean in respect of any Solicitor the sum of the annual premiums payable in respect of each year beginning during the Relevant Period by a Partner in the Firm multiplied by the number of Partners in the Firm at the Assessment Date.
 - (b) 'Claims Pool' shall mean in respect of any Solicitor the sum of
 - A. all Insurance Payments made by Underwriters during the Relevant Period in respect of arising out of or in any way in connection with an Insurance Claim concerning the firm; and

- B. the Due Proportion of all Insurance Payments made by Underwriters during the Relevant Period in respect of arising out of or in any way in connection with an Insurance Claim concerning any Former Firm.
- (c) The 'Relevant Period' shall mean the period of 3 years ending on the Assessment Date.
 - (d) The 'Assessment Date' shall mean the 31st March 1979 or (in the case of any renewal of this Master Policy) the 31st March immediately preceding the Renewal Date.
 - (e) 'Insurance Payments' shall include all payments of whatsoever sort made by Underwriters including but not limited to payments made in respect of claimants damages and costs save and except that no account shall be taken of sums paid by Underwriters in respect of the costs of investigating or defending an Insurance Claim.
 - (f) 'Insurance Claim' shall include any claims of whatsoever sort whether made threatened intimated apprehended formulated or not in respect of which (if proved) Underwriters would be liable to grant indemnity under the Certificate.
 - (g) 'Firm' shall include in the case of any amalgamation between or merger of two or more firms previously carrying on the practice of practising as a solicitor each such firm.
 - (h) 'Former Firm' shall mean a firm which during the Relevant Period carried on the practice of practising as a solicitor and which prior to the Assessment Date ceased so to practise otherwise than by amalgamation or merger with another firm and in which at the Cessation Date there was a Cessation Partner.
 - (i) 'Cessation Date' shall mean the date when a Former Firm ceases to practise.
 - (j) 'Cessation Partner' shall mean a Partner in the Firm at the Assessment Date who was a partner in the Former Firm at the Cessation Date.

- (k) 'Due Proportion' shall mean in respect of any Former Firm the proportion which the number of Cessation Partners thereof bears to the total number of partners in such Former Firm at the Cessation Date.
- (ii) If in the case of any solicitor the Claims Pool exceeds the Premium Pool then the premium payable by such solicitor under sub-section (1) above shall be according to the following table:
- | <u>Amount by which Claims Pool exceeds Premium Pool</u> | <u>Increase in Premium</u> |
|--|----------------------------|
| Up to but not equal to or exceeding twice the Premium Pool | By a factor of 6/5 |
| Equal to or exceeding twice the Premium Pool but not equal to or exceeding three times the Premium Pool | By a factor of 13/10 |
| Equal to or exceeding three times the Premium Pool but not equal to or exceeding four times the Premium Pool | By a factor of 7/5 |
| Equal to or exceeding four times the Premium Pool | By a factor of 3/2 |
- (iii) Where a solicitor is at the Assessment Date a Partner in more than one firm there shall be calculated separate Claims Pools and Premium Pools in respect of each such Firm and there shall be taken for the purpose of the application of sub-sub-section (ii) above as the Claims Pool that which exceeds its respective Premium Pool by the greatest multiple and as the Premium Pool that Premium Pool.
- (iv) A sole practitioner shall be treated as the sole Partner in his Firm.

4. All claims and notices required to be given by the Assured under the terms of the Certificate attached hereto shall be notified to London Insurance Brokers Limited (hereinafter referred to as The Brokers) on behalf of the Insurers. The Brokers will handle the same (subject to the overriding control of the Leading Underwriters) in accordance with the following procedure:

- (a) All reasonable assistance and advice as to his position and professional duty will be given forthwith to the Assured, the Brokers having the Insurers' authority in emergency situations to take such immediate steps on the Assured's behalf as the Brokers may deem necessary.

- (b) As soon as practicable brief details (in a form to be agreed with the Leading Underwriters) shall be reported to the Leading Underwriters and further reports will be submitted as and when required by the Insurers.
- (c) Except in case of urgency the Brokers will not instruct solicitors or other expert advisers without first obtaining the Leading Underwriters' authority, it being understood that the Insurers will not unreasonably withhold such approval in any case where the Assured or the Brokers consider this step to be advisable. Where solicitors are so employed their fees and expenses will be for the account of the Insurers who may require the solicitors' reports to be submitted directly to them.
- (d) A Panel of solicitors to handle claims shall be agreed between The Law Society and the Insurers.
- (e) In handling claims and potential claims against the Assured, the Brokers shall act as agents for the Assured and, subject to such disclosure as may be necessary to the Insurers or as required by them in accordance with the terms of this Policy and the attached Certificate, shall be under a duty of confidence to the Assured; and in particular neither the Brokers nor the Insurers shall disclose information about any individual or firm to The Law Society without his or their consent.

5. In respect of former solicitors (which expression in this Policy and in the Certificate attached hereto shall include solicitors who have ceased by reason of death, retirement or otherwise, to practise as principals in private practice, and their personal representatives) certificates need not be issued and no premium shall be payable. A former solicitor who has at any time been insured under (or whose successors in practice have at any time been insured under) this Master Policy or a previous Master Policy issued pursuant to the Solicitors Indemnity Rules 1975 or 1978 shall be entitled to be indemnified by the Insurers in respect of any claim or claims first made against him during the currency of this Policy, as if a Certificate in the terms attached hereto had been issued to him hereunder and as if there were specified in the Schedule to such Certificate (a) as the Period of Insurance the period during which this Policy shall be in force, and (b) as the Sum Insured the sum of £50,000, if he was practising alone immediately before he ceased so to practise,

and, in any other case, the sum of £30,000 multiplied by the number of partners immediately before he ceased so to practise in the partnership in which he last so practised.

6. Authority is hereby given by the Insurers to the Brokers to issue on behalf of the Insurers to solicitors seeking insurance in accordance with Clause 1 hereof certificates in the form attached hereto.

7. Expressions used in this Policy have the meanings given to them by the Certificate attached hereto.

8. For the payment of an additional premium to be determined by the Leading Underwriters the terms of any Certificate issued hereunder may be extended by endorsement.

2. Certificate of Insurance

This is to certify that in accordance with the authorisation granted to the undersigned under the Master Policy referred to in the Schedule by the Insurers subscribing such Master Policy (hereinafter called 'The Insurers') insurance is granted by the Insurers in accordance with the terms and conditions following, and in consideration of the payment of the premium stated in the Schedule.

1. INTERPRETATION

- (a) 'The Solicitor' means the person named as such in the Schedule.
- (b) 'The Assured' means the Solicitor, any person employed in connection with the Practice (including any articulated clerk, and any solicitor who is a Consultant or Associate in the Firm), and the estate and/or the legal representatives of any of the foregoing, to the intent that each of the foregoing shall be severally insured hereunder.
- (c) 'The Practice' means the practice of practising as a solicitor (including the acceptance of obligations as trustee) undertaken by the Solicitor or his predecessors in private practice alone or with others, provided always that wherever any fees or other income accrue therefrom they inure to the benefit of that practice.

- (d) Private practice does not include practice by the Solicitor in the course of or in connection with or in relation to his employment under a contract of service by an employer not also a solicitor in private practice.
- (e) 'The Period of Insurance' means the period specified in the Schedule.
- (f) 'The Firm' means the firm as from time to time constituted carrying on the Practice.
- (g) 'Partner' includes any solicitor held out by the Firm as a partner in the Firm.

2. INSURING CLAUSES

- (a) On the terms and conditions herein contained the Insurers shall indemnify the Assured against all loss to the Assured whensoever occurring arising from any claim or claims first made against the Assured or the Firm during the Period of Insurance in respect of any description of civil liability whatsoever incurred in connection with the Practice. Such indemnity as aforesaid shall not extend to indemnify the solicitor in respect of any undertaking given by or on behalf of the solicitor to any person in connection with the provision of finance property assistance or other advantage whatsoever to or for the benefit of the solicitor or any partner the solicitor's or any partner's spouse or children or any business firm company enterprise association or venture owned or controlled by the solicitor or any partner whether alone or in concert with others.
- (b) The liability of the Insurers under this Certificate and any other Certificate issued under the Master Policy shall not exceed in respect of each such claim and claimants' costs the sum insured specified in the Schedule and in addition all costs and expenses incurred with the Insurers' consent (such consent not to be unreasonably withheld) in the defence or settlement of any such claim, provided that if a payment in excess of the said sum insured is made to dispose of any such claim the Insurers' liability for any such costs and expenses so incurred shall be limited to such proportion thereof as the said sum insured bears to the amount of the payment so made.
- (c) For the purposes hereof all claims against the Assured or the Firm arising from the same act or omission shall be regarded as one claim.

3. SPECIAL CONDITIONS.

- (a) Subject to General condition (f) the Insurers will not seek to avoid, repudiate or rescind this insurance upon any ground whatsoever, including in particular non-disclosure or misrepresentation.
- (b) Where the Assured's breach of or non-compliance with any condition of this insurance has resulted in substantial prejudice to the handling or settlement of any claim against the Assured or the Firm in respect of which the Assured is insured hereunder the Assured shall reimburse to the Insurers the difference between the sum payable by the Insurers in respect of that claim and the sum which would have been payable in the absence of such prejudice. Provided always that it shall be a condition precedent of the right of the Insurers to seek such reimbursement that they shall have fully indemnified the Assured in accordance with the terms hereof.
- (c)
 - (i) For the purposes of this paragraph 'the relevant date' means the date when a claim the subject of the Insuring Clauses hereof is first made against the Assured or the date, if earlier, when circumstances which may give rise thereto first come to the notice of the Solicitor or of any solicitor or former solicitor (including the personal representatives of any such solicitor or former solicitor) liable with the Solicitor in respect of thereof.
 - (ii) If on the relevant date the Solicitor is practising as a solicitor in partnership with one or more solicitors, or is a partner in more than one such partnership, the Schedule shall, subject to (iii) below, be deemed to specify as the Sum Insured in respect of that claim, an amount of £30,000 multiplied by the number in partnership or in the largest such partnership (measured by the number of partners who are members thereof) on the relevant date or on the 1st September preceding that date, whichever number is greatest.
 - (iii) If on the relevant date one or more solicitors who are liable to the claimant are practising as solicitors in partnership but there is no such partnership of which all of them are members the Schedule shall be deemed to specify as the Sum Insured in respect of that claim an amount of £30,000 multiplied by the number of partners in the largest partnership (measured as aforesaid) in which any such solicitor is

practising on that date or on the 1st September preceding that date, whichever number is greater.

- (iv) The number by which the amount of £30,000 falls to be multiplied under (ii) or (iii) above is herein called 'the multiplier'.
- (d) This insurance shall extend to indemnify the Assured up to the Sum Insured calculated as above in respect of any loss arising from any claim or claims first made against the Assured or the Firm during the Period of Insurance arising out of any dishonest or fraudulent act or omission of any past or present Partner in the Firm (not being the Solicitor himself). Provided always that:
 - (i) at the request of the Insurers the Assured shall take or procure to be taken by the Firm at the Insurers' expense all reasonable steps to obtain reimbursement from any partner or former partner concerned in such dishonesty or fraud, or from the legal representatives of any such partner or former partner, and
 - (ii) the Assured shall procure that any reimbursement so obtained together with any monies which but for such fraud or dishonesty would be due to such partner or former partner from the Firm shall be paid to the Insurers up to but not exceeding the amounts paid by the Insurers in respect of such claim together with any expenditure reasonably incurred by the Insurers in obtaining such reimbursement.

4. GENERAL CONDITIONS.

- (a) (i) Neither the Assured nor the Firm shall admit liability for, or settle, any claim falling within the Insuring Clauses hereof or incur any costs or expenses in connection therewith without the consent of the Insurers (such consent not to be unreasonably withheld) and subject to (ii) below the Assured shall procure that the Insurers shall be entitled at their own expense at any time to take over the conduct in the name of the Assured or the Firm of the defence or settlement of any such claim.
- (ii) Neither the Assured nor the Firm nor the insurers shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Assured and the Insurers or failing agreement to be appointed

- by the President of The Law Society for the time being) shall advise that such proceedings should be contested.
- (b) The Assured shall procure that notice to the Insurers shall be given in writing as soon as practicable of any claims the subject of the Insuring Clauses hereof made during the Period of Insurance against the Assured or the firm or of the receipt by either of them of notice from any person of any intention to make a claim against them. The Assured may also give notice in writing to the Insurers of any circumstances of which the Assured shall become aware during the period of Insurance which may give rise to such a claim. If notice is given to the Insurers under this paragraph any claim subsequently made (whether before or after the expiration of the Period of Insurance) pursuant to such an intention to claim or arising from circumstances so notified shall be deemed to have been made at the date when such notice was given.
 - (c) The Insurers waive any rights of subrogation against any employee of the Assured save where those rights arise in connection with a dishonest or criminal act by that employee.
 - (d) Notices to the Insurers to be given hereunder shall be deemed to be properly made if given to London Insurance Brokers Limited.
 - (e) Save as provided in General Condition (a)(ii) above any dispute or disagreement between the Assured and the Insurers arising out of or in connection with this insurance shall at the request of either of them be referred to the sole arbitrament of a person to be appointed (failing agreement between them) by the President of The Law Society for the time being whose decision shall be final and binding upon both parties.
 - (f) If the Assured shall prefer any claim hereunder knowing the same to be false or fraudulent as regards amount or otherwise this insurance shall become void and all claims hereunder shall be forfeited.

5. GENERAL EXCLUSIONS.

- (a) This insurance shall not indemnify the Assured in respect of the first £400 of any one claim or (in the case of any claim to which Special Condition (c) applies) the first £400 multiplied by the Multiplier.

- (b) This insurance shall not indemnify the Assured in respect of any loss arising out of any claim:
- (i) for death, bodily injury, physical loss or physical damage to property of any kind whatsoever (other than property in the care, custody and control of the Assured or the Firm in connection with the Practice for which they are responsible, not being property occupied or used by them for the purposes of the Practice);
 - (ii) for the payment of a trading debt incurred by the Assured or the Firm;
 - (iii) in respect of any circumstances or occurrence which has been notified under any other insurance attaching prior to the inception of this Certificate;
 - (iv) in respect of his own dishonest or fraudulent act or omission;
 - (v) directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from combustion of nuclear fuel, the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, or from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.
 - (vi) in respect of any liability incurred in connection with a practice wholly outside England and Wales.

B. Scotland

Scotland is the only comparable jurisdiction to New South Wales, with a separate Bar, which has compulsory schemes in force for each branch of the profession. Some of the features of the barristers' scheme operated by the Faculty of Advocates are referred to in our Discussion Paper, Professional Indemnity Insurance. However, the Faculty has indicated to the Commission that it could not approve publication of the terms of the Advocates' policy in this Background Paper.

The compulsory Master Policy scheme for Scottish solicitors, operated by the Law Society of Scotland, commenced on 1st February 1978. The Scottish scheme differs from the existing English and Australian schemes in several respects, including the amount of cover, definition of the scope of cover, and premium setting (including the imposition of premium loadings).

The wording of the current Master Policy and Certificate of Insurance is as follows.

1. Master Policy

1. INTERPRETATION

In this Policy unless the context otherwise requires:-

"Brokers"	shall mean the Brokers from time to time appointed by the Council of the Society to act on behalf of the Society and its members in relation to this Policy.
"Insured"	shall mean the Insured as defined in the Certificates to be issued in terms of this Policy.
"Insurers"	shall mean the Insurers who from time to time are providing cover under this Policy.
"Leading Insurer"	shall mean the Insurer first named in the said Certificates.
"Practice Unit"	means where the practice is carried on by a sole practitioner that practitioner and where the practice is carried on in partnership that partnership.
"the Society"	means the Law Society of Scotland established under the Solicitors (Scotland) Act 1949.

2. INSURANCE

The Insurers agree with the Society on behalf of all solicitors from time to time required to be insured by the Solicitors' (Scotland) professional Indemnity Insurance Rules 1977 and on behalf of former solicitors hereinafter referred to to provide insurance in accordance with the terms of the Certificate attached hereto. Subject as hereinafter appears in respect of former solicitors the Certificate will be issued to each Practice Unit in respect of each practice year or part thereof (as the case may be) on request on payment of the appropriate premium.

3. DURATION

This Policy commences on 1st February 1978 for the period from that date to 31st October 1979 and shall continue yearly thereafter from 1st November each year until terminated in terms hereof.

4. PREMIUMS

- (a) The premiums payable hereunder by each Practice Unit shall be in accordance with the Schedules of annual premiums agreed for the period concerned between the Society and the Insurers, copies of the Schedules relative to the period from the date of commencement of this Policy to 31st October 1979 having been signed by the Society and the Leading Insurer and deposited with the Society, the premiums therein being based on the number of principals and employees (as defined in the Certificate) in each Practice Unit as at the date of the relevant proposal.
- (b) Notwithstanding (a) above the Insurers in consultation with the Brokers shall be entitled in appropriate cases to load the premium for any Practice Unit but so that any such loading shall not exceed 150% of the premium which would have been otherwise payable. Any Practice Unit whose premium is loaded in terms hereof shall have the right to appeal against such loading.
- (c) For the purpose of dealing with appeals under paragraph (b) above there shall be formed a committee which shall meet in Scotland and comprise two members nominated by the Leading Insurers, two members nominated by the Society, and one member nominated by the Brokers. The members nominated shall not be

persons who were involved in the determination of the loading appealed against. The Committee shall have power to reduce or confirm any loading appealed against. The decision of the Committee shall be final. Notwithstanding an appeal in terms hereof the premium and proposed loading shall be payable in the normal way in terms of this Policy. Any sums due as a result of an adjustment to the proposed loading made by the Committee shall be paid within 21 days of the intimation by the Committee of its decision to the Insured and the Leading Insurer.

- (d) A solicitor who is in the full time employment of a third party but who also practices on his own account will be allowed a percentage discount on the premium which he would otherwise have to pay in terms of paragraphs (a) or (b) above as follows:-

<u>Gross Fee Income For Year of Insurance</u>	<u>Percentage Discount On Premium</u>
£0 £1,000	66 2/3%)
£1,001 - £2,500	50%) Of the relevant
£2,501 - £5,000	25%) annual premium.
Over £5,000	Nil)

Provided that on submitting a proposal for renewal of insurance under this Policy such a solicitor shall disclose to the Insurers the gross fee income received by him or her during the year ended not earlier than one month prior to date of the proposal and the discount for the year preceding the year being proposed shall be adjusted accordingly.

- (e) It is further agreed that if this Policy shall continue beyond 31st October 1979 the premiums to be charged for the year commencing 1st November 1979 or for any subsequent year will be the subject of consultation with the Society. After such consultation the Insurers will be bound to intimate to the Society in writing not later than six months before the expiry of the year of insurance then current the premiums proposed to be charged for the following year. On receipt of such intimation the Society shall have a period of 18 weeks to agree the said premiums or to terminate this Policy with effect from the end of the year of insurance then current.

5. LIMITS OF INDEMNITY AND SELF-INSURED AMOUNTS

Unless otherwise agreed the premiums shall relate to the following limits of indemnity and self-insured amounts, namely

(A) Limits of Indemnity

Sole Practitioner £75,000 each and every claim.

Solicitors in Partnership For each partnership £50,000 each and every claim multiplied by the number of partners as at the date of commencement of cover or at 1st November in each year of insurance as the case may be with an upper limit in respect of any partnership of £500,000.

(B) Self-Insured Amount

Sole Practitioner £500 each and every claim.

Solicitors in Partnership For each partnership £500 each and every claim multiplied by the number of partners as at the date of commencement of cover or as at 1st November in each year of insurance as the case may be with an upper limit in respect of any partnership of £5,000.

6. ALTERATIONS IN PRACTICE UNITS

(i) In the event of any change in a Practice Unit during any period of insurance by reason of the death, retirement (from practice as a solicitor or for the purpose of becoming a consultant to that Practice Unit) or suspension of a partner or partners, or, the assumption of a partner or partners (being a solicitor of solicitors not previously insured under this Policy) there shall be no alteration in premium, current limits of indemnity or self-insured amount relating to the partnership in question but any new partner or partners will nevertheless be insured under this Policy and the Certificate then current. The foregoing shall not however, preclude the limit of indemnity and self-insured amounts be-

ing increased to the limits prescribed in this Policy on the assumption of a partner or partners on payment of the appropriate premium and completion of a new proposal form.

- (ii) In the event of any change in a Practice Unit during any period of insurance by reason of:-
- (a) The withdrawal from the partnership of a partner who remains in practice other than as a consultant.
 - (b) The assumption into a Practice Unit of, or the formation of a new Practice Unit or Units by any solicitor or solicitors who is/are at that time insured hereunder.

the limit or limits of indemnity and self-insured amount or amounts as from the date of the change or changes shall without adjustment of premium be held to be those which would have been applicable had the change or changes taken place immediately prior to the commencement of the period of insurance and a Certificate or Certificates to that effect issued; Provided always that where the new Practice Unit or Units comprise a sole practitioner the limit of indemnity until the next renewal date shall be £50,000.

7. TERMINATION

In addition to their right to terminate this Policy in terms of Clause 4 (e) hereof the Society shall be entitled to terminate this Policy on 31 October 1979 or on the expiry of any period of insurance thereafter on giving to the Leading Insurer not less than six months prior written notice of their intention to do so. The Insurers shall be entitled to terminate this Policy at any time on or after the said 31st October 1979 on giving to the Society not less than nine months prior written notice of their intention to do so.

8. Before taking out insurance under this Policy prior to 1st November 1978 or taking out or renewing cover on or after that date each practice Unit shall be bound to submit to the Brokers a proposal in terms of the form thereof attached hereto or in such other form as may from time to time be agreed between the Leading Insurer and the Society and that no later than 30 days before the insurance is required and to provide the Insurers with such other information as they may require.

9. CLAIMS

All claims and notices required to be given by the Insured under the terms of the Certificate attached hereto shall be notified to the Brokers who will in turn advise the Insurers.

- (a) A panel of solicitors to handle claims as required by the Leading Insurer shall be agreed between the Society and the Insurers.
- (b) The Brokers and the Insurers shall be under a duty of confidence to the Insured; and in particular neither the Brokers nor the Insurers shall disclose information which would enable the Society to identify any individual or Practice Unit without his or their consent.

10. FORMER SOLICITORS

In respect of former solicitors as described below (which expression in this Policy shall mean solicitors who have ceased to practise as principals in private practice, and their personal representatives) Certificates need not be issued and no premium shall be payable. A former solicitor who has at any time been insured hereunder or whose successors in business have at any time been insured hereunder shall be entitled to be indemnified by the Insurers in respect of any claim or claims made against him or her as if a Certificate in the terms attached hereto had been issued to him or her hereunder and as if there were specified in the Schedule to such Certificate (a) as the period of insurance the period during which this Policy shall be in force, and (b) as the limit of indemnity £75,000 for each and every claim if the former solicitor was practising alone immediately before he or she ceased so to practise, and in any other case the sum of £50,000 for each and every claim multiplied by the number of members in the partnership in which the former solicitor practised immediately before he or she ceased so to practise with an upper limit in respect of any partnership of £500,000.

11. CERTIFICATES

Authority is hereby given by the Insurers to the Brokers to issue on behalf of the Insurers Certificates in the form attached hereto.

12. EXTENSION OF COVER

For the payment of an additional premium to be determined by the Insurers the cover under any Certificate issued hereunder may be extended by endorsement.

13. TRANSITIONAL PROVISIONS

In the event of the cover and/or Limit of indemnity provided by an existing policy of a solicitor which will expire between 1st November 1978 and 31st January 1979 (hereinafter called the "Existing Policy") being less than that provided by this Policy this Policy (subject to the appropriate self-insured amount) shall (without payment of premium) apply to the risks in addition to and amount of indemnity in excess of the cover provided by the Existing Policy. Provided that no claim shall be payable under this clause unless the insurers of the Existing Policy are liable to pay the full amounts available under their policy or policies. For the purpose of this clause the expression "Existing Policy" shall mean not only the primary policy held by a member of the Society but also any excess layer policy or policies.

14. This Policy shall be governed and interpreted according to Scots Law.

2. Certificate of Insurance

This is to certify that in accordance with the authorisation granted to the Brokers (named in the Schedule hereto) under the Master Policy being Policy Number 947Y031750 of Sun Alliance and London Insurance Limited (the Leading Insurer) in consideration of the Premium specified in the Schedule insurance is granted by the Insurers (named in the Schedule annexed hereto) to the Insured in accordance with the terms and conditions contained in the Master Policy and on the following terms and conditions.

The Master Policy this Certificate the Schedule and any Memoranda thereon shall be considered one document and any word or expression to which a specific meaning has been attached in any of them shall bear such meaning throughout and where appropriate the singular shall include the plural and vice versa.

Interpretations

For the purposes of this Certificate.

1. Documents shall mean and include deeds wills agreements maps plans records books letters certificates forms tapes discs microfilm microfiche and documents of any nature whatsoever written printed prepared or reproduced by any other method (other than bearer bonds coupons bank notes currency notes and negotiable instruments).
2. Employee shall mean any person (including any apprentice) at any time employed by or who is a consultant to the Principal Insured or his predecessors in the Practice.
3. the Insured shall mean
 - (a) the Principal Insured.
 - (b) any other person who may during the Period of Insurance become a partner in the firm of the Principal Insured.
 - (c) any former partner of the Principal Insured or his predecessors.
 - (d) any Employee.
 - (e) in the event of the death of an Insured the personal representatives of such Insured.or any of them.
4. the Practice shall mean the business of practising as a solicitor undertaken by the Principal Insured or his predecessors in business while acting as a solicitor and business shall cover all manner of business carried on or transacted by the Principal Insured which is customarily (but not necessarily exclusively) carried on or transacted by Solicitors in Scotland.
5. Principal Insured shall mean the Principal Insured named in the Schedule or any of them.
6. Proposal shall mean any signed proposal form and declaration and any information supplied by or on behalf of the Principal Insured in addition thereto or in substitution therefor.

7. Self-Insured Amount shall mean the total amount payable by the Insured in respect of each and every claim made against the Insured for all damages and claimant's costs and expenses the appropriate amount being stated in the Schedule.

The Proposal

The Proposal shall be incorporated in and be the basis of the contract and the truth of the Proposal shall be a condition precedent to any liability of the Insurers subject to the provisions of special Condition 1 hereinafter contained.

Insurance

The Insurers will indemnify the Insured

1. against liability at law for damages and claimant's costs and expenses in respect of claims or alleged claims made against the Insured and notified to the Brokers during the period of Insurance specified in the Schedule by reason of any negligent act neglect error or omission on the part of

(a) the Insured or the predecessors in the Practice.

(b) any agent or correspondent of the Insured or of the predecessors in the Practice.

occurring or committed or alleged to have occurred or to have been committed in good faith in connection with the Practice.

2. against liability at law for loss or damages and claimant's costs and expenses in respect of claims or alleged claims made against the Insured and notified to the Brokers during the Period of Insurance by reason of any dishonest fraudulent criminal or malicious act or omission occurring or committed or alleged to have occurred or to have been committed in connection with the Practice on the part of the Insured.

Provided that

(a) no individual committing or condoning such act or omission shall be entitled to indemnity under Insurance 2.

(b) if the Insurers request it the Insured shall take all reasonable steps to recover the loss from the person committing or condoning such dishonest fraud-

ulent criminal or malicious act or omission or from the personal representatives of such person and the amount recovered (up to but not exceeding the amount paid by the Insurers) shall be paid to the Insurers.

3. against liability at law in respect of claims and claimant's costs and expenses made against the Insured or the predecessors in the Practice and notified to the Brokers during the Period of Insurance.

(a) by reason of any negligent act neglect error or omission committed by the Insured or the predecessors in the Practice while acting as an Executor Trustee Judicial Factor Curator or as a Director Secretary Treasurer or Auditor of any body (whether incorporated or unincorporated) or as a Liquidator or Receiver but only so far as.

(i) fees paid or which would have been payable are part of or would have formed part of the receipts of the Practice or taken into account in allocating the profits earned by the Principal Insured or.

(ii) if honorary the appointment is undertaken with the knowledge and approval of the Principal Insured.

(b) for failure or alleged failure in good faith to account to clients for monies had and received in connection with the Practice.

(c) for breach of warranty of authority committed or alleged to have been committed in connection with the Practice in the belief that appropriate authority was held.

(d) for breach committed or alleged to have been committed in connection with the Practice of any duty as described in the speech of Lord Morris reported in *Hedley Byrne and Co. Ltd. v. Heller and Partners Ltd.* 1964 A.C. 465.

4. against loss notified to the Brokers during the Period of Insurance and claimant's costs and expenses arising from honouring any personal undertaking or letter or obligation given in good faith by the Insured in the Insured's professional capacity in the Practice.

5. against liability at law for damages and claimant's costs and expenses in respect of claims made against the Insured and notified to the Brokers during the Period of Insurance for libel or slander committed or alleged to have been committed in good faith by reason of words written or

spoken by the Insured in the course of the Practice provided that the Self-Insured Amount shall not apply to such indemnity.

6. notwithstanding Exception 2 in the event of loss of or damage to Documents occurring in connection with the Practice and discovered during any Period of Insurance in respect of

(a) all sums which the Insured shall become legally liable to pay in consequence of such loss or damage and

(b) all costs and expenses reasonably incurred by the Insured in replacing or restoring such Documents Provided that

(i) such loss or damage is sustained while the Documents are either anywhere in transit or are in the custody of the Insured or of any person to whom the Insured has entrusted them in the course of the normal conduct of the Practice.

(ii) the amount of any claim for such costs and expenses shall be supported by bills and accounts which shall be subject to approval by a competent person to be nominated by the Insurers with the consent of the Insured.

(iii) the Insurers shall not be liable in respect of loss or damage caused by riot or civil commotion outside Scotland England and Wales the Channel Islands or the Isle of Man.

(iv) the Self-Insured Amount shall not apply to paragraph (b) above.

Limit of Indemnity

The liability of the Insurers for loss damages and claimant's costs and expenses arising out of any one claim shall not exceed the Limit of Indemnity specified in the Schedule. All claims made against the Insured and attributable to the same act neglect error or omission shall be regarded as one claim.

Other Costs

The Insurers will in addition to the Limit of Indemnity pay all other costs and expenses incurred with their written consent. Provided that the amount of damages and claimant's costs and expenses in respect of any one claim exceeds the Limit of Indemnity the liability of the

Insurers for such other costs and expenses shall be only that proportion which the Limit of Indemnity bears to the total amount of damages and claimant's costs and expenses payable to dispose of the claim.

Exceptions

The Insurers shall not be liable in respect of

1. the Self-Insured Amount except as provided under Insurance 5 and 6(b).
2. death bodily injury or damage to property unless arising out of advice given or negligent act or omission in connection with the Practice.
- 3.(a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from
 - (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
 - (ii) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- (b) loss destruction or damage directly occasioned by pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
4. the consequences of any circumstance notified under any insurance which was in force prior to the inception date of this Certificate.
5. claims made upon the Insured prior to the inception date of this Certificate.
6. any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power.

Partners' Previous Business

The Practice shall include any Solicitors' practice in which any of the persons described under (a) and (b) of the definition of the Insured in Interpretation 3 has been

previously engaged provided that such person is not entitled to an indemnity under any other insurance. Subject always to General Condition 6.

Special Conditions

- 1.(a) In the event of non-disclosure or misrepresentation at inception or at any subsequent renewal the Insurers will waive their rights to avoid this Certificate subject to the premium for the Certificate being adjusted to that which would have applied if the circumstances which gave rise to the right had been disclosed at inception or the appropriate renewal as the case may be.
- (b) The Insurers shall not avoid any claim on the grounds of the breach of any General Condition of this Certificate other than General Condition 5.

Provided that where the Insured's non-disclosure or misrepresentation at inception or renewal or breach or non-compliance with any condition of this Certificate has prejudiced the handling or settlement of any claim the amount payable in respect of such claim (including costs and expenses) shall be reduced to such sum as would have been payable in the absence of such prejudice.

2. In the event of any dispute or disagreement between the Insured and the Insurers (except for the matters referred to a Queen's Counsel in General Condition 3) as to the application meaning or effect of this insurance or any of the terms exclusions and conditions thereof or any endorsements made or to be made hereon the same shall be referred to the decision of an arbiter to be appointed failing agreement by the Dean of the Faculty of Advocates for the time being and the decision of such arbiter whether interim or final shall be binding on the parties. The terms of Section 3(1) of the Administration of Justice (Scotland) Act 1972 shall not apply to any such reference to arbitration.

General Conditions

1. The Insured shall give written notice to the Brokers (regardless of any Self-Insured Amount) as soon as possible after becoming aware of circumstances which might reasonably be expected to produce a claim irrespective of the Insured's views as to the validity of the claim or on receiving information of a claim for which there may be

liability under this Certificate. Any claim arising from such circumstances shall be deemed to have been made in the Period of Insurance in which such notice has been given.

2. Every letter claim writ summons and process shall be forwarded to the Brokers immediately on receipt. No admission offer promise payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Insurers who shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim or to pursue in the name of the Insured for their own benefit any right of relief and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.

3. The Insured shall give all such assistance as the Insurers may require but the Insured shall not be required to contest or pursue any legal proceedings unless a Queen's Counsel or similar authority (to be mutually agreed upon by the Insured and the Insurers) shall advise that such proceedings could be contested or pursued with the probability of success.

4. In connection with any claim against the Insured the Insurers may at any time pay to the Insured the Limit of Indemnity (after deduction of any sums already paid as damages or claimant's costs and expenses in respect of such claim) or any less amount for which such claim can be settled and thereupon the Insurers shall relinquish the control of such claim and be under no further liability in connection therewith except for costs and expenses for which the Insurers may be responsible under this Certificate in respect of matters prior to the date of such payment.

5. If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain benefit under this Certificate all benefit hereunder in respect of the individual or individuals committing or condoning the fraud shall be forfeited.

6. If at the time any claim arises under this Certificate there be any other insurance covering the same liability the Insurers shall not be liable except in respect of any excess beyond the amount which would have been payable under such other insurance.

C. Ontario

The Law Society of Upper Canada has operated a compulsory Master Policy scheme for lawyers since 1971. Each lawyer, whether practising on his or her own account or as an employee in private practice, is required to pay the insurance levy. The scheme is partially mutually funded, subject to a Stop Loss Agreement with the insurers. In its essentials, the Ontario compulsory scheme is representative of the type of indemnity insurance programs operating in most Canadian provinces.

The policy wording in force during 1977-79 is as follows.

1. Master Policy

DECLARATIONS

Item 1. Named Insured	The Law Society of Upper Canada
Item 2. Address	Osgoode Hall, Toronto, Ontario
Item 3. Policy Period	12.01 A.M. January 1, 1977 Eastern Standard Time 12.01 A.M. January 1, 1978 Eastern Standard Time
Item 4. Limit of Liability	\$100,000 per occurrence (including \$35,000 deductible as per Condition 2).
Item 5. Deductible	\$35,000 per occurrence made up of \$30,000 group deductible and \$5,000 individual member deductible and subject to the Stop Loss Agreement entered into concurrently herewith.
Item 6. Premium	Annual Policy Premium \$70 per lawyer. All necessary premium adjustments shall be calculated according to the Premium Schedule on file in the records of The Law Society of Upper Canada.
Item 7. Insured	Eligible members of the Law Society of Upper Canada, including Partnerships, will be covered under this policy for a limit of liability of \$100,000 provided the agreed

premium has been charged. The inclusion of more than one member or employee of a Partnership and/or the Partnership itself does not cumulate the limit of liability per occurrence nor operate in any other way to increase the limit of liability per occurrence. Cancellation of individual coverage or of this plan shall be in accordance with Clause 12 of this Group Policy.

The Insurers in consideration of the payment of the premium and in reliance upon the declarations, and subject to the limits of liability and all of the other terms of this policy, agree with the named insured, as follows:

INSURING AGREEMENTS

Coverage A -- Individual Coverage:

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of any act or omission of the Insured, or of any other person for whose acts or omissions the Insured is legally responsible, and arising out of the performance or intended performance of professional services for others, or failure to perform such services as ought to have been performed, in the Insured's capacity as a lawyer except that, if the Insured is a member of any partnership, this coverage (A) shall not apply if one or more claims arising out of the same professional service are made (1) jointly or severally against two or more members of the partnership or against any member of the partnership and the partnership, (2) against the partnership or (3) against the Insured solely because he is a member of the partnership.

Coverage B -- Partnership Coverage:

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of any act or omission of the Insured, or of any other person for whose acts or omissions the Insured is legally responsible, and arising out of the performance or intended performance of professional services for others, or failure to perform such services as ought to have been

performed, in the Insured's capacity as a lawyer provided one or more claims arising out of the same professional service are made (1) jointly or severally against two or more members of the partnership insured hereunder or against any member and such partnership, (2) against the partnership or (3) against the Insured solely because he is a member of the partnership insured hereunder.

Coverage C -- Defense, Settlement, Supplementary Payments: With respect to such insurance as is afforded by this Policy, the Insurers shall--

- (a) Defend any suit against the Insured alleging such act or omission and seeking damages which are or may be payable under the terms of this Policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the Insurers may make such investigation and, with the consent of the Insured, such settlement of any claim or suit as they deem expedient; if the Insured and Insurers fail to agree on whether settlement shall be made then such issue shall be decided by reference to an arbitrator appointed by the Claims Committee whose decision shall be binding on the Insurers and the Insured and Named Insured.
- (b) Pay, in addition to the applicable limit of liability:
 - (i) all costs taxed against the Insured in any suit defended by the Insurers and all interest on the amount of any judgment therein which accrues after entry of the judgment and before the Insurers have paid or tendered or deposited in Court that part of the judgment which does not exceed the limit of the Insurers' liability thereon; where the judgment exceeds the policy limit the Insurers will only be liable for their pro rata proportion of such cost and interest;
 - (ii) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy but without any obligation to apply for or furnish any such bonds;Subsections (a) and (b) of Coverage C above, are subject to the deductible.
- (c) Pay all reasonable expenses, other than loss of earnings, incurred by the Insured at the Insurers' request.

EXCLUSIONS

This Policy Does Not Apply:

- (a) to any dishonest, fraudulent, criminal or malicious act or omission of any Insured;
- (b) to any claim made by an employer who is not insured hereunder against an Insured who is a salaried employee of such employer. In the event of a claim covered by the policy being made by an employer who is an Insured hereunder against another Insured who is a salaried employee of such employer, this policy will indemnify the insured employee only to the extent of the employer's vicarious liability for the negligence of the insured employee and within the limits of this policy. This policy shall not indemnify the insured employee in respect of any claim by the insured employer for any alleged consequential damage to the goodwill or reputation of the employer;
- (c) to bodily injury to, or sickness, disease or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; unless arising out of the performance of professional services, which is covered hereunder;
- (d) with respect to acts or omissions committed prior to the policy period of the Insured on the effective date of this policy had knowledge that such acts or omissions might be expected to be the basis of a claim or suit.

DEFINITIONS

- A. "Named Insured" means The Law Society of Upper Canada
- B. "Insured" means
 - 1. with respect to Coverages A and C
 - (a) each lawyer who is a member of The Law Society of Upper Canada and is eligible for coverage under this Policy, and
 - (b) each judge, each former member of The Law Society of Upper Canada, and each lawyer exempted by the Benchers of The Law Society of Upper Canada from this Lawyers' Professional Liability Policy; provided that at the time such person became a judge or ceased to be a member or was exempted he was a member of The

Law Society of Upper Canada and would have been eligible within the Rules of The Law Society of Upper Canada for coverage under this Policy, and provided further that each such person shall be an Insured only with respect to acts or omissions committed prior to his becoming a judge or ceasing to be a member or being exempted, respectively.

2. with respect to Coverages B and C
 - (a) each partnership in which an Insured under Coverage A is or was a partner, and each partner and employed lawyer thereof;
 - (b) if two or more insured persons are or were held out to the public as partners, they shall be deemed to be partners whether or not the partnership in fact exists, or existed.
- C. "Claims Committee" means that committee as from time to time may be constituted between the Named Insured and the Insurers as provided for in the agreement entered into concurrently herewith.
- D. "Policy Period" means
 1. with respect to the Named Insured and each Insured as defined in Definition B (b) the period shown in item 3 of the Declarations of this Policy;
 2. with respect to each other insured, the period from the time when coverage has been effected through The Law Society of Upper Canada and for which a premium has been paid, until either the expiration date shown in Item 3 of the Declarations of this Group Policy, or until cancellation of coverage, whichever first occurs.
- E. "Occurrence" shall mean any error or alleged error or any omission or alleged omission by an Insured hereunder or by his/her partner and/or employee(s) in the performance of professional services for others; in the event that more than one error or omission is alleged to have occurred in relation to the same professional service then all such errors and omissions shall be deemed to be a single occurrence and the limit of liability in respect thereof shall be \$100,000 except in the event that one or more claims arising out of the same professional services are made jointly or severally against two

or more partnerships or sole practitioners then the limit of \$100,000 and the applicable deductible will apply separately to each partnership or sole practitioner.

- F. "Insurers" shall mean the following Insurance Companies each of them being liable for the coverage provided by this policy for its own part only according to the percentage indicated following its name and not one for the other:

General Security Insurance Company of Canada	29%
The Guarantee Company of North America	6%
La Paix General Insurance Company of Canada	15%
CNA Assurance Company	10%
Gibraltar General Insurance Company	30%
Northumberland General Insurance Company	5%
Victoria Insurance Company of Canada	5%

CONDITIONS

1. Limit of Liability

With respect to such insurance as is afforded under Coverage A or B, the limit of liability stated in the Declarations as applicable to "each occurrence" is the total limit of the Insurers' liability (including the deductible stated in the Declarations) for all damages arising out of all acts or omissions in connection with the same professional service.

2. Deductible

The Insurers' obligation to pay damages on behalf of the Insured applies only to damages in excess of the individual deductible amount stated in the Declarations as applicable to "each occurrence" and the Insurers shall be liable only for the difference between the individual deductible amount so stated and the limit of liability applicable to "each occurrence" subject to the following additional provisions:

- (1) The terms of the Policy, including those with respect to notice of claim or suit and the Insurers' right to investigate, negotiate and settle any claim or suit, apply irrespective of the application of the deductible amount.
- (2) When the Insured has consented to the settlement of any claim or suit, the Insurers shall pay any part or all of the deductible amount to effect settlement

of any claim or suit and, upon notification of the action taken, the Named Insured shall promptly place the Insurers in funds sufficient to satisfy the claim subject to the maximum group deductible of \$30,000 and shall arrange for prompt payment of the individual deductible of \$5,000, or so much thereof as shall be required to effect the settlement.

3. Coverage, Policy Period, Territory

This insurance applies to acts or omissions committed by an Insured in connection with his practice as a member of The Law Society of Upper Canada provided the original claim or suit for damages is brought during the policy period; provided further that if during the policy period the Insured shall become aware of any happening which may subsequently give rise to a claim and shall, during the policy period, give notice in accordance with Condition 5, any claim or suit subsequently brought against the Insured arising out of that happening shall be deemed for the purpose of this insurance to have been made during the policy period. Upon the expiration of the policy period, this policy shall be free of all claims other than those mentioned above in this paragraph. If the policy period stated in the Declarations is subsequently extended, this Condition shall not apply separately to each such extended period, except that this shall not operate to increase the Limit of Liability applicable to any occurrence.

4. Fiduciary

When the Insured acts as an administrator, executor, guardian, trustee, or in any similar fiduciary capacity, his acts and omissions in such capacity shall be covered (a) only to the extent that such acts or omissions are those for which he is legally responsible in the usual solicitor-client relationship, and shall be (b) subject to all Exclusions and other Conditions of this policy.

5. Notice of Claim or Suit

The Insured as soon as practicable after learning of a happening which may give rise to a claim hereunder shall give notice or cause notice to be given to:

F.C. Maltman & Co. Ltd.
P.O. Box 5, Postal Station Q
TORONTO, Ontario
M4T 2L8

(hereinafter referred to as "the Adjuster" for The Society and Insurers). The Insured shall furnish promptly thereafter to the Adjuster all information on the subject which is in or comes to the insured's possession or knowledge.

If the claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Adjuster every demand, notice, summons or other process received by the Insured or by his representative.

6. Assistance and Co-operation of the Insured

The Insured shall cooperate with the Insurers and, upon the Insurers' request assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization other than an employee or any Insured who may be liable to the Insured because of acts or omissions with respect to whom insurance is afforded under this policy, and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.

7. Action Against Insurers

- (a) No action by the Insured shall lie against the Insurers unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurers. Neither the Named Insured nor Insured shall have any right under this policy to join the Insurers as a party to any action against the Insured to determine the Insurers' liability.
- (b) No action by the Named Insured shall lie against the Insurers unless, as a condition precedent thereto, the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurers.

8. Other Insurance

If the Insured has other insurance against a loss covered by this Policy, except insurance specifically arranged to apply as excess over the insurance provided by this Policy, the insurance hereunder shall apply only as excess insurance over any other valid and collectible insurance and shall not be called upon in contribution.

9. Subrogation

In case of payment of loss by the Insurers hereunder, the Insurers shall be subrogated to the Insured's right of recovery against any other person for such loss and the Insured shall execute all papers required and shall co-operate with the Insurers to secure such rights. The Insured shall do nothing after loss to prejudice such rights. In the event that the Insured has been required to pay part of any settlement or judgement in respect of which the Insurers have paid and the net amount recovered pursuant to the Insurers' subrogated right, after deducting the cost of recovery, is not sufficient to provide a complete indemnity for both Insurers and Insured, that amount shall be divided between the Insurers and the Insured in the proportions in which the cost of settlement or of satisfying a judgment has been borne by them respectively. The Insurers shall not by way of subrogation to the rights of an Insured, seek to recover from another Insured, except to the extent that the Insurers have been prejudiced by the failure of such other Insured to comply with the terms of this policy.

10. Changes

Notice to the Broker or knowledge possessed by any agent or by any other person shall not effect a waiver nor a change in any part of this Policy, nor estop the Insurers from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed except by an endorsement issued to form a part of this Policy, signed by a duly authorized representative of the Insurers and accepted by the Named Insured.

11. Assignment

The interest hereunder of any Insured is not assignable. If the Insured shall die, be adjudged incapable of managing his affairs or become bankrupt or insolvent, this policy shall cover the Insured's legal representative as an Insured with respect to acts or omissions covered by this

policy. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Insurers of any of their obligations hereunder.

12. Cancellation

Group Policy--

This Group Policy may be cancelled by the Named Insured or by the Insurers by giving not less than one hundred and eighty (180) days notice in writing the one to the other. Such notice may be delivered or sent by registered mail to the registered office of the Named Insured at Osgoode Hall, Toronto, or the Gestas Corporation, in its capacity as manager, at Suite 530, 410 St. Nicholas Street, Montreal as may be required. The effective date of cancellation stated in the notice shall become the end of the policy period.

If the Named Insured or the Insurers cancel, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

Upon such cancellation, all coverage under this Policy and all coverage afforded to any and all Insureds shall terminate concurrently with the termination of coverage under this Group Policy except as provided under the first paragraph of Condition 3. In the event of such cancellation the Named Insured shall advise its members.

Individual Insureds--

Individual coverage provided under this Policy may be terminated by the Insurers only on agreement from the Benchers of The Law Society of Upper Canada by mailing to the Insured fifteen (15) days notice of termination by registered mail or giving five (5) days written notice personally delivered. The fifteen (15) days mentioned above commences to run on the day following the mailing of the registered letter. No return of premium will be made.

13. Compromise

The Named Insured and Insurers shall not compromise any claim nor settle any suit without the consent of the Insured. If the Insured shall refuse to consent to any settlement recommended by the Named Insured and Insurers

and shall elect to contest or continue legal proceedings in connection with such claim, the amount payable under this policy for such claim shall not exceed the amount for which such claim could have been so settled plus the costs and expenses incurred with the Claims Committee's consent up to the date of such refusal, all subject always to the deductible, limits and limitations of this policy.

2. Stop Loss and Management Agreement

BETWEEN: The Law Society of Upper Canada (hereinafter called the "Society") of the first part.

AND: Gestas Corporation Ltd. (hereinafter called the "Manager") in its capacity as Manager for Insurers, as listed below, of the second part:-

General Security Insurance Company of Canada
The Guarantee Company of North America
La Paix General Insurance Company of Canada
CNA Assurance Company
Gibraltar General Insurance Company
Northumberland General Insurance Company
Victoria Insurance Company of Canada

WHEREAS the Manager has agreed to issue on behalf of Insurers Policy No. RP 601369 of Group Professional Liability Insurance to the Society on behalf of its eligible members;

AND WHEREAS the Manager has agreed to administer the handling and payment of damages under the said Policy, notwithstanding the deductible shown therein;

AND WHEREAS the Society has agreed to place the Manager in funds up to the limits and on the conditions herein contained;

AND WHEREAS it is the intent of this agreement that the group deductible for which the Society is responsible shall not exceed the amounts hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH:

1. The Society and the Manager mutually agree -
 - (a) To establish a Claims Committee comprised of a representative of the Society, a representative

- of the Manager, and an arbitrator as required, and;
- (b) To establish rules of procedure and conduct as may be necessary for the operation of the Claims Committee.

No payment of damages or expenses shall be made for any occurrence irrespective of the application of any deductible, unless such payment has been approved by the Committee.

2. The Society Agrees -

- (a) To place the Manager in funds to pay all damages which the Manager is required to pay under the Policy, provided, however that:
 - (i) Such funds do not exceed \$35,000 per occurrence made up of \$30,000 Group Deductible and \$5,000 individual member deductible.
 - (ii) The Society's aggregate payments shall not exceed \$2,000,000 or the sum of \$225 times the number of lawyers eligible for coverage as at January 1, 1977 (whichever is the larger amount) for all damages and defence expenses for all occurrences reported during the policy period January 1, 1977 to January 1, 1978, calculated exclusive of individual Insureds' deductibles.
- (b) In any succeeding year the Society's aggregate payments shall not exceed the sum of \$225 times the number of lawyers eligible at the beginning of each such year, calculated exclusive of individual Insureds' deductibles.
- (c) To provide an Adjuster at the expense of the Society who shall investigate on behalf of the Manager and the Society all reported occurrences, and who shall adjust all claims for damages regardless of amount, and obtain at the direction of the Manager, all necessary releases with respect to settlements made.

The Manager has the right to employ at its own expense such other adjusting assistance as it deems necessary. If the Claims Committee obtains expert assistance in addition to the Society's Adjuster, the expense of such additional assistance shall be borne by the Society

- and be included in calculating the limit of its liability as set forth in Clauses 2(a)(ii) and 2(b).
- (d) To pay all counselling expenses necessarily incurred by the Adjuster in carrying out his responsibilities.
 - (e) If the aggregate paid to the Manager as respects occurrences reported during any period stated in 2(a)(ii) and 2(b) above reaches the aggregate amount applicable to such period, to arrange for payment by the Insured to pay all damages and defence expenses which the Manager is required to pay by Coverages A and B of the policy not exceeding the sum of \$5,000 for each further occurrence.
 - (f) In the event of cancellation of the policy during any annual period, Clauses 2(a)(ii) and 2(b) shall apply pro rata.
3. The Manager Agrees -
- (a) To issue its cheque in payment of damages or defence costs in accordance with the terms of the Policy and this Agreement.
 - (b) That the termination of the policy or of the coverage of any Insured does not terminate this Agreement either in whole or in part.
 - (c) That it shall from time to time after January 1, 1977 advise the Society, promptly through its Broker of any changes in the Schedule of subscribing Insurers.
 - (d) That no change in the Schedule of Insurers or their percentages shall modify the terms or conditions of the policy.

D. Victorian Legal Advice Centres

In late 1979 the Law Institute of Victoria negotiated a group scheme for voluntary legal advice centres in Melbourne. The scheme requires adoption by at least ten centres before it can commence. The Commission was advised in December 1979 that this target was expected to be achieved.

The wording of the proposed group policy is as follows.

Policy

Whereas the Assured, as stated in the Schedule, has made to Underwriters a written Proposal/Declaration bearing the date stated in the Schedule containing particulars and statements which it is hereby agreed are the basis of this Policy and are to be considered as incorporated herein, and have paid the premium stated in the Schedule.

Now, We, the Insurers, to the extent and in the manner hereinafter provided, hereby agree to indemnify the Assured against all sums which the Assured shall become legally liable to pay as damages as a result of a claim or claims made against the Assured during the period specified in the Policy arising out of any negligent act error or omission on the part of the Assured or any employee or other person working under the control, direction or supervision of the Assured in or about the conduct of the Assured's occupation as a legal advice centre.

Insurers hereby agree to pay all costs and expenses (including claims handling expenses) incurred in connection with any claim which falls to be dealt with under this Policy provided that Insurers' total aggregate liability under this Policy for all damages and/or costs and/or expenses (including claims handling expenses) shall not exceed in all the limit of Indemnity specified in the Schedule, notwithstanding the number of claims made. The excess is as specified in the Schedule of the Master Policy and this amount shall be borne jointly by all Assureds insured under the Master Policy at their own risk and Insurers' liability shall only be excess of this amount. Where the excess is shown in the Schedule to be inclusive of costs and expenses it is specifically understood and agreed that all claims and/or complaints and/or threats of action and/or circumstances which may give rise to claims against them shall be reported to and controlled by Law Claims on behalf of Insurers, or no such indemnity shall be afforded by this Policy in respect of such claims, threats of action or circumstances.

EXCLUSIONS

Insurers shall not be liable for:-

- (i) any claim made upon the Assured for work carried out by the Assured for and in the name of any other firm(s) or other association formed of which the Assured form part for the purpose of undertaking any

- joint venture or joint ventures unless Insurers' agreement has been first obtained and an endorsement made upon this Policy;
- (ii) any claim directly or indirectly arising from the use by the Assured or by any person or persons employed by the Assured of any aircraft, vessel, automobile or any other vehicle, or mechanically propelled machinery;
 - (iii) any claim
 - (a) by any person for bodily injury, sickness, disease or death, incurred, contracted or occurring whilst under a contract of service or apprenticeship with the Assured, or
 - (b) for any breach of any obligation owed by the Assured as an employer to any employee;
 - (iv) any claim or claims where the initial action and all subsequent actions and/or litigations are not brought in the Courts of and subject to the laws of the Commonwealth of Australia;
 - (v) any claims arising out of any defect in or use of any buildings, premises or land owned, leased or occupied by the Assured;
 - (vi) any claim arising out of a specific liability assumed by the Assured under contract which goes beyond the duty to use such skill and care as is usual in the exercise of their profession or occupation;
 - (vii) any claim directly or indirectly caused, or contributed to, by any dishonest, fraudulent or criminal act of the Assured;
 - (viii) any claim in respect of which the Assured are entitled to indemnity under any other insurance except in respect of any excess beyond the amount which would have been payable under such insurance had this Policy not been effected;
 - (ix) any claim arising out of any circumstance(s) or occurrence(s) which has been notified under any other Policy or Certificate of Insurance attaching prior to the inception of this Policy;
 - (x) any claim directly or indirectly caused by, or contributed to by, or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or from war, invasion, acts of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by, or under the order of, any government or public or local authority.

CONDITIONS

1. The Assured shall as a condition precedent to their right to be indemnified under this Policy give to the Insurers immediate notice in writing -
 - (a) of any claim made against them
 - (b) of the receipt of notice from any person of or an intention to make a claim against them.
2. The Assured shall give to Law Claims on behalf of Insurers immediate notice in writing of any circumstance, of which they shall become aware during the subsistence hereof, likely to give rise to a claim against them. Such notice having been given, any claim, to which that circumstance has given rise, which is made after the expiration of the period specified in the Schedule shall be deemed for the purpose of this Policy to have been made during the subsistence hereof.
3. After notice to Insurers has been given through Law Claims of a claim or of circumstances likely to give rise to a claim the Assured shall not disclose to any person without the written consent of Law Claims on behalf of Insurers, the nature or terms of this Policy and no liability shall be admitted or costs or expenses incurred and no admission, arrangement, offer, promise or payment shall be made by the Assured without the written consent of the Insurers who shall be entitled at their own choice to take control of the defence of any claim or to prosecute in the name of the Assured for their own benefit any claim for indemnity or damage or otherwise against any third party and shall have full discretion in the conduct of any negotiations or proceedings on the settlement of any claim.

Nevertheless, the Underwriters shall not exercise their subrogated rights of recovery against any person who has been or may be under a contract of service or apprenticeship with the Assured unless the payment giving rise to such right has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act of such person.

4. In the event of any claim, complaint or threat of action being made against the Assured which, in the opinion of the Insurers should be compromised or otherwise settled on the most advantageous terms but which claim, complaint or threat of action the Assured insists on defending or resisting, the Insur-

ers shall not be liable for any damages, costs and/or expenses incurred from the date of such refusal to compromise as a result of such insistence on the part of the Assured.

5. It is hereby understood and agreed that notwithstanding any monetary excess contained in the Policy, all claims, complaints or threat of action must be notified to Insurers and handled and controlled by Insurers, or no indemnity shall be afforded by this Policy in respect of such claims or threats of action.
6. In the event of Insurers being at any time entitled to avoid this Policy ab initio by reason of the inaccuracy or omission of any material information given or which ought to have been given by the Assured, Insurers may at their election instead of voiding this Policy ab initio give notice in writing to the Assured that they regard this Policy as of full force and effect save that there shall be excluded from the indemnity afforded hereunder any claim which has arisen or which may arise and which is related to circumstances which ought to have been disclosed but which were not disclosed to Insurers. This Policy shall then continue in full force and effect but shall be deemed to exclude as if the same had been specifically endorsed ab initio the particular claim or possible claim referred to in the said notice.
7. It is a condition precedent to liability hereunder that the Assured will not effect insurance for any sum in excess of the Indemnity provided by this Policy without the prior consent of Insurers hereon.
8. Notwithstanding anything contained to the contrary, Insurers agree that -
 - (a) In the event of a dispute arising under this insurance, the Insurers at the request of the Assured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
 - (b) Any summons notice or process to be served upon the Insurers may be served upon Phillips, Fox and Masel, Solicitors, of Melbourne, who have authority to accept service and to enter an appearance on Insurers' behalf, and who are directed at the request of the Assured to give a written undertaking to the Assured that they will enter an appearance on Insurers' behalf.

- (c) If suit is instituted against any one of the Insurers, all Insurers will abide by the final decision of any competent Court or any competent appellate Court in the Commonwealth of Australia.

Part 2

Statistical Information on Selected Schemes

List of Tables in this Part

A. New South Wales

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A. New South Wales

INTRODUCTION TO THE TABLES

A voluntary scheme for solicitors has been operated by the Law Society of New South Wales since 1968, with Baillieu Bowring (Professional Indemnity) Pty. Ltd. acting as brokers. We have been informed by the broker that some 400 firms joined the scheme at its inception. Since about 1972, participation in the scheme has remained fairly constant at about 850-950 firms, which in 1979 encompassed approximately 50% of New South Wales solicitors.

During the period 1968-76, the scheme was underwritten by the National and General Insurance Co. Ltd. In 1976 National and General Insurance indicated to the Law Society that claims incurred under the scheme in 1975 and 1976 would necessitate a considerable increase in premiums for the 1976-77 year. Other quotations for the voluntary scheme were obtained, and on the recommendation of the Law Society's brokers, Sphere Insurance Co. Ltd. was appointed as underwriter of the scheme for 1976-77. When Sphere Insurance withdrew from the scheme in 1977, a continuation of the scheme was arranged with a consortium of insurers through G.E. Brown Underwriting Agencies Pty. Ltd. This consortium continues to underwrite the scheme at the present time. The current voluntary scheme policy appears as Appendix I in our Discussion Paper, Professional Indemnity Insurance.

This section contains ten tables which illustrate claims experience under the voluntary scheme. They have been compiled from information supplied by the Law Society of New South Wales and the brokers to the scheme, Baillieu Bowring (Professional Indemnity) Pty. Ltd. The following summaries give a brief outline of the Tables.

Table A.1: Schedule of Claims

This Table shows the position, as at 31st December 1978, of every claim made under the voluntary scheme from its inception in 1968 to 1st October, 1977. Details of claims made after 1st October, 1977 have been supplied to the Commission on a confidential basis only and are not included in this Table. The Table is divided into the insurance periods for which compilations of statistics have been prepared by the insurers. Next to each claim is shown the actual payment made or the 'reserve' fixed above the deductible payable by the insured. A 'reserve' is a tentative estimate by the insurers of the payment which may be needed to finalize the claim. Where no reserve is shown,

the claim had been finalized. Where no payment or reserve is shown, the claim had been finalized without any payment being made. In some instances, part-payment had been made but the claim was not yet finalized; accordingly, the payment and the remaining reserve appear in the Table. The descriptions of the type of matter giving rise to each claim are as provided by the insurers, although in some cases minor changes have been made to clarify the description given.

Tables A.2-A.5: Size of Claims

These tables look at the claims made during the period 1968-76 and sub-divide the claims according to the size of payment or reserve at the end of each of four successive years. Tables A.2 and A.3 concern finalized claims and show, respectively, the number and percentage of such claims on which payments of various sizes had been made from the commencement of the scheme to the specified dates. Tables A.4 and A.5 give similar information but relate to the combined total of the payment (if any) and the outstanding reserve in relation to each unfinalized claim.

Table A.4 shows that this type of insurance has a "long tail", that is the claims tend to take a long time to finalize. At December 1978, 13.9% of claims made between 1968 and 1976 remained unfinalized.

The tables show that the great majority of finalized claims result in a relatively small payment; for example, 88.1% of claims finalized by 31st December 1978 resulted in payment of less than \$1,000 each. They also show that the larger claims tend to take longer to finalize; for example, of the claims made prior to 1977, 7.6% of those unfinalized at 31st December 1976 had reserves of \$50,000 or more but for those unfinalized at 31st December 1978, the corresponding percentage had risen to 19.1%.

Tables A.6 and A.7: Type of Claim

These tables group the 1968-1976 claims according to the type of matter giving rise to the claim and the size of the claim. They show that conveyancing and failure to observe limitation periods for litigation were the most common sources of all claims and of the larger claims. It is not yet possible to estimate the impact of the Notice of Action and Other Privileges Abolition Act 1977 (N.S.W.) on the number of claims arising from missed limitation periods.

Table A.8: Total Payments and Reserves

This table shows the total payments and reserves, as at several specified dates, for the claims made during each of several periods. These periods are those into which the insurers grouped the statistics before providing them to us.

The table indicates the "long tail" of insurance; for example, as at 31st December 1978 there remained total reserves of \$194,312 on unfinalized claims which were made between 1971 and 1974. An indication of the increasing size of indemnity insurance claims in recent years can be obtained from the table.

Table A.9: Re-assessment of Reserves

This table looks at the sixty-three claims which were made during the period 1968-76 but had not been finalized by 31st December 1978. It shows the reserves placed on them at the end of each of three successive years. In some instances, claims which were originally thought likely to give rise to only a small payment have been re-assessed as likely to require a larger payment. In other cases the re-assessment has led to the opposite conclusion. The table shows that the increases have outnumbered the decreases. For example, whereas at the end of 1976 there were 23 claims (out of the total of 63) on which the payment (if any) and reserve was less than \$1,000, by the end of 1978 only 14 of the claims were in this category.

Table A.10: Increase in Size of Payments

This table compares the amounts paid on claims made between 1971 and 1974 with those on claims made between 1974 and 1976. These two periods are not of equal length because a change of insurer occurred before completion of the 1974-77 claims period. In any event, 1976 is the latest year for which statistics are available to show the position two years after the end of the claims period. The comparison in this table has been made between the total payments at the 31st December, two years after the end of the respective periods in which the claims were made.

The table shows that the number of claims, the average payment per claim and the total payment on claims was substantially higher in the later of the two periods. In approximate terms, the number of claims was twice as high, the average payment more than twice as high and the total payment more than five times as high. These increases are despite the fact that the earlier period was three years and the later period only two years. Of course, it is also necessary to allow for the effects of inflation.

TABLE A.1

Claims Made Under Law Society of New South Wales
Voluntary Scheme (as at 31st December 1978)

1. 1st July 1968 — 1st October 1971

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (£)	<u>Reserve</u> (£)
1	Allegations of conflicting representations.	25.00	
2	Advice on assignment of rights under an Estate.	336.45	
3	Action by insured contrary to clients wishes - conveyancing.		
4	Time barred compulsory third party claim.	4,604.80	
5	Failure to register mortgage.		
6	Currency fraud.	2,876.20	
7	Conveyancing.		
8	Failure to secure an easement - conveyancing.		
9	Unregistered mortgage.	7,584.85	
10	Allegations that insured failed to detect vendor's misrepresentation - conveyancing.	57.00	
11	Time barred Workers Compensation claim.	40.00	
12	Wrongfully refunded deposit - conveyancing.	327.00	
13	Failure to observe time limit - workers compensation	1,802.25	
14	Incorrect zoning - conveyancing.	1,644.75	
15	Failure to lodge land ballot.		
16	Failure to obtain right of way - conveyancing.	164.00	
17	Various allegations regarding estates & mortgages	20.00	
18	Failure to register lease.	2,710.50	
19	Failure to keep trace of sole witness.		
20	Alleged mishandling of court action on a lease.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (\$)	<u>Reserve</u> (\$)
21	Failure to insert time limit in conveyancing contract.	341.00	
22	Incorrect account of conveyancing money.		
23	Error in interest on loan documents.	30.00	
24	Loss due to rescinding conveyancing contract.	92.00	
25	Allegation of failure to register mortgage.	133.00	
26	Libel action.		
27	Libel action.		
28	Libel action.		
29	Error in remuneration shown on share farming agreement.		
30	Allegations of misconduct in a court action		
31	Failure to search "Trademark Register" correctly.	16,463.80	
32	Reclamation of land for road making not disclosed in conveyancing matter.	33.00	
33	Conveyancing - cause of not disclosed.		
34	Conveyancing - mortgagee's settlement not completed in full.		
35	Conveyancing - failure to incorporate covenant.	27.00	
36	Conveyancing failure to observe right of way.	8,476.32	
37	Time barred compulsory third party action.	400.00	
38	Allegations regarding security for bank guarantee.	71.50	
39	Inadequate advice on capital improvement to a leased property.	6,994.62	
40	Conveyancing - contravention of zoning.		
41	Share transaction.		
42	Insured signed lease in agency for client. No authority.	85.00	
43	Alleges failure to advise the plaintiff of option.	3,146.60	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
44	Out of time appeal on taxation assessment.		
45	Conveyancing questionable recission of contract.	151.00	
46	Failure to execute property damage recovery.		
47	Erroneous addressing of a letter.		
48	Inadequate advice on notice to vacate on a lease.	61.80	
49	Failure to institute proceedings within time limit.		
50	Failure to include right of way in a conveyancing contract.	30.00	
51	Conveyancing - encroachment on adjoining property.		
52	Failure to secure recovery against shipping company for damage to cargo.	20.00	
53	Failure to ensure security on a loan.	19,869.89	
54	Loss of right of appeal to High Court.	116.20	
55	Failure to submit claim to proper Court.	60.00	
56	Failure to institute proceedings within time limit.		
57	2 Separate notifications. (1) Claim against nominal defendant out of time. (2) Dispute arising from winding up of an estate.		
58	Failure to observe time limit.		
59	Local Council not notified of sale of property.		
60	Failure to institute proceedings.	191.60	
61	Conveyancing - zoning incorrect.		
62	Failure to institute common law proceedings.		
63	Inadequate advice on Money Lenders Act.	45.00	
64	Legal consultation on all claims.	60.00	

2. 1st October 1971 — 1st October 1974

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
201	Fraudulent transfer of title - conveyancing.	506.00	5,000.00
202	Defamation.		
203	Faulty release accepted by purchaser of a property with building defects		
204	Failure to institute proceed- ing under Testators Family Maintenance Act.		
205	Failure to observe time limit against nominal defendant.	12.00	
206	Allegation of improper conduct.		
207	Allegation on mishandling of estate.		
208	Error in distribution of shares in a company.		
209	Rescission of a conveyancing contract.		
210	Incorrect property dimen- sions on conveyancing contract.		
211	Allegations regarding pre- servation of plaintiff's rights in a conveyancing matter.	7,560.40	
212	Conveyancing - s.342 AS Certificate obtained after sale showed building not to be residential premises.		
213	Conveyancing - encroachment of buildings on adjoining land.		
214	Omission handling an estate.		
215	Conveyancing - incorrect zoning.	725.00	
216	Failure to lodge answer to divorce petition.		
217	Defamation.		
218	Professional negligence in loan dealings.		
219	Time barred action.	175.00	
220	Error in lease - conveyanc- ing.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
221	Conveyancing - failure to secure easement.	80.00	
222	Failure to lodge declaration in compulsory third party action.		
223	Time barred action against nominal defendant.		
224	Time barred action against employer.		
225	Inadequate advice on loan security.		
226	Inadequate advice on lease option.		
227	Misdescription of land on title deeds.		
228	Time barred compulsory third party action.		
229	Inadequate advice - conveyancing.	8,139.90	
301	Inadequate advice in a partnership agreement.	3,407.71	
302	Time barred Workers Compensation action.		
303	Conveyancing - zoning error.		
304	Conveyancing - deprived purchaser of part of the intended purchase.	2,565.20	
305	Conveyancing - content of Water Board certificate was not made known to the purchaser.	105.00	
306	Inadequate advice on liability of trustees.	4,263.05	55,000.00
307	Insured unable to register mortgage due to caveats on the property.		
308	Related to claim 307.		
309	Bank cheque misdirected.		
310	Failure to lodge declaration within time limit - compulsory third party claim.	18,302.40	
311	Alleged negligence in conveyancing matter.		
312	Conveyancing - failed to discover that property affected by town planning restriction.	75.00	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
313	Failure to exchange conveyancing contract within a specified time.		
314	Loss of share rights in administration of an estate.		
315	Delay resulting in rescission of agreement to sell a property - conveyancing.	266.00	
316	Inadequate advice to purchasers.		
317	Mishandling of an estate.		
318	Failure to observe time limit requirement on conveyancing contract.	28,008.80	
319	Allegations regarding failure of insured to render adequate professional service.	40.00	
320	Failure to draw up lease to include rental review.		
321	Inadequate advice on gift duties.	2,603.60	
322	Failure to advise purchaser of proposed freeway rear of property - conveyancing.	11,232.82	
323	Failure to observe time limit - Workers Compensation.	87.07	
324	Conveyancing - clients wishes not carried out resulting loss of favourable terms of purchase.	102.00	
325	Defect in mortgage document.		
326	Conveyancing - actions of insured caused deposit to be forfeited.	9,721.56	
327	Conveyancing - change in contract not agreed by vendors.		
328	Title search not shown to client. Incorrect property - conveyancing.		
329	Insured failed to obtain caveat on property to protect divorcee's interest, property sold contrary to court order.	285.00	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
330	Failure to inform municipal authority of transfer of title; land sold to recover rates - conveyancing.	252.10	
331	Failure to secure renewal of lease.		
332	Inadequate loan documents.	2,199.50	
333	Failure to secure adequate assignment of trade name.		
334	Faulty bill of sale.		
335	Time barred Workers Compensation action.		
336	Inadequate title to land - conveyancing.		
337	Failure to advise council of change land ownership, land sold for back rates.	713.40	
338	Time barred compulsory third party action.	27,249.12	
339	Personal injury claim - summons not issued within time limit.		
401	Conveyancing contract not properly drawn.		
402	Inadequate lease.		
403	Delay in conveyancing transaction resulted in increased price.	353.05	
404	Failure to meet time limit for estate duty objection.	192.00	
405	Inadequate loan security.	160,371.00	
406	Conveyancing - land dimensions incorrect.	11,508.10	
407	Conveyancing - alleged impropriety over land sale.		
408	Conveyancing - attempted rescission of contract.		
409	Alleged failure to render adequate advice.	88.58	
410	Alleged failure to lodge objection to an assessment for income tax.	95.00	
411	Time barred personal injury claim.	320.50	50,000.00
412	Conveyancing - town planning restriction.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
413	Failed to file appeal in prescribed time.		
414	Conveyancing - allegations over rescission of contract.		
415	Conveyancing - alleged failure to exercise option.		
416	Conveyancing - failure to secure renewal of lease.		
417	Conveyancing - land dimension incorrect.		
418	Conveyancing - failure to disclose to purchaser lack of legal access to property.	2,815.00	
419	Conveyancing - complications contract terminated.	871.00	2,000.00
420	Problem over title of land purchased.		
421	Personal injury claim statute barred.		
422	Alleged agreement to purchase interest in company void - Insured unable to stamp the agreement and transfers.	65,366.70	
423	Failed to advise purchaser of proposed expressway.		
424	Bank cheque lost.		
425	Various allegations from client over improper security for invested monies.	1,122.90	
426	Alleged failure to convert suburban holding to freehold title.	11,390.30	
427	Alleged delay resulting in rescission of contract.		
428	Alleged failure to act in accordance with instructions.		
429	Personal injury claim Statute barred.	60.00	
430	Purported rescission of contract - information used incorrect.	270.95	
431	Funds advanced by clients not used for purpose specified.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
432	Alleged interference led to termination of certain orders.	1,096.10	
433	Assignment of lease, consent of mortgagee not obtained.		
434	Signature on contract of sale forgery.		
435	Alleged inadequate advice to purchasers.		
436	Conflict of instructions contract not terminated.		
437	Failure to plead time limit, Workers Compensation action.		
438	Insufficient detail on formal notice of claim, Workers Compensation action.	299.00	
439	Workers Compensation action commenced possibly against wrong defendant.		
440	Possible defect in mortgage document.	17,761.40	
441	Time barred Workers Compensation claim.	407.00	5,000.00
442	Alleged negligence in conveyancing matter.	1,905.15	
443	Conveyancing - zoning incorrect.	125.00	
444	Conveyancing default by purchaser.	195.20	
445	Various allegations - conveyancing.	385.00	
446	Consent of mortgagee not obtained for a lease.		
447	Alleged delay in handling an estate leading to loss of revenue.	61.38	
448	Conveyancing unsecured loan.		
449	Related to claim 448.	15,532.79	10.00
450	Title to property not obtained in period required.		
451	Alleged libel.		
452	Alleged inadequate advice to purchasers.		
453	Lease not lodged for registration.	1,293.95	
454	No details disclosed.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
455	Conveyancing - cause not disclosed.	49,435.70	77,302.00
456	Forged transfer witnessed by insured.	25.12	
457	Conveyancing alleged failure to protect purchasers interest.		
458	Non-payment of account.	171.80	

3. 1st October 1974 — 1st October 1976

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
501	Conveyancing - finance arranged not used by mortgagor for purpose stipulated.	257.25	
502	Alleged failure to act on instructions during divorce proceedings.		
503	Conflict over costs.		
504	Conveyancing - allegations over rescission of a contract.		
505	Conveyancing - cause not disclosed.		
506	Conveyancing allegations leading to rescission of contract of sale.	1,387.85	15,000.00
507	Allegations on mishandling of estate.		
508	Deficiency in trust account.		
509	Conveyancing - failure to notify client of easement.	66.60	
510	Conveyancing - failure to obtain correct Water Board diagram.		
511	Advance on mortgage - alleged failure to check on forged valuation.		
512	Alleged failure to ensure insurance cover on purchase of property.	7,253.70	
513	Lease never executed - specific performance proceedings for option to purchase.	747.30	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
514	Conduct of District Court action - no details supplied.	575.00	
515	No details supplied.		
516	Two leases not registered - subsequently rectified.		
517	Common law action for Workers' Compensation case not commenced within statutory time limit.		
518	Conveyancing - alleged failure to account for cheque on day of settlement.	110.00	
519	Statement of Claim issued out of time without an extension of time under the Relatives Act.	133.00	
520	Conveyancing - allegations that contracts exchanged without authority.		
521	Advance of monies on inadequate securities.	54,409.20	
522	Failure to act on third party motor vehicle claim within the statutory time limit.		
523	Failure to act on personal injury claim - statute barred.	2,806.50	15,000.00
524	Failure to institute proceedings for Workers' Compensation case within the statutory time limit.	834.00	10,000.00
525	Defective deed - proceedings instituted for rectification.	30,385.70	
526	Divorce case - alleged negligence in handling of proceedings.		
527	Workers' Compensation case - statute barred.		
528	Workers' Compensation claim - statute barred.	1,065.00	5,000.00
529	Workers' Compensation claim - statute barred.	97.50	
530	Conveyancing - property resold by purchasers.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
531	Conveyancing - failure to notify client of the resumption of a section of land.	3,827.25	26,000.00
532	Failure to exercise right of option to renew lease.	38,803.30	
533	Workers' Compensation claim - statute barred.	76.80	
534	Personal injury claim - statute barred.	136.00	
535	Allegations on mishandling of estate.		
536	Allegations on mishandling of estate.	2,794.50	28,000.00
537	Conveyancing - dispute on occupancy of premises.	55.00	
538	Conveyancing - conflict over assessment of stamp duties.		
539	Dispute on car parking provisions in lease.		
540	Alleged failure to file a declaration within the time specified by the Court.	203.50	
541	Alleged defamation.		
542	Conveyancing - Alleged failure to advise properly and lodge caveat on land.	7,392.87	
543	Conveyancing - default in payment of interest re value of land.	19,454.90	200.00
544	Conveyancing - conflict of monies owing on various transactions.		
545	Conveyancing - contract incorrectly drawn up on sale price.	370.50	10,000.00
546	Conveyancing - conflict on purchase price.	1,190.30	
547	Conveyancing - client not advised the purchase to include additional vacant land.		
548	Conveyancing - mishandling of conveyancing money.		
549	Conveyancing - allegations of negligence in handling of contract.	232.50	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
550	Conveyancing - contract for sale not completed.	186.00	
551	Conveyancing - mortgage document incorrectly prepared.	9,351.35	110,000.00
552	Workers' Compensation claim - statute barred.	1,729.50	12,000.00
553	Conveyancing - survey not obtained.		
554	Conveyancing - alleged negligence on handling of transaction.		
555	Workers' Compensation claim - statute barred.	410.50	
556	Conveyancing - Client not advised of zoning restrictions.	650.00	
557	Conveyancing - draft agreement altered without authority.	1,397.00	80,000.00
558	Conveyancing - allegations regarding the giving of advice on finance.	4,560.11	
559	Conveyancing - allegations of incorrect advice given.		
560	Conveyancing - mortgage document not registered.	1,676.50	85,000.00
561	Conveyancing - allegations of negligence in the giving of advice.		
562	Conveyancing - rescission of contract.		
563	Allegations of negligence in Equity proceedings.	685.00	
564	Unpaid account - allegations of negligence - details not disclosed.		
565	Workers' Compensation claim - statute barred.		500.00
566	Conveyancing - fraudulent valuation.	85.00	
567	Conveyancing - allegations that client not advised of car parking area not included in contract.	235.50	
568	Conveyancing - default of mortgage.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
569	Conveyancing - default of mortgage.	297.00	
570	Conveyancing - dispute over easement.	11,490.49	15,000.00
571	Alleged failure to file a defence in time for a summons issued.		
572	Conveyancing - alleged failure to obtain title.		
573	Lease documents never registered.	568.00	
574	Workers' Compensation claim - alleged failure to join as co-defendant within statutory limit.		
575	Conflict on zoning restrictions.		
576	Allegations that mortgage registered without authority.	317.25	
577	Conveyancing - various transactions.	3,902.50	110,000.00
578	Failure to obtain finance on mortgage.		500.00
579	Non-registration of lease.		
580	Failure to take up option on lease.		
581	Possible loss of investment on trust funds.	860.00	
582	Alleged failure to arrange security for advance on unregistered mortgages.	895.00	
583	Possible allegation client not advised regarding alterations to property purchased.		
601	Allegations that improper advice given for the advance on a mortgage.	532.70	11,000.00
602	Conveyancing - Allegations of breach of duty on sale of property.	23,441.00	
603	Allegations of incorrect advice given to rescind contract.	812.20	4,188.00

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
604	Allegations of incorrect advice given on the purchase of freehold land.	186.00	
605	Conveyancing - fraudulent mortgages completed.	1,607.90	120,000.00
606	Mortgage discharged for incorrect amount.		
607	Workers' Compensation claim - statute barred.	638.00	
608	Alleged mishandling of lease agreement.		
609	Allegations that instructions not carried out to purchase property on freehold agreement.		
610	Alleged failure to issue recovery proceedings within the time limit.	310.00	
611	Conveyancing - incorrect lot numbers transferred on sale of land.	191.80	
612	Failure to file summons within time limit for deceased estate.	670.00	
613	Alleged failure to lodge an appeal for undefended divorce settlement.	395.00	
614	Delay in the transfer of title.	467.50	4,000.00
615	Failure to commence proceedings for personal injury claim within time allowed under the Metropolitan Water Sewerage and Drainage Act.	414.00	
616	Alleged failure to advise on right of way.	250.00	
617	Alleged failure to obtain adequate security.	428.50	
618	Loss of documents.	1,114.50	
619	Failure to advise that properties leased would be dedicated to the State Forestry.	310.18	
620	Allegation that no protection or advice given for a development approval.	27,982.98	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
621	Alleged failure to register a deed of charge.	198.50	
622	Workers' Compensation claim. Proceedings not commenced within period required by section 63(3) of Act.	55.00	20,000.00
623	Conflict over rescission of contract.	203.00	
624	Personal injury claim - possibility out of time to commence proceedings.	3,889.54	500.00
625	Conflict over exchange of contracts.	445.50	
626	Failure to advise of easement in contract.	100.00	
627	Possible allegation that incorrect advice given for the depositing and payment of monies.	393.76	
628	Contract completed for title on incorrect lot number.	752.20	100.00
629	Spirit merchants Licence not granted because of defective application regarding the site submitted.	246.50	
630	Incorrect insurance arranged on property.		
631	Allegations of negligent advice and delay on sale of property.		
632	Failure to advise of easement in contract.	3,026.25	9,000.00
633	Failure to issue notice of appearance in time for summons taken out.		
634	Failure to advise on option in contract relating to protected tenants.	4,594.60	15,000.00
635	Failure to advise of zoning restrictions and of right to rescind contract.	861.50	
636	Failure to secure and register advance on mortgage.	827.00	
637	Alleged failure to file affidavit for an appeal in divorce proceedings.	208.00	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
638	Alleged failure to obtain transfer of title.	4,851.38	35,000.00
639	Signature of witness on deceased will incorrectly executed.	120.00	
640	Allegations of incorrect advice given on description of property purchased.	122.20	100.00
641	Failure to file Directors Resolution for registration on the issue of shares under section 21 of the Companies Act.	882.00	
642	Allegations of failure to ascertain true area of land purchased and advice on rectification.	4,376.50	70,000.00
643	Error in the transcription of deeds for settlement of family trusts.		
644	Allegations of failure to obtain adequate security.	25,903.49	200.00
645	Incorrect disbursements of monies.	184.00	
646	Alleged failure to obtain adequate security.	30.00	
647	Dispute over right of way.	305.64	
648	Incorrect advice given for the termination of building contract.	2,289.50	14,000.00
649	Alleged failure to register mortgage.	322.50	
650	Failure to obtain adequate security.	753.00	
651	Alleged failure to appeal at hearing in divorce proceedings.		
652	Allegations on the handling of monies in trust account.	176.75	
653	Allegations of incorrect advice given.	803.00	
654	Workers' Compensation claim, statute barred.	4,458.45	10,000.00
655	Rescission of contract.	1,280.00	26,000.00
656	Rescission of contract.		2,500.00
657	Conflict over zoning restrictions.	253.00	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
658	Conflict over rescission of contract.	15,986.65	
659	Third party motor vehicle claim - time barred.	243.67	
660	Third party motor vehicle claim - time barred.		3,000.00
661	Conflict over easement and transfer of title.		
662	Possible resumption of property purchased by the Department of Main Roads.	172.00	10,000.00
663	Monies in trust account not returned on demand.	105.00	
664	Sub-lease incorrectly registered.	5,388.95	
665	Allegations on the handling of defence in a District Court action.	202.50	
666	Mortgage document incorrectly executed.	988.50	2,000.00
667	Failure to check security on mortgage.		5,000.00
668	Deeds for leases incorrectly executed.	60.00	
669	Draft order for investment of monies paid into Court not completed.	360.00	
670	Security on mortgage not registered in accordance with the Money Lenders Ordinance 1936.		
671	Conflict over the surrendering of rights to royalties on the leasing of a subdivision.	75.00	
672	Allegations on the handling of defence in Equity proceedings.		
673	Failure to exercise option to purchase property.	1,788.95	10,000.00
674	Incorrect plan annexed to contract for sale.	260.00	
675	Dispute over the payment of fees.	130.00	
676	Conflict over repayment of monies advanced on mortgage.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (\$)	<u>Reserve</u> (\$)
677	Dispute over the registering of mortgage.	141.80	
678	Dispute over terms of contract to purchase property.	111.60	
679	Conflict over payment of costs on the transfer of title.		
680	Failure to obtain adequate security on mortgage.	424.55	77,000.00
681	Dispute over liquidation of company.	110.00	
682	Dispute over payment of "Land Contribution Tax" under Contract.	583.80	
683	Repayments owing on un-registered mortgage.	100.00	
684	Failure to advise of s.342AS Certificate annexed to contract.		
685	Conflict over final repayment on mortgage.	75.00	
686	Delay in the registration of applications to re-seal probate.	45.00	
687	Rescission of contract.	527.50	
688	Conflict over the distribution of proceeds from sale of property.	550.00	
689	Out of time for appeal in Motor Traffic conviction.		
690	Possible allegation on the handling of Court proceedings for criminal action.		
691	Shareholders not advised of the liquidation of a client company.	65.00	
692	Denial of instructions given in divorce proceedings.	50.00	
693	Third party motor vehicle claim - possibility statute barred.	25.00	
694	Non-payment of costs relating to Court Order made in divorce proceedings.	100.00	
695	Failure to commence proceedings in time for the recovery of building costs.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
696	Monies lent on unsecured mortgage.	905.00	33,000.00
697	Conflict over contracts exchanged for sale of property regarding proposals by the Department of Main Roads to widen street.	87.55	
698	Failure to correctly lodge gift duty return for deceased estate.	197.70	
699	Possible allegation on the preparation of licence agreement.	75.00	
700	Conflict over easement.	557.65	
701	Survey not checked for property purchased.	510.00	
702	Workers' Compensation claim - statute barred.	464.94	10,000.00
703	Description of land on contract for sale amended without instructions.	76.75	500.00
704	Workers' Compensation claim - statute barred.	45.00	
705	Possibility that to commence proceedings for marine claim time barred.		
706	Conflict over settlement in divorce proceedings.		
707	Lease agreements prepared do not protect client in the case of default.		500.00
708	Failure to file Acknowledgement of Debt within the time limit.	522.00	
709	Arbitration clause not inserted in lease agreement for option to renew.	182.20	
710	Conflict on right to exercise option on lease agreement.	350.00	500.00
711	Failure to account for monies from the proceeds of a conveyancing transaction.	65.00	
712	Workers' Compensation claim - possibility statute barred.		
713	Adjoining property not included as a security in contract.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> <u>(\$)</u>	<u>Reserve</u> <u>(\$)</u>
714	Third party motor vehicle claim - time barred.	105.00	
715	Sufficient finance not obtained.	1,141.59	90,000.00
716	Personal injury claim - possibility out of time to commence proceedings.	8,544.00	
717	Possibility that hearing date for appeal in Equity proceedings delayed.		
718	Delay in the issuing of a summons for the application in Testators Family Maintenance Act.		
719	Survey not obtained.	91.80	
720	Failure to commence proceedings in time under s.580(6) of the Local Government Act.	60.00	
721	Possible allegation on the transfer of title in divorce settlement.		
722	Error in contract for sale.	426.85	500.00
723	Allegations of professional negligence and conflict over the payment of fees.	125.00	
724	Possible allegation that improper security obtained for monies invested.		500.00
725	Possible allegation that improper security arranged, for monies invested.		500.00
726	Allegations in the handling of divorce proceedings.	45.00	
727	Rescission of contract.	260.00	
728	Bill of Sale not registered.		
729	Survey not obtained.	65.00	
730	Allegations of failure to advise on Hotel Licensing Orders.		500.00
731	Allegations on the investment of monies.	175.00	
732	Loss of title deeds.	40.00	
733	Allegations regarding the loss of interest.	65.00	
734	Personal injury claim.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
735	Insurance dispute not referred to arbitration within the time limit.		
736	Amendments made to Strata Plan.	475.00	50.00
737	Affidavit for attesting witness not included in the preparation of an amended Bill of Sale.		
738	Third party motor vehicle claim - time barred.	337.50	5,000.00
739	Third party motor vehicle claim - no further details.	150.00	
740	Default of mortgage.	55,835.00	1,000.00
741	Deed incorrectly prepared.	75.00	500.00
742	Failure to obtain a Certificate under section 317A of the Local Government Act.	182.50	
743	Personal injury claim - possible failure to commence proceedings under section 580 of the Local Government Act.		
744	Allegations of delay to register the plan on a sub-division.		
745	Title transferred incorrectly to instructions given.		
746	Failure to register Bill of Sale.		
747	Possible allegation of negligent advice given for purchase of sub-division.		
748	Workers' Compensation claim - time barred.	65.00	
749	Allegation that advice not given for the payment of duty on part interest in estate.	495.60	
750	Inadequate finance arranged.		
751	Possible allegation shareholders not told of option agreement to purchase shares.		
752	Inadequate security arranged for investment of monies.	225.00	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> <u>(\$)</u>	<u>Reserve</u> <u>(\$)</u>
753	Allegations on the payment of rent under a lease agreement.	378.40	
754	Survey not obtained for the purchase of freehold land.		
755	Failure to lodge deed of charge for registration under the Companies Act.	176.90	
756	Personal injury claim - time barred.	122.00	
757	Allegation that advice not given for the payment of duty on part interest in estate.		
758	Failure to complete contracts for sale.	120.00	
759	Failure to name principal beneficiary in preparation of will.		
760	Failure to lodge caveat on title.		
761	Possible allegation of professional negligence in the handling of an estate planning.	75.00	
762	Personal injury claim - time barred.		
763	Third party motor vehicle claim - time barred.	266.75	
764	Failure to complete a sub-lease.	75.00	
765	Third party motor vehicle claim - possibility time barred.	216.95	
766	Third party motor vehicle claim - possibility time barred.	150.00	
767	Conflict over the payment of fees.		
768	Third party motor vehicle claim - time barred.	111.86	
769	Alleged failure to advise of easement.	4,400.00	1,000.00
770	Failure to take up option to renew lease.	90.00	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
771	Possible allegation of failure to appear in the defence of a maintenance order in divorce proceedings.		50.00
772	Possible allegation over liability for tax under the Land Development Contribution Management Act.	254.80	
773	Conflict over the payment of fees.		
774	Personal injury claim - time barred.	255.05	
775	Dispute over Court petition for divorce proceedings.		
776	Personal injury claim - details unknown.		20,000.00
777	Conflict over payment of fees.		
778	Allegation over the amount of fees charged.		
779	Failure to invest money as instructed.	110.00	

4. 1st October 1976 — 1st October 1977

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
S6004-01	Third party bodily injury matter out of time.	286.00	
S6004-02	Conveyancing matter.		21,000.00
S6004-03	Failure to advise on tenancy agreement.	700.00	
S6004-04	Conveyancing matter.		300.00
S6004-05	Negligence in arranging mortgage finance.	363.50	
S6004-06	Conveyancing matter.	4,170.00	
S6004-07	Conveyancing matter.	262.40	
S6004-08	Conveyancing matter.	452.00	
S6004-09	Failure to take up share options.	103,758.00	
S6004-10	Conveyancing matter.	192.20	
S6004-11	Missing trust receipt.	282.55	
S6004-12	Third party bodily injury matter out of time.	588.00	
S6004-13	Third party bodily injury matter out of time.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
S6004-14	Alleged negligence, advice on mortgage advances.	222.70	
S6004-15	Alleged negligence in litigation matter.	600.00	
S6004-16	Conveyancing matter.	308.00	
S6004-17	Failure to arrange insurance.	483.00	
S6004-18	Loss of documents.		
S6004-19	Loss of documents.		
S6004-20	Sale of commercial property.		
S6004-21	Third party bodily injury matter out of time.		10,000.00
S6004-22	Alleged negligence, advice on tenancy agreement.	238.00	
S6004-23	Alleged negligence in preparation of lease.	217.00	
S6004-24	Alleged negligence in drawing up mortgage document.	684.00	
S6004-25	Alleged negligence, advice in share transaction.		
S6004-26	Alleged negligence arising from misappropriation of cash by an agent of the insured firm.	90.00	
S6004-27	Conveyancing matter.		500.00
S6004-28	Conveyancing matter.	259.60	1,000.00
S6004-29	Failure to adequately advise client on mortgage security.	323.80	60,000.00
S6004-30	Divorce matter.	142.00	
S6004-31	Insufficient security on a mortgage.		25,000.00
S6004-32	Lease matter.		
S6004-33	Conveyancing matter.		
S6004-34	Conveyancing matter.		4,000.00
S6004-35	Alleged negligence in handling a third party damages action.		
S6004-36	Conveyancing matter.	303.80	
S6004-37	Conveyancing matter.	120.00	
S6004-38	Conveyancing matter.		
S6004-39	Libel matter.	498.74	
S6004-40	Litigation matter out of time.		5,000.00

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
S6004-41	Conveyancing matter.	2,736.55	
S6004-42	Conveyancing matter.		
S6004-43	Conveyancing matter.	86.00	
S6004-44	Preparation of a lease.	File closed.	
S6004-45	Alleged negligent advice in a common law action for damages arising from bodily injury.		1,500.00
S6004-46	File closed.	File closed.	
S6004-47	Conveyancing matter.		
S6004-48	Conveyancing matter.	182.90	
S6004-49	Preparation of lease documents.		
S6004-50	Alleged negligence in the preparation of a lease.		24,500.00
S6004-51	Conveyancing matter.		
S6004-52	Dispute in partnership dis- solution.		
S6004-53	Alleged negligent advice under Strata Titles Act.		
S6004-54	File closed.		
S6004-55	File closed.		
S6004-56	File closed.		
S6004-57	Conveyancing matter.		
S6004-58	Conveyancing matter.		
S6004-59	Conveyancing matter.		
S6004-60	Conveyancing transaction.		
S6004-61	Third party bodily injury matter out of time.	286.90	2,500.00
S6004-62	Title search.	File Closed.	
S6004-63	Strata Title matter.		5,000.00
S6004-64	Divorce action.	173.00	
S6004-65	Conveyancing matter.		
S6004-66	Conveyancing matter.	181.80	5,000.00
S6004-67	Conveyancing matter.		2,000.00
S6004-68	Third party bodily injury matter out of time.		3,000.00
S6004-69	Motor vehicle action out of time.	151.00	
S6004-70	Conveyancing mater.	183.00	
S6004-71	Negligent advice to a municipal authority on a drainage easement.		95,000.00
S6004-72	Conveyancing matter.	563.00	
S6004-73	Share transactions.		10,000.00

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (\$)	<u>Reserve</u> (\$)
S6004-74	Failure to invest monies in adequate security.		
S6004-75	Conveyancing matter.		500.00
S6004-76	Conveyancing matter.		
S6004-77	Sale of an accountancy practice.		
S6004-78	Conveyancing matter.	346.00	
S6004-79	Alleged negligence in a litigation matter.		
S6004-80	Alleged negligence in preparation of mortgage.	257.00	20,000.00
S6004-81	Conveyancing matter.		
S6004-82	Conveyancing matter.		
S6004-83	Loss of documents claim.	75.00	
S6004-84	Third party bodily injury matter out of time.	192.20	
S6004-85	Conveyancing matter.		
S6004-86	Third party bodily injury matter out of time.	194.70	
S6004-87	Mortgage advance.	212.36	
S6004-88	Mortgage advance.	167.35	
S6004-89	Negligent advice in a litigation matter.		
S6004-90	Taxation matter.		
S6004-91	Alleged negligence in preparation of a building contract.	320.00	
S6004-92	Conveyancing matter.		
S6004-93	Conveyancing matter.	76.00	
S6004-94	Probate matter.	176.00	
S6004-95	Conveyancing matter.	210.00	
S6004-96	Alleged negligence in a building contract for a kindergarten.		
S6004-97	Accounts claim alleging negligence after action for recovery of fees.		
S6004-98	Divorce matter.	100.00	
S6004-99	Alleged negligence in court action for the recovery of debts.		
S6004-100	Conveyancing matter.		
S6004-101	Alleged negligence in preparation of a lease.	121.00	
S6004-102	Alleged negligence in preparation of a lease.	161.90	

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
S6004-103	Counter claim for negligence after an action for recovery of fees.		
S6004-104	Federal estate duty return not lodged within prescribed time.		
S6004-105	Alleged negligent advice on mortgage investment.		
S6004-106	Conveyancing matter.		
S6004-107	Alleged negligence on a defence of a criminal matter.		
S6004-108	Alleged negligence in preparation of trust deeds.		
S6004-109	Alleged negligent advice in a partnership dispute.		
S6004-110	Alleged negligent advice in an estate matter.		
S6004-111	Conveyancing matter.		
S6004-112	Alleged negligent advice in an estate matter.	148.00	
S6004-113	Third party bodily injury matter out of time.		
S6004-114	Alleged negligence in an estate matter.	228.20	
S6004-115	Conveyancing matter.	160.00	
S6004-116	Conveyancing matter.		15,000.00
S6004-117	Conveyancing matter.	352.20	
S6004-118	Alleged negligence in preparation of a lease.		
S6004-119	Conveyancing matter.		
S6004-120	Conveyancing matter.		
S6004-121	Conveyancing matter.	111.00	
S6004-122	Third party bodily injury matter out of time.		
S6004-123	Alleged negligence in preparation of trust deeds.	242.80	
S6004-124	Conveyancing matter.		400.00
S6004-125	Third party bodily injury matter out of time.		
S6004-126	Third party bodily injury matter out of time.		
S6004-127	Alleged negligence in preparation of a will.	182.40	
S6004-128	Alleged negligence in preparation of a will.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
S6004-129	Conveyancing matter.		
S6004-130	Alleged negligent advice on a mortgage investment.		
S6004-131	Alleged negligent advice in a litigation matter.	343.00	
S6004-132	Alleged negligent advice in a tenancy matter.		
S6004-133	Alleged negligent advice in a mortgage investment.	904.80	90,000.00
S6004-134	Conveyancing matter.	161.80	
S6004-135	Conveyancing matter.	192.00	
S6004-136	Alleged negligent advice on Workers' Compensation.	177.40	
S6004-137	Conveyancing matter.	121.80	
S6004-138	Third party bodily injury matter out of time.		
S6004-139	Alleged negligence advice in a mortgage investment.		10,000.00
S6004-140	Conveyancing matter.		464.00
S6004-141	Conveyancing matter.	122.40	
S6004-142	Alleged negligent advice on a company search.		1,750.00
S6004-143	Loss of documents.		
S6004-144	Third party bodily injury matter out of time.	2,000.00	
S6004-145	Conveyancing matter.	484.00	
S6004-146	Conveyancing matter.		
S6004-147	Alleged negligent advice in a mortgage investment.	402.40	35,000.00
S6004-148	Conveyancing matter.	453.80	
S6004-149	Alleged negligence in preparation of a lease.	125.00	
S6004-150	Divorce matter.	111.00	
S6004-151	Breach of promise action out of time.		
S6004-152	Alleged negligent advice in taxation matter.		5,000.00
S6004-153	Alleged negligent advice in mortgage investment.	648.10	
S6004-154	Alleged negligent advice in a claim for damages arising from personal injury.		500.00
S6004-155	Conveyancing matter.		250.00
S6004-156	Conveyancing matter.		
S6004-157	Dishonesty of an employee.		
S6004-158	Conveyancing matter.		

<u>Claim No.</u>	<u>Type</u>	<u>Payment</u> (<u>\$</u>)	<u>Reserve</u> (<u>\$</u>)
S6004-159	Alleged negligent advice in mortgage investment.	932.90	10,000.00
S6004-160	Conveyancing matter.	221.80	
S6004-161	Alleged negligence in mortgage investment.		32,000.00
S6004-162	Alleged negligence in mortgage investment - Insurers consider claim does not fall under policy.	File Closed.	
S6004-163	Divorce matter - Insurers consider claim does not fall under policy.	File Closed.	
S6004-164	Conveyancing matter - Insurers consider claim does not fall under policy.	File Closed.	

TABLE A.2

Cumulative Numbers of Claims Compared with Size of Claims

Finalized Claims

CLAIMS PERIOD
1968-76

NUMBER OF CLAIMS

<u>SIZE OF PAYMENT</u> (<u>\$</u>)	<u>Cumulative Totals at 31st December</u>			
	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
0-99	133	162	198	232
100-999	19	32	59	111
1,000-9,999	15	15	20	28
10,000-49,999	3	6	11	15
50,000-99,999	0	0	1	2
100,000 or more	0	0	1	1
TOTAL	<u>170</u>	<u>215</u>	<u>290</u>	<u>389</u>

TABLE A.3

Percentage Distribution of Claims Sizes

Finalized Claims

<u>CLAIMS PERIOD</u> <u>1968-76</u>		<u>PERCENTAGE OF CLAIMS</u>		
<u>SIZE OF PAYMENT</u> <u>(\$)</u>	<u>As at 31st December</u>			<u>1978</u> <u>(%)</u>
	<u>1976</u> <u>(%)</u>	<u>1977</u> <u>(%)</u>	<u>1978</u> <u>(%)</u>	
0-99	75.3	68.3	59.6	
100-999	14.9	20.4	28.5	
1,000-9,999	7.0	6.9	7.2	
10,000-49,999	2.8	3.8	3.9	
50,000-99,999	0.0	0.3	0.5	
100,000 or more	0.0	0.3	0.3	
TOTAL	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	

Note: The cumulative increase in claims finalized expressed as a percentage of total claims made in respect of the period 1968-76 is as follows:

31.12.76	:	47.8%
31.12.77	:	64.2%
31.12.78	:	86.1%

TABLE A.4

Number of Claims Compared with Size of Claims

Claims Not Finalized

<u>CLAIMS PERIOD</u> <u>1968-76</u>		<u>NUMBER OF CLAIMS</u>			
<u>SIZE OF PAYMENT (IF ANY) PLUS OUTSTANDING RESERVE</u> <u>(\$)</u>	<u>Totals at 31st December</u>				
	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	
0-99	2	44	19	1	
100-999	33	86	52	13	
1,000-9,999	45	50	36	13	
10,000-49,999	18	37	42	24	
50,000-99,999	9	13	9	8	
100,000 or more	5	5	4	4	
TOTAL	<u>112</u>	<u>235</u>	<u>162</u>	<u>63</u>	

TABLE A.5
 Percentage Distribution of Claim Sizes
 Claims Not Finalized

<u>CLAIMS PERIOD</u> 1968-76		<u>PERCENTAGE OF CLAIMS</u>		
<u>SIZE OF PAYMENT (IF ANY) PLUS OUTSTANDING RESERVE</u>		<u>As at 31st December</u>		
<u>(\$)</u>	<u>1976</u> <u>(%)</u>	<u>1977</u> <u>(%)</u>	<u>1978</u> <u>(%)</u>	
0-99	18.7	11.7	1.6	
100-999	36.6	32.1	20.6	
1,000-9,999	21.3	22.2	20.6	
10,000-49,999	15.8	25.9	38.1	
50,000-99,999	5.5	5.6	12.7	
100,000 or more	2.1	2.5	6.4	
TOTAL	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	

TABLE A.6

Size of Claim Compared with Type of Matter

Claims Finalized by 31st December 1978

CLAIMS PERIOD
1968-76TYPE OF MATTERSIZE OF PAYMENTS (\$)

	0-99	100-999	1,000-9,999	10,000-49,999	50,000-99,999	100,000 or more	TOTAL
Conveyancing (a)	100	47	16	9	0	7	172
Clients' Funds (b)	12	11	2	1			
Litigation							
- time (c)	41	23	3	2	0	0	69
- other	18	4	0	0	0	0	22
- uncertain	2	2	0	0	0	0	4
Wills & Probate (d)	11	5	0	0	0	0	16
Other	38	11	6	2	1	0	58
Uncertain	10	8	1	1	0	0	20
TOTAL	232	111	28	15	2	1	389

Notes: The Notes to this Table appear on p.101

TABLE A.7

Size of Claim Compared with Type of Matter

Claims Not Finalized by 31st December 1978

<u>CLAIMS PERIOD</u> 1968-76	<u>TYPE OF MATTER</u>	<u>SIZE OF PAYMENTS (IF ANY) PLUS OUTSTANDING RESERVE (\$)</u>						TOTAL
		0-99	100-999	1,000-9,999	10,000-49,999	50,000-99,999	100,000 or more	
	Conveyancing (a)	0	7	5	9	2	4	27
	Clients' Funds (b)	0	3	1	4			
	Litigation							
	- time (c)	0	1	5	6	1	0	13
	- other	1	0	0	0	0	0	1
	- uncertain	0	0	0	1	0	0	1
	Wills & Probate (d)	0	0	0	1	0	0	1
	Other	0	1	2	3	3	0	9
	Uncertain	0	1	0	0	1	0	2
	TOTAL	1	13	13	24	8	4	63

Notes to Tables A.6 and A.7

a. All matter relating to the transfer or use of land, including leases, mortgages and planning restrictions.

b. All matters relating to solicitors' handling of money entrusted to them by clients, including money entrusted for investment purposes.

c. All matters relating to failure to commence an action within the time period permitted by law.

d. All matters relating to wills and the administration of deceased estates, including lodgment of death duty returns.

TABLE A.8

Cumulative Totals of Payments and Reserves: Claims Notified 1968-1978

	Cumulative Total of Claims Notified During*						TOTAL (\$)
	1968-71 (\$)	1971-74 (\$)	1974-76 (\$)	1976-77 (\$)	1977-78 (\$)	1978-79 (\$)	
<u>1. PAYMENTS</u>							
as at 31.12.75	76,556.00	51,470.00	-	-	-	-	128,026.00
31.12.76	76,595.33	226,981.83	76,451.00	-	-	-	380,028.16
31.12.77	82,047.83	402,187.00	146,392.00	-	-	-	630,626.83
31.12.78	84,758.33	417,258.00	445,567.55	131,525.75	20,546.63	-	1,099,656.20
<u>2. RESERVES</u>							
as at 31.12.75	30,050.00	577,310.00	-	-	-	-	607,360.00
31.12.76	5,050.00	481,955.00	1,640,061.00	-	-	-	2,127,066.00
31.12.77	200.00	312,794.00	1,589,096.00	-	-	-	1,902,090.00
31.12.78	Nil	194,312.00	1,134,888.00	496,164.00	699,000.00	222,000.00	2,746,364.00

*The periods run from 1st October to 1st October.

TABLE A.9

Size of Payments Plus Reserves
 Claims Not Finalized by 31st December 1978

CLAIMS PERIOD 1968-76		NUMBER OF CLAIMS As at 31st December 1978		
SIZE OF PAYMENT (IF ANY) PLUS OUTSTAND- ING RESERVE		1976	1977	1978
(\$)				
0-99		3	1	1
100-999		20	14	13
1,000-9,999		10	12	13
10,000-49,999		19	24	24
50,000-99,999		7	8	8
100,000 or more		4	4	4
	TOTAL	<u>63</u>	<u>63</u>	<u>63</u>

TABLE A.10

Comparison of Claims Notified 1971-74 and 1974-76

Position Two Years After Claims Period

1. Duration of Period of Insurance.	1.10.71 - 1.10.74	1.10.74 - 1.10.76
2. Date to which claims statistics in this table have been compiled.	31.12.76	31.12.78
3. Total Number of Claims.	125	262
4. Claims Finalized.	98	206
5. Claims Finalized as Percentage of Total Claims.	78.4%	78.6%
6. Total Payout on Claims Finalized.	\$47,049.23	\$256,116.67
7. Mean Payout on Claims Finalized.	\$480.09	\$1,243.28

B. Victoria

The Master Policy scheme operated by the Law Institute of Victoria commenced on a voluntary basis on 1st January 1978 and became compulsory for Victorian solicitors on 1st July 1978. However, temporary exemptions granted to practitioners with policies taken out or renewed prior to 1st January 1978 meant that the profession was not brought fully within the scheme until the end of 1978.

The following Tables have been compiled from statistical information supplied by Law Claims, the claims handling body set up under the scheme. Of the claims shown in the Tables, 44 (38.6%) of the 114 claims made in 1978, and 63 (23.5%) of the 268 claims made in 1979, had been finalized by 31st December 1979.

Because the scheme has been operating for only a relatively short period, any trends identifiable in the statistics must be treated at this stage with caution.

TABLE B.1

Number of Claims Compared with Type of Matter

TYPE OF MATTER	NUMBER OF CLAIMS					
	No.	<u>1978</u>	(%)	No.	<u>1979</u>	(%)
Common Law	31		(27.2)	95		(35.4)
Conveyancing	47		(41.2)	83		(31.0)
Probate	6		(5.3)	9		(3.4)
Commercial	21		(18.4)	62		(23.1)
Office Administration	7		(6.1)	4		(1.5)
Matrimonial	2		(1.8)	13		(4.9)
Company	-		(0.0)	2		(0.7)
TOTAL		<u>114</u>	<u>(100.0)</u>		<u>268</u>	<u>(100.0)</u>

TABLE B.2

Number of Claims Compared with Size of Firm

SIZE OF FIRM (NO.OF PRINCIPALS)	PROPORTION OF INSURED PRIVATE PROFESSION (%)	NUMBER OF CLAIMS	
		No. <u>1978</u> (%)	No. <u>1979</u> (%)
1	37.1	42 (36.8)	93 (34.7)
2	23.0	38 (33.3)	58 (21.6)
3-6	27.0	24 (21.1)	79 (29.5)
7 or more	12.9	10 (8.8)	38 (14.2)
TOTAL	<u>100.0</u>	<u>114 (100.0)</u>	<u>268 (100.0)</u>

TABLE B.3

Number of Claims Compared with Location of Firm

LOCATION OF FIRM	NUMBER OF CLAIMS	
	No. <u>1978</u> (%)	No. <u>1979</u> (%)
Melbourne City	50 (43.9)	117 (43.7)
Melbourne Suburbs	46 (40.4)	92 (34.3)
Country	12 (10.5)	33 (12.3)
Provincial	6 (5.3)	26 (9.7)
Totals	<u>114 (100.0)</u>	<u>268 (100.0)</u>

C. England

The English Master Policy for solicitors appears in Part 1 of this Background Paper. Some of the following Tables were compiled by the claims-handling body under the English scheme, and the remainder have been compiled by the Commission from statistical information supplied by the Law Society in England.

TABLE C.1

Analysis of All Claims Made

POSITION OF CLAIMS FOR EACH CLAIMS PERIOD AT 30TH NOVEMBER 1979

	<u>1975-76 (a)</u>	<u>1976-77 (b)</u>	<u>1977-78 (b)</u>	<u>1978-79 (b)</u>	<u>1979-80 (b)</u>
<u>CLAIMS FINALIZED</u>					
No Payment Made (c)	355	1,229	749	279	13
Payment Made	136	601	339	116	1
<u>CLAIMS RESERVED</u>					
No Payment Yet Made	65	355	504	417	17
Part Payment Made	20	90	78	57	1
<u>OTHER CLAIMS</u>					
<u>PENDING</u>	25	262	698	1,509	606
TOTAL	<u>601</u>	<u>2,537</u>	<u>2,368</u>	<u>2,378</u>	<u>638</u>

- Notes:
- Run-in period: 18th November 1975 - 31st August 1976.
 - Period runs 1st September - 31st August.
 - In 24% of these cases "Panel Solicitor's Costs" were paid. The Panel Solicitors are solicitors in private practice whose function is to assess the appropriate action and, if necessary, reserve for each claim referred to them. Where no payment has been made other than to the Panel Solicitors their costs have not been recorded as a 'payment' in this Table.

TABLE C.2

Total Payments and Reserves for Each Claims Period

<u>CLAIMS PERIOD</u>	<u>TOTAL PAYMENTS</u>	<u>TOTAL RESERVES</u>
	(As at 30th November 1979) (£)	(£)
1975-76	920,308.83	2,182,907.00
1976-77	3,698,199.05	8,310,659.00
1977-78	2,095,543.96	11,334,128.00
1978-79	574,665.19	10,151,127.00
1979-80	5,525.00	995,575.00

TABLE C.3

Number of Claims Compared with Type of Matter

<u>TYPE OF MATTER</u>	<u>CUMULATIVE TOTALS OF CLAIMS AT 30TH NOVEMBER 1979 (a)</u>	
	<u>No.</u>	<u>% of Total</u>
Commercial	380	10.2
Landlord & Tenant	484	13.0
Town Planning & Compulsory Purchase	27	0.7
Conveyancing	1,303	35.2
Estate Duty & Taxation	64	1.7
Trusts & Probate	199	5.4
Matrimonial	159	4.3
Personal Injuries	473	12.7
Other Litigation	371	10.0
Other Categories	253	6.8
TOTAL	<u>3,713</u>	<u>100.0</u>

Note: a. The total number of claims in this Table is the number passed to Panel Solicitors for consideration. The classification of the claims into the categories shown was made by the Panel Solicitors.

TABLE C.4
 Number of Claims Compared with
 Circumstances of Alleged Negligence

<u>TYPE OF ALLEGED NEGLIGENCE</u>	<u>CUMULATIVE TOTALS OF CLAIMS AT 30TH NOVEMBER 1979 (a)</u>	
	<u>No.</u>	<u>% of Total</u>
Failure to observe time limits	442	11.9
Other Delay	249	6.7
Failure to Advise Correctly	936	25.2
Failure to take Correct Action	1,564	42.1
Failure to make Proper Searches	121	3.3
Other Reasons	312	8.4
Not Apparent	89	2.4
Total	<u>3,713</u>	<u>100.0</u>

Note: a. See note to Table C.3.

TABLE C.5
 Number of Claims Compared with Probable Cause of Trouble

<u>PROBABLE CAUSE OF TROUBLE</u>	<u>TOTALS OF CLAIMS AT 30TH NOVEMBER 1979 (a)</u>	
	<u>No.</u>	<u>% of Total</u>
Inadequate Diarying	203	5.5
Lack of Knowledge or Ability	982	26.4
Poor Supervision or Organization	916	24.7
Other Reasons	629	16.9
Not Apparent	983	26.5
TOTAL	<u>3,713</u>	<u>100.0</u>

Note: a. See Note to Table C.3.

TABLE C.6

Number of Claims Compared with Degree of Blameworthiness

<u>DEGREE OF BLAME- WORTHINESS</u>	<u>TOTALS OF CLAIMS AT 30TH NOVEMBER 1979 (a)</u>	
	<u>No.</u>	<u>% of Total</u>
No Blame	61	1.6
Bad Luck	156	4.2
Careless	1,010	27.2
Serious	841	22.7
Inexcusable	328	8.8
Not Apparent	1,317	35.5
TOTAL	<u>3,713</u>	<u>100.0</u>

Note: a. See note to Table C.3.

TABLE C.7
High Reserves

	POSITION AS AT 30TH NOVEMBER 1979 OF CLAIMS MADE DURING			
	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>
1. Number of Reserves Exceeding £50,000	13	43	50	42
2. Highest Reserve	£500,000	£550,000	£840,000	£1,680,000
3. Total Amount of Reserves Exceeding £50,000	£1,587,250	£4,839,100	£6,838,590	£6,852,546
4. Number of Reserves Exceeding £50,000 as a Percentage of Total Number of Reserves	15.3%	9.7%	8.6%	8.7%
5. Amount of Reserves Exceeding £50,000 as a Percentage of Total Amount of Reserves	72.7%	58.2%	60.3%	67.5%

TABLE C.8

Summary of Claims Statistics and Estimate of Profit/Loss Arising from the Scheme

	POSITION AS AT 31ST AUGUST 1979 OF CLAIMS MADE DURING			
	1975-76 (£)	1976-77 (£)	1977-78 (£)	1978-79 (£)
1. Total premiums paid	1,716,000	7,080,000	8,320,000	14,700,000
2. Net premium after deduction of brokerage and underwriters' expenses	1,350,000	5,560,000	6,540,000	11,560,000
3. Total claims payments plus fees (a)	850,000	3,360,000	1,680,000	360,000
4. Amount of reserves	2,280,000	8,400,000	11,100,000	7,410,000
5. Total estimated reserves	2,570,000	10,880,000	17,050,000	(d)
6. Estimated settlement at 50% of reserves (b)	1,285,000	5,440,000	8,525,000	(d)
7. Estimated underwriting profit/(loss)	(785,000)	(3,240,000)	(3,665,000)	(d)
8. Estimated profit/(loss) allowing for investment income (c)	(360,000)	(1,553,000)	(1,058,000)	(d)

- Notes:
- a. All payments to third parties plus panel solicitors' fees.
 - b. 50% was taken as an estimate, since for the Run-In period the ratio of average settlement to final reserve was running at approximately this figure in late 1979.
 - c. This figure takes into account (1) rates of interest available down to 31st August, 1979 applied to the balance of net premiums, less claims paid, available for investment, and (2) after that date an annual rate of 10 per cent applied on the assumption that outstanding estimated settlements are paid in equal proportions over the remaining period until the expected close of each year's account.
 - d. For the year ended 31st August, 1979 over 60 per cent. of the claims files opened did not, at the time this Table was compiled, contain sufficient information either to close them or to pass them to panel solicitors for further action. This did not provide a sufficient basis for estimates.

TABLE C.9

Claims Paid Compared with Size of Firm

POSITION AS AT 31ST MARCH 1979 (a)

NUMBER OF PRINCIPALS IN FIRM	NUMBER OF	PERCENTAGE	NUMBER OF	TOTAL	PERCENTAGE	NUMBER	FIRMS	AVERAGE
	FIRMS AT APRIL 1979	OF ALL PRINCIPALS N= 20,404	CASES WHERE PAYMENT MADE	PAYMENTS MADE IN RESPECT OF CLAIMS	OF TOTAL AMOUNT PAID	OF FIRMS RATED (b)	RATED AS A PERCENTAGE OF FIRMS OF THAT SIZE	SIZE OF CLAIM
				(£)				(£)
1	2,285	11	206	848,430	18	74	3.2	4,119
2	1,608	16	214	651,475	13	60	3.7	3,044
3	994	14	157	919,253	19	30	3.0	5,855
4	581	11	126	498,851	10	22	3.7	3,959
5	393	10	106	393,662	8	13	3.3	3,713
6	223	7	52	207,141	4	7	3.1	3,983
7	136	4	37	79,607	2	1	0.7	2,151
8	101	4	27	277,926	6	3	2.9	10,293
9	89	4	22	70,100	1	1	1.1	3,186
10	62	3	27	121,228	2	2	3.2	4,489
11-15	131	8	48	470,952	10	7	5.3	9,811
16-20	32	3	11	76,172	2	0	0.0	6,924
21 or more	32	5	17	226,696	5	1	3.1	13,335
TOTAL	<u>6,667</u>	<u>100</u>	<u>1,050</u>	<u>4,841,493</u>	<u>100</u>			

- Note: a. Where, over a three year period ending 31st March, the claims paid in respect of a practice exceed the attributable premiums, the premiums payable by the principals in the practice for the year beginning on the following 1st September are subject to loading.
- b. 'Firms rated' are those required to pay an increased premium under the experience rating procedure described in Note (a) above. See Master Policy Clause 3(2)(ii).

TABLE C.10

Reserves Two Years After Claims Period Compared with Size of Firm

POSITION AT 31ST AUGUST 1979 FOR THE YEAR ENDED 31ST AUGUST 1977

NUMBER OF PRINCIPALS IN FIRM	NUMBER OF FIRMS AT JANUARY 1977	PERCENTAGE OF ALL PRINCIPALS N= 19,328	NUMBER OF CLAIMS	RESERVES	PERCENTAGE OF TOTAL RESERVES	AVERAGE RESERVES	NUMBER OF TOTAL LOSS CLAIMS (a)
1	2,054	11	83	806,316	10	9,714	3
2	1,699	18	78	895,559	11	11,481	4
3	932	14	69	1,167,904	14	16,926	4
4	603	12	49	625,896	7	12,773	-
5	352	10	36	552,350	8	15,343	-
6	217	7	26	468,578	5	18,022	1
7	148	5	18	297,400	3	16,522	-
8	107	4	19	873,650	10	45,981	2
9	73	3	10	704,750	8	70,475	2
10	50	3	8	355,500	4	44,437	1
11-15	128	7	28	662,300	8	23,653	-
16-19	32	3	7	139,500	2	19,928	-
20 or more	25	3	7	845,000	10	120,714	-
TOTAL	<u>6,420</u>	<u>100</u>	<u>438</u>	<u>8,394,703</u>	<u>100</u>		<u>17</u>

Note: a. I.e. reserve equal to the full amount of cover per claim.

Part 3

Waivers

Waivers are considered in some detail in Chapter 2 of our Discussion Paper, Professional Indemnity Insurance. A notable example, referred to in the Discussion Paper, is the waiver granted by the English Law Society under its Master Policy scheme. The wording of the waiver is as follows.

A. General Waiver

The Council on 7 May 1976 agreed that a General Waiver of the Solicitors' Indemnity Rules 1975 be granted in the following terms:

The Council hereby waive compliance with the Solicitors' Indemnity Rules 1975 by:

- (1) Solicitors who do all or any of the things listed in paras (a) to (c) below but do no other professional business as a principal, or as a person held out to the public as a principal, in private practice in England and Wales:
 - (a) Conduct professional business without remuneration for personal friends, relatives or charities who have been notified beforehand that the solicitor is not insured against professional indemnity risks or (as the case may be) of the amount for which the solicitor is insured against such risks;
 - (b) Administer Oaths, or take affidavits;
 - (c) While in the whole-time employment of an employer who is not a solicitor, act without charge in conveyancing transactions for fellow employees who have been compulsorily moved on their employer's business from one location to another, provided that:
 - (i) the solicitor complies in all respects with the conditions attached to the general waiver of Rules 1 and 3 of the Solicitors' Practice Rules 1936-72 by which he is permitted so to act, and
 - (ii) every person for whom he so acts is notified beforehand that the solicitor is not insured against professional indemnity risks or (as the case may be) of the amount for which the solicitor is insured against such risks.
- (2) Solicitors who are insured under a professional indemnity policy other than The Law Society's Master Policy last renewed between 1 September 1975 and 9 January 1976 (both dates inclusive) until the expiry

of such policy or 9 January 1977, whichever is earlier, provided that the amount of cover available under such policy is not less than 50,000 in the case of a sole principal, and in the case of a solicitor practising in partnership 30,000 multiplied by the number of partners in the insured firm.

B. Solicitors acting for Subsidiary and Associated Companies or under Local Authority Agency Agreements

The Council have considered the position of solicitors employed whole-time in commerce or industry or in local government who are called upon by their employers to act for subsidiary and associated companies, or under local authority agency agreements within the terms of the appropriate general waivers of Rules 1 and 3 of the Solicitors' Practice Rules 1936-72 published in pp 111 and 127 of the Guide to Professional Conduct. The Council confirm that, in their view, such work does not of itself bring such solicitor within the provisions of the Solicitors' Indemnity Rules 1975 so as to make him liable to effect insurance thereunder.

C. Applications for Individual Waivers

The Council, whilst dealing sympathetically with applications for individual waivers, will apply the following principles in considering each such application:

- (a) Any solicitor earning remuneration for professional business in private practice, however small should fall within the scheme;
- (b) It must be shown the public are adequately protected under alternative arrangements or that the risk involved is minimal;
- (c) Individual waivers will be granted only in exceptional circumstances, and in the absolute discretion of the Council;
- (d) Where an individual waiver is granted, stringent conditions will be imposed requiring immediate notification of any change of circumstances;
- (e) Such waivers will in every case be limited as to time, so as to allow for regular review and be revocable at will.

D. Applications for Individual Waivers in Special Cases

Notwithstanding the principles laid down in recommendation 3, the Council will in principle, but without prejudice to their overriding discretion to consider each application on its individual merits, grant individual waivers where application is made in the following circumstances:

- (a) Where a solicitor employed whole-time outside private practice by an employer who is not a solicitor uses a style or title on his professional stationery which would otherwise be deemed to hold him out as a principal in private practice under Rule 4 of the Solicitors' Indemnity Rules 1975, only in respect of professional business undertaken for his employer.
- (b) Where a solicitor acts as a consultant to a local or other public authority or a company on a fee earning, as opposed to salaried, basis thereby bringing himself within the terms of the Solicitors Indemnity Rules 1975 but undertakes no other professional business as a principal in private practice.

