

Policy

Errors and Omissions Insurance for the Members of the Human Resources Professional Association of Ontario

PART I - DEFINITIONS

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

1. CLAIM

- (a) Any written or oral monetary demands; or
- (b) any written or oral allegations;

received by the INSURED and in relation to the rendering of INSURED SERVICES and resulting from a single fault, error, omission or negligent act in the rendering of INSURED SERVICES.

2. DAMAGES

Compensatory damages excluding all pre-judgement and post-judgement interest.

3. FISSIONABLE SUBSTANCE

Any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.

4. INSURANCE MANAGER

The insurance administrator under this policy, who is duly authorized to issue this policy as well as to issue and receive notices under this policy for and on behalf of the INSURERS and whose name and address appears in the Declarations. The INSURANCE MANAGER is not a party to this contract of insurance.

5. INSURED

- (a) All members of the Named INSURED mentioned in the Declarations who presently subscribe to this insurance contract;
- (b) the Named INSURED as mentioned in the Declarations and the members of its governing body, but only for CLAIMS resulting from INSURED SERVICES rendered by a member provided that such member is insured under this contract of insurance;

- (c) the legal heirs or trustees of all persons mentioned in paragraphs (a) and (b) above.

6. INSURED SERVICES

Those services rendered by INSUREDS or that should have been rendered in their capacity as Certified Human Resources Professionals.

7. INSURERS

The insurance companies whose names appear in the Declarations. It is agreed that such INSURERS are binding themselves severally and not jointly, each in its own layer of coverage only, and each only for that amount determined by multiplying its percentage proportion of coverage by the amount of the LOSS.

8. LOSS

One or more CLAIMS resulting from the same or related error, omission or negligent act in the rendering of INSURED SERVICES, regardless of the number of suits, claimants or INSUREDS. Such CLAIMS will be considered first reported within the policy period in which the earliest CLAIM was reported and subject to that single limit of liability.

9. NUCLEAR ENERGY HAZARD

The radioactive, toxic, explosive, or other hazardous properties of RADIOACTIVE MATERIAL.

10. NUCLEAR FACILITY

- (a) Any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium, uranium, or any one or more of them;
- (b) any equipment or device designed or used for:
 - (i) separating the isotopes of plutonium, thorium, and uranium or any one or more of them;
 - (ii) processing or utilizing spent fuel; or
 - (iii) handling, processing or packaging waste;

(c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235 or any one or more of them if at any time the total amount of such material in the custody of the INSURED at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste RADIOACTIVE MATERIAL.

The above includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

11. POLLUTION

Emission, release, discharge, dispersal, escape or disposal of smoke, gases, vapours, soot, fumes, acids, alkalis, toxic substances, waste materials, irritants, contaminants or pollutants into or upon land or any water of any description no matter where located or how contained, or into any drainage or sewage system, or into the atmosphere.

12. RADIOACTIVE MATERIAL

Uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof, as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.

PART II - INSURING AGREEMENTS

A. GENERAL AGREEMENT

In consideration of the premium indicated in the Declarations, and in reliance upon the statements made in the application form, and subject to the terms, conditions, and limitations contained in this policy, the INSURERS agree to pay on behalf of the INSURED all sums which the INSURED shall become legally obligated to pay as DAMAGES because of a CLAIM presented to the INSURERS during the policy period arising out of an error, omission or negligent act in the rendering of INSURED SERVICES by the INSURED which took place subsequent to the retroactive date specified in the Declarations.

THIS POLICY OF INSURANCE, SUBJECT TO ITS TERMS, CONDITIONS AND LIMITATIONS, IS DESIGNED FOR APPLICATION TO CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURERS DURING THE POLICY PERIOD.

B. DEFENCE AND OTHER PAYMENTS

With respect to the insurance afforded by the General Agreements of Part II of this policy, the INSURERS further agree:

1. that they shall have the right and duty to defend the INSURED in any suit first brought against the INSURED before a Canadian court of civil jurisdiction, even though this suit is unfounded, false or fraudulent;
2. to pay any premium payable under guarantee bonds required to release attachments and any premium payable on appeal bonds but without any obligation to apply for or furnish any such bonds;
3. to pay expenses incurred in Canada in any investigation, defence, arbitration, litigation and settlement of any CLAIM;
4. to pay costs taxed against the INSURED following a judgement by a Canadian court of civil jurisdiction;
5. to pay reasonable expenses incurred by the INSURED at the request of the INSURERS, other than loss of revenue.

C. With respect to the insurance afforded by the General Agreement of Part II of this policy, the INSURERS further agree to pay all accrued interest that the INSURED is obligated to pay on that portion of such Canadian judgements payable by the INSURERS.

The Defence and Other Payments referred to in paragraphs B and C of Part II include all the expenses that the INSURERS incur to investigate, defend, settle, arbitrate or litigate a CLAIM covered by this policy; such expenses are costs and fees for the hiring of investigators, adjusters, experts, consultants, arbitrators, mediators and lawyers and also court and arbitration costs and costs for the attendance of witnesses other than the relevant INSURED.

D. The payment of the sums provided for in paragraphs B and C of Part II are to be considered in excess of the applicable limit of liability of the INSURERS.

E. TERRITORIAL LIMIT

This insurance applies only to CLAIMS which give rise to suits or judicial proceedings first brought against the INSURED within Canada.

PART III - EXCLUSIONS

The coverage afforded under this policy does not apply to:

1. BANKRUPTCY/INSOLVENCY

CLAIMS resulting from the bankruptcy or insolvency of the INSURED.

2. CARE, CUSTODY AND CONTROL

CLAIMS resulting from damage caused to property in the care, custody or control of the INSURED or property over which the INSURED is for any purpose exercising control.

3. DELIBERATE/DISHONEST OR FRAUDULENT ACTS

CLAIMS resulting from deliberate, dishonest, criminal or fraudulent acts committed by the INSURED, unless it was done in order to protect persons or property, but this exclusion does not apply to any INSURED who is neither the author of nor an accomplice to the act.

5. FINES, PENALTIES

Fines, penalties, punitive or exemplary DAMAGES.

6. INSURED VS INSURED

CLAIMS initiated by one or more INSUREDS against any other INSURED.

7. LIBEL AND SLANDER

CLAIMS resulting from DAMAGES resulting from:

- (a) oral or written publication of material, declaration or interview by the media that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- (b) oral or written publication of material that violates a person's right of privacy.

8. NUCLEAR ENERGY

CLAIMS:

- (a) resulting from any liability imposed by or arising under the Nuclear Liability Act; or
- (b) with respect to which an INSURED under this policy is also insured under a contract of nuclear energy liability insurance (whether the INSURED is named in such contract or not and whether or not it is legally enforceable by the INSURED) issued by the Nuclear Insurance Association of Canada or any other group or pool of insurers, or would be an INSURED under any such policy but for its termination upon exhaustion of its limit of liability; or
- (c) resulting directly or indirectly from the NUCLEAR ENERGY HAZARD arising from:
 - (i) the ownership, maintenance, operation or use of a NUCLEAR FACILITY by or on behalf of an INSURED;
 - (ii) the furnishing by an INSURED of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any NUCLEAR FACILITY; and

(iii) the possession, consumption, use handling, disposal or transportation of FISSIONABLE SUBSTANCES, or of other RADIOACTIVE MATERIAL;

but this exclusion shall not be construed to apply in any commercial or medical radioactive isotopes.

9. OTHER ACTIVITIES

CLAIMS resulting from the legal liability of the INSURED resulting from the operation of any business enterprise, other than INSURED SERVICES.

10. OTHER INSURANCE

CLAIMS covered by other insurance to which the INSURED has subscribed.

11. POLLUTION

CLAIMS arising out of or attributable to POLLUTION.

12. PRIOR KNOWLEDGE

CLAIMS or circumstances, reported or not in the application, known to the INSURED before the effective date of this policy; however, when this policy replaces, without interruption, a policy previously issued by the INSURANCE MANAGER, this exclusion applies only to LOSSES previously known to the INSURED before the inception date of the policy which was replaced.

13. RELATED ENTITIES

CLAIMS made against the INSURED, when such CLAIMS are made by or involve another business:

- (a) owned totally or partially by an INSURED; or
- (b) controlled or managed totally or partially by an INSURED; or
- (c) which is directly or indirectly involved in any way in the ownership or management of an INSURED'S business; or
- (d) of which an INSURED is a partner, director, officer or employee.

14. WAR RISK

DAMAGES caused directly or indirectly by war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection.

PART IV - COMPUTATION OF AMOUNTS PAYABLE BY THE INSURERS

A. LIMIT OF LIABILITY OF THE INSURERS

Subject, when applicable, to the deductible as stated in the Declarations, the liability of the INSURERS under the General Agreement of Part II of this policy is

limited, for each LOSS and per policy period, to the amounts as stated in the Declarations. Moreover, such deductible shall apply to investigation, adjusting and legal defence expenses, and any other payment made under Part II of this policy.

B. INTERPRETATION

For the purpose of interpreting Section A. of Part IV of this policy, the payment of the sums provided for in paragraphs B and C of Part II are to be considered in excess of the applicable limit of liability of the INSURERS.

PART V - CONDITIONS

1. ACTION AGAINST THE INSURERS

No action or legal proceedings may be initiated against the INSURERS unless the INSURED has fully complied with the requirements of this policy.

2. ADDITIONAL INSURED

This policy will apply to each INSURED as if separate policies had been issued to each of them.

3. AMENDMENTS

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or 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 endorsement, signed by the INSURANCE MANAGER, issued to form a part of this policy.

4. CANCELLATION OF POLICY

(a) The Named INSURED may cancel this policy by giving written notice to the INSURANCE MANAGER to this effect, indicating when thereafter the cancellation shall be effective. The INSURERS will reimburse the excess of premium paid by the INSURED over and above the premium earned for the time on risk, the calculation being made in accordance with the customary short rate table and procedure.

(b) The INSURERS or INSURANCE MANAGER may cancel this policy by giving to the Named INSURED written notice to this effect, either by registered mail or by delivering it by hand and the termination takes effect thirty (30) days after the date of the notice; in the event of non-payment of premium, the termination takes effect fifteen (15) days after the date of the notice. The INSURERS or INSURANCE MANAGER shall reimburse this excess premium paid by the INSURED over the earned premium for the time on risk, such calculation to be made on a pro rata basis.

5. CONFORMITY WITH LAW

Provisions of this policy which are at variance with the law of the province shown in the Declarations are hereby modified in order to conform with such law.

6. CO-OPERATION OF THE INSURED

The INSURED must co-operate with the INSURERS or the INSURANCE MANAGER and, at the request of the INSURERS or INSURANCE MANAGER, assist to effect settlement, forward proceedings, attend hearings and trials, assist in securing and giving evidence and in obtaining the attendance of witnesses.

The INSURED shall not, without the INSURERS' or INSURANCE MANAGER'S approval and except at the INSURED'S own cost, voluntarily make any payment, assume any obligation or incur any expense.

7. DEATH OR BANKRUPTCY OF THE INSURED

If the INSURED dies or is declared bankrupt during the policy period, the INSURERS shall continue the coverage for the legal representative of the INSURED on the same basis as for the INSURED.

8. NOTICE OF CLAIM

This is a claims-made and reported policy. The INSURED shall, as soon as practicable after being made aware of a CLAIM for which coverage would be afforded by this policy, provide written notice with the full particulars thereof to the INSURANCE MANAGER, ENCON Group Inc., at the address indicated in the Declarations.

If during the policy period the INSURED becomes aware of a circumstance which could reasonably give rise to a CLAIM, the INSURED shall give written notice thereof to the INSURANCE MANAGER as soon as practicable and prior to the date of the termination of the policy. Any such CLAIM received by the INSURED resulting from such circumstances shall be treated as a CLAIM made during the policy period in which such notice was given.

If the effective date of termination of the policy is a Saturday, Sunday, or Statutory Holiday, any CLAIM presented to the INSURANCE MANAGER on the business day immediately following the termination date, will be deemed to have been reported within the policy period.

Notwithstanding the aforementioned, any late notice or absence of notice is cause of forfeiture of the rights of the INSURED, if the INSURANCE MANAGER sustains injury therefrom.

9. RIGHT TO AUDIT

The INSURERS or INSURANCE MANAGER may, at any time, inspect the premises of the INSURED. In relation to the object of this policy, the INSURERS or INSURANCE MANAGER may also examine the financial records and files of the INSURED during the policy period and during the two (2) years which follow its expiry or cancellation provided that prior

notice of forty-eight (48) hours is given to the INSURED.

10. SETTLEMENT AND
CONTESTATION OF CLAIMS

In the event of a CLAIM, the INSURERS or INSURANCE MANAGER will not settle the LOSS without first obtaining the written consent of the INSURED.

However, if a settlement is rendered impossible by the sole refusal of the INSURED, the latter must continue the defence at the Named INSURED'S own expense and the liability of the INSURERS will then be limited to the amount for which the CLAIM could have been so settled together with expenses incurred under the present policy at the date of such refusal.

11. SUBROGATION

In the event of any payment under this policy, the INSURERS shall be subrogated to all the INSURED'S rights of recovery therefore against any person or organization and the INSURED shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The INSURED shall do nothing to prejudice such rights.

12. SUSPENSION OF PERMIT OR
PROVISIONAL ADMINISTRATION

If the Named INSURED has its permit or license to practice suspended by virtue of the laws governing its practice, or if a provisional administration is imposed by governmental authority, notice must be given to the INSURANCE MANAGER within a period of not more than thirty (30) days from such suspension or provisional administration.



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Endorsement No. 1

Retirement/Death/Disability/ Cessation of Business

It is agreed that the following condition is hereby added to PART V – CONDITIONS of this POLICY:

13. RETIREMENT/DEATH/DISABILITY/CESSATION OF BUSINESS

If the INSURED completely gives up the practice of his/her profession as defined under Item 6, INSURED SERVICES, of PART I – DEFINITIONS of this POLICY during the POLICY PERIOD due to his/her retirement/death/disability/cessation of business, the INSURED has the right to an extension of cover granted hereunder with respect to any CLAIM or CLAIMS which may be made against the INSURED during the POLICY PERIOD, but only with respect to any INSURED SERVICES performed or omitted or alleged to have been performed or omitted by the INSURED prior to his/her retirement/death/disability/cessation of business.

Furthermore, the premium required to grant this extension of coverage is as set out below:

First Year:	75% of expiring premium
Second Year:	50% of expired premium from final year on program
Subsequent Years:	25% of expired premium from final year on program

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.

Attached to and forming part of Policy Number SRD116021.



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Endorsement No. 2

Asbestos Liability Bodily Injury Exclusion

This endorsement restricts the insurance provided by this policy.

This insurance does not apply to:

CLAIMS for DAMAGES for BODILY INJURY which is actually or allegedly, in whole or in part, directly or indirectly, caused by, based upon or in any way involving asbestos or any material derived therefrom in whatever form or quantity.

This exclusion applies to such CLAIMS regardless of any other cause or event (whether insured or not) contributing concurrently or in any sequence to the occasioning of the BODILY INJURY.

BODILY INJURY in the context of this exclusion means physical injury, sickness, disease, mental anguish, mental suffering or shock, including death resulting from any of these at any time.

Except as otherwise provided by this endorsement, all terms, provisions and conditions of this policy shall have full force and effect.

Attached to and forming part of Policy Number SRD116021.