



THE
CANADIAN
NURSES
PROTECTIVE
SOCIETY

1999 - 2008

A Second Decade of Success

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INTRODUCTION	1
1999: EXPANSION OF SERVICES	1
2000: THE NEW MILLENIUM	2
2001: PROFESSIONAL ACCOUNTABILITY	2
2002: RELEVANT AND RESPONSIVE	3
2003: PATIENT SAFETY	4
2004: PROACTIVE SUPPORT OF NURSE PRACTITIONERS	5
2005: ENHANCING COLLABORATIVE PRACTICE	5
2006: PREPAREDNESS	6
2007: PLANNING FOR THE FUTURE	7
2008: 20 th ANNIVERSARY	8
CONCLUSION	9

INTRODUCTION

The Canadian Nurses Protective Society (CNPS®) is a national not-for-profit nursing organization established in 1988 to meet the professional liability needs of registered nurses across Canada. Over the course of twenty years, the organization has grown from a staff of one to nine and is now recognized as a leader in the area of risk management education for the Canadian healthcare and nursing sectors. In 1999, CNPS published *The Canadian Nurses Protective Society: A Ten-Year History of Success*. This is a sequel to that document, highlighting CNPS' accomplishments and significant events from 1999 to 2008.

1999: EXPANSION OF SERVICES

Two significant events occurred in 1999: CNPS' services were expanded to new areas and the CNPS Plus® program was launched to meet the changing needs of nurses and nursing organizations. To support nurses in independent practice, those appearing as witnesses, and those being investigated for alleged criminal offenses, CNPS added financial assistance for opposing an Application for Production of Clients Records in a criminal sexual assault trial; and legal assistance for witness appearances and for criminal investigations up to \$2,000 per proceeding/investigation to an annual maximum of \$5,000.

Due to healthcare cutbacks in the 1990's, many nurses started independent nursing practices. These nurses found the business insurance offered by the insurance industry was not tailored for a nursing practice and, if available, the cost was prohibitive. To respond to this need, CNPS sponsored CNPS Plus®, a national group insurance program established for nurses and nursing groups by the insurance broker Aon Reed Stenhouse. This national approach reduced the cost to nurses by approximately 80%. It offers primary professional liability coverage as well as business, professional discipline, legal expense, and directors and officers liability coverage. This program continues today. While originally designed for nurses in independent practice, it has become a valuable plan for Nurse Practitioners.

In addition to the liability protection offered by CNPS and CNPS Plus®, keystones of CNPS services are communication with CNPS members and beneficiaries, and education for nurses about legal risks and risk management strategies pertaining to nursing practice. CNPS published its first Annual Report to members in 1999. The same year, CNPS published *The Canadian Nurses Protective Society: A Ten Year History of Success*; launched its French web site and published its eleventh infoLAW®, *Legal Risks in Nursing*. Three articles were published in the *The Canadian Nurse/L'infirmière canadienne: Managing Risks in Obstetrical Nursing, Defamation Actions, and Is There a Risk in Being a Good Samaritan?* Legal workshops were provided for nurses across the country and free confidential telephone consultative services were provided to nurses daily.

At the Board of Directors, two major governance initiatives were initiated: revision of the CNPS Bylaws and adoption of the *Policy Governance*® model as a framework for CNPS Board governance. Over time, this model has been modified by the CNPS Board to meet CNPS' evolving needs and continues to enhance the governance and management of CNPS.

2000: THE NEW MILLENNIUM

With the dawn of the new millennium, governance of CNPS moved forward into the 21st century. To adhere to the principles of *Policy Governance*[®], the CNPS Board made significant Bylaw amendments which changed the management structure and accountability mechanisms within the organization. The former Managing Director of CNPS was appointed Executive Director and Chief Executive Officer. As a result, CNPS became a fully autonomous independent organization.

CNPS strengthened its resource base in 2000 by adding a nurse lawyer with extensive nursing experience in labour and delivery (a high risk area for nurses) and ethics to its ranks. As well, the addition of a Nursing Informatics Analyst to CNPS' staff enabled CNPS to more accurately capture information and statistics to bolster CNPS risk management and education activities.

CNPS continued to increase its risk management profile and enhance its communication with nurses through its web site, publications, legal education workshops and presentations. Two new infoLAWs were published: *Privilege*, and *Delegation to Other Health Care Workers* and an article on *Occupational Health and the Transfer of Records* was published in the *Canadian Nurse*.

2001: PROFESSIONAL ACCOUNTABILITY

The major concern of nurses contacting CNPS in 2001 was professional accountability. During this period, cutbacks in healthcare resulted in job losses, nurses leaving the country and the profession, and an increase in the provision of nursing services by less qualified healthcare providers. Nurses were concerned about leaving their clients in the care of others who did not have the knowledge, skills or judgment of a registered nurse. With fewer resources and more acutely ill clients, nurses knew they could not provide optimal care and were legitimately concerned about their professional accountability and potential liability exposure. CNPS canvassed the issues with nurses, provided them with risk management advice, and referred them to resources supporting their practice. These issues were also addressed in speaking engagements and an article was published in the *Canadian Nurse* on *Professional Liability During the Shortage*. An infoLAW[®] entitled *Community & Public Health Nursing and the Law* was produced to respond to the liability concerns of nurses working in these fields.

The introduction of information technology into healthcare increased certain legal risks such as confidentiality. CNPS' expertise was sought by nurses and by organizations requesting presentations related to electronic documentation and confidentiality and an article on the *Legal Risks of E-mail* was published in the *Canadian Nurse*. CNPS legal knowledge in this area was also recognized by Corrections Canada, when it requested CNPS' participation in its Think Tank on Confidentiality Issues Related to the Corrections System, a project which spanned three years.

2002: RELEVANT AND RESPONSIVE

To ensure that CNPS remains an organization relevant and responsive to the needs of Canada's nurses, the CNPS Board spent extensive time evaluating governance performance and the utility of the *Policy Governance*[®] model, analyzing threats and opportunities in the environment, and strategic planning. The CNPS Mission, Mandate, Values and Ends were reassessed and revised. The Board adopted a new, more flexible policy governance approach while retaining the existing policy framework as a basis for future governance.

CNPS financial security was also scrutinized. An independent actuarial review was conducted which revealed that CNPS had adequate financial resources to meet present and future claims and commitments.

From a practice perspective, key issues identified by nurses and CNPS' member jurisdictions were: the shortage of nurses, concerns about patient safety, the potential liability exposure of Nurse Practitioners, and the adequacy of personal professional liability protection for Nurse Practitioners. CNPS continued to help nurses manage the risks in their practice by providing risk management information by telephone, conducting legal workshops in CNPS member jurisdictions, and through legal writing. An infoLAW[®] entitled *Obstetrical Nursing* was published and three articles on the topics of *Cyberlaw*, *Liability Trends in Nursing*, and *Managing Legal Risks in Preceptorships* were published in the *Canadian Nurse*.

CNPS assumed an advocacy role in response to concerns raised by some medical organizations about the potential liability exposure of physicians working with Nurse Practitioners (NPs), and the perceived inadequacy of professional liability protection for these nurses. CNPS provided media interviews and communicated directly with representatives of these physician organizations as well as the provincial government in Ontario. CNPS presented the Ontario Ministry of Health with statistical data from the USA to demonstrate the low liability risk of the NPs relative to physicians. To further support Nurse Practitioners, CNPS added a new section to its web site dedicated to legal issues for NPs.

Externally, CNPS visibility and credibility continued to grow. CNPS provided:

- statistical and legal information included in the Society of Obstetricians and Gynecologists (SOGC)'s ALARM course material on risk management;
- input to proposed amendments to the Saskatchewan government's regional health authority legislation;
- input through its participation in Corrections Canada's national multi-disciplinary project, *Confidentiality of Health Information Within the Federal Correctional Environment*;
- input to two First Nations and Inuit Health Branch projects for Health Canada; and
- input to the Policy and Standards Committee of the Canadian Society of Telehealth.

2003: PATIENT SAFETY

Patient safety, implementation of the Nurse Practitioner role, and privacy were the three dominant issues in 2003. Patient safety within the Canadian healthcare sector received more attention because of international patient safety studies which triggered the establishment of a National Steering Committee headed by the Royal College of Physicians and Surgeons of Canada (RCPSC). This committee recommended the establishment of a Canadian Patient Safety Institute. CNPS participated, at the RCPSC's request, in a forum on the proposed governance of this Institute. CNPS also presented at the Canadian Nurses Association (CNA) forum on Patient Safety, contributed to the CNA Patient Safety Discussion Paper and Position Statement, and was added to the National Initiative for Telehealth Framework of Guidelines project (NIFTE) stakeholder database.

Concerns about the adequacy of professional liability protection for Nurse Practitioners continued to be raised by physician groups. Some CNPS member jurisdictions expressed the view that this issue was acting as a barrier to implementation of the NP role. This was confirmed in a CNPS Nurse Practitioner Survey. To remove this perceived barrier, the CNPS Board of Directors increased the limit of its professional liability protection for NPs to \$2,000,000 for each occurrence with an annual aggregate of \$3,000,000. To further support the Nurse Practitioner initiative, CNPS conducted a review of relevant provincial/territorial legislation, worked closely with the Ontario's Ministry of Health and Long Term Care Nursing Secretariat, met with representatives from the Nurse Practitioners' Association of Ontario, and published an infoLAW® entitled *Nurse Practitioners*.

The introduction of new provincial, territorial and federal privacy legislation also impacted on CNPS activities. To ensure nurses were provided with current information, a review of privacy and health information legislation was conducted. Because the provisions in the Federal *Personal Information and Protection of Electronic Documents Act (PIPEDA)* would apply, on 1 January 2004, "to every organization that collects, uses or discloses personal information in the course of commercial activity", CNPS, though not a commercial entity, decided to voluntarily comply with the provisions in *PIPEDA*. A Chief Privacy Officer (CPO) was appointed in December of 2003 and a CNPS Privacy Code was developed as well as privacy policies and procedures. An article entitled *New Developments in Privacy Law* was published in the *Canadian Nurse*.

In 2003, the CNPS Mission Statement was revised, the Corporate Values were updated, and two additional infoLAWs, *Inquests and Fatality Inquiries*, and *Defamation*, were published. Two articles, *Intermittent Auscultation of the Fetal Heart Rate* and *Reuse of Single Use Medical Devices* were published in the *Canadian Nurse* and the *Canadian Operating Room Journal* respectively. The article on *Reuse of Single Use Medical Devices* was subsequently cited in a research study from the University of Edinburgh which was published in the *Journal of General Virology*.

2004: PROACTIVE SUPPORT OF NURSE PRACTITIONERS

Physician groups continued to foster a perceived inadequacy of liability protection for NPs despite CNPS' data to the contrary. This issue remained a barrier to implementation of the NP role despite enabling provincial legislation. To address this, the CNPS Board increased liability protection for Nurse Practitioners to \$5,000,000. This commitment helped facilitate the funding of over 500 Nurse Practitioner positions in Ontario alone. It also addressed similar concerns voiced by physician groups in other jurisdictions. An article entitled *Nurse Practitioners and Liability Protection* was forwarded to member jurisdictions for inclusion in their publications and the article was posted on the CNPS web site. To help clarify misconceptions about professional liability, CNPS initiated a project with the Canadian Medical Protective Association (CMPA) to develop a joint statement to address liability issues and protection for Nurse Practitioners and physicians working in collaborative practice.

Work in the area of privacy continued throughout 2004. Recent privacy law developments were researched and an article entitled *CNPS: Respecting Your Privacy Rights* was published in the *Canadian Nurse*. CNPS Board and staff privacy education sessions were also held. An independent Threat and Risk Assessment (TRA) of CNPS security measures was conducted by a company specializing in security analysis. With its existing security measures, CNPS security risk was assessed as low.

In May of 2004, two significant documents were released by Drs. Ross Baker and Peter Norton: the *Canadian Adverse Events Study* and the Report to Health Canada entitled *Patient Safety and Healthcare Error in the Canadian Healthcare System*. CNPS incorporated information from these documents into its workshops and legal writing.

As part of CNPS' ongoing risk management activities, three infoLAWs, *Examinations for Discovery*, *Patient Restraints*, and *Consent for the Incapable Adult* were published and the infoLAWs on *Negligence*, and *Independent Practice* were updated. Two additional articles were published in the *Canadian Nurse*: *The Nurse as an Expert Witness*, and *Managing Risk With Patient Restraints*.

2005: ENHANCING COLLABORATIVE PRACTICE

The *CMPA/CNPS Joint Statement on Liability Protection for Nurse Practitioners and Physicians in Collaborative Practice* was published this year. As a result of the wide distribution of this document, CNPS received several invitations from other national groups working on interdisciplinary practice. One such project was the 18 month Multidisciplinary Collaborative Primary Maternity Care Project (MCP²) funded by Health Canada. CNPS provided input to the core competency document and to the section on Accountability, Liability and Malpractice that appears in the final MCP² publication.

In addition, CNPS expertise was sought for more than 14 interdisciplinary projects, including: the Task Group Primary Health Care Renewal Electronic Records project; the Canadian Nurse Practitioner Initiative (CNPI); the CNA Invitational Symposium on the Evolution of Advanced

Practice in Canada; the Health Quality Council of Alberta's Provincial Framework for Disclosure of Harm to Patients and Families; the Conference Board of Canada's Enhancing Interdisciplinary Collaboration in Primary Health Care (EICP) project; Ontario's Supporting Interdisciplinary Practice (SIP) project; the Health Council of Canada's National Health Human Resources Summit; and the Canadian Health Services Research Foundation's (CHSRF) Retreat on Teamwork.

CNPS' visibility was also enhanced by its appointment to the CPSI's Legal and Regulatory Advisory Committee and to the Policy and Standards Committee of the Canadian Society of Telehealth, ongoing workshops and seminars including joint education sessions with CMPA, and participation in the Ontario Hospital Association's conference on *Legal Issues and Practicalities of NP Role Implementation*. Two infoLAWs were published: *Patient Safety and Privacy*; and an article on *The Legal Status of the Fetus* was published in the *Canadian Nurse*.

The Board of Directors reaffirmed the organization's Mission, Vision and Values and continued to monitor and update its governance and operational policies. Leasehold improvements were completed in the spring of 2005 to increase CNPS' usable office space at CNA House.

2006: PREPAREDNESS

Preparedness in governance, response to the current and future liability protection needs of registered nurses and fiscal responsibility were the focus of Board activities in 2006. To enhance Board knowledge and performance in these areas, Board education sessions on governance, CNPS' investment history and strategy, and liability issues and trends were conducted. Revisions were made to a number of governance policies, the Mission Statement, and a bylaw protecting CNPS from financial responsibility if a Board member is convicted of criminal activity. A new policy for succession planning was adopted. To respond to current and future concerns related to pandemics, the CNPS Adjudication Guidelines were revised to extend eligibility for CNPS liability protection to persons, including students, who are issued a temporary permit by CNPS member jurisdictions to practice nursing for a limited time in the event of a pandemic emergency.

To enhance the communication of key messages about emerging legal issues affecting the nursing community to CNPS member organizations, governments and other relevant stakeholders, a series of Briefing Notes was commenced. Briefing Notes on *Collaborative Practice: Are Nurses Employees or Self-Employed?* and *Professional Liability Protection in a Pandemic* were published and distributed to stakeholders. CNPS also published three new infoLAWs on the topics of *Communication*, *Expert Witness* and *Consent to CPR*. An article on *Advanced Directives* was published in the *Canadian Nurse*.

As an offshoot of the CMPA/CNPS Joint Statement and other documents published in 2005, CNPS liaisons with external organizations continued to grow and strengthen. This was evidenced by the Health Council of Canada's invitation to address the Council on patient safety initiatives and tort reform and the CEO's invitation to present to physicians at CMPA's Annual Meeting. CNPS also participated in: the Conference Board of Canada's multi-disciplinary Think Tank addressing liability risks in interdisciplinary care; the EICP reference group on Understanding

Liability Issues for Interdisciplinary Collaborative Patient-Centred Practice; a multi-disciplinary Care at the End of Life Initiative sponsored by the Calgary Health Region; and the UBC Department of Medicine's Collaboration for Maternal and Newborn Health Initiative. CNPS involvement with CPSI increased to three initiatives: the Legal and Regulatory Affairs Committee, Ottawa's Patient Safety Network and participation in a multi-disciplinary Working Group established to develop national guidelines for the disclosure of adverse events.

2007: PLANNING FOR THE FUTURE

Responsiveness, financial accountability and planning for the future were three key areas of focus for the CNPS Board in 2007. A review of CNPS Adjudication Guidelines confirmed that CNPS is well positioned to respond to future nursing professional liability needs. An actuarial report with projections to 2012 provided an actuarial valuation of CNPS liabilities which included: separate calculations of potential RN and NP liability exposure; an evaluation of the adequacy of CNPS net assets; and an analysis of the long term effects of reducing membership fees, increasing liability limits or both. The actuary concluded that CNPS had adequate financial resources to protect nurses and NPs. Based on a limited claims history for NPs, the Board decided not to change the limits or fees at this time.

CNPS ongoing work relating to liability protection and issues for nurses working in the emerging collaborative care models across the country has resulted in further recognition of CNPS as a stakeholder and a credible resource at the provincial and national levels. Participation in the Conference Board of Canada's Think Tank concluded with its publication of *Liability Risks in Interdisciplinary Care: Thinking Outside the Box*. New projects included participation in: The Nova Scotia Department of Health's Forum on Regulation in the 21st Century: Interdisciplinary Team Accountability; HealthForceOntario's Interdisciplinary Care Project: Interprofessional Care: A Blueprint for Action in Ontario; and an interdisciplinary meeting held by the Ontario Health Professions Regulatory Advisory Committee (HPRAC) to discuss liability issues related to proposed amendments to Ontario's *Regulated Health Professions Act* (RHPA) expanding the scope of nursing practice.

Liability protection for nurses and Nurse Practitioners hired as employees by Primary Care Networks in Alberta, and Family Health Teams in Ontario was an issue in 2007. In both cases, CNPS advocated for adequate liability insurance for legal entities or individuals hiring nurses and Nurse Practitioners. Following CNPS' input, the Alberta government's healthcare insurer confirmed that they would provide the needed insurance coverage for Alberta's Primary Care Initiatives. In Ontario, this issue has not yet been fully resolved.

As a stakeholder in patient safety, CNPS continued its CPSI commitments. CNPS attended the CPSI Annual General Meeting as a voting member and hosted a meeting of the Canadian Patient Safety Network. CNPS also continued its involvement with the Legal and Regulatory Affairs Committee and with the Working Group on guidelines for disclosure of adverse events. The *Canadian Disclosure Guidelines* were approved by the CPSI Board of Directors in December 2007.

CNPS continued to promote prevention of adverse events through risk management workshops and daily interactions with nurses calling CNPS about their legal concerns. An infoLAW® on *Operating Room Nursing* was published and the infoLAWs on *Documentation*, *The Nurse as a Witness*, *Malpractice Lawsuits* and *Medication Errors* were updated.

2008: 20th ANNIVERSARY

The crowning event in 2008 was the 20th anniversary luncheon hosted by CNPS in Ottawa to celebrate CNPS' 20 years of success and to recognize the foresight of CNPS' innovators, Dr. Ginette Rodger and the 1987 CNA Board of Directors. Other special guests included many former CNPS Presidents and Board members, current and former Executive Directors of CNPS' member organizations, CNPS' legal counsel, and the CNPS Finance Officer.

Celebrating CNPS' success was energizing, and the focus on CNPS' past successes and evolution directed the Board's attention to the need to protect CNPS for the future. At a strategic planning session, the Board identified risk areas and opportunities, putting strategies in place to address the risks and changes they could see on the horizon. Policy changes were made to increase the Board's financial oversight of CNPS with a recommendation that CNPS hire its own accounting staff. In the latter part of the year, CNPS received notice from CNA that CNA could no longer provide CNPS with financial services and, further, CNA would not be renewing CNPS' lease beyond the end of 2009. CNPS hired a Finance Officer in November 2008 and began to search for new business premises.

In 2008, concerns about the liability of nurses working with midwives and with unregulated healthcare providers were raised by nurses and CNPS member jurisdictions. In response to the midwifery assistant issue, a Briefing Note, *Insurance Considerations when Nurses Assist Midwives*, was distributed. CNPS also participated in Health Canada's Office of Nursing Policy Discussion Forum "Reciprocity in Education and Practice: is there a role for concurrent practice for nurses and midwives?", and in a series of roundtable discussions hosted by CNA entitled "Valuing Health-care Team Members: Working with Unregulated Workers". Another concern was the increase in adverse events involving the medication Dilaudid. To alert nurses to this potential risk, an article entitled *Hydromorphone: Handle with Care* was published in the *Canadian Nurse*.

The work on patient safety continued. CNPS participated in meetings with CPSI's Disclosure Working Group; presented to the Nursing Leadership Conference 2009 on "The Nurse Leader's Role in Disclosure of an Adverse Event"; and provided a poster presentation at the national Halifax 8 Patient Safety Conference. CNPS also provided detailed responses to Ontario's HPRAC Reports; gave feedback on PEI's draft provincial disclosure policy; lobbied provincial governments for the enactment of apology legislation; and advocated for the development of national guidelines for the reporting of adverse events. The *Canadian Disclosure Guidelines* were endorsed by CNPS prior to their release in March of 2008. CNPS was presented with a plaque in recognition of its contribution to this project. CNPS also participated in two National Patient Safety Roundtables hosted by CPSI and the Canadian Council of Health Services Accreditation (CCHSA).

As well as the external projects, CNPS continued to conduct legal workshops across the country; published two new infoLAWs on the topics of *Reporting and Disclosure of Adverse Events* and *Occupational Health*; and revised the infoLAWs on *Telephone Advice* and *Confidentiality of Health Information*. By 2008, the infoLAW® series included 29 topics covering a wide range of legal liability issues relevant to nursing practice. All are available to nurses on CNPS' web site.

CONCLUSION

In addition to its risk management activities and services over the past twenty years, CNPS has met the evolving legal needs of the nursing community by providing financial assistance to eligible registered nurses for claims arising from the provision of professional nursing services. The number of nurses eligible for CNPS services has increased by 50% over CNPS' 20 year history. Nurses working as employees, volunteers or in independent practice have accessed CNPS' financial assistance to cover their legal costs in many legal processes including criminal investigations.

As CNPS embarks on its third decade of providing professional liability services to the Canadian nursing community, it is well positioned to respond to the changing nursing landscape and the evolution of new nursing roles and professional liability needs. CNPS continues to be a progressive organization, governed by nurses dedicated to enabling nurses to effectively manage their professional legal risks and assisting them appropriately when they are in professional legal jeopardy.