



**REGISTERED NURSES' ASSOCIATION OF ONTARIO**

**LEGAL ASSISTANCE PROGRAM**

**POLICIES**

March 3, 2012

REGISTERED NURSES' ASSOCIATION OF ONTARIO

LEGAL ASSISTANCE PROGRAM

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## **1. INTRODUCTION**

The Legal Assistance Program (the “Program” or “LAP”) was established by the Registered Nurses’ Association of Ontario (“RNAO”) in 1986. The goal is to assist individual participants in the Program with certain legal problems, on a case-by-case basis, which may arise in work-related circumstances, and which relate to the professional practice of nursing. (professional practice of nursing refers to all aspects of nursing as recognized by CNO).

LAP is not an insurance, it is a discretionary program and enrolment is voluntary. LAP may cover all or part of the legal expenses incurred by the participant who has request and received approval by the LAP Committee. Decisions concerning the appropriate level of assistance are made by the Legal Assistance Program Committee (the “Committee”). The LAP Administrator will receive requests for legal assistance. The Committee, in its discretion, will decide if the Program will provide information; referral to a lawyer employed by LAP; referral to lawyers familiar with the subject matter of the request, or, in some cases, funding for fees of a lawyer of the participant’s choice.

The Program provides assistance to individuals in matters arising under the Nursing Act, 1993, and the Regulated Health Professions Act, 1993 of Ontario and any amending or superseding legislation. It may also cover some employment matters and for other matters where the participant is called as a witness arising out of a job-related incident.

RNAO Board of Directors in consultation with the Committee may, in its discretion, use LAP funds for legal cases to advance, support and advocate for the profession of nursing.

LAP is available to members of the Registered Nurses Association of Ontario (“RNAO”) who are enrolled in the Program, and is funded by contributions by such members who choose to participate in the Program. RNAO members who have not joined the LAP program would not be entitled to the assistance provided.

The Services and Benefits Administrator of RNAO acts as LAP Administrator and assists the Committee. Participants must request assistance from the LAP Administrator and complete a request form which outlines the type of legal proceeding involved and the extent and nature of assistance required.

The detailed rules, regulations and exceptions governing the Program follow.

## **2. ELIGIBILITY**

- (a) The eligibility requirements in order to be considered for legal assistance through the Legal Assistance Program are as follows:
  - (i) the person requesting legal assistance must have been a Registered Nurse with the College of Nurses of Ontario at the time of the incident;

- (ii) the incident must have occurred within the Province of Ontario;
  - (iii) the person requesting assistance must be a member or associate member of the Registered Nurses' Association of Ontario;
  - (iv) the person requesting assistance must be a member of the Program at the time of the incident and remain a member continuously from the time of the incident until the case is resolved or the maximum assistance available from the program has been reached. Continuous membership is defined as membership in RNAO and LAP, which is renewed annually, for the entire membership year November 1 to October 31. The Committee may, at its discretion, consider exceptions to the foregoing.
  - (v) Any person enrolled in LAP requesting assistance is deemed to have accepted the terms and conditions of the Program.
- (b) A person is no longer eligible and will not be considered for legal assistance through the LAP program if any of the eligibility requirements outlined above are not met.
  - (c) The Committee may, at its discretion, consider exceptions to the foregoing.

### **3. DEFINITION OF LEGAL EXPENSES**

Subject to the limitations contained in section 6 below, "Legal Expenses" means fees and disbursements payable by the participant to a lawyer for conferences, counselling, investigation, assessments, preparation of documents or reports, judicial or similar proceedings, costs awarded against the participant and witness fees.

### **4. ASSISTANCE PROVIDED**

Subject to the exclusions and limitations set forth herein, the Program may assist a participant in payment of Legal Expenses incurred in relation to:

- (a) matters which are the result of an initial letter of notification of a complaint or a report or other investigation issued or taken by the College of Nurses of Ontario and which letter, report or investigation relates to an incident which occurred while the participant was a participant in the LAP program;
- (b) appearances under a subpoena as a witness in matters arising under the Regulated Health Professions Act of Ontario and any amending or superseding legislation;

- (c) summonses to appear as a witness before a legally constituted tribunal or a court in Ontario in relation to job-related incidents and which summonses relate to an incident which occurred while the participant was a participant in the Program;
- (d) some employment-related matters occurring in Ontario, which occurred while the participant was a participant in LAP;
- (e) situations where the participant may have a substantial direct interest in a coroner's inquest, as evidenced by a letter to the LAP Administrator and such supporting material as the LAP Administrator may require;
- (f) initial consultation for legal document review which is required during the course of employment or specifically an employment contract review prior to accepting a nursing position;
- (g) The Committee may in its discretion consider other legal matters related to the professional practice of nursing.

## 5. EXCLUSIONS

- (a) The Program will not assist with any Legal Expenses in respect of matters under the following sections of the Health Professions Procedural Code, or any similar section of any amending or superseding legislation:

Sections 15(1), (2)	References to the Registration Committee
Sections 72, 73 and 74	Reinstatement
- (b) The Program will not assist with any amounts arising out of the following:
  - (i) Fines and Penalties;
  - (ii) Personal expenses except for case related travel, accommodation and communication costs, to a maximum of \$1,500.
  - (iii) Damages awarded against the participant; and
  - (iv) Loss of income.
- (c) Requests for assistance under the Program will only be considered for assistance which is not covered by an employer or by any insurance or other plan in which the participant is a member or participates except where the only source of alternative advice may involve bias as determined by the Committee.

- (d) The program will not be used to solely create or amend legislation.

## **6. FINANCIAL LIMITS**

### **Individual Case**

- (a) maximum funding per case, including time and disbursements, is \$10,000.00 plus applicable taxes, including initial consultation;
- (b) initial consultation having a value of \$250.00;
- (c) time and billings, including disbursements and outside counsel, will be docketed for each case and a summary provided to the member periodically;
- (d) in exceptional circumstances the Committee will consider requests for assistance which exceed the maximum amounts set out in 6.(a) above.

### **Group Case**

- (a) the Committee may approve a request to provide financial assistance, to a maximum of \$10,000 per group case, to a group of nurses who engage a lawyer for assistance.
- (b) must be a minimum of 75% (seventy-five percent) of LAP members within the group, eligible for assistance, in order for the group to qualify for consideration.
- (c) if approved, LAP will provide financial assistance in relation to the percentage of eligible LAP members in the total group.
- (d) Where an eligible LAP member who participates in a group consultation subsequently applies to the Program for financial assistance related to the matter discussed at the group level, that member's percentage share of costs already paid will be deducted from the individual case maximum, if approved.

## **7. LIMIT OF LIABILITY**

The Program, the Committee, nor any other party, guarantees the reimbursement of any Legal Expenses incurred by a participant, and particularly limits assistance to the extent that funds are available in the Program and to the extent and subject to the limitations set forth herein.

## **8. PAYMENT OF LAWYERS ACCOUNTS AND COSTS**

- (a) When an initial consultation has been approved, the Program will pay the account rendered for that initial consultation up to the approved maximum. Where a member has engaged a lawyer prior to Committee approval of the case, the Program is under no obligation to reimburse such costs.
- (b) When the Committee has approved assistance for Legal Expenses incurred by a lawyer other than a lawyer on the LAP referral list, the participant is responsible for payment of any account rendered by the lawyer chosen by the participant and must submit accounts for reimbursement by LAP.

When the Committee has approved assistance for Legal Expenses incurred by an outside lawyer who is on the LAP referral list, the Program will pay that lawyer directly to the extent that the amounts paid to the lawyer are approved by the LAP Administrator or the Committee.

- (c) All accounts rendered by the lawyer for which assistance is sought from the Program must contain detailed descriptions of the services performed, disbursements incurred, hours devoted to the participant's action, hourly rate charged by the lawyer and the exact amount of any costs awarded to the participant by the College of Nurses and any court or pursuant to any settlement.
- (d) Costs awarded to the participant; by the College of Nurses in accordance with the Health Professions Procedural Code or any amending or superseding legislation; by any court, or; any costs awarded by way of settlement shall be applied to reduce any claim for assistance of Legal Expenses under the Program by the amount of such costs actually received by or for the benefit of the participant. The Program requires the participant to take reasonable actions to recover such costs.
- (e) The Program may require that the participant proceed with an assessment of an account submitted by a lawyer for which the participant seeks assistance from the Program. The costs of such a required assessment will be paid by the Program.

## **9. LEGAL ASSISTANCE PROGRAM COMMITTEE**

The Legal Assistance Program Committee shall be established by RNAO, consisting of not less than three, nor more than six, persons who shall be selected by the RNAO Board of Directors. The members of this Committee shall elect from among those who also serve on the Board of Directors, the Chairperson of the Committee. The members of the Committee shall serve on a voluntary basis for the Program year provided that members of the Committee shall be entitled to receive expenses in accordance with the current RNAO expense policy. The Committee shall meet at least quarterly and as required. The Committee

may retain consultants to assist it in the performance of its duties at the expense of the Program.

If a Committee member believes that she/he may have a conflict of interest with a file before the Committee, the Committee member shall withdraw from the discussion and any voting related to that file.

The Committee shall consider each request for assistance and review the operations of the Program. Each request for assistance must be approved by the Committee before payment except that the LAP Administrator shall have the authority to approve routine requests for initial assistance and personal expenses as defined in section 5.(b)(ii) up to such maximum amounts and for such matters as may be set by the Committee from time to time. The Committee shall report to the RNAO Board of Directors at least annually.

The Program shall be responsible for all expenses incurred in connection with its administration and operation, including meeting expenses of the Committee, printing and mailing costs, secretarial services, legal fees and disbursements for consultations regarding the provisions of the Program, and all other direct expenses so incurred. The Committee may approve the expenditure of funds from the Program for the purpose of providing information and education concerning the Program.

#### **10. AMENDMENTS, SUSPENSION OR TERMINATION OF THE PLAN**

This Program may be amended, suspended or terminated by the RNAO Board of Directors at any time. Participants will be notified of the date on which suspension or termination will take effect. Participants will be advised of any amendments to the Program. Upon suspension, no further claims will be accepted. Claims commenced before suspension or termination shall be completed without regard to said suspension or termination. On termination, all amounts remaining in the fund shall be used for the general purposes of RNAO.

#### **11. LAP FUND**

From time to time access to the LAP fund may occur with consultation from the Committee and as approved by the RNAO Board of Directors; it would be for matters such as for any inquests and/or other matters in which the nursing profession has an interest; investments deemed appropriate and which would benefit the RNAO membership.

#### **12. LAP COMMITTEE DISCRETION**

Terms referenced in this Policy are subject to the interpretation and discretion of the Committee.

**13. RELEASE**

The participant releases the Program, RNAO, the Committee and their agents from any liability for the results or outcome of any legal proceeding in which assistance is extended to the participant under the Program.

- end -

*Revised and approved by RNAO Board of Directors, March 3, 2012*