

# LEGAL EXPENSE ASSISTANCE PLAN

## A INTRODUCTION

### 1. Purpose of the Plan

The Ontario Nurses' Association Legal Expense Assistance Plan (the "Plan") was established as of and from January 1, 1980 ("the effective date") to assist participants with certain legal problems arising from their employment as a Registered Nurse or Allied Health Personnel. Subject to the conditions and limitations of the plan, legal expense assistance may be available to qualified participants:

- (i) for proceedings before the participant's Regulatory Body (College) and appeals/reviews from decisions of the College;
- (ii) for participation in a coroner's investigation or inquest in which the participant has a direct and substantial interest;
- (iii) when a participant is the focus of a criminal investigation or is prosecuted on criminal charges; and
- (iv) when a participant is called as a witness in a proceeding before a College, Coroner's Inquest, Criminal case or a Custody dispute;
- (v) when a participant is the subject of a complaint under the *Personal Health Information & Protection Act* ("PHIPA") or is prosecuted under that Act;
- (vi) when a participant is questioned by an inspector pursuant to the Long-Term Care Homes Act.

*The Plan does not pay all Legal Expenses and if a participant becomes involved in a legal proceeding she/he may personally be responsible for all associated Legal Expenses. Further, the Plan has been amended from time to time since January 1, 1980; the current version of the Plan should be carefully reviewed for qualifications, limitations and conditions. Participants are strongly encouraged to contact the LEAP team for consultation and information if they feel they may be entitled to benefits under the Plan or if they are contacted by their College, or the Police in connection with either a criminal or coroner's investigation.*

### 2. Funding

The Plan is funded through contributions made by all nurses and Allied Health Personnel in the bargaining units represented by the Ontario Nurses' Association ("O.N.A.") and the funding needs are assessed from time to time by the Board of Directors. The Board of Directors of O.N.A. monitors the investment and interest earned by the Fund. The Plan is responsible for all expenses incurred in connection with its administration and operation including the expenses of the LEAP Team, legal fees and disbursements for consultations regarding the provisions of the Plan, meeting expenses of the Advisory Team, printing and mailing costs, secretarial services and all other direct expenses so incurred.

### **3. Plan Administrator**

The President of O.N.A. is the Plan Administrator ("Plan Administrator"). The duties of the Plan Administrator include those set out in the Plan and may be performed by the Plan Administrator or her/his delegate. The Plan Administrator has the discretion to extend coverage in extraordinary circumstances.

### **4. LEAP Team**

The LEAP Team shall consist of members of O.N.A.'s staff. The LEAP Team shall be responsible for providing summary advice and servicing all aspects of a participant's claim, except for those matters referred to a lawyer on the approved Roster by the LEAP team or those matters serviced by the lawyer selected by the participant. The LEAP Team shall also assist in the administration of the Plan as delegated by the Plan Administrator.

### **5. Advisory Team**

An Advisory Team consisting of one representative from each region shall be selected by the Board of Directors of O.N.A. The Chairperson of the Advisory Team shall be the First Vice-President, Political Action and Professional Issues. The members of the Advisory Team shall serve on a voluntary basis for a 24 month period; the Board of Directors has the discretion to remove and/or replace a member of the Team during the course of the year. Members of the Advisory Team shall be compensated from the LEAP fund for their time and expenses in accordance with O.N.A. Board policy. The Advisory Team shall meet at least twice a year, and as required, to review activities of the Plan, including claims, expenses, and reserves, and will annually report its findings to the Plan Administrator and then to the O.N.A. Board of Directors. The Advisory Team may retain, at the expense of the Plan, consultant(s) to assist it in the performance of its duties. The Advisory Team will also settle any disputes arising out of a participant's request for legal representation other than by the LEAP Team.

## **B GENERAL CONDITIONS AND ELIGIBILITY**

The following conditions, criteria and limitations apply to all claims made to the Plan.

### **1. General Conditions**

Participants in the Plan shall be serviced by the LEAP Team or by a lawyer from an approved roster to whom the participant is referred by the LEAP Team. All services rendered by the LEAP Team and by any lawyer to whom the participant is referred shall be subject to all terms and limitations of the Plan. The LEAP Team will consider the wishes of the participant in all referrals made to external lawyers.

The Plan Administrator will maintain an approved roster of external lawyers to whom participants may be referred. The Plan Administrator will review and revise this roster once every two years.

Participants in the Plan who do not wish to be serviced by the LEAP Team or the lawyer from the approved roster to whom they are referred by the LEAP Team and who wish to retain the services of another lawyer licensed to practice law in Ontario shall have their request reviewed by the Plan Administrator to determine if the lawyer has the necessary expertise and experience. If the request is granted, the services of the lawyer shall be subject to all terms and limitations of the Plan. O.N.A. does not warrant the skill, quality or capability of any lawyer selected by a participant.

Neither O.N.A. nor any of its Agents, Directors, or Employees guarantees the reimbursement of any Legal Expenses incurred by a participant, which reimbursement is subject to the extent that funds are available in the Plan and to strict compliance with the provisions of the Plan.

## **2. Eligibility of Participants**

Eligibility for benefits under the Plan is limited to all Registered Nurses and Allied Health Personnel who:

- (i) were, at the time of the incident(s) giving rise to the claim, included within a bargaining unit for which O.N.A. was at the time of the incident certified as the bargaining agent; and
- (ii) were regularly paying dues or the equivalent (in accordance with the criteria established from time to time by the Board of Directors of O.N.A.) to O.N.A. on or before the date of the incident or incidents that gave rise to a claim for benefits under the Plan.

## **3. Multiple Participants Involved in the Same Matter**

If more than one participant is involved in a matter, all participants will normally be provided with joint representation by one counsel. In the event of a potential conflict, the LEAP Conflict of Interest Policy shall apply.

## **4. Eligibility of Matters**

The Plan will only cover claims for matters in which the events giving rise to the proceedings:

- (i) occurred on or after the date the participant became an eligible participant in the Plan;
- (ii) arose out of and occurred in the course of the participant's employment as a Registered Nurse or Allied Health Personnel at an agency in which the participant was a member of the bargaining unit represented by O.N.A.

## **C BENEFITS AND LIMITATIONS**

### **1. *Regulated Health Professions Act / College Proceedings***

#### **(a) College Proceedings**

Subject to the eligibility criteria and other conditions and limitations set out herein, the Plan will cover the Legal Expenses incurred in the defence of, representation of, and/or counselling of participants for the following proceedings under the *Regulated Health Professions Act* (the "RHPA"):

- (i) Inquiries, Complaints and Reports Committee;
- (ii) Discipline Committee;
- (iii) Fitness to Practise Committee;
- (iv) Quality Assurance Committee; and
- (v) Appeals/Reviews from the above proceedings.

#### **(b) Exclusions and Limitations**

- (i) The Plan will not reimburse Legal Expenses in respect of matters arising under the following sections of the Health Professions Procedural Code, or similar sections of any amending or superceding legislation:

Registration (Sections 15-24 of Schedule 2)

This exclusion extends to all matters pertaining to registration with the exception of application for removal of information from public access under Section 23, Sub-sections 7 or 11. The Plan will cover legal expenses incurred in such applications only if the participant has prior approval from the Plan Administrator. The Plan Administrator may approve coverage of legal expenses for applications if satisfied by an opinion letter and such supporting material as the Plan Administrator may require that the application is warranted.

Reinstatement (Sections 72-74 of Schedule 2)

This exclusion extends to the restoration of a participant's Registration or Certificate of Competence except for matters arising out of the voluntary surrender, variation or removal of terms and conditions or limitations, or the restoration of Registration or Certificate of Competence for

reasons arising because of the participant's handicap within the meaning of the *Ontario Human Rights Code*.

- (ii) Legal expenses for the Quality Assurance Program are limited to participants who through Peer Assessment have remedial recommendations to the Quality Assurance Committee. Participants who fail to complete the required Self-Assessment component of the Quality Assurance Program are not eligible for coverage of matters arising out of a failure to complete the required Self-Assessment component;
- (iii) In the event the participant has terms, conditions or limitations imposed on her/his Certificate of Competence, Registration or Licence, the Plan will not reimburse for any costs incurred in the representation of the participant before the appropriate Regulatory Body (College), HPARB, or Court which arise from or relate to the participant's failure to meet such terms, conditions or limitations except in incapacity proceedings when such failure is physical or because of handicap within the meaning of the *Ontario Human Rights Code*. Otherwise, all such legal expenses and costs shall be at the participant's expense.
- (iv) In all Regulatory Body (College) matters, if the LEAP Team and/or the participant's lawyer is of the opinion that the matter ought to be settled and the participant disagrees, then the interested parties and the Plan Administrator shall meet and discuss the merits of the proposed settlement. The participant's lawyer is required to contact the Plan Administrator in writing in the event that he or she is of the opinion that the matter ought to be settled and the participant disagrees in order to arrange such a meeting. If, after such a meeting, it is the opinion of the Plan Administrator that the matter ought to be settled and the participant chooses to proceed, then all legal expenses and costs thereafter shall be at the participant's expense.

**(c) Appeals and Reviews**

- (i) Subject to the conditions and limitations set out herein, the Plan will cover Legal Expenses incurred in a review or appeal under the RHPA of a proceeding set out in paragraph C1.(a), initiated by the participant, only if the Appeal/Review has the prior approval of the Plan Administrator. The Administrator may approve reimbursement of legal expenses for reviews/appeals if satisfied, by an opinion letter and such supporting material as the Plan Administrator may require, that the review/appeal is warranted.
- (ii) In Appeals/Reviews initiated by a participant without the prior approval of the Plan Administrator, all legal expenses and costs shall be at the participant's expense.

- (iii) Subject to eligibility criteria and other conditions and limitations set out herein, the Plan will cover Legal Expenses incurred in a review or appeal under the RHPA of a proceeding set out in paragraph C1.(a) initiated by a complainant or by a regulatory College.

## **2. Coroner's Investigations and Inquests**

### **(a) Coverage**

Subject to the eligibility criteria and other conditions and limitations set out herein, including approval by the Plan Administrator, the Plan will cover Legal Expenses incurred in representation of and/or counselling of participants in a coroner's investigation and/or inquest.

The Administrator may approve reimbursement of legal expenses for representation of all or part of a coroner's investigation and/or inquest if the Plan Administrator is satisfied, by a letter and/or such supporting material as the Plan Administrator may require, that the participant has a substantial and direct interest in the subject matter of the coroner's investigation and/or inquest.

### **(b) Exclusions and Limitations**

- (i) The Plan Administrator may at any time ask for a reporting letter setting out the status of the proceeding and providing an update on legal expenses incurred to date together with an estimate of future expenses. The Administrator has the right to give notice at any time to the participant(s) and her/his/their lawyer that benefits under the Plan will be terminated.
- (ii) The benefits under this clause shall be provided until the conclusion of the inquest or until such time as the participant is advised by the Plan Administrator of the termination date of the benefit. Thereafter there shall be no reimbursement for additional Legal Expenses arising from the inquest or inquests that gave rise to a claim under the Plan regardless of whether or not the inquest or inquests have concluded nor shall reimbursement be made for any inquest or inquests held on or after said termination date.

## **3. Criminal Investigations**

### **(a) Coverage**

Subject to the eligibility criteria and other conditions and limitations set out herein, the Plan will cover Legal Expenses incurred in the representation of and/or counselling of participants who are being investigated by the police in connection with the possible laying of criminal charges against the participant as a result of the participant's employment as a Registered Nurse or Allied Health Personnel. If such an investigation does occur, as evidenced by a letter and/or such supporting material as the

Plan Administrator may require, the Plan will reimburse for Legal Expenses up until the point that criminal charges are laid against the participant or the investigation is concluded whichever first occurs.

**(b) Exclusions and Limitations**

The Plan Administrator may at any time ask for a reporting letter setting out the status of the proceeding and providing an update on legal expenses incurred to date together with an estimate of future expenses. The Plan Administrator shall have the right at any time to notify the participant and his/her lawyer that benefits under the Plan will be terminated. After notice of termination is given, there shall be no reimbursement under this benefit for additional Legal Expenses arising from the investigation that gave rise to a claim under the Plan regardless of whether or not the investigation has been concluded or charges have been laid.

**4. Criminal Prosecutions**

**(a) Coverage**

Subject to the eligibility criteria and other conditions and limitations set out herein, the Plan will cover Legal Expenses incurred in the defence of, representation of, and/or counselling of participants who are charged with a criminal offence under the Criminal Code of Canada as a result of the participant's employment as a Registered Nurse or Allied Health Personnel.

**(b) Exclusions and Limitations**

(i) The benefit described in this clause shall consist of a one-time payment of up to a maximum amount of \$300,000.00 for legal expenses arising out of all criminal charges that have been or could have been laid against a participant during any term including a renewed term of the Plan ("the original claim"). At the written request of the participant and at the discretion of the Plan Administrator, coverage may be provided for additional criminal charges laid against a participant ("the additional claim") provided that the additional claim does not relate to or arise out of the original claim. The maximum amount reimbursable for all additional claims shall be at the discretion of the Plan Administrator but shall not exceed a one-time payment in the amount of \$300,000.00.

(ii) The Plan will reimburse for Legal Expenses only if after all appeals and/or time limits for appeals are exhausted, the participant is found not guilty of all charges or all charges are withdrawn, dismissed or stayed.

**5. Witness Representation / Advice**

(i) When a participant is summoned as a witness in matters arising out of the RHPA, and requires

representation due to significant risk of legal repercussion, subject to the discretion of the Plan Administrator, the Plan may reimburse up to 100 percent of Legal Expenses incurred.

- (ii) When a participant is summoned as a witness as the result of an incident that arose out of and occurred in the course of that participant's employment as a Registered Nurse or Allied Health Personnel and the participant requests a legal consultation other than with the LEAP Team, the Plan shall make a one-time payment as follows:

(a)	Coroners' Inquests	one hour consultation
(b)	Court Custody Cases	one hour consultation
(c)	Criminal Code Cases	one hour consultation
(d)	RHPA Matters	one hour consultation

## **6. PHIPA Complaints to the Information and Privacy Commission**

- (a) Subject to the eligibility criteria and other conditions and limitations set out herein, the Plan will cover Legal Expenses incurred in the defence of, representation of, and/or counseling of a participant who has been named in a complaint to the Information and Privacy Commissioner under PHIPA. The representation may include the preparation of written submissions, participation in mediation and/or adjudication under PHIPA and legal representation while the Attorney General investigates whether to lay charges.

### **(b) Appeals and Reviews**

- (i) Subject to the conditions and limitations set out herein, the Plan will cover Legal Expenses incurred in an appeal of an order under the PHIPA initiated by the participant only with the prior approval of the Plan Administrator. The Administrator may approve reimbursement of legal expenses for appeals if satisfied, by an opinion letter and such supporting material as the Plan Administrator may require, that the appeal is warranted.
- (iii) In Appeals initiated by a participant without the prior approval of the Plan Administrator, all legal expenses and costs shall be at the participant's expense.
- (iv) Subject to eligibility criteria and other conditions and limitations set out herein, the Plan may, subject to the approval of the Plan Administrator, cover Legal Expenses incurred in a review or appeal under PHIPA of a proceeding set out in paragraph 6.(a), initiated by the complainant.

### **(c) Exclusions and Limitations**

- (i) The Plan will cover legal expenses up to the point that charges are laid by the Attorney General to a maximum of \$5000.00 per complaint.



## **7. PHIPA Prosecutions by the Attorney General**

### **a) Coverage**

Subject to the eligibility criteria and other conditions and limitations set out herein, the Plan will cover Legal Expenses incurred in the defence of, representation of, and/or counselling of participants who are prosecuted by the Attorney General under PHIPA as a result of the participant's employment as a Registered Nurse or Allied Health Personnel

### **(b) Exclusions and Limitations**

- (i) The benefit described in this clause shall consist of a one-time payment of up to a maximum amount of \$100,000.00 for legal expenses arising out of all charges that have been or could have been laid against a participant during any term including a renewed term of the Plan ("the original claim"). At the written request of the participant and at the discretion of the Plan Administrator, coverage may be provided for additional charges laid against a participant ("the additional claim") provided that the additional claim does not relate to or arise out of the original claim. The maximum amount reimbursable for all additional claims shall be at the discretion of the Plan Administrator but shall not exceed a one-time payment in the amount of \$100,000.00.
- (ii) The Plan will reimburse for Legal Expenses only if after all appeals and/or time limits for appeals are exhausted, the participant is found not guilty of all charges or all charges are withdrawn, dismissed or stayed.

## **8. Long-Term Care Homes Act Proceedings**

- (a) Subject to the eligibility criteria and other conditions and limitations as set out herein, and subject to the approval of the Plan Administrator, the Plan will cover Legal Expenses incurred in the representation of a participant(s) who is(are) being questioned by an inspector pursuant to the Inspector's powers under the Long Term Care Homes Act. The representation may include counseling and/or, with the specific approval of the Plan Administrator, attendance at the interview with the participant(s) and shall be subject to whatever limitations which the Plan Administrator may deem appropriate.

### **(b) Exclusions and Limitations**

The benefit described in this clause is limited to a maximum claim of \$5,000 per participant arising out of each investigation.

**D GENERAL**

**1. Legal Expenses**

**(a) Definition**

- (i) fees and disbursements payable by the participant to a lawyer for services rendered by the lawyer that are reasonable and necessary; and
- (ii) fees and disbursements payable by the Plan to the LEAP Team for all services rendered by the LEAP Team that are reasonable and necessary.

**(b) Exclusions and Limitations**

- (i) While the participant may agree to pay a lawyer an hourly fee in excess of \$250, effective June 14, 2004 the maximum amount paid by the Plan for legal fees is limited to \$250 per hour.
- (ii) The maximum amount reimbursable for all witnesses appearing on behalf of a participant in respect of a proceeding under the RHPA or in an inquest is \$5,000. The granting of coverage under this benefit beyond \$5,000 shall be in the discretion of the Plan Administrator and is subject to prior approval from the Plan Administrator.
- (iii) Reimbursement for unusual expenses, such as medical assessments or private investigators shall be in the discretion of the Plan Administrator and is subject to prior approval from the Plan Administrator.
- (iv) The maximum amount reimbursable to a participant for travel and accommodation shall be the amounts set out in LEAP expense guidelines, as amended from time to time.
- (v) The Plan will not reimburse for any of the following:
  - (a) Fines, penalties and damages levied against the participant by a court or tribunal;
  - (b) Costs awarded by a Regulatory Body (College) as against a participant by the Plan Administrator;
  - (c) Costs awarded by a Court unless prior discretionary approval of the Plan Administrator is obtained;
  - (d) Personal expenses, except for travel and accommodation as provided above; and
  - (e) Loss of income.

## 2. BILLINGS AND CLAIMS

- (a) When participants are serviced by the LEAP Team or by a lawyer to whom the LEAP team has referred the participant, expenses will be covered by the Plan, subject to the terms and limitations of the Plan and the availability of funds in the Plan.
- (b) When the participant is serviced by a lawyer other than a member of the LEAP team or a lawyer to whom the LEAP team has referred the participant, the participant is responsible for payment of any account rendered by that lawyer. The Plan will reimburse the participant only to the extent that the amounts paid to the lawyer are approved by the Plan Administrator as representing reasonable Legal Expenses for which reimbursement is provided under the Plan. Reimbursement is subject to the terms and limitations of the Plan and the availability of funds in the Plan. It is recommended that the participant not pay any amount to the lawyer without having first consulted with the Plan Administrator or the LEAP Team.
- (c) To initiate a claim under the Plan, forms must be completed in full by the participant. If the participant retains the services of a lawyer, the lawyer must categorize the nature of the legal services to be provided and estimate the Legal Expenses to be incurred for services to be rendered. The forms shall be submitted to the Plan Administrator. The lawyer is responsible to ensure that any revisions to the original estimate are provided to the Administrator in a timely manner and failure to do so may result in the limitation of reimbursement to the amount of the original estimate. The lawyer is also responsible for advising the Plan of any significant change in the status of the case and for providing copies of all complaints, decisions, and agreements negotiated on behalf of the participant. The Plan Administrator shall have the right to ask for a reporting letter from time to time setting out the status of the matter.
- (d) All accounts rendered by a lawyer, other than a member of the LEAP team, for which reimbursement is sought from the Plan must contain detailed descriptions of the services performed together with the time devoted to those services, disbursements incurred, the total number of hours devoted to the participant's claim, the hourly rate charged by the lawyer, the exact amount of any costs awarded for or against the participant by the participant's Regulatory Body (College) or any Court, and a report on the status of the matter. The participant is required to review all accounts rendered to the Plan on her/his behalf and to inform the Plan of any discrepancies in the accounts.
- (e) Subject to the discretion of the Plan Administrator, a participant who has retained the services of a lawyer will not normally be reimbursed by the Plan until a final account has been rendered by the lawyer. The Plan Administrator may ask for an account to be rendered prior to the end of a fund year. In the case of criminal prosecutions reimbursement will not occur until all appeals or the time limit for an appeal has been exhausted.

- (f) The Plan Administrator may require the participant to assess, in accordance with the *Solicitors Act*, R.S.O. 1990, Chap. S.15, as amended from time to time, any account rendered by the participant's lawyer for which the participant seeks reimbursement from the Plan. If assessment of a lawyer's account is required by the Plan Administrator, all reasonable Legal Expenses incurred by reason of the assessment will be reimbursed by the Plan, subject to the limitation on hourly rates set out herein.
- (g) Costs awarded to the participant by the participant's Regulatory Body (College), the Health Professions and Review Board (HPRB), or a Court shall be assigned to the Plan and applied to reduce any claim by the participant for reimbursement of Legal Expenses under the Plan. All awards of costs are to be paid directly to the Plan.

### **3. PLAN TERM**

The term of the Plan shall be for one (1) year commencing January 1, 1980. It shall automatically be renewed for subsequent terms of one year each unless terminated.

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

This Plan may be amended, suspended or terminated by the Board of Directors of the O.N.A at any time, after consideration of recommendations from the Advisory Committee. Members of O.N.A. shall be notified, in a manner determined by the Board of Directors, of any amendments to the Plan and the date on which amendment, suspension or termination shall take effect. Upon suspension or termination, no further claims shall be accepted. Claims commenced before suspension or termination shall be completed without regard to said suspension or termination.

### **5. CONFIDENTIALITY OF CLAIM INFORMATION**

The Plan Administrator shall maintain statistics reflecting use of the Plan by participants for quarterly submission to the Board of Directors. Information with respect to an individual claim shall be used for purposes of the administration of the Plan only and shall be available only to the LEAP Team, the Plan Administrator, ONA's CEO and Privacy Officer. Participants will be deemed to have consented to this disclosure. Any further disclosure will require the written consent of the Participant.

### **6. COMPLAINTS AND DISPUTES**

Any dispute concerning the Plan must be filed in writing with the Plan Administrator who, together with the chairperson of the Advisory Team, will attempt to resolve the dispute. If the dispute is not resolved and the participant files a complaint regarding the application or interpretation of the Plan, the

Chairperson of the Advisory Team shall appoint three members of the Advisory Team to investigate the matter and submit a report to the Board of Directors. The Board of Directors shall take such action as it, in its discretion and jurisdiction, considers appropriate in the circumstances. The decision of the Board of Directors shall be final and binding on all parties and shall not be subject to any appeal or judicial review.

## **7. ENGLISH LANGUAGE VERSION**

This document may be translated into the French language but this English language version shall govern.

### **How Do I Make a Claim?**

Any participant who believes he/she is entitled to claim under this Plan is asked to contact:

The Legal Expense Assistance Plan Team  
85 Grenville Street  
Suite 400  
Toronto, Ontario M5S 3A2  
Phone 416-964-8833  
Toll Free 1-800-387-5580

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