

BY-LAW 6

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PROFESSIONAL LIABILITY INSURANCE

PART I

LICENSEES HOLDING A CLASS L1 LICENCE

GENERAL

Interpretation

1. (1) In this Part,

“licensee” means a licensee who holds a Class L1 licence;

“Society’s insurance plan” means the Society’s professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for licensees.

Interpretation: engaging in practice of law

(2) In this Part, a person engages in the practice of law if he or she gives legal advice respecting the laws of Ontario or Canada or provides any professional services of a barrister or solicitor for others.

INSURANCE PREMIUM LEVIES

Requirement to pay insurance premium levies

2. (1) Unless otherwise exempted, every licensee who is eligible for coverage under the Society’s insurance plan and who engages in the practice of law during the course of any year shall pay insurance premium levies for that year in accordance with this Part.

Same

(2) A licensee who is required to pay any insurance premium levy shall pay the amount of the levy and any taxes that the Society is required to collect from the licensee in respect of the payment of the insurance premium levy.

Insurance premium levies

3. The insurance premium levies mentioned in section 2 shall consist of a base levy, an innocent party surcharge levy, a claims history surcharge levy and such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan.

Time for payment of insurance premium levies

4. (1) The base levy, the innocent party surcharge levy and the claims history surcharge levy are due and payable on January 1 of the year in which the coverage applies.

Same

(2) Such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan are due and payable on the dates specified by Convocation or the insurer of the Society's insurance plan.

Period of default

5. (1) For the purpose of subsection 46 (1) of the Act, the period of default for failure to pay an insurance premium levy is 120 days after the day on which payment of the levy is due.

Payment plan: deemed date of failure to pay

(2) Where the Society or the insurer of the Society's insurance plan arranges or permits a schedule for the payment of an insurance premium levy by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay the levy will be deemed to have occurred on January 1 of the year in which the coverage applies.

Reinstatement of licence

(3) If a licensee's licence has been suspended under subsection 46 (1) of the Act for failure to pay an insurance premium levy in a given year, for the purpose of subsection 46 (2) of the Act, the licensee shall pay an amount equal to the amount of the insurance premium levy which the licensee is required to pay in respect of that year and a reinstatement fee.

Refund of unearned portion of insurance premium levy

6. Where a licensee, who has paid one or more of the base levy, innocent party surcharge levy and claims history surcharge levy, subsequently, during the course of the year for which the levy or levies were payable, dies, retires, ceases to be eligible for coverage or is exempted by the Society from the requirement to pay one or more of the levies, the unearned portion of the levy or levies shall be refunded on a pro rata basis, subject to a two month minimum.

Society's insurance fund

7. (1) The insurance premium levies paid by licensees shall be used for the Society's insurance fund in respect of licensees, or to pay the required insurance premiums to the insurer of the Society's insurance plan, claims, group deductibles, adjusting costs, counsel and legal fees, administration costs and such other expenses reasonably incurred in connection with the Society's insurance plan.

Society's insurance fund not used up at year-end

(2) If at the end of any year the insurance fund is not entirely used up, the surplus remaining shall be carried forward into the next year.

Eligibility for coverage

8. (1) Every licensee is eligible for the standard coverage under the Society's insurance plan provided that his or her licence is not suspended.

Application for coverage

(2) A licensee who is eligible for coverage under the Society's insurance plan but who is not required under this Part to pay insurance premium levies may apply to the Society or to the insurer of the Society's insurance plan for coverage and, if granted coverage, shall pay the required levies in accordance with this Part.

Exemption from payment of insurance premium levies

9. (1) The following are eligible to apply for exemption from payment of insurance premium levies:

1. Any licensee who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario.
2. Any licensee who, during the course of the year for which a levy is payable,

- i. will be resident in a Canadian jurisdiction other than Ontario,
 - ii. will engage in the practice of law in Ontario on an occasional basis only, and
 - iii. demonstrates proof of coverage for the licensee's practice of law in Ontario under the mandatory professional liability insurance program of another Canadian jurisdiction, such coverage to be reasonably comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.
3. Any licensee who, during the course of the year for which a levy is payable,
 - i. will be resident in a reciprocating jurisdiction, and
 - ii. demonstrates proof of coverage for the licensee's practice of law in Ontario under the mandatory professional liability insurance program of the reciprocating jurisdiction, such coverage to be reasonably comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.
4. Any licensee who, during the course of the year for which a levy is payable,
 - i. will be employed by a single employer,
 - ii. will engage in the practice of law only for and on behalf of the employer as,
 - A. counsel or solicitor to the Government of Canada or the Government of Ontario,
 - B. a Crown Attorney,
 - C. counsel to a corporation other than a law corporation, or
 - D. a city solicitor, and
 - iii. will not engage in the practice of law in Ontario other than for and on behalf of the employer.
5. Any licensee employed as a law teacher who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario other than teaching.

6. Any licensee who, during the course of the year for which a levy is payable,
 - i. will be employed or volunteer in a clinic within the meaning of the *Legal Aid Services Act, 1998*, a student legal aid services society or an Aboriginal legal services corporation, that is funded by Legal Aid Ontario, but will not be directly employed by Legal Aid Ontario,
 - ii. will engage in the practice of law only through the clinic, student legal aid services society or Aboriginal legal services corporation to individuals in communities served by the clinic, student legal aid services society or Aboriginal legal services corporation and will not otherwise engage in the practice of law in Ontario, and
 - iii. demonstrates proof of coverage for such practice of law under a professional liability insurance policy issued by a licensed insurer in Canada, such coverage to be at least equivalent to that required under the Society's insurance plan.

7. Any licensee who, during the course of the year for which a levy is payable, will act in the capacity of an estate trustee, a trustee for an *inter vivos* trust or an attorney for property in respect of an estate, a trust or a property of a person other than a related person of the licensee of which the licensee was named as estate trustee, trustee or attorney while the licensee was engaged in the practice of law in Ontario and,
 - i. will not otherwise engage in the practice of law in Ontario, or
 - ii. who otherwise qualifies for exemption from payment of insurance premium levies under paragraph 4, 5 or 6 and will not engage in the practice of law in Ontario other than as provided for under this paragraph or paragraph 4, 5 or 6.

Same

(2) A licensee who is exempt from payment of insurance premium levies under paragraph 1, 2, 3, 4, 5, 6 or 7 of subsection (1) continues to be exempt from payment of insurance premium levies even though he or she engages in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies if the following conditions are met:

1. The licensee's practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies is restricted

to engaging in the practice of law only on a pro bono basis and only,

- i. to or on behalf of non-profit organizations, or
 - ii. through a program that is and continues to be registered with Pro Bono Law Ontario and approved by the insurer of the Society's insurance plan while the licensee is engaging in the practice of law through the program.
2. Prior to engaging in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies, the licensee applies to the insurer of the Society's insurance plan, in accordance with procedures established by the insurer, to continue to be exempt from payment of insurance premium levies and the insurer approves the licensee's application.

Interpretation: occasional practice of law

(3) For the purposes of paragraph 2 of subsection (1), in any year, a licensee engages in the practice of law on an occasional basis if, during that year, the licensee,

- (a) engages in the practice of law in respect of not more than ten matters; and
- (b) engages in the practice of law for not more than twenty days in total.

Interpretation: "reciprocating jurisdiction"

(4) In subsection (1), "reciprocating jurisdiction" means a Canadian jurisdiction other than Ontario,

- (a) which is a signatory to,
 - (i) the National Mobility Agreement originally entered into in December 2002 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, The Barreau du Québec, the Nova Scotia Barristers' Society and the Law Society of Newfoundland; or
 - (ii) until December 31, 2011, the Territorial Mobility Agreement originally entered into in November 2006 by the Society, the Law Society of Yukon, the Law Society of Northwest Territories, the Law Society of Nunavut, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, The Barreau du Québec, the Law Society of New Brunswick, the Nova Scotia Barristers'

Society, the Law Society of Prince Edward Island and the Law Society of Newfoundland;

- (b) in which a licensee is authorized to engage in the practice of law; and
- (c) which would exempt the licensee from its mandatory professional liability insurance program if the licensee were resident in Ontario and demonstrated proof of coverage for the licensee's practice of law in the jurisdiction under the Society's insurance plan which was reasonably comparable in coverage and limits to the professional liability insurance that would otherwise be required of the licensee by the jurisdiction.

Interpretation: "employer"

(5) In paragraph 4 of subsection (1), "employer" includes a corporation, any affiliated, controlled and subsidiary company of the corporation and any other entity employing the licensee.

Interpretation: "affiliated", "controlled" and "subsidiary"

(6) In subsection (5), "affiliated", "controlled" and "subsidiary" have the same meanings given them in the *Securities Act*.

Interpretation: "resident"

(7) In subsection (1), "resident" has the same meaning given it for the purposes of the *Income Tax Act* (Canada).

Interpretation: "related person"

(8) In paragraph 7 of subsection (1), "related person" has the meaning given "related persons" in subsection 251 (2) of the *Income Tax Act* (Canada).

FILING INSURANCE DOCUMENTS

Interpretation: "insurance policy"

10. (1) In this section, "insurance policy" means a policy for indemnity for professional liability issued in respect of a licensee by the insurer of the Society's insurance plan.

Period of default

(2) For the purpose of clause 47 (1) (b) of the Act, the period of default for failure to complete or file with the Society, or with the insurer of the Society’s insurance plan, any certificate, report or other document that a licensee is required to file under an insurance policy is 120 days after the day that the certificate, report or other document is required to be filed under the insurance policy.

DEDUCTIBLES

Interpretation: “insurance policy”

11. (1) In this section, “insurance policy” means a policy for indemnity for professional liability issued in respect of a licensee by the insurer of the Society’s insurance plan.

Requirement to pay deductible

(2) A licensee shall pay to the insurer of the Society’s insurance plan, or to such other person as the insurer may direct, any amount of a deductible under an insurance policy that the licensee is required by the insurer to pay.

Compliance with requirement

(3) For the purposes of subsection 47.1 (3) of the Act, a licensee complies with the requirement mentioned in subsection (2) when,

- (a) the licensee pays to the insurer of the Society’s insurance plan or, if the insurer has directed the licensee to pay to another person, to the person to whom the insurer has directed the licensee to pay, the amount of the deductible that the insurer has required the licensee to pay; or
- (b) the licensee complies with an award made by the arbitrator as a result of an arbitration conducted under the insurance policy with respect to the requirement to pay the deductible.

PART II

LICENSEES HOLDING A CLASS P1 LICENCE

MANDATORY INSURANCE

Mandatory insurance

12. (1) Every licensee who holds a Class P1 licence shall maintain insurance against professional liability under a policy of professional liability insurance issued by a company licensed to carry on business in the province of Ontario which complies with the following minimum requirements and is otherwise comparable to a policy of professional liability insurance issued by the Lawyers' Professional Indemnity Company to a licensee who holds a Class L1 licence:

1. A policy limit for each single claim of not less than \$1 million and an aggregate policy limit for all claims of not less than \$2 million per year.
2. A maximum deductible amount under the policy that is reasonable in relation to the financial resources of the licensee.
3. Coverage for liability for errors, omissions and negligent acts arising out of the provision by the licensee of legal services authorized under a Class P1 licence.
4. A provision granting an extended reporting period of ninety days from the date of cancellation of the policy.
5. A provision naming the Society as an additional insured, for the purposes of reporting claims and receiving notice of the cancellation or amendment of the policy.
6. A provision that the policy may not be cancelled or amended without at least 60 days written notice to the Society.

Exemption from insurance requirement

(2) A licensee is not required to be insured against professional liability under subsection (1) if the licensee provides written evidence to the satisfaction of the Society that,

- (a) the licensee is not providing legal services in Ontario; or
- (b) the licensee is providing legal services in Ontario in the circumstances specified in paragraph 1, 2 or 4 of subsection 30 (1) of By-Law 4, subsection 31 (2), (3) or (4) of By-Law 4 or subsection 32 (2) of By-Law 4.

Proof of compliance with s. 12

13. A licensee shall, prior to the commencement of the provision of legal services and on an annual basis thereafter, by not later than the anniversary date of the commencement of the

provision of legal services, provide written evidence to the satisfaction of the Society that the licensee is in compliance with section 12.
