

Tab 7



**Secretary's Report
November 9, 2016**

Amendments to By-Law 6

Purpose of Report: Decision

**Prepared by the Secretary
Jim Varro (416-947-3434)**

FOR DECISION

AMENDMENTS TO BY-LAW 6

Motion

1. That Convocation make the amendments to By-Law 6 [Professional Liability Insurance] as set out in the motion at [Tab 7.1](#) respecting lawyers who are seconded to corporate clients to provide professional services to them.

Issue for Consideration

2. For 2017, LawPro is amending its program of insurance to exclude claims brought by corporate employers against seconded practising lawyers for professional services provided while under secondment. The program policy will also be amended to extend the limited defence-only coverage to include coverage for these seconded lawyers acting in the role of in-house corporate counsel. The LawPRO Program Report included the following at paragraph 8(v):

Seconded Lawyers:

(v) Many lawyers in private practice go on temporary secondment in order to carry out the tasks of in-house counsel for corporate clients of their firms. Seconded lawyers face different risks than either employed corporate counsel or lawyers in traditional private practice and the Program requires amendment to reflect this. For 2017, the Program Policy will be amended to exclude claims brought by corporations against seconded lawyers for professional services provided while under secondment with them, where notwithstanding the form of the relationship, the claimant meets the definition of a "corporate employer" under the Program Policy. The Policy will also be amended to extend the \$250,000 per claim and in the aggregate defence-only coverage under the endorsement for "Claims Brought by CORPORATE EMPLOYERS" to include coverage for seconded lawyers in those circumstances (paragraph 20).

3. This change was approved by Convocation on September 22, 2016 when it approved LawPRO's program of insurance for 2017.
4. Corresponding changes to the language in By-Law 6 are now required to make it clear that practising lawyers employed by law firms who go on secondment are not eligible for exemption.
5. The amendments prepared by the Law Society's Office of General Counsel appear at [Tab 7.2](#), in both track changes version ([Tab 7.2.1](#)) and clean version ([Tab 7.2.2](#)).

THE LAW SOCIETY OF UPPER CANADA
**BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT***

**BY-LAW 6
[PROFESSIONAL LIABILITY INSURANCE]**

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON NOVEMBER 9, 2016

MOVED BY

SECONDED BY

THAT By-Law 6 [Professional Liability Insurance], made by Convocation on May 1, 2007 and in force immediately before this motion is made, be amended as follows:

- 1. Effective January 1, 2017, subparagraph 9 (1) 4 i of the English version of the By-Law is amended by adding “that is not a licensee or a licensee firm” at the end of the subparagraph.**
- 2. Effective January 1, 2017, subparagraph 9 (1) 4 i of the French version of the By-Law is amended by adding “qui n’est pas un titulaire de permis ni un cabinet de titulaires de permis” at the end of the subparagraph.**
- 3. Effective January 1, 2017, section 9 of the English version of the By-Law is amended by adding the following subsections:**

(5.1) For the purposes of paragraph 4 of subsection (1), a licensee who is employed by another licensee or a licensee firm and temporarily seconded to a client of the other licensee or licensee firm shall continue to be employed by the other licensee or licensee firm notwithstanding the form of the employment relationship between the licensee and the client during the period of the temporary secondment.

Interpretation: “licensee firm”

(5.2) In paragraph 4 of subsection (1) and in subsection (5.1), “licensee firm” means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

- 4. Effective January 1, 2017, section 9 of the French version of the By-Law is amended by adding the following subsections:**

(5.1) Pour l’application de l’alinéa 1 du paragraphe (4), un titulaire de permis qui est employé par un autre titulaire de permis ou un cabinet de titulaires de permis et qui est détaché

temporairement à un client de l'autre titulaire de permis ou cabinet de titulaires de permis continue d'être employé par l'autre titulaire de permis ou cabinet de titulaires de permis sans égard au type de la relation d'emploi entre le titulaire de permis et le client durant la période du détachement temporaire.

Définition : « cabinet de titulaires de permis »

(5.2) Au sous-alinéa 4 du paragraphe (1) et au paragraphe (5.1), « cabinet de titulaires de permis » s'entend d'une société de personnes ou d'un autre type d'association de titulaires de permis, d'une société de personnes ou d'une autre association mentionnée à la partie III du Règlement administratif n° 7 [Entreprises] ou d'une société professionnelle.

BY-LAW 6

May 1, 2007
Amended: June 28, 2007
February 21, 2008
September 24, 2009
November 24, 2011
September 27, 2012
April 25, 2013
October 24, 2013
October 29, 2015
December 10, 2015 (editorial changes)
November 9, 2016

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,
 - A. in a reciprocating jurisdiction, or
 - B. in Quebec and deemed 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 that is not a licensee or a licensee firm,
 - 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 engages in the practice of law in respect of not more than ten matters.

Interpretation: "reciprocating jurisdiction"

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

- (a) which is a signatory to,
 - (i) prior to January 1, 2014, 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,
 - (ii) beginning January 1, 2014, the National Mobility Agreement entered into in October 2013 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 Chambre des Notaires 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 and Labrador, or
 - (iii) the Territorial Mobility Agreement originally entered into in November 2011 by the Society, the Law Society of Yukon, the Law Society of the 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 and Labrador;

- (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.

(5.1) For the purposes of paragraph 4 of subsection (1), a licensee who is employed by another licensee or a licensee firm and temporarily seconded to a client of the other licensee or licensee firm shall continue to be employed by the other licensee or licensee firm notwithstanding the form of the employment relationship between the licensee and the client during the period of the temporary secondment.

Interpretation: "licensee firm"

(5.2) In paragraph 4 of subsection (1) and in subsection (5.1), "licensee firm" means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

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), other than in the phrase "deemed resident", "resident" has the same meaning given it for the purposes of the *Income Tax Act* (Canada).

Interpretation: "deemed resident"

- (7.1) In paragraph (1) 3, a licensee is deemed resident in a reciprocating jurisdiction if,
 - (a) where the Society and the governing bodies of the legal profession in all reciprocating jurisdictions have agreed on nationally consistent criteria for determining deemed residence, the licensee is deemed resident in a reciprocating jurisdiction under the criteria; or

- (b) where the Society and the governing bodies of the legal profession in all reciprocating jurisdictions have not agreed on nationally consistent criteria for determining deemed residence, as between Ontario and one or more reciprocating jurisdictions, the licensee has been continuously authorized to practise law for the longest period of time in a reciprocating jurisdiction.

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) Unless exempted and subject to subsection (1.1), 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 that 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.

Insurance to be maintained under policy issued by the Lawyers' Professional Indemnity Company

(1.1) A licensee who holds a Class P1 licence shall maintain insurance against professional liability under a policy of professional liability insurance issued by Lawyers' Professional Indemnity Company if,

- (a) the licensee is a partner in a partnership where licensees who hold a Class L1 licence are also partners and the business of the partnership is the practice of law in Ontario or the provision of legal services in Ontario; or
- (b) the licensee is a shareholder in a professional corporation where licensees who hold a Class L1 licence are also shareholders and the business of the professional corporation is the practice of law in Ontario and the provision of legal services in Ontario.

Transition

(1.2) Despite subsection (1.1), a licensee described in subsection (1.1) whose existing insurance policy expires in 2016 shall not be required to maintain insurance against professional liability under a policy of professional liability insurance issued by Lawyers' Professional Indemnity Company until the expiry of her or his existing insurance policy in 2016.

Exemption from insurance requirement

(2) A licensee who holds a Class P1 licence is exempt from the requirement to maintain insurance against professional liability contained in subsection (1) if,

- (a) the licensee is not providing legal services in Ontario; or
- (b) the licensee is providing legal services in Ontario only in any of the following circumstances:
 - 1. The licensee,
 - i. is employed by a single employer that is not a licensee or a licensee firm,
 - ii. provides legal services only for and on behalf of the single employer, and
 - iii. does not provide any legal services to any person other than the single employer,
 - 2. The licensee,
 - i. is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,

- ii. provides legal services only through the clinic to the community that the clinic serves and does not otherwise provide legal services, and
 - iii. has professional liability insurance coverage for the provision of the legal services that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence,
3. The licensee,
- i. is employed by a not-for-profit organization that is established for the purposes of providing legal services and is funded by the Government of Canada, the Government of Ontario or a municipal government in Ontario,
 - ii. provides legal services only through the organization to the community that the organization serves and does not otherwise provide legal services, and
 - iii. has professional liability insurance coverage for the provision of the legal services that is comparable in coverage and limits to the professional liability insurance that is required of a licensee who holds a Class L1 licence,
4. The licensee,
- i. is a public servant in the service of the Office of the Worker Adviser,
 - ii. provides only the following legal services through the Office of the Worker Adviser:
 - I. advises a worker, who is not a member of a trade union, or a survivor of the worker of her or his legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*, as amended from time to time,
 - II. acts on behalf of a worker, who is not a member of a trade union, or a survivor of the worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings, and
 - iii. does not otherwise provide any legal services to any person,

5. The licensee,
 - i. is a public servant in the service of the Office of the Employer Adviser,
 - ii. provides only the following legal services through the Office of the Employer Adviser:
 - I. advises an employer of her, his or its legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*, as amended from time to time, or any predecessor legislation,
 - II. acts on behalf of an employer in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings, and
 - iii. does not otherwise provide any legal services to any person,
6. The licensee,
 - i. volunteers in an injured workers' group,
 - ii. provides only the following legal services through the group:
 - I. gives a worker advice on her or his legal interests, rights or responsibilities under the *Workplace Safety and Insurance Act, 1997*, as amended from time to time,
 - II. acts on behalf of a worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings, and
 - iii. does not otherwise provide any legal services to any person,
7. The licensee,
 - i. is an employee of a trade union, a volunteer representative of the trade union or an individual designated by the Ontario Federation of Labour for the purposes of the trade union,
 - ii. provides to the trade union, a member of the trade union, a former member of the trade union or a spouse, child or dependant of a deceased member of the trade union only the following legal

services:

- I. gives the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute,
 - II. acts on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court,
 - III. acts on behalf of the person in enforcing benefits payable under a collective agreement before the Small Claims Court, and
- iii. does not otherwise provide any legal services to any person.

Interpretation: “licensee firm”

(3) In paragraph 1 of clause (2) (b), “licensee firm” means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

Interpretation of words used in paragraphs 4, 5 and 6 of clause (2) (b)

(4) In this subsection and in paragraphs 4, 5 and 6 of clause (2) (b),

“employer” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*, as amended from time to time;

“injured workers’ group” means a not-for-profit organization that is funded by the Workplace Safety and Insurance Board to provide specified legal services to workers;

“public servant” has the meaning given it in the *Public Service of Ontario Act, 2006*, as amended from time to time;

“survivor” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*, as amended from time to time;

“worker” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*, as amended from time to time.

Interpretation of words used in paragraph 7 of clause (2) (b)

(5) In this subsection and in paragraph 7 of clause (2) (b),

“dependant” means each of the following persons who was wholly or partly dependent upon the

earnings of a member of a trade union at the time of the member's death or who, but for the member's incapacity due to an accident, would have been so dependent:

1. parent, stepparent or person who stood in the role of parent to the member,
2. sibling or half-sibling,
3. grandparent,
4. grandchild;

“workplace” means,

- (a) in the case of a former member of a trade union, a workplace of the former member when he or she was a member of the trade union, and
- (b) in the case of a spouse, child or dependant of a deceased member of a trade union, a workplace of the deceased member when he or she was a member of the trade union.

Proof of compliance with s. 12

13. A licensee who holds a Class P1 licence shall provide evidence to the satisfaction of the Society that the licensee is in compliance with section 12,

- (a) immediately after the licensee is issued a Class P1 licence;
- (b) prior to the commencement of the provision of legal services;
- (c) prior to any change in the circumstances in which the licensee provides legal services, where the change in circumstances,
 - (i) would result in the licensee being required to maintain insurance against professional liability under subsection 12 (1),
 - (ii) would entitle the licensee to claim an exemption from the requirement to maintain insurance against professional liability under subsection 12 (2), or
 - (iii) would entitle the licensee to claim an exemption from the requirement to maintain insurance against professional liability under a different paragraph of subsection 12 (2) than the paragraph of subsection 12 (2) under which the licensee claimed an exemption from the requirement to maintain insurance against professional liability prior to the change in the circumstances of providing legal services;

- (d) where the licensee maintains insurance against professional liability, prior to the expiry of the licensee's policy of professional liability insurance;
- (e) on the anniversary date of the last time the licensee provided evidence to the satisfaction of the Society that the licensee was in compliance with section 12 under clause (a), (b), (c) or (d); and
- (f) immediately after being required by the Society to provide evidence to the satisfaction of the Society that the licensee is in compliance with section 12.

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BY-LAW 6

May 1, 2007
Amended: June 28, 2007
February 21, 2008
September 24, 2009
November 24, 2011
September 27, 2012
April 25, 2013
October 24, 2013
October 29, 2015
December 10, 2015 (editorial changes)
November 9, 2016

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,
 - A. in a reciprocating jurisdiction, or
 - B. in Quebec and deemed 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 that is not a licensee or a licensee firm,
 - 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 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 engages in the practice of law in respect of not more than ten matters.

Interpretation: "reciprocating jurisdiction"

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

- (a) which is a signatory to,
 - (i) prior to January 1, 2014, 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,
 - (ii) beginning January 1, 2014, the National Mobility Agreement entered into in October 2013 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 Chambre des Notaires 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 and Labrador, or
 - (iii) the Territorial Mobility Agreement originally entered into in November 2011 by the Society, the Law Society of Yukon, the Law Society of the 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 and Labrador;

- (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.

(5.1) For the purposes of paragraph 4 of subsection (1), a licensee who is employed by another licensee or a licensee firm and temporarily seconded to a client of the other licensee or licensee firm shall continue to be employed by the other licensee or licensee firm notwithstanding the form of the employment relationship between the licensee and the client during the period of the temporary secondment.

Interpretation: "licensee firm"

(5.2) In paragraph 4 of subsection (1) and in subsection (5.1), "licensee firm" means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

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), other than in the phrase "deemed resident", "resident" has the same meaning given it for the purposes of the *Income Tax Act* (Canada).

Interpretation: "deemed resident"

- (7.1) In paragraph (1) 3, a licensee is deemed resident in a reciprocating jurisdiction if,
 - (a) where the Society and the governing bodies of the legal profession in all reciprocating jurisdictions have agreed on nationally consistent criteria for determining deemed residence, the licensee is deemed resident in a reciprocating jurisdiction under the criteria; or
 - (b) where the Society and the governing bodies of the legal profession in all

reciprocating jurisdictions have not agreed on nationally consistent criteria for determining deemed residence, as between Ontario and one or more reciprocating jurisdictions, the licensee has been continuously authorized to practise law for the longest period of time in a reciprocating jurisdiction.

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) Unless exempted and subject to subsection (1.1), 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 that 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.

Insurance to be maintained under policy issued by the Lawyers' Professional Indemnity Company

- (1.1) A licensee who holds a Class P1 licence shall maintain insurance against

professional liability under a policy of professional liability insurance issued by Lawyers' Professional Indemnity Company if,

- (a) the licensee is a partner in a partnership where licensees who hold a Class L1 licence are also partners and the business of the partnership is the practice of law in Ontario or the provision of legal services in Ontario; or
- (b) the licensee is a shareholder in a professional corporation where licensees who hold a Class L1 licence are also shareholders and the business of the professional corporation is the practice of law in Ontario and the provision of legal services in Ontario.

Transition

(1.2) Despite subsection (1.1), a licensee described in subsection (1.1) whose existing insurance policy expires in 2016 shall not be required to maintain insurance against professional liability under a policy of professional liability insurance issued by Lawyers' Professional Indemnity Company until the expiry of her or his existing insurance policy in 2016.

Exemption from insurance requirement

(2) A licensee who holds a Class P1 licence is exempt from the requirement to maintain insurance against professional liability contained in subsection (1) if,

- (a) the licensee is not providing legal services in Ontario; or
- (b) the licensee is providing legal services in Ontario only in any of the following circumstances:
 - 1. The licensee,
 - i. is employed by a single employer that is not a licensee or a licensee firm,
 - ii. provides legal services only for and on behalf of the single employer, and
 - iii. does not provide any legal services to any person other than the single employer,
 - 2. The licensee,
 - i. is employed by a clinic, within the meaning of the *Legal Aid Services Act, 1998*, that is funded by Legal Aid Ontario,
 - ii. provides legal services only through the clinic to the community

that the clinic serves and does not otherwise provide legal services,
and

- iii. has professional liability insurance coverage for the provision of the legal services that is comparable in coverage and limits to professional liability insurance that is required of a licensee who holds a Class L1 licence,

3. The licensee,

- i. is employed by a not-for-profit organization that is established for the purposes of providing legal services and is funded by the Government of Canada, the Government of Ontario or a municipal government in Ontario,
- ii. provides legal services only through the organization to the community that the organization serves and does not otherwise provide legal services, and
- iii. has professional liability insurance coverage for the provision of the legal services that is comparable in coverage and limits to the professional liability insurance that is required of a licensee who holds a Class L1 licence,

4. The licensee,

- i. is a public servant in the service of the Office of the Worker Adviser,
- ii. provides only the following legal services through the Office of the Worker Adviser:
 - I. advises a worker, who is not a member of a trade union, or a survivor of the worker of her or his legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*, as amended from time to time,
 - II. acts on behalf of a worker, who is not a member of a trade union, or a survivor of the worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings, and
- iii. does not otherwise provide any legal services to any person,

5. The licensee,

- i. is a public servant in the service of the Office of the Employer Adviser,
 - ii. provides only the following legal services through the Office of the Employer Adviser:
 - I. advises an employer of her, his or its legal interests, rights and responsibilities under the *Workplace Safety and Insurance Act, 1997*, as amended from time to time, or any predecessor legislation,
 - II. acts on behalf of an employer in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings, and
 - iii. does not otherwise provide any legal services to any person,
6. The licensee,
 - i. volunteers in an injured workers' group,
 - ii. provides only the following legal services through the group:
 - I. gives a worker advice on her or his legal interests, rights or responsibilities under the *Workplace Safety and Insurance Act, 1997*, as amended from time to time,
 - II. acts on behalf of a worker in connection with matters and proceedings before the Workplace Safety and Insurance Board or the Workplace Safety and Insurance Appeals Tribunal or related proceedings, and
 - iii. does not otherwise provide any legal services to any person,
7. The licensee,
 - i. is an employee of a trade union, a volunteer representative of the trade union or an individual designated by the Ontario Federation of Labour for the purposes of the trade union,
 - ii. provides to the trade union, a member of the trade union, a former member of the trade union or a spouse, child or dependant of a deceased member of the trade union only the following legal services:

- I. gives the person advice on her, his or its legal interests, rights or responsibilities in connection with a workplace issue or dispute,
 - II. acts on behalf of the person in connection with a workplace issue or dispute or a related proceeding before an adjudicative body other than a federal or provincial court,
 - III. acts on behalf of the person in enforcing benefits payable under a collective agreement before the Small Claims Court, and
- iii. does not otherwise provide any legal services to any person.

Interpretation: “licensee firm”

(3) In paragraph 1 of clause (2) (b), “licensee firm” means a partnership or other association of licensees, a partnership or association mentioned in Part III of By-Law 7 [Business Entities] or a professional corporation.

Interpretation of words used in paragraphs 4, 5 and 6 of clause (2) (b)

(4) In this subsection and in paragraphs 4, 5 and 6 of clause (2) (b),

“employer” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*, as amended from time to time;

“injured workers’ group” means a not-for-profit organization that is funded by the Workplace Safety and Insurance Board to provide specified legal services to workers;

“public servant” has the meaning given it in the *Public Service of Ontario Act, 2006*, as amended from time to time;

“survivor” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*, as amended from time to time;

“worker” has the meaning given it in the *Workplace Safety and Insurance Act, 1997*, as amended from time to time.

Interpretation of words used in paragraph 7 of clause (2) (b)

(5) In this subsection and in paragraph 7 of clause (2) (b),

“dependant” means each of the following persons who was wholly or partly dependent upon the earnings of a member of a trade union at the time of the member’s death or who, but for the

member's incapacity due to an accident, would have been so dependent:

1. parent, stepparent or person who stood in the role of parent to the member,
2. sibling or half-sibling,
3. grandparent,
4. grandchild;

“workplace” means,

- (a) in the case of a former member of a trade union, a workplace of the former member when he or she was a member of the trade union, and
- (b) in the case of a spouse, child or dependant of a deceased member of a trade union, a workplace of the deceased member when he or she was a member of the trade union.

Proof of compliance with s. 12

13. A licensee who holds a Class P1 licence shall provide evidence to the satisfaction of the Society that the licensee is in compliance with section 12,

- (a) immediately after the licensee is issued a Class P1 licence;
- (b) prior to the commencement of the provision of legal services;
- (c) prior to any change in the circumstances in which the licensee provides legal services, where the change in circumstances,
 - (i) would result in the licensee being required to maintain insurance against professional liability under subsection 12 (1),
 - (ii) would entitle the licensee to claim an exemption from the requirement to maintain insurance against professional liability under subsection 12 (2), or
 - (iii) would entitle the licensee to claim an exemption from the requirement to maintain insurance against professional liability under a different paragraph of subsection 12 (2) than the paragraph of subsection 12 (2) under which the licensee claimed an exemption from the requirement to maintain insurance against professional liability prior to the change in the circumstances of providing legal services;
- (d) where the licensee maintains insurance against professional liability, prior to the

expiry of the licensee's policy of professional liability insurance;

- (e) on the anniversary date of the last time the licensee provided evidence to the satisfaction of the Society that the licensee was in compliance with section 12 under clause (a), (b), (c) or (d); and
 - (f) immediately after being required by the Society to provide evidence to the satisfaction of the Society that the licensee is in compliance with section 12.
-