

2019 Professional Legal Expenses Plan

Issued by
Aviva Insurance Company of Canada
Policy number 81794395

The 2019 policy booklet for Professional
Legal Expenses Plan insurance applies from
January 1, 2019 to December 31, 2020



PROFESSIONAL LEGAL EXPENSES PLAN INSURANCE COVERAGE
MASTER POLICY AGREEMENT 81794395

The Company: Aviva Insurance Company of Canada (the insurer)
Policyholder: CDSPI

The Glossary below provides definitions for terms which appear in boldface when they are used. Headings are included for reference only and do not change the meanings of the terms of the Section.

GLOSSARY

Appointed Representative means the Insured's representative, appointed in accordance with section 7 of this Professional Legal Expenses Plan Insurance coverage.

Claim or Legal Proceedings means the pursuit or defence of civil legal disputes (excluding non-contentious matters).

Criminal or Statutory Charges means offences under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada) and any other provincial or federal statutes or regulations which prescribe offences punishable on summary conviction or by indictment.

Except as otherwise provided herein, **Legal Expenses** means

- All fees, expenses and other disbursements reasonably claimed by the **Appointed Representative** in connection with any **Claim or Legal Proceedings** brought by or against the Insured, including
 - i costs and expenses of expert witnesses,
 - ii if the Claim is related to an audit or investigation by an insurer or similar dental benefit provider, amounts reasonably incurred by the Insured for professional services to produce and certify details of the Insured's business and charges to such insurer or benefit provider; and
 - iii any costs incurred by the Company in connection with such **Claim or Legal Proceeding**;
- All costs which the Insured is ordered to pay by a court or tribunal as an award of costs in connection with a **Claim or Legal Proceedings** but not any costs which the Insured is ordered to pay by a court adjudication on **Criminal or Statutory Charges**; and
- Costs payable following an out of court settlement made in connection with a **Claim or Legal Proceedings**;

all as set out in more detail in, and subject to the limitations and exclusions of, Section 4 of this Professional Legal Expenses Plan Insurance coverage.

The **Period of Insurance** is the time period during which the Insured's Professional Legal Expenses Plan Insurance coverage is in effect. The beginning and end of the Insured's **Period of Insurance** is shown on the Memorandum of Insurance issued to the Insured.

Practice of Dentistry means the providing of professional services by a person licensed or holding a certificate to practice dentistry in a province or territory of Canada who is or was:

- practicing dentistry as a general practitioner or specialist;
- employed in:
 - i dental research or consulting;
 - ii dental and health sciences education;
 - iii administration in connection with the practice of dentistry; or
 - iv the civil service of a provincial government or the federal government or in the Canadian Armed Forces.

1. INSURING AGREEMENT

Agreement of the Company

The Company will pay, on behalf of the Insured, **Legal Expenses** up to the Company's limit of liability, as set out below, in connection with any **Claim or Legal Proceedings** brought by or against the Insured in Canada and of which the Company is notified within the **Period of Insurance**. The Company will also provide coverage for events described below under the heading "**When and how notice of a Claim must be given**".

2. ELIGIBILITY FOR INSURANCE

Who is eligible for Professional Legal Expenses Plan Insurance?

A dentist, including a dentist practicing through a professional corporation, is eligible for Professional Legal Expenses Plan Insurance if he or she is or was licensed or possesses or possessed a certificate to practice dentistry in a province or territory of Canada, and is a member of one of the following dental associations:

British Columbia Dental Association
Alberta Dental Association and College
College of Dental Surgeons of Saskatchewan
Manitoba Dental Association
Ontario Dental Association
New Brunswick Dental Society
Prince Edward Island Dental Association
Nova Scotia Dental Association
Newfoundland and Labrador Dental Association
Northwest Territories & Nunavut Dental Association
Yukon Dental Association

or a dental association which replaces one of the listed provincial or territorial dental

associations,

and has been approved by the Company. The Company's approval is evidenced by the issuance of a Memorandum of Insurance.

The dentist must be a resident of Canada at the later of (i) their date of application or (ii) their most recent renewal date in order to be eligible for coverage under the Professional Legal Expenses Plan Insurance.

The names of the Insureds are as shown in the records of the Policyholder.

Amount of premium and when it must be paid

The amount of the premium is set out in the invoice issued to the Insured. The premium is due on or before the due date set out in the invoice.

3. PERIOD OF INSURANCE

When coverage begins

Professional Legal Expenses Plan Insurance coverage for the initial **Period of Insurance** will take effect on the date the application for insurance is approved by the Company. This date will be shown on the Memorandum of Insurance issued to the Insured.

When the Period of Insurance ends

The **Period of Insurance** will end on January 1, 2020 at 00:01 Standard Time at the address of the Insured.

Renewal Periods

As long as the Insured continually maintains the Professional Legal Expenses Plan Insurance coverage by paying the premiums when due, he or she will not be required to reapply each year for renewal coverage. The Insured will be sent an invoice for the renewal of the coverage. Subject to the right of the Company and the Insured to cancel the coverage described below under the heading "**Termination of Insurance Coverage**", the coverage will be renewed automatically upon the Policyholder's receipt of the premiums due as of January 1 in the renewal year. Following the Policyholder's receipt of the renewal premiums, a Memorandum of Insurance confirming the renewal of the coverage will be sent to the Insured.

4. PROFESSIONAL LEGAL EXPENSES PLAN INSURANCE COVERAGE

General Description of Coverage

Only certain specific **Legal Expenses** arising out of the Insured's **Practice of Dentistry** are covered under Professional Legal Expenses Plan Insurance coverage. The covered **Legal Expenses** are described under the subheading "**Expenses covered under Professional Legal Expenses Plan Insurance Coverage**" and the exclusions from that coverage are described under the subheading "**Expenses which are not covered under Professional Legal Expenses Plan Insurance Coverage.**"

Expenses covered under Professional Legal Expenses Plan Insurance Coverage

The Company will pay the **Legal Expenses** of the Insured only and not of any other person.

Legal Expenses include only those costs incurred directly by or on behalf of the Insured, including without limitation expenses incurred through the Insured's professional corporation.

The Company will pay **Legal Expenses**, in excess of the deductible amount described below, which arise out of the Insured's **Practice of Dentistry**, but only with respect to:

- 1) any coroner's inquest where the Insured has been subpoenaed as a witness;
- 2) any investigation, inquiry or audit where an insurance company or benefit provider has required the Insured's participation, including with respect to an audit or review of services provided by the Insured's office;
- 3) any legislated investigation, tribunal and/or inquiry where the legislated authority has required the Insured's participation;
- 4) any investigation, inquiry and/ or hearing of any provincial board, college or association to which the Insured belongs concerning fitness to practice and/or licensing;
- 5) any investigation, inquiry and/or hearing of any provincial board, college or association:
 - a) of which the Insured is a member, or
 - b) which has jurisdiction over the Insured with respect to his or her **Practice of Dentistry**, concerning a matter of discipline and/or complaint against the Insured;
- 6) any appeal or judicial review arising out of 1, 2, 3, 4, or 5 above.

Expenses which are not covered under Professional Legal Expenses Plan Insurance Coverage

The Company will not pay **Legal Expenses** for:

- 1) **Unauthorized expenses**
 - **Legal Expenses** incurred or paid before the consent of the Company has been given;

2) **Prior Claims**

- anything which occurred prior to the effective date of the Insured's coverage under this Professional Legal Expenses Plan Insurance coverage which the Insured knew or ought reasonably to have known was likely to give rise to a **Claim or Legal Proceedings**;

3) **Tax Irregularities**

- any legislated investigation, tribunal and/or inquiry relating to any tax irregularities with respect to the Insured's practice;

4) **Criminal or Statutory Charges**

- any **Claim or Legal Proceedings** arising from **Criminal or Statutory Charges** brought against the Insured.

5. NOTICE OF CLAIMS

When and how notice of a Claim must be given

As soon as the Insured knows of any event which has given or may give rise to a **Claim or Legal Proceedings**, the Insured must:

- immediately notify the Company in writing;
- complete all forms provided or requested by the Company and return those forms to the Company as soon as possible; and
- send the Company all other documents which it may request.

If the Insured does not comply with the requirements of this section, the Company will not pay any **Legal Expenses**.

Approval by Company of payment of Legal Expenses

The Company will approve the payment of **Legal Expenses** if:

1. the Insured has reasonable grounds for bringing or defending the **Claim or Legal Proceedings**, or
2. it is reasonable in all the circumstances of the particular case for **Legal Expenses** to be paid,

and the other conditions set out in this Professional Legal Expenses Plan Insurance coverage have been satisfied.

The Company will consider the opinion of the Insured's representatives and its own advisors in deciding whether to approve the payment of **Legal Expenses**. It may require a further opinion on the merits of the **Claim or Legal Proceedings** from a specialist. The Insured will be required to pay for this opinion. If the Company subsequently approves payment of the **Legal Expenses**, it will reimburse the Insured for the costs of the opinion.

The Company will notify the Insured in writing of its decision to approve or deny payment of **Legal Expenses**. If the Company denies payment of **Legal Expenses**, it will inform the Insured of its reasons. The Insured may then invoke the arbitration procedure described below under the heading “**Arbitration**”. If the Insured proceeds with the **Claim or Legal Proceedings** without the Company’s approval and achieves substantial success, the Company will reimburse the Insured for his or her **Legal Expenses**.

6. CONDITIONS OF COVERAGE

Amount of the deductible

There is a \$1,000 deductible applicable to each claim which the Insured must pay.

Amount of the Company’s limit of liability

The Company will not pay more than \$20,000 for any one **Claim or Legal Proceeding**. The Company will not pay more than \$60,000 in the aggregate in any one calendar year commencing January 1st, for any number of **Claims or Legal Proceedings**.

Duty to minimize Claims

The Insured must take all reasonable steps to mitigate and reduce the cost of any **Claim or Legal Proceedings** in which he or she may be involved.

Fraudulent Claims

If:

- the Insured makes any request for **Legal Expenses** which he or she knows to be fraudulent or false, or
- there is any collusion between the parties to the claim,

the Insured’s Professional Legal Expenses Plan Insurance coverage will automatically be void.

Canadian Currency Clause

All limits of insurance, premiums, deductibles and other amounts set out in this Professional Legal Expenses Plan Insurance coverage and the related Declarations and Premium Tables are in Canadian currency.

Other Insurance

If the Insured has other collectible legal expense insurance with another insurer covering a loss also covered under this Professional Legal Expenses Plan Insurance coverage the Insured may collect under this coverage only after the limits of the other insurance have been exhausted. Coverage under this Professional Legal Expenses Plan Insurance coverage is strictly excess to such other insurance.

Limitation Periods

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act* (for actions or proceedings governed by the laws of Alberta, British Columbia, and Manitoba), the *Limitations Act, 2002* (for actions or proceedings governed by the laws of Ontario), or other applicable legislation.

7. HOW LEGAL PROCEEDINGS ARE TO BE CONDUCTED

The Appointed Representative

Who may act as the Appointed Representative

A lawyer or other qualified person may act as the **Appointed Representative** of the Insured. The **Appointed Representative** must be appointed in the name of the Insured.

Nomination of Appointed Representative

The Insured may

- nominate the **Appointed Representative**, or
- request that the Company nominate the **Appointed Representative**.

If the Insured nominates the **Appointed Representative**, he or she must inform the Company of the **Appointed Representative**'s name and address. The Company may refuse to accept the Insured's nomination of the **Appointed Representative**. If the Company so refuses, the Insured may nominate another **Appointed Representative**. The Company has a continuing right to refuse to accept the Insured's nomination.

Any dispute arising from the nomination of the **Appointed Representative** may be resolved by the arbitration procedure described below under the heading "**Arbitration**".

Assistance to be provided to Appointed Representative

The Insured must give the **Appointed Representative** all information and assistance which the **Appointed Representative** may require, including

- a complete and truthful account of the facts of the case, and
- all relevant documents or other evidence which the Insured may possess.

The Insured must

- obtain and execute all necessary documents, and
- attend any meetings or conferences requested by the **Appointed Representative** or the Company.

The Company's access to the **Appointed Representative**

Counsel to the Company (either in-house or external) is entitled to obtain from the **Appointed Representative** any information, documents or advice relating to a **Claim or Legal Proceedings** whether or not such information or documents are privileged. If the Company so requests, the Insured must give the **Appointed Representative** any instructions or authorizations necessary to permit such access. The Insured's request for **Legal Expenses** will not be affected if the **Appointed Representative** refuses to grant such access because doing so could prejudice the Insured's interest in the **Claim or Legal Proceedings**.

The **Appointed Representative's** bills of account

The Insured must immediately forward to the Company all bills of account or other communications relating to **Legal Expenses** which he or she receives from the **Appointed Representative**. If the Company so requests, the Insured will instruct the **Appointed Representative** to submit his or her bills of account for assessment or certification by the appropriate person or authority.

Approval of fees and expenses

The Insured must not, without the Company's written consent, enter into any agreement with the **Appointed Representative** as to payment of fees and expenses. The Company may agree to waive the requirement of written consent if the time required to obtain its written consent might prejudice the Insured's **Claim or Legal Proceedings**, provided that the Company is fully aware of the contents of the agreement being approved. Any consent given by the Company may be withdrawn at any time and does not affect the Company's rights under this Professional Legal Expenses Plan Insurance coverage.

The payment of any **Legal Expenses** by the Company does not mean that all fees and expenses will be paid.

Instruction of senior or specialist counsel

If the **Appointed Representative** wants to instruct senior or specialist counsel in the course of any **Claim or Legal Proceedings**, he or she must submit to the Company

- the name of the proposed senior or specialist counsel, and
- the reasons for requiring senior or specialist counsel.

The Company will not unreasonably withhold or delay its consent to the appointment of senior or specialist counsel.

Claim or Legal Proceedings of less than \$500

If the **Legal Expenses** for a **Claim or Legal Proceedings** are likely to be less than \$500, the Company may

- carry out its own investigations, and
- attempt to negotiate a settlement.

Any such settlement is subject to the Insured's approval, which must not be unreasonably withheld or delayed.

Offers of settlement

The Insured or the **Appointed Representative** must immediately inform the Company in writing if:

- an offer to settle a **Claim or Legal Proceedings** is made, or
- an offer of payment into court is received.

If the Company is not notified of any such offer, it is not liable for the continued payment of **Legal Expenses**.

The Insured must not enter into any agreement to settle any **Claim or Legal Proceedings** without the Company's prior written permission, which permission cannot unreasonably be withheld or delayed.

If the Insured unreasonably withholds or delays agreement to a settlement offer, the Company may

- immediately terminate the Insured's Professional Legal Expenses Plan Insurance coverage, and
- deny the Insured's claim with respect to the **Claim or Legal Proceedings** giving rise to the settlement offer.

Any dispute arising from an offer of settlement must be resolved by the arbitration procedure described below under the heading "**Arbitration**".

Payment of fees, expenses and awards

The Insured is responsible for payment of all fees, expenses and awards of compensation assessed against him or her. However, the Company will pay directly all fees and expenses which are covered.

The Insured must certify that

- charges on bills have been properly incurred, and
- the Company is authorized to settle such bills on the Insured's behalf.

Awards and recoveries

If the Insured is awarded costs in a **Claim or Legal Proceedings**, he or she must take all necessary steps to recover **Legal Expenses** paid or payable. The Company will pay the expenses incurred by the Insured in recovering such **Legal Expenses**. Any amounts recovered will be taken into account in calculating the Company's liability as set out below.

Any amounts recovered by the Insured on account of an award of compensation and costs from a court or tribunal will be applied:

- firstly, in satisfaction of the award for costs in the **Claim or Legal Proceedings**, and
- secondly, any remainder will be applied on account of the award for compensation.

The Insured must pay all amounts which it recovers which are applicable to costs, as described above, to the Company immediately. If the Insured fails to make such payment, the Company may set off such amounts against any amounts owing to the Insured under this Professional Legal Expenses Plan Insurance coverage.

Appeal of decision of court or tribunal

If the Company wants the Insured to appeal the decision of a court or tribunal, the Insured must cooperate fully in any such appeal. The Company will pay the expenses for such an appeal.

If the Insured wants to appeal the decision of a court or tribunal and wants the Company to pay **Legal Expenses**, the Insured must apply to the Company for its approval giving the reasons for the appeal. If the appeal deadline is 30 days or more from the date of the decision, the application must be sent by pre-paid registered mail at least 25 business days before the final date for any such appeal. If the appeal deadline is less than 30 days from the date of the decision, the application must be sent by pre-paid registered mail at least 6 business days before the final date for any such appeal.

8. TERMINATION OF INSURANCE COVERAGE

Cancellation of coverage at the request of the Insured

The Insured may request the cancellation of the Memorandum of Insurance at any time. Upon cancellation, the Company will refund to the Insured its pro rata share of the premium for the remainder of the **Period of Insurance**.

Cancellation of coverage at the request of the Company

The Company may cancel the Memorandum of Insurance:

- at any time, by giving the Insured 90 days' notice of cancellation by registered mail; and
- in the event of non-payment of premium, fraud or misrepresentation by the Insured, by giving 15 days' notice of cancellation by registered mail or personally delivered.

The notice period for cancellation by registered mail begins on the day after the registered letter is received at the post office to which it is addressed.

Except in the case of fraud or misrepresentation by the Insured, the Company will provide Professional Legal Expenses Plan Insurance coverage for all **Claims or Legal Proceedings** of which it is notified on or before the effective date of cancellation.

Optional Extension Period if Master Policy Agreement is Cancelled

If the Company cancels or does not renew the Master Policy Agreement or the Insured's Professional Legal Expenses Plan Insurance coverage for any reason other than non-payment of premium by the Insured, the Insured has the right to purchase an Optional Extension Period of 365 days following the effective date of cancellation or non-renewal. Coverage during the Optional Extension Period only applies to **Claims or Legal Proceedings** relating to acts committed or alleged to have been committed prior to the effective date of cancellation or non-renewal.

The premium payable by the Insured to extend his or her coverage is based on the annual premium for the Insured's coverage in effect in the policy year which ends on the effective date of the cancellation or non-renewal.

In order to purchase the Optional Extension Period, the Insured must:

- give notice within 30 days of the effective date of cancellation or non-renewal; and
- pay a premium of 75% of the annual premium for the Insured's coverage as described above.

At the end of the first Optional Extension Period the Insured may purchase one additional Optional Extension Period of 365 days.

In order to purchase the additional Optional Extension Period, the Insured must:

- give notice within 30 days after the expiration of the first Optional Extension Period; and
- pay a premium of 50% of the annual premium for the Insured's coverage as described above.

The Insured's purchase of the Optional Extension Period(s) does not increase the Company's limit of liability under any Memorandum of Insurance.

9. ARBITRATION

Arbitration procedure

Any dispute arising from this Professional Legal Expenses Plan Insurance coverage will be decided by a single arbitrator. The arbitrator will be either:

- a lawyer agreed upon by the parties,
or, failing agreement,
- a person appointed by a judge of the Supreme Court (or equivalent) of the province or territory in which the Insured resides.

The arbitration will be governed by the arbitration legislation of the province or territory in which the Insured resides. The decisions of the arbitrator will be final and binding on the Insured and the Company. All costs of the arbitrator will be paid by the party against whom the decision is made. If the decision is not clearly made against either party the arbitrator will have the power to allocate costs.



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