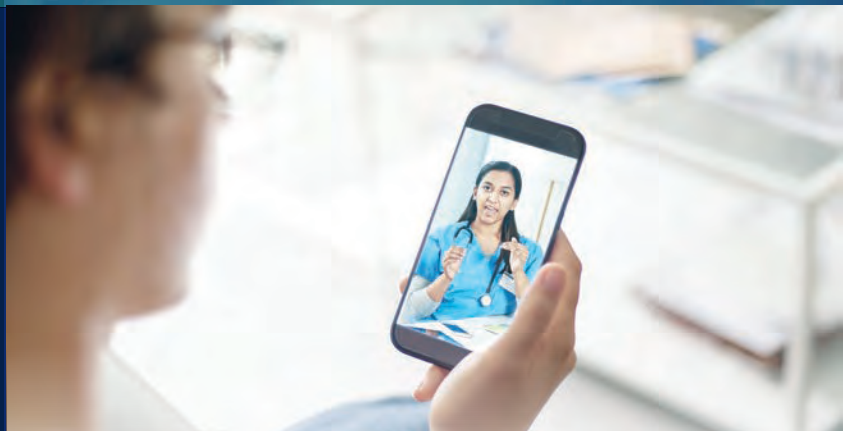




2019 AT-A-GLANCE

KEY TRENDS AND OVERVIEW

CNPS
Canadian Nurses
Protective Society



CEO MESSAGE

As we reflect upon the achievements of 2019, we do so with a strong sense of nostalgia, particularly as we adjust to the new realities of COVID-19 and the tremendous impact it has had on both nurses and the Canadian health-care system.

COVID-19 has radically transformed how we work and has impacted nurses working in all settings of care. The CNPS remains enormously proud and is honoured to provide Canadian nurses with continued access to professional liability protection, legal advice and assistance as they lead at the frontlines of this ever-evolving pandemic. We continue to marvel at the focused and compassionate care you provide under such pressure and want to thank you for all that you have done for your communities over the past few months.

Many of the trending issues we identified in 2019 have taken on a more pressing priority with the arrival of the pandemic. While the growth of virtual care and telepractice was an area of focus for CNPS last year, we could not have anticipated how quickly our health-care system would have to adjust and re-prioritize the way in which it delivers care to meet the needs of Canadians in this new reality. The pandemic has also challenged the ever-evolving scope of practice of nurses, who have been asked to stretch the boundaries of their roles and responsibilities in this new normal. Similarly, COVID-19 has driven many nurses to advocate on social media, encouraging Canadians to follow protocols and think of the risks front-line providers are facing on a daily basis to preserve the health and well-being of all.

Changes to the regulatory landscape

In April 2019, Harry Cayton's Report, "An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act" was released in British Columbia. This report outlined significant recommendations for changes to the Health Professions Act and the regulatory framework for health professionals in B.C., and its ripples continue to be felt across Canada. Subsequently, the Saskatchewan Registered Nurses

Association and the College and Association of Registered Nurses of Alberta completed reports in 2019 to examine their disciplinary/regulatory process. These reports have underscored a growing shift towards further regulatory transparency and transformation and resulted in recommendations to amalgamate professional regulators into single regulatory bodies. The move towards creating greater independence between regulatory colleges

and associations will continue to challenge the current landscape as new mandates and value propositions are developed. We will continue to work collaboratively to ensure a vibrant, healthy future for all the pillars of the nursing profession.





The desire for increased accessibility to MAID

In the fall of 2019, Medical Assistance in Dying (MAID) was once again brought into focus as a Quebec judge overturned a portion of the federal legislation in response to a case brought forward by Nicole Gladu and Jean Truchon. The court determined that the law was unconstitutional and excessively restrictive, as it barred access to MAID for individuals with intolerable suffering whose death is not imminent. As a provider of legal services that understands the regulatory framework, the legal obligations and the practice environment of nurses, the CNPS appreciated the opportunity to provide input via an in-person consultation with the Minister of Health, several discussions with Ministry officials and a submission to the federal government on the legislative response to the *Truchon* decision in early 2020.

With the onset of the pandemic, much of this discussion has been temporarily put on hold. The CNPS looks forward to continuing to engage federal government and key stakeholder groups in moving towards amended legislation that responds to the needs of Canadians while clarifying requirements to ensure that nurse practitioners remain comfortable in initiating discussions and facilitating MAID where requested. The CNPS will keep beneficiaries apprised of any upcoming changes as they occur. More details can be found in the trending legal issues section of this report.

Welcoming two groups of Registered Psychiatric Nurses

On November 1, 2019, Saskatchewan RPNs gained access to the professional liability programs and services offered by the CNPS as members of the Registered Psychiatric Nurses Association of Saskatchewan (RPNAS), joining the RPNs of BC who became CNPS beneficiaries in late 2018. Also, beginning January 1, 2020, all RPNs in Manitoba became CNPS beneficiaries through their membership with the College of Registered Psychiatric Nurses of Manitoba (CRPNM).

With the addition of these groups, the CNPS now provides legal support to over 140,000 nurses from coast-to-coast, working within all professional nursing designations. We are honoured to be your provider of legal assistance and professional liability protection and will continuously strive to support the important work that you do.

OUR SERVICES

Created by nurses, for nurses, the CNPS has been providing legal assistance and support to eligible nurses in Canada for over 30 years. We are proud to provide access to legal advice, risk management services, legal assistance and professional liability protection related to nursing practice to over 140,000 eligible nurses across all Canadian provinces and territories and all nursing designations.

The CNPS is available as a resource to nurses in their day-to-day practice, not only when they are implicated in a legal proceeding. We encourage nurses to call to speak with our Legal Counsel should they have any specific legal questions or concerns related to their practice.

To learn more about CNPS core services, please visit www.cnps.ca/services.

Did you know? The CNPS is a not-for-profit Society and does not profit financially from the fees it receives: all resources are dedicated to providing legal support and education to beneficiaries.

Operational highlights

To support our growing beneficiary count across Canada, the CNPS began transforming its information systems to increase organizational resiliency, security and agility by moving toward a cloud-based information system which will be fully integrated into a customer relationship management (CRM) system by 2022.

In 2019, the CNPS expanded its operational team structure by adding coordinators and senior positions. A senior management team was also created and added key strategic positions in Finance, Operations, Human Resources and Communications. Our team of Legal Counsel also continues to grow to support the increasing demand for our services and growing call volumes.

We continue to see growth in both the volume and complexity of the calls we are receiving, which is reflective of the increasingly complex environment in which our beneficiaries work. As more nurses enter into independent practice, the CNPS has also seen a marked growth in requests for contract reviews.

CNPS beneficiaries continue to rely on our educational offerings. In 2019, we hosted 32 public webinars, 22 private webinars, and attended 33 in-person presentations requested by beneficiaries, member organizations, and health-care stakeholders. We have also seen an increase in the average number of webinar attendees and can now host up to 500 nursing sites at each public webinar.

In 2019 we also began the process of updating our corporate presence, including our logo, website and collateral materials. Retaining our core colors, we have modernized the CNPS' look and feel to align with our evolving organization. The results of our re-branding initiative are reflected in this document and our recently relaunched website.

As always, thank you to the members of our Board of Directors¹ for serving as the representative voices of our beneficiaries from across this country. Your guidance and passion for the nursing profession are instrumental in fulfilling the CNPS' mission and vision. Our organization and nurses across Canada have benefited through your guidance and generosity of time. And to the talented and committed employees of the CNPS: thank you! You have been steadfast in these challenging times and unwavering in your approach to ensuring that nurses have access to the best possible assistance when they need it.

And to all nurses, thank you again for your leadership and continued dedication to the health of Canadians during this extraordinary time.

¹ To learn more about the CNPS Board of Directors, please visit www.cnps.ca

2019 STATS AT-A-GLANCE

TOP 5 WEBINARS

1. Documentation
2. Medical Cannabis: What every nurse needs to know
3. Telepractice
4. Social Media and Technology
5. Legal Risk Management for Nurses Practicing in Mental Health Environments

Due to the high volume of requests that the CNPS receives for in-person engagements and presentations, the CNPS increased its service offering in 2019 to provide more digital presentations and engagements to meet the needs of beneficiaries.

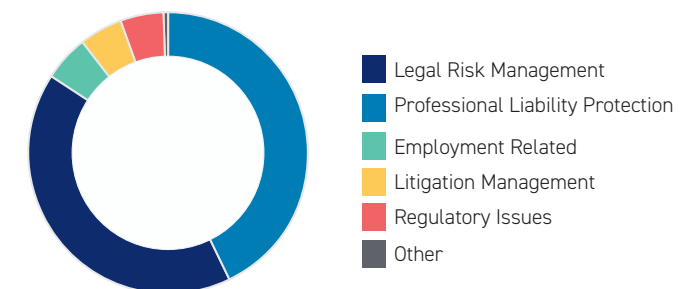
2015-2019 INCURRED COSTS BY TYPE OF ASSISTANCE (CORE SERVICES)

- Civil litigation and threats **94%**
- Criminal investigations and prosecutions **3%**
- Statutory breaches **1%**
- Fatality inquiries and coroners' inquests **1%**
- Miscellaneous **1%**

LEGAL RISK MANAGEMENT: TOP QUESTIONS FROM BENEFICIARIES

1. Assessment of legal risk or legal liability in specific circumstances
2. Request for CNPS' legal opinion or analysis of legal documents (such as contracts, bylaws and policies or the interpretation of legislation)
3. Confidentiality and privacy
4. Documentation
5. Reporting obligations

2019 LEGAL INQUIRIES BY CATEGORY



2019 TOTAL NUMBER OF WEBINARS AND PRESENTATIONS:

54 CNPS hosted digital engagements **33** in person **87** total



VIRTUAL CARE

VIRTUAL CARE

As new technologies emerge, the provision of virtual care continues to grow both nationally and globally. Virtual care aims to facilitate or maximize the quality and effectiveness of patient care,² and is administered by both public and private institutions. Through virtual care, patients can access timely health care remotely, with methods such as video or telephone calls, instant messaging, or apps. As the care provider and the client are in different locations and must actively rely on technology to communicate with each other, additional considerations are needed so that the health practitioner continues to meet the appropriate standard of care.

Virtual care will continue to play a vital role in the evolution of our health-care system, as it improves access to care in remote communities, provides a convenient platform to access care in a timely manner, decreases costs and presents a safe way to assess patients exhibiting symptoms of potentially contagious illnesses.

Despite the many benefits of virtual care, as with any technology, there are some risks that need to be considered and mitigated. First, the absence of a physical consultation can make it more difficult to provide a diagnosis, and not all conditions can be appropriately assessed via virtual care. It is also important for nurses to consider whether they will be expected to provide virtual care to individuals outside of the province or territory in which they presently practise. Unique privacy considerations must also be addressed.

National and Global Update

Due to the wide geographic landscape of the country and its sparse population density, Canada has many remote populations living in rural communities. It is reasonable to infer that virtual care technology has great potential to increase equitable access to health care for rural communities and help to mitigate health inequities by reducing costs and wait times.³ In fact, a 2019 Canadian Medical Association survey reported that 39% of physicians indicated that they would be ready to offer care to patients in other jurisdictions through virtual care platforms.⁴

² Shaw J, Jamieson T, Agarwal P, et al. *Virtual care policy recommendations for patient-centred primary care: findings of a consensus policy dialogue using a nominal group technique*. J Telemed Telecare 2018.

³ Canadian Medical Association, *What Canadians Think About Virtual Health Care*, May 2020, online: <https://www.cma.ca/sites/default/files/pdf/virtual-care/cma-virtual-care-public-poll-june-2020-e.pdf>

⁴ Canadian Medical Association, "Physicians overwhelmingly support national licensure: 2019 CMA Physical Workforce Survey results," October 29, 2019, online: <https://www.cma.ca/physicians-overwhelmingly-support-national-licensure-2019-cma-physician-workforce-survey-results>





In 2019, the world's first artificial intelligence (AI) health application in Swahili was launched, which helped to tackle doctor shortages in eastern Africa. Closer to home, P.E.I.'s first virtual health-care clinic was launched in November.⁵ It is anticipated that this sector will continue to grow with the advancement of AI technology.

Additionally, private virtual care systems began rising in popularity in 2019, with an increasing number of companies offering access to virtual care as a part of employee benefit packages. Several provinces such as Alberta, Saskatchewan, Manitoba and Ontario have designated specific telehealth billing codes for virtual care services,⁶ although these services are not offered by the majority of health practitioners. For example, recent surveys conducted by Canada Health Infoway show that 71% of Canadians would like to be able to book an appointment electronically.⁷ As such, private sector companies have stepped into this realm and are now offering services directly to employers and patients for a fee.

Considering the onset of private virtual care companies, it is important to note that they do not yet operate within the same legislative and regulatory scheme that governs public health care organizations. As a result, some of the legal responsibilities that normally belong to health care organizations, such as custodianship, retention and management of personal health information, systems to enable follow-up care, may devolve to health care professionals, even if the video conferencing systems and the information is maintained by an organization. This may increase the responsibility of health-care professionals that they are properly supported to provide care in accordance with their standards of practice and that the legal requirements applicable to privacy, etc. are met. This has also raised concerns over the privatization of health care in Canada, that include increasing overall costs, introducing more inequities, or absorbing resources from the public health-care system.

With the emergence of COVID-19 in early 2020, virtual care is now poised to become a standard method of primary care, and we anticipate that the rapid pace of technological innovation will assist in widening the scope of health conditions that can be assessed and treated via virtual consultation. In fact, a recent CMA survey showed that 34% of people have interacted with their family doctor via telephone during the pandemic thus far, compared to 10% through an in-person consultation.⁸ They also found that overall, satisfaction levels with telepractice services were very high.⁹

⁵ Eric McCarthy for The Guardian, "Virtual health clinic sees first patients in Tignish," Nov 1st 2019, <https://www.theguardian.pe.ca/news/provincial/virtual-health-clinic-sees-first-patients-in-tignish-371075/>

⁶ McMaster Health Forum, "Rapid Synthesis: Understanding the Use of and Compensation for Virtual-care Services in Primary Care," July 2018, www.mcmasterforum.org/docs/default-source/product-documents/rapid-responses/understanding-the-use-of-and-compensation-for-virtual-care-services-in-primary-care.pdf?sfvrsn=2.

⁷ Canada Health Infoway, *Connecting patients for better health: 2018*, 2018, online: www.infoway-inforoute.ca/en/component/edocman/3564-connecting-patients-for-better-health-2018/view-document?Itemid=0.

⁸ *Supra*, at note 6.

⁹ *Supra*, at note 6.

CNPS in Action

The CNPS continues to advise nurses on the advantages and legal considerations related to the provision of virtual care and telepractice. In 2019, the CNPS received a growing number of speaking requests from beneficiaries on this topic. Virtual care or telepractice continue to be among the most popular webinar and presentation topics offered by the CNPS, and in 2019, the CNPS revised and presented a new virtual care webinar that focused on the legal considerations associated with the evolving technology and jurisdictional issues inherent to this delivery model. In 2019, this topic was offered three times in public webinars to beneficiaries. The CNPS also completed many contract reviews for nurses entering into private sector agreements with virtual care providers and will continue to provide legal advice in this context to ensure the best interests of beneficiaries are upheld in contractual agreements.¹⁰

Although it was already an area of focus in 2019, virtual care became an extremely important tool that allowed for a quick adaptation of our health-care system to ensure Canadians continued to have basic access to care throughout the COVID-19 pandemic. CNPS is closely monitoring emerging technologies and developments in this area and continues to publish new resources on this issue for its beneficiaries at www.cnps.ca.

¹⁰ CNPS, "Twelve Things to Consider Before joining a Virtual Care Practice," 2020, online: <https://cnps.ca/article/twelve-things-to-consider-before-joining-a-virtual-care-practice/#gsc.tab=0>



A healthcare professional wearing a surgical cap, face shield, and gloves is administering a vaccine into a patient's arm. The patient is also wearing a face mask. The scene is set in a clinical environment, likely a vaccination site. The entire image has a blue color overlay.

EVOLVING SCOPE OF PRACTICE

EVOLVING SCOPE OF PRACTICE

National Update

As Canada continues to grow and evolve, so do the population's health-care needs. Rather than solely focusing on treatment and diagnoses, current health-care reform is focused on illness prevention, health promotion and self-management of chronic diseases.¹¹ NPs and RNs working in advanced practice roles fulfill this necessity by meeting the multifaceted health needs of Canadians in different settings, such as rural and remote communities or long-term care facilities. In fact, several studies have shown that NPs improve health outcomes and quality of care, reduce wait times and alleviate pressures on other sectors of the health-care system by offering early diagnosis, preventive interventions, or continuity of care.¹² In doing so, more patients can access primary health care. In order to adapt to this evolving model of care, governments and regulators are in the process of adjusting and adding to the nursing scope of practice across nursing designations.



Regional Changes

Many provinces or regulatory bodies, including Alberta, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador amended their current legislation or regulations to expand the scope of practice of nurses in 2019. For example, as of February in Newfoundland and Labrador, and July in British Columbia, nurse practitioners may authorize the use of cannabis for medical purposes.¹³ In Prince Edward Island, nurses may now be considered for an appointment as a field investigator under the Coroners Act.¹⁴ In Saskatchewan, RNs with additional authorized practice may refer a patient to a radiologist.¹⁵

By late 2020 in Ontario, an NP may have the authority to order MRIs and CTs and perform point-of-care testing. This would also allow RPNs to independently initiate additional duties such as venipuncture or wound irrigation below the dermis or a mucous membrane.¹⁶ The province has also been working on expanding RNs' scope of practice, such as being able to communicate diagnoses and prescribe drugs for some non-complex conditions. In Alberta, LPNs are now authorized to administer blood or blood products or administer intravenous nutrition.¹⁷

As with any considerable change in the health-care field, adjunct industries must adapt as well. For example, the Canadian Nurses Association and the Nurse Practitioner Association of Canada asked in 2019 that private health insurance companies eliminate barriers by amending their policies to reflect the scope of practice of NPs.¹⁸



CNPS in Action

The CNPS ensures that it has sufficient resources to support the provision of professional liability protection for the expanding scope of nursing practice and provides legal advice to nurses related to their expanding scope of practice.

¹¹ Canadian Nurses Association, *Advanced Practice Nursing: A Pan-Canadian Framework*, 2019, online: <https://www.cna-aic.ca/-/media/cna/page-content/pdf-en/advanced-practice-nursing-framework-en.pdf?la=en&hash=76A98ADEE62E655E158026DEB45326C8C9528B1B>

¹² *Ibid.*

¹³ Association of Registered Nurses of Newfoundland and Labrador, *Authorizing the Use of Cannabis For Medical Purposes*, 2019, online: https://crnrl.ca/sites/default/files/documents/RD_Authorizing_The_Use_of_Cannabis_For_Medical_Purposes.pdf
And British Columbia College of Nurses and Midwives: <https://www.bccnp.ca/bccnp/Announcements/Pages/Announcement.aspx?AnnouncementID=71>.

¹⁴ Prince Edward Island Royal Gazette, Vol. CXLV- No. 38, September 2019, online: https://www.princeedwardisland.ca/sites/default/files/publications/royal_gazette/rg_issue_38-september_21_2019_complete_reduced_0.pdf.

¹⁵ Government of Saskatchewan Publications, *The Saskatchewan Gazette*, Part II, Vol. 115, no. 16, April 2019.

¹⁶ College of Nurses of Ontario, "Scope of practice for NPs and RPNs to expand", *the Standard*: July 2019, online: <https://www.cno.org/en/learn-about-standards-guidelines/magazines-newsletters/the-standard/july-2019/Scope-of-practice-NPs-and-RPNs-expand/>

¹⁷ Alberta, "LPNs to have broader roles," Oct 2019, online: <https://www.alberta.ca/release.cfm?xID=6465788A43752-9256-82E6-D0158E452DC4AA97>

¹⁸ Canadian Nurses Association, "Health-Care Providers jointly call on private insurers to eliminate barriers for nurse practitioners," Nov 2019, online: <https://cna-aic.ca/en/news-room/news-releases/2019/health-care-providers-jointly-call-on-private-insurers-to-eliminate-barriers-for-nurse-practitioners>.



MEDICAL ASSISTANCE IN DYING

MEDICAL ASSISTANCE IN DYING

National Update

Federal legislation (Bill C-14) was adopted in 2016 to allow eligible Canadian adults to request medical assistance in dying (MAID). At that time, the CNPS made written submissions to the Special Joint Committee on Physician-Assisted Dying in order to bring to the attention of parliamentarians the legal implications of the *Carter v. Canada* decision for nurses.¹⁹ The CNPS also made submissions to the House of Commons and Senate regarding Bill C-14, whose provisions amend the Criminal Code and set out circumstances in which MAID will not be considered a criminal offense.²⁰ However, in 2019, the *Truchon*²¹ decision at the Quebec Superior Court questioned the eligibility criteria for MAID. They declared the "reasonable foreseeability of natural death" criterion in the federal Criminal Code, as well as the "end-of-life" criterion in Quebec's provincial law on MAID to be unconstitutional. Although this would only apply to Quebec, the Canadian government had to respond to the decision, and thus chose to apply these changes at the federal level.

¹⁹ Canadian Nurses Protective Society, *Medical Assistance in Dying: What every nurse should know*, July 2016, online: <https://cnps.ca/article/medical-assistance-in-dying-what-every-nurse-should-know/>

²⁰ *Ibid.*

²¹ *Truchon c. Procureur général du Canada*, 2019 QCCS 3792 (CanLII), <<http://canlii.ca/t/j4f8t>>





CNPS in Action

In early 2020, the CNPS collaborated with the CNA to review the implications of removing the requirement of "reasonably foreseeable death" as a condition for the provision of MAID. It also participated in various consultations with the federal government to regarding MAID eligibility criteria and the request process, including telephone consultations with Ministry advisors; an in-person, by-invitation-only meeting with the Minister of Health; and a written submission. This was a crucial engagement, as nurses play a critical role in providing end-of-life care and NPs are able to act as assessors in the administration of MAID.

The provision of MAID in the absence of a reasonably foreseeable death fundamentally changes the nature of the intervention and considerably expands the circumstances in which a request for MAID might be presented.

In summary, the submission recognized that the requirement for reasonably foreseeable death has often served as an objective "gatekeeper criteria" when determining if an individual is eligible for MAID, and thus limited its application to individuals suffering solely from psychiatric conditions, amongst others. As such, it focused on the following recommendations:

- ✓ that an extension be sought to allow for a more fulsome assessment of the implications of the criteria regarding foreseeable death be removed;
- ✓ that a new independent body comprised of health-care professionals have the authority to waive the requirement for a reasonably foreseeable death in specific circumstances;
- ✓ that consideration be given to waiving the requirement for express consent immediately before the provision of MAID, if sufficient safeguards are in place; and
- ✓ that the *Criminal Code* be amended to stipulate that the exemption from criminal prosecution that applies to the information about the lawful provision of MAID applies notwithstanding that the health-care professional may have initiated the discussion, to avoid any misconception regarding the appropriateness of initiating discussions about MAID with patients.

With the onset of the COVID-19 pandemic, these discussions have been tabled and this remains an evolving issue. Discussions surrounding the subject have recently resumed, and the CNPS will ensure that any relevant developments are appropriately communicated with CNPS beneficiaries.

