

## Administrative Policy 06 Roster Management

Approved by CEO:  Date: January 29, 2014  
Lyle Toop, Interim President & CEO

Takes effect on: February 4, 2014 Previous Policy: 2004 Rules

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- Purpose:**
- To identify the elements of roster management
  - To provide a framework for how roster management decisions are made.
  - To set out when a roster management decision is final, or when and how it can be reviewed.
- Related Rules:** Part VII, Rules 7.1 to 7.7 as amended

## Policy

### I. Application of this policy

1. This policy applies to:
  - a. Legal Aid Alberta's rosters of private bar lawyers who are on a roster for the purpose of providing certificate-based services to clients;
  - b. roster lawyers, who are:
    - i. private bar lawyers who are enrolled on a roster; and
    - ii. lawyers who have been suspended or removed from a roster; and
  - c. private bar lawyers who are applying to be enrolled on a roster.
2. This policy does not apply to:
  - a. staff lawyers whether they provide certificate-based services or not; and
  - b. contract lawyers.
3. In this policy, unless otherwise noted:
  - a. "CEO" includes the CEO's delegate; and
  - b. "lawyer" includes student-at-law.

## II. Roster management

4. Roster management is the recruitment to, development, administration and maintenance of one or more rosters and the roster lawyers on those rosters.
5. Roster management activities may include the development and implementation of:
  - a. standards and qualifications for enrollment and continuation of membership on rosters;
  - b. roster-specific training and mentoring for roster lawyers on or applying to be put on rosters; and
  - c. developmental or probationary status for lawyers on or applying to be put on rosters.

## III. Roster membership decisions

6. A roster membership decision is one that deals with:
  - a. enrolling a lawyer on a roster;
  - b. attaching terms and conditions to a lawyer's enrollment or continuation of membership on a roster; or
  - c. imposing sanctions on a roster lawyer, including the removal or suspension of a roster lawyer from the roster.
7. Legal Aid Alberta will establish a Roster Committee in accordance with the Terms of Reference which are Appendix A to this Policy.
8. Roster membership decisions will be made by the persons and Committee identified in accordance with Table 1 at the end of this Policy.
9. Legal Aid Alberta, when making a roster membership decision, will consider the following:
  - a. how Legal Aid Alberta's Rules, Board Policies and Administrative Policies applies to the roster lawyer and matter under consideration;
  - b. whether the materials and information provided by the lawyer or others form a sufficient basis upon which to make a decision; and
  - c. whether any factors exist which would warrant exercising discretion under the Rules or Policies.

## IV. Rosters

10. Legal Aid Alberta may establish one or more rosters of private bar lawyers who have agreed to become roster lawyers.
11. Where Legal Aid Alberta establishes more than one roster, the rosters may be differentiated by area of law, area of lawyer specialization, experience, geographic area or such other characteristic as Legal Aid Alberta may chose.

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12. Legal Aid Alberta will develop and maintain protocols and processes for ensuring that roster membership is current and related to the characteristics, if any, of a specific roster.

#### **V. Standards and qualifications**

13. Legal Aid Alberta may establish qualifications and standards required for a lawyer to be enrolled or continue to be enrolled on a roster.
14. Qualifications and standards may vary by roster.
15. Legal Aid Alberta may establish protocols and processes for the review and audit of roster lawyers or lawyers who wish to be enrolled on a roster to ensure that they comply with Legal Aid Alberta's standards, qualifications and conditions or terms of enrollment and membership.
16. Where a lawyer does not meet standards and qualifications, Legal Aid Alberta may impose terms and conditions on a lawyer who is being enrolled or is continuing to be enrolled on a roster.

#### **VI. Membership on a roster**

17. Legal Aid Alberta will develop and maintain protocols and processes for:
  - a. lawyers to apply for enrollment on a roster; and
  - b. selecting and enrolling lawyers on a roster.
18. A lawyer who wishes to be enrolled or continue to be enrolled on a roster must:
  - a. apply for enrollment in accordance with Legal Aid Alberta's Rules, Policies and procedures;
  - b. agree to comply with Legal Aid Alberta's Rules, Policies, procedures and any terms or conditions imposed upon the lawyer or upon any certificate-based matters for which the lawyer is appointed to act; and
  - c. provide information and records for review, in accordance with this Policy and any protocols or processes developed under it.
19. Legal Aid Alberta will remove a roster lawyer from a roster where:
  - a. the roster lawyer requests that he or she be removed;
  - b. the roster lawyer is no longer entitled to practice law in the Province of Alberta;
  - c. the roster lawyer is deceased or otherwise is no longer in the active practice of law; or
  - d. the Roster Committee decides that the roster lawyer should be removed from a roster.
20. Legal Aid Alberta will suspend a roster lawyer from a roster where the Roster Committee decides that the roster lawyer should be suspended.

21. Nothing in this policy prevents a roster lawyer who is removed from a roster from reapplying for enrollment, when the circumstances triggering the removal no longer exist.
22. Removal or suspension from a roster does not end the roster lawyer's obligations to Legal Aid Alberta.
23. Where Legal Aid Alberta makes a decision under this Part, it will take all reasonable steps to ensure that:
  - a. the roster lawyer understands the decision that has been made and the reasons for it;
  - b. the roster lawyer has an opportunity to ask questions of the decision-maker and get further clarification, if requested;
  - c. the decision-maker or delegate explains how the roster lawyer can ask for a review of the decision or, where a review is not available, that the decision is final; and
  - d. where review is available, the roster lawyer is assisted in making a request for it.

## **VII. Roster supports**

24. Legal Aid Alberta may develop and implement:
  - a. roster-specific training and educational activities for roster lawyers or lawyers applying to be enrolled on a roster;
  - b. mentoring programmes for roster lawyers; and
  - c. resources and other tools which will support the work of roster lawyers for Legal Aid Alberta clients.

## **VIII. Sanctions**

25. This Part does not apply to the imposition of terms and conditions on enrollment under Part VI of this Policy.
26. Legal Aid Alberta may develop and maintain protocols and criteria which identify conduct and activities which may result in sanctions being imposed against a roster lawyer.
27. Legal Aid Alberta may impose the following sanctions:
  - a. suspension of a roster lawyer from a roster; or
  - b. removal of a roster lawyer from a roster.
28. Legal Aid Alberta may impose sanctions against a roster lawyer where the roster lawyer has:
  - a. not complied with the Rules, Board Policies or Administrative Policies;
  - b. not complied with the terms and conditions attached to a client's matter;
  - c. been charged with a criminal offence or is the subject of an allegation of misconduct that places the legal interests of Legal Aid Alberta at material risk or could cause significant damage to the reputation of Legal Aid Alberta;

- d. been the subject of unacceptable performance findings in an audit, performance review, evaluation or quality review; or
  - e. failed to meet, on an ongoing basis, any of the qualifications and standards established under Part V of this Policy.
29. Where Legal Aid Alberta becomes aware that a matter described in section 28 may exist, the CEO will determine whether there is sufficient evidence to refer it to the Roster Committee.
30. On completion of the investigation, the CEO will:
- i. take no further action; or
  - ii. refer the matter to the Roster Committee.
31. Where the CEO refers the matter to the Roster Committee, the CEO will:
- a. prepare a report setting out the findings of the investigation; and
  - b. give the roster lawyer a copy of the report as soon as possible and in advance of the hearing; and
  - c. give the roster lawyer notice of the hearing.

#### **IX. Roster Committee Protocol**

32. Where a matter has been referred to the Roster Committee, the Committee will set a date for the hearing of the matter as soon as possible.
33. Where the Committee determines it is in the best interest of Legal Aid Alberta to do so, it may immediately suspend the roster lawyer from the roster, prior to the hearing.
34. A suspension under section 33 is not subject to review or appeal.
35. The Roster Committee will make no decision, other than one made under section 33, until it has given the roster lawyer:
- a. reasonable opportunity to review the CEO's report;
  - b. reasonable notice of the hearing date and location; and
  - c. reasonable opportunity to respond or object to the CEO's report in person at the hearing.
36. At the hearing, the Roster Committee may:
- a. proceed in the absence of the roster lawyer;
  - b. hear, receive and examine evidence in any manner it considers proper; and
  - c. otherwise control its proceedings in any manner it considers proper.
37. The Roster Committee is not bound by any rules of evidence.
38. The Roster Committee may make a decision to:
- a. suspend the roster lawyer from a roster for a period of time, with or without conditions;
  - b. remove the roster lawyer from a roster; or

- c. refuse to impose either sanction.
39. Where the Roster Committee does not impose a sanction, it may make recommendations to the CEO regarding terms and conditions for the roster lawyer's continued membership on the roster.
40. The Roster Committee will consider the following when making a decision:
- a. how Legal Aid Alberta's Rules, Board Policies and Administrative Policies apply to the facts of the matter;
  - b. whether the materials and information provided form a sufficient basis upon which to make a decision;
  - c. whether the roster lawyer's conduct or activities fall within section 28 of this policy; and
  - d. where the Committee finds conduct or activities falling within section 28, the appropriateness of any sanctions to be imposed.
41. The Roster Committee will render its decision, with reasons, in writing and provide it to the roster lawyer.
42. A copy of the decision will be attached to the roster lawyer's Legal Aid Alberta record.

#### **X. Review of roster membership decisions**

43. A roster membership decision made by the Roster Committee is final and cannot be reviewed or appealed.
44. Subject to section 43, all other roster membership decisions may be reviewed.
45. A review decision is final and cannot be appealed.
46. If a lawyer wishes to request a review of a roster membership decision described in section 44, the lawyer must:
- a. fill in the Request to Review form;
  - b. set out the reasons for disagreeing with the decision;
  - c. include copies of any documents in support of the Request to Review; and
  - d. send the completed Request to Review to Legal Aid Alberta within 15 days of the decision with which the lawyer does not agree.
47. Legal Aid Alberta can, in its discretion, waive or extend the 15 day period in section 46.
48. The reviewer may:
- a. uphold the roster membership decision;
  - b. vary the roster membership decision;
  - c. overturn the roster membership decision; or
  - d. when varying or overturning the decision, substitute her or his own decision.

49. The lawyer requesting the review has no right to appear in person before the reviewer.
50. The reviewer will
- a. conduct the review within 15 days of the receipt of the Request;
  - b. base the review on the materials in the Request to Review, the records relating to the matters under review and any other materials the reviewer believes are relevant; and
  - c. send the lawyer a written notice of the reviewer’s decision within five days of making that decision.
51. The reviewer will consider the following when making a review decision:
- a. how Legal Aid Alberta’s Rules, Board Policies and Administrative Policies apply to the facts of the matter and decision under review;
  - b. whether the materials and information provided by the lawyer form a sufficient basis upon which to make a decision;
  - c. whether the decision under review was based on an error or misapplication of the Rules, Board Policies or Administrative Policies; and
  - d. whether any of the factors which would warrant exercising discretion under the Rules or Policies exist in the matter and decision under review.
52. A copy of the reviewer’s decision will be attached to a roster lawyer’s Legal Aid Alberta record.

**Table 1: Roster Membership Decisions**

Issue	Decision	Review	Appeal
1. Enrolling a lawyer on a roster	Designated LAA manager or staff	CEO	None
2. Attaching terms or conditions to a lawyer’s enrollment or continued membership	Designated LAA manager or staff	CEO	None
3. Application of sanctions to roster lawyer:			
a. suspension from a Roster, with or without conditions	Roster Committee	None	None
b. removal from a Roster	Roster Committee	None	None

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**Appendix A**  
**Roster Committee Terms of Reference**

**1. Definitions**

<b>Board</b>	1.1	the Legal Aid Alberta Board of Directors;
<b>CEO</b>	1.2	the Chief Executive Officer of Legal Aid Alberta;
<b>LAA</b>	1.3	Legal Aid Alberta, the Legal Aid Society of Alberta;
<b>Roster Manager</b>	1.4	the LAA staff position which is responsible for overseeing roster management activities.

**2. What does the Roster Committee do?**

<b>Purpose</b>	2.1	The Roster Committee is an ad hoc operations Committee that decides all questions relating to the imposition of sanctions upon roster lawyers, under Part IX of the Roster Management Policy.
<b>Responsibilities</b>	2.2	The Roster Committee makes decisions on matters before it, in accordance with LAA Rules, Policies and procedures.

**3. How does the Committee do its work?**

<b>Composition</b>	3.1	The Committee will consist of three members of the Board, convened by the CEO as required, the majority of which must be lawyers.
<b>Secretariat</b>	3.2	The work of the Committee will be supported by the CEO or delegate.
<b>Hearings</b>	3.3	The Committee may meet in person, by video-conference or by tele-conference to hold hearings and make decisions on matters before it.
	3.4	The CEO, or the CEO's delegate, is entitled to attend hearings to observe and provide technical support to the Committee Panel during hearings and deliberations, but may not actively participate in decision-making on any matter before the Committee.



- Presiding Officer**
- 3.5 The Committee will chose a Presiding Officer at the beginning of a hearing.
- 3.6 The Committee may chose the same Presiding Officer for all or some of the hearings scheduled for that day.
- 3.7 The Presiding Officer will:
- a. oversee the hearing process; and
  - b. ensure that a record of the decision for each hearing, in the required format, is provided to the Secretariat.
- Decision-making**
- 3.8 Decisions of the Committee will be made by a majority of the members present at a hearing.
- Conflict of Interest**
- 3.9 A Committee member cannot participate in the hearing, discussion or decision-making related to a specific case where the member has a conflict of interest in that case.
- 3.10 Where the conflict is not known until the Committee has begun its work on the specific case, the member with the conflict will excuse himself or herself from the work or hearing, tell the Presiding Officer and Secretariat and return to the Secretariat any case materials he or she may have.