

## Administrative Policy 03 Fee and Payment

Approved by CEO: S. Polkosnik Date: Nov. 20/15  
Suzanne Polkosnik, President & CEO

Takes effect on: December 7, 2015

Previous Policy: February 4, 2014

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**Purpose:** To set out policy, protocol and criteria with respect to Fee and Payment Guidelines in the 2015 Legal Aid Alberta Rules.

**Related Rules:** Part V, Rules 5.1 to 5.8 as amended  
Schedule 1, Definitions as amended

## Policy

### When the Fee and Payment Policy applies.

1. Fee and Payment Policies apply to all clients who accept legal services from Legal Aid Alberta.

### Who makes Fee and Payment decisions.

2. Decisions relating to whether a client will be charged fees, the amount of fees, payment arrangements, whether security must be given and other matters relating to the payment and collection of fees will be made by the Vice President of Client Services or the Vice President's delegate.
3. When Legal Aid Alberta makes a fee and payment decision, it will consider the following:
  - a. how Legal Aid Alberta's Rules, Board Policies and Administrative Policies apply to the client and the matter;
  - b. whether the materials and information provided by the client form a sufficient basis upon which to make a decision; and,
  - c. whether any of the factors which would warrant exercising discretion under the Rules or Policies exist.

4. Legal Aid Alberta will take all reasonable steps to ensure that:
  - a. the client understands the fee and payment decision that has been made and the reasons; and,
  - b. where the client does not agree with the decision:
    - i. the client has an opportunity to ask questions of the decision-maker and get further clarification, if requested;
    - ii. the decision-maker or delegate explains how the client can request a review of the decision or where no review is available, that the decision is final; and
    - iii. where review is available, the client is assisted in making a Request to Review.

### **Setting Client Fees**


5. Client fees for legal representation services will not include:
  - a. the GST portion of the certificate lawyer's bill; and,
  - b. travel charges paid by Legal Aid Alberta to the certificate lawyer.
6. Where client fees may be charged for a legal representation service, a client should be informed before those legal services are provided:
  - a. that they will be charged client fees for the legal service;
  - b. how the amount of fees will be set;
  - c. how and when they may be required to make payments; and
  - d. how and when they may be required to pledge security for the fees.

### **Charging Client Fees**

7. In making decisions under 5.1.a of the Rules and section 2 of this Policy, Legal Aid Alberta must consider:
  - a. the client's allowed income in relation to the client's family size;
  - b. the indebtedness of the client;
  - c. what would be a reasonable monthly payment for the client;
  - d. whether the client has real property or other assets which could provide security or down-payment for the payment of fees; and
  - e. whether the client has potential assets coming to him or her that could provide security for the payment of fees. For example: bail, net proceeds from sale of property or proceeds from a court award of damages or estate.

8. Client fees become due and payable when:
- a. a client receives notification of the client's obligation to make monthly or other payments or provide security towards client fees; or
  - b. an account statement has been issued to a client,
- whichever should first occur.

9. Legal Aid Alberta will not charge interest on unpaid client fees.

### **Requiring Security against Client Fees**

10. Subject to the Rules and Board Policy, where a client owns or has control over real property or other assets with a value exceeding \$3,000, the client must provide security against that real property or other assets to Legal Aid Alberta in order to receive, or continue to receive, legal representation services.
11. Security against an asset will be one or more of the following:
- a. security agreement;
  - b. mortgage; and/or
  - c. assignment of net proceeds of sale or other award or payment.
12. Where a client has been released from custody on the payment of cash bail and the bail is assigned to the client, the client must provide a Bail Assignment to Legal Aid Alberta in order to receive legal services.
13. Where a client has a matter involving division of property between the client and the client's spouse as defined under the Rules, the client must provide an assignment of net proceeds of the sale.
14. Where a client is likely to receive payment of proceeds of sale or an award of monies in their legal matter, the client must agree in writing and in the format required by Legal Aid Alberta, that client fees will be paid from the proceeds or awards before any funds are released to the client.
15. Where a client has previously retained private counsel on a matter for which the client is now seeking Legal Aid Alberta services, and the client is requesting that same lawyer be appointed on a certificate, the client must agree that Legal Aid Alberta can request that the lawyer, following payment of his or her outstanding fees, forward the balance of money held in trust as a retainer to Legal Aid Alberta as payment toward client fees.

### **Setting up Client Accounts and Receiving Payment of Fees**

16. Legal Aid Alberta will maintain a separate account for each matter on which the client will be or has been charged client fees.
17. Legal Aid Alberta may require that clients make regular payments to their accounts or provide security for client fees before final fees have been charged.
18. Payments received by a client will be allocated against the client's accounts as follows:
  - a. where a client expressly requests that the payments be allocated to one or more specific account, Legal Aid Alberta will so allocate the fees; and,
  - b. in all other cases, the fees will be allocated according to the age of the account where payment will be applied to the oldest account with outstanding fees. Where an account has an outstanding balance less than the allocation, only the amount equal to that outstanding balance will be allocated to that account.
19. Where payment of client fees is made through the realization of a security, the payments from that source will be allocated in the same manner described in 18(b) of this policy.
20. Where possible, Legal Aid Alberta will ensure that advance payments do not result in clients paying more than the likely amount of fees they will be charged.
21. Where, after full payment of all outstanding client fees, there is a credit balance owing to the client, Legal Aid Alberta will take all reasonable efforts to return the balance to the client as soon as possible.

### **Unpaid Client Fees**

22. Unpaid client fees will be identified as one or more of the following:
  - a. uncollectible;
  - b. collectible fees;
  - c. suspended fees;
  - d. statute-barred fees;
  - e. cancelled fees – partial; or
  - f. cancelled fees – full.
23. Fees identified as uncollectible are client fees which:
  - a. are charged to a client;
  - b. remain unpaid; and
  - c. payment of fees would cause undue hardship to the client or the client's family.
24. Collectible fees are client fees which:
  - a. are charged to a client; and
  - b. remain unpaid.

25. Suspended fees are client fees which:
  - a. are charged to a client;
  - b. remain unpaid; and,
  - c. upon which Legal Aid Alberta has determined that temporarily:
    - i. it is not reasonable to expect to receive payments at this time; or
    - ii. payment of fees would cause undue hardship to the client or the client's family.
  
26. Statute-barred fees are client fees which:
  - a. are charged to a client;
  - b. remain unpaid; and
  - c. upon which the time period for taking legal action to collect the fees has expired under the Alberta Limitations Act.
  
27. Cancelled fees – partial are client fees which:
  - a. are charged to a client;
  - b. remain unpaid; and,
  - c. upon which Legal Aid Alberta has reduced or waived payment of part of the outstanding fees.
  
28. Cancelled fees – full are client fees which:
  - a. are charged to a client;
  - b. remain unpaid; and
  - c. upon which Legal Aid Alberta has waived payment of all of the outstanding fees.
  
29. The status of a client's unpaid client fees may change, from time to time, until the fee is paid, cancelled in full or statute-barred.
  
30. Legal Aid Alberta will cancel unpaid client fees when:
  - a. they become statute-barred fees; or
  - b. the debt was discharged in bankruptcy.
  
31. In determining whether fees should be suspended or cancelled, Legal Aid Alberta will consider the following factors:
  - a. the potential for the client to be gainfully employed in the future;
  - b. the client's access to other funds or assets; and,
  - c. the client and/or family impact of making payments given the current financial situation.
  
32. A client whose unpaid fees were cancelled will not be refused Legal Aid Alberta services on another matter, solely because the client's fees were cancelled.
  
33. Subject to section 34, decisions on the methods to be used for collecting unpaid fees will be made by the Vice President of Client Service or the Vice President's delegate.
  
34. Only the CEO may authorize the use of legal action to collect unpaid client fees.

### **Terminating Service Provision for Failure to Pay or Provide Security**

35. In addition to termination provisions in the Rules or other Policies, Legal Aid Alberta may stop providing Legal Representation, where a client:
  - a. does not make payments required by Legal Aid Alberta;
  - b. does not provide or maintain security required by Legal Aid Alberta; or
  - c. otherwise fails to comply with Fee and Payment Guidelines in the Rules or this Policy.
  
36. Legal Aid Alberta must consider the following when deciding whether to terminate services under section 35:
  - a. if there are any court or tribunal dates scheduled and, if so, how far ahead in time;
  - b. whether counsel is on the record at court or tribunal;
  - c. how close the matter is to a scheduled proceeding or hearing date;
  - d. how close the matter is to completion; and,
  - e. the impact termination of services may have upon the client and the client's family.

### **Use of Discretion**

37. Legal Aid Alberta may exercise its discretion, where appropriate:
  - a. to waive the charging or payment of client fees, in full or in part; or
  - b. to forego a security requirement, in full or in part.
  
38. When exercising discretion under this Policy, Legal Aid Alberta must consider the following:
  - a. where they apply, the discretion factors in other sections of this Policy;
  - b. the reasonableness of the client's request;
  - c. the indebtedness of the client;
  - d. the likelihood that, without legal services, the issue will escalate and cause further financial, emotional, physical or social harm to the client or the client's family; and,
  - e. any other relevant item.

### **Review of Fee and Payment Decisions**

39. Nothing in this Policy prevents Legal Aid Alberta, where a change in circumstances has occurred, from reconsidering the amount of client fees charged or the method and amount of payment or security.
  
40. A fee and payment decision can be reviewed if it is a decision that a client should:
  - a. pay client fees;
  - b. make monthly or other fee payments; or
  - c. provide security for fees.
  
41. A fee and payment decision that a client should make an Assignment of Bail cannot be reviewed.

42. All review decisions are final and cannot be appealed.
43. If a client wishes to request a review of a fee and payment decision under section 40, the client 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 for review; and,
  - d. send the completed Request to Review to Legal Aid Alberta within 15 days of the decision with which the client does not agree.
44. Legal Aid Alberta can, in its discretion, waive or extend the 15 day period in section 43.
45. The reviewer will be the Vice President of Client Services or the Vice President's delegate.
46. The reviewer may:
  - a. uphold the fee and payment decision;
  - b. vary the decision;
  - c. overturn the decision; or
  - d. when varying or overturning the decision, substitute her/his own decision.
47. The client requesting the review has no right to appear in person before the reviewer.
48. 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 for Review, the client's records relating to the matter under review and any other materials the reviewer believes are relevant; and,
  - c. send the client a written notice of the reviewer's decision.
49. 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 client 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.
50. A copy of the reviewer's decision will be attached to the client's electronic case record.