



## Administrative Policy 01 Service Eligibility

Approved by CEO:

  
Suzanne Polkosnik, President & CEO

Date:



Takes effect on: **December 7, 2015**

**Previous Policy:** February 2014 Rules,  
2009 Ops Manual, 2012 LSC SOP Manual

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**Purpose:** To set out policy, protocol and criteria necessary to implement the Service Eligibility Guidelines in the Legal Aid Alberta Rules.

**Related Rules:** Part II, Rules 2.1 to 2.10 as amended  
Part III, Rules 3.1 to 3.20 as amended  
Schedule 1, Definitions as amended

## Policy

### When do Service Eligibility Guidelines not apply?

1. Service Eligibility Guidelines do not apply to services provided through duty counsel.

### Who makes service eligibility decisions?

2. Decisions on whether or not a client and a client's matter meets Service Eligibility Guidelines and Policies, including termination of services, will be made by the persons identified in accordance with Table 1 at the end of this Policy.
3. In making a service eligibility decision, Legal Aid Alberta 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 service eligibility decision that has been made and the reasons for it; 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 ask for a Review of the decision or, where no Review is available, that the decision is final; and
  - iii. where Review is available, the client may be assisted in making a Request to Review.

### **When is a person a resident Albertan?**

- 5. To apply the definition of resident Albertan under the Rules, staff should consider the following criteria:
  - a. “the time of becoming a client” is normally the time when a client first contacted Legal Aid Alberta for assistance on the specific matter;
  - b. if a person has moved to Alberta with the intent to make his or her home and ordinarily live in Alberta, the person may be considered a resident Albertan;
  - c. if a client, who is receiving Legal Aid Alberta services, leaves Alberta before a matter is completed, the criteria for termination of services under section 24 of this Policy apply.

### **Is a client eligible for service if they already have a lawyer?**

- 6. Legal Aid Alberta will not provide legal services, on a specific matter, to a client who has or had retained a private lawyer for the same matter, except where:
  - a. the client is unable to continue to pay on a private retainer basis; and
  - b. either
    - i. the privately retained lawyer has ceased to act on the matter; or
    - ii. the privately retained lawyer has been removed as Counsel of Record for a matter in a court or tribunal.
- 7. Where a client requests that the same lawyer who was privately retained be appointed on a certificate, and where the privately retained lawyer holds monies in trust, Legal Aid Alberta’s Fees and Payment Guidelines and Policies apply.

### **What may be included in the legal services described in the Rules?**

- 8. Legal Aid Alberta may exercise its discretion to determine which services and levels of services are most appropriate for the client and the client’s matter.
- 9. Early resolution services may include:
  - a. representation provided by the Criminal Resolution Office; and
  - b. other alternative dispute resolution services.
- 10. Limited scope services are certificate-based services and may include:
  - a. providing legal services within a specified amount of time;

- b. preparing and reviewing documents;
  - c. coaching a client;
  - d. contacting others for information and clarification;
  - e. negotiating settlements; and
  - f. representing a client during specific steps in a proceeding.
11. Limited scope services may be provided when, in the sole opinion of Legal Aid Alberta, an eligible client is expected to conduct some steps toward resolution on his or her own, while having the assistance of a certificate lawyer with other steps.
12. When exercising discretion under sections 9 to 11, Legal Aid Alberta will consider:
- a. whether providing brief services, early resolution services or limited scope services could result in:
    - i. early resolution of the matter;
    - ii. resolution of procedural, factual or other issues relating to the matter; or
    - iii. a better, more timely or less costly outcome for the client; and
  - b. in the case of early resolution services and limited scope services, that the criteria in Rule 3.17 have been met.
13. Legal representation services may be provided where:
- a. the criteria in Rule 3.17 have been met; and  
after taking into account the factors in sections 8 to 11 of this Policy, and in the sole opinion of Legal Aid Alberta, legal representation services are appropriate for resolving the matter.
14. Where legal representation services are to be provided, the number of service hours may be restricted where Legal Aid Alberta, in its sole discretion, determines that the scope or nature of the matter suggests it can be resolved in less time than that set out in the Tariff of Fees.

### **Specific Service Eligibility Requirements: Criminal Law**

15. Where a client, with a criminal law matter for which Legal Aid Alberta is currently providing legal services, is charged with a new offence, the new offence will be added to the client's matter so long as the new charge relates to:
- a. the original criminal law matter; or
  - b. a charge of Failure to Appear or Breach of release conditions under s. 145 of the Criminal Code relating to the original criminal law matter.

### **Specific Service Eligibility Requirements: Civil Law**

16. Where an eligible client is the person subject to or potentially subject to guardianship or trusteeship applications, the matter will not be subject to a determination of legal merit.

**Specific Service Eligibility Requirements: Family Law**

17. Legal Aid Alberta will provide services to an eligible client with a matter that falls within its Emergency Protection Order Program or other Legal Aid Alberta services relating to domestic violence including:
  - a. Matters that fall under the Protection Against Family Violence Act:
    - i. applications for Emergency Protection Orders;
    - ii. confirmations and breaches of Emergency Protection Orders;
    - iii. oral hearings; and
    - iv. Queen’s Bench Protection Orders.
  - b. Restraining Orders between family members, as defined under the Protection Against Family Violence Act, where:
    - i. legal merit has been determined; or
    - ii. there are also one or more matters in Rule 3.11d,e, or f for which legal representation services are being provided by Legal Aid Alberta.
  
18. Legal Aid Alberta may provide legal representation services to an eligible client requiring applications to be made under the Interjurisdictional Support Orders Act on a restricted hours basis provided child support is the only issue.

**Specific Service Eligibility Requirements: Counsel for Children**

19. Legal Aid Alberta will not provide counsel for a child with respect to a matter under the Divorce Act or the Family Law Act unless ordered to do so by a Court.
  
20. Legal Aid Alberta will provide duty counsel services to a child who is brought before a court under the Protection of Children Abusing Drugs Act.

**Specific Service Eligibility Requirements: Immigration and Refugee Law**

21. Legal Aid Alberta may provide legal representation services for the following immigration and refugee law matters:
  - a. refugee claims, including preparation and filing of the Basis of Claim (BOC) form, applications for extensions of time, hearings, and abandonment show cause hearings;
  - b. appeals from unsuccessful refugee claims;
  - c. judicial review of unsuccessful refugee claims, where the claimant does not have a right of appeal;
  - d. admissibility hearings;
  - e. removal appeals;
  - f. appeals by the Minister; and
  - g. detention hearings.
  
22. Legal Aid Alberta may only provide legal representation services where:
  - a. the matter is listed in section 21; and
  - b. the client is unlikely to be able to successfully represent himself or herself.

**Specific Service Eligibility Requirements: Reciprocal Agreement and Hague Convention Clients**

23. A non-resident, eligible client who is receiving legal services under Rule 3.3 or 3.4 shall receive the same level of service as would have been provided to a resident Albertan in the same situation.

**What will Legal Aid Alberta consider before terminating service provision under the Rules?**

24. Legal Aid Alberta must consider the following when deciding whether to terminate services:

- a. if there are any court or tribunal dates scheduled and, if so, how far ahead in time;
- b. the type of matter, legal issue and service being provided;
- c. whether counsel is on the record at court or tribunal;
- d. how close the matter is to a scheduled proceeding or hearing date;
- e. how close the matter is to completion; and
- f. the impact termination of services may have upon the client and the client’s family.

**How does Legal Aid Alberta exercise its discretion in other areas of the Service Eligibility Guidelines and Policies?**

25. The CEO, or the CEO’s delegate, may in his or her discretion authorize the provision of services to clients who do not meet the Service Eligibility Guidelines or Policy.

**Table 1: Eligibility Decisions - Initial**

Legal Service	Decision Maker
Duty Counsel	Duty Counsel lawyer
Legal Representation	Legal Services Manager or delegate
Full representation – Appeals to a Court	Vice President, Client Services or delegate
Full representation – Supreme Court of Canada Appeals	President and CEO or delegate
Termination of services, not certificate-based	Duty Counsel or Legal Services Officer, depending upon the services being provided
Termination of services, certificate-based	Legal Services Officer Manager or delegate