


## Administrative Policy 4

### Review of Client Eligibility Decisions

**Approved By:**   
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 G. John Panusa, President & CEO

**Approved:** April 30, 2021

**Takes Effect On:** June 1, 2021

**Previous Policy:** December 7, 2015

**Purpose:** This policy sets out the process Legal Aid Alberta uses when someone asks for a review of a decision to deny or terminate coverage. It creates procedures for both internal administrative reviews and for coverage appeals to an Appeals Committee.

**Related Rules:** LAA Rules, Part VI, Rules 6.1 to 6.11

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## **Part 1 – General**

### **Purpose of Policy is to Allow for Review of Coverage Decisions**

- 1.1 In this policy, “coverage”:
  - (a) means ongoing assistance that LAA offers someone with respect to a matter, provided in accordance with LAA’s eligibility policies and under a certificate that authorizes a lawyer to act in that matter; and
  - (b) does not include schedule-based duty counsel services, duty counsel triage services, and other forms of summary or short-term legal assistance provided by LAA staff or by roster lawyers.
  
- 1.2 In accordance with LAA’s eligibility policies and internal policy, LAA’s intake and certificate management staff:
  - (a) will collect information from an applicant for LAA services and decide whether the applicant is eligible for coverage in a matter;
  - (b) may refer an applicant to duty counsel or a duty counsel service before deciding whether to grant the applicant coverage; and
  - (c) may reassess a person’s coverage periodically and terminate coverage for a matter if the person is no longer eligible for services.
  
- 1.3 Intake and certificate management staff may ask a staff or roster lawyer to gather additional information from the client and provide a legal opinion – such as a duty counsel referral or a written merit opinion – to help determine whether an applicant is eligible for coverage or remains eligible for coverage.
  
- 1.4 An applicant may ask LAA to review a coverage decision by LAA’s intake and certificate management staff. Together with Part VI of the LAA Rules, this policy defines how someone asks Legal Aid Alberta (“LAA”) to review LAA’s decision to:
  - (a) deny that person coverage in relation to a matter; or
  - (b) if LAA has already granted coverage, terminate that person’s coverage.

### **Two Levels of Review: Administrative Review and Appeals Committee**

- 1.5 If LAA denies or terminates coverage in relation to a matter, there are two levels of review:
  - (a) first, an administrative review by LAA staff (see Rule 6.4 of the LAA Rules); and
  - (b) after an administrative review, an appeal to the Appeals Committee (see Rule 6.7).

### **Discretionary Authorization Decisions Handled Using Different Policies**

- 1.6 If LAA concludes that someone is eligible for coverage with respect to a matter but LAA and the applicant disagree about the conditions of that coverage or the specific nature or scope of the services a lawyer is authorized to provide, these disagreements will be resolved using the discretionary coverage decision-making process defined in Administrative Policy 5 (for ordinary matters) or Administrative Policy 7 (for high-cost cases), as the case may be.

### **Denying a Change of Counsel is Not Reviewable Under this Process**

- 1.7 For greater certainty, LAA's refusal to authorize a change of counsel:
- (a) is not a decision to deny or terminate coverage that is reviewable under this policy, even if the client's previous lawyer has stopped assisting the client and LAA's refusal to appoint another lawyer ends the client's coverage; and
  - (b) may only be reviewed in accordance with Administrative Policy 5.

### **CEO's Residual Discretion is Not a Level of Review**

- 1.8 In exceptional circumstances, the CEO may exercise LAA's residual discretion to approve coverage even after the coverage appeal process has been exhausted. This discretion is not intended to function as an ordinary avenue for review or appeal of coverage decisions, and the CEO will consider requests to exercise this discretion only when such a request is brought to the attention of the CEO by LAA staff, and only in circumstances where, in the opinion of the CEO, it would be in the best interests of the client, LAA, or the public interest to approve coverage.
- 1.9 As a result, for the purposes of a *Rowbotham* application or another application for court-appointed counsel, LAA takes the position that the CEO's residual discretion is not a distinct level of review within the legal aid plan.

### **Discretionary Coverage Program is Not a Level of Review**

- 1.10 In accordance with the Governance Agreement, LAA may enter into an agreement with Alberta Justice & Solicitor General to identify applicants who are financially ineligible for coverage under LAA's ordinary policies, and to review those applications to determine whether LAA should exercise its discretion to approve coverage.
- 1.11 This process is initiated by LAA and an applicant cannot ask LAA or Alberta Justice to have their application considered using this process. As a result, LAA does not consider this process a review or an appeal for the purposes of a *Rowbotham* application or another application for court-appointed counsel.

### **Powers of Administrative Reviewer & Appeals Committee**

- 1.12 When conducting a review, the administrative reviewer or the Appeals Committee may:
- (a) collect any information it needs to make a decision, and may in particular:
    - (i) ask an applicant for additional records, documents, or information about their finances, personal circumstances, or legal issues, and require an applicant to waive confidentiality or privilege, if such a waiver is necessary to allow the reviewer to obtain relevant information about the applicant's circumstances; or
    - (ii) request records, documents, or information about the applicant's matter from a lawyer who has assisted or acted for the applicant;
  - (b) make any decision or take any step available to the earlier decision-maker, including:
    - (i) confirming the decision to deny or terminate coverage; or
    - (ii) authorizing or restoring some or all coverage sought by the applicant; or
  - (c) if the reviewer authorizes or restores coverage, impose binding conditions with respect to that coverage, including directing that a certificate only be issued if the applicant or certificate lawyer agree to certain conditions.
- 1.13 A review under this policy is a fresh assessment of the applicant's eligibility for coverage, and although the reviewer may consider any information that was before the previous decision-maker, they do not owe deference to the earlier decision.

### **Administrative Reviewer and Appeals Committee Bound by Policy**

- 1.14 Reviewers are bound by the LAA Rules and LAA Administrative Policies regarding financial and service eligibility. Reviewers must make review decisions in accordance with the eligibility criteria contained in those Rules and Policies, and reviewers do not have additional discretion to grant legal aid coverage beyond the discretion afforded in those Rules and Policies.
- 1.15 As a result, for the purposes of a *Rowbotham* application or another application for court-appointed counsel, LAA takes the position that a review under this policy – including both an administrative review or an appeal – will be unnecessary when:
- (a) there is no dispute about the factual basis for LAA's initial decision (that is, if there is no dispute about the accuracy of the financial information that LAA relied upon, and no dispute about LAA's calculation of the applicant's income, assets, debts, or other financial information relevant to eligibility for coverage);
  - (b) there is no dispute about whether LAA has correctly interpreted and applied its financial eligibility policies; and

- (c) based on LAA policy and the uncontested facts, LAA does not have discretion to extend coverage to the applicant because the applicant is financially ineligible for coverage.

### **Reviewer Prepares Brief Reasons if Coverage Denied**

- 1.16 If an administrative reviewer or the Appeals Committee denies an applicant coverage (or refuses to restore coverage that was terminated), the reviewer will prepare brief written reasons that summarize why coverage was denied (or why coverage was not restored). These reasons are intended to briefly explain why LAA denied coverage and do not need to set out LAA's reasoning in detail. LAA will provide these written reasons to the applicant upon request.

### **Confidentiality of Application and Coverage Information**

- 1.17 When an applicant discloses personal information or information about their legal issue during an application for coverage or a review of a coverage decision, this information might reveal sensitive aspects of the client's circumstances or litigation position. In most cases, this information will be protected by solicitor-client privilege, unless the client has waived privilege or another exception to privilege applies. As a result, LAA will require members of the Appeals Committee to enter into a confidentiality and conflict of interest agreement as a condition for membership on that Committee.

### **Special Service Eligibility Review for Supreme Court of Canada Matters**

- 1.18 If an applicant requests coverage for an application for permission to appeal to the Supreme Court of Canada, and if LAA must determine whether their appeal has merit or likelihood of success or whether the cost of commencing the action is reasonable considering the relief being sought (*see Rule 3.18*), then:
  - (a) LAA will typically request a merit opinion from the lawyer who represented the applicant in the Court of Appeal;
  - (b) LAA may ask an LAA staff lawyer to prepare a merit opinion;
  - (c) LAA will refer the question of service eligibility to its internal Supreme Court Coverage Committee along with any merit opinions and supporting records;
  - (d) the applicant and the applicant's counsel do not have the right to appear before the Committee or make oral or written submissions to the Committee; and
  - (e) despite Parts 1 and 2 of this policy, the Committee's coverage decision in the first instance will be deemed an Administrative Review under Part 2, and any appeal of this decision will proceed directly to the Appeals Committee under the process in Part 3.

## **Part 2 – Administrative Reviews**

### **How to Initiate an Administrative Review**

- 2.1 LAA will create a request-for-review form and publish it on the LAA website.
- 2.2 An applicant who has been denied coverage or whose coverage has been terminated may request an administrative review of that decision by:
  - (a) submitting a completed request-for-review form to LAA’s intake staff; or
  - (b) calling LAA’s intake telephone number, orally requesting an administrative review, and providing intake staff with the information they require to complete the form on behalf of the applicant.
- 2.3 An applicant must request an administrative review within 15 days of when LAA denied or terminated coverage. LAA may extend this deadline before or after the deadline has passed.
- 2.4 An administrative review will be performed by the person identified in Table 1.

### **Procedure on Administrative Review**

- 2.5 An administrative review is a document-based process, and while the reviewer may consider the applicant’s written submissions about his or her eligibility for coverage, an applicant has no right to make oral submissions to the reviewer.
- 2.6 An administrative reviewer will ordinarily make a decision and prepare reasons within 21 days of when LAA received a request for an administrative review, but the failure to reach a decision within 21 days does not entitle the applicant to coverage or restore coverage.

## Part 3 – Appeals Committee and its Terms of Reference

### How to Appeal a Review Decision

- 3.1 An applicant may appeal a decision made in an administrative review by submitting a completed appeal form to the Appeals Secretariat, in the manner described on that form.
- 3.2 An applicant must submit the appeal form within 15 days of when the administrative reviewer made the decision under appeal. The Appeals Secretariat may, either before or after the deadline has passed:
  - (a) extend this deadline or refuse to extend this deadline; or
  - (b) refer a request for an extension to a panel of the Appeals Committee, which will then decide whether to extend this deadline.
- 3.3 LAA intake staff must:
  - (a) explain the appeal process when an applicant asks about an appeal; and
  - (b) create a process to collect appeal forms from applicants who are incarcerated.

### Appeals Committee

- 3.4 There is an Appeals Committee (“Committee”) (*see Rule 6.8*), which will hear and decide:
  - (a) appeals from coverage decisions made after an administrative review; and
  - (b) any other matters that another LAA policy delegates to the Appeals Committee.
- 3.5 The Committee is comprised of:
  - (a) the voting members of the Board of Directors;
  - (b) at least 15 and not more than 25 members-at-large; and
  - (c) the Appeals Secretariat, who serves as an *ex officio*, non-voting member.
- 3.6 The members-at-large on the Committee:
  - (a) are appointed by the Board of Directors to serve for three-year terms;
  - (b) may serve for a maximum of three consecutive three-year terms (i.e. nine years);
  - (c) serve in a volunteer capacity, without remuneration;
  - (d) must not be employees of LAA; and
  - (e) may be removed from the Committee by the Board of Directors at any time, with or without cause for removal.



- 3.7 At least 12 of the members-at-large on the Committee must be practicing lawyers who belong to the LAA roster.
- 3.8 Other LAA policies may prescribe different policies or practices about the quorum, composition, or procedure of the Appeals Committee if the Committee is authorized to make decisions made under those policies.

**Committee Members Must Keep Information Confidential**

- 3.9 Appeals Committee members must hold all information received by virtue of their membership on the Committee in strict confidence and must not disclose this information without the written consent of the CEO or unless required to do so by law.
- 3.10 LAA will require all members of the Appeals Committee to sign an undertaking or other acknowledgment of their duty of confidentiality as a member of the Committee.

**Appeals Secretariat**

- 3.11 The CEO will appoint a lawyer employed by LAA to act as Appeals Secretariat.
- 3.12 The Appeals Secretariat may delegate his or her duties to another lawyer employed by LAA if the Secretariat is unavailable or otherwise unable to carry out those duties.
- 3.13 The Appeals Secretariat supports the work of the Committee and will in particular:
  - (a) coordinate the application and selection process for member-at-large positions on the Committee;
  - (b) accept and process applicants' requests for appeals;
  - (c) schedule Committee meetings, contact Committee members to determine their availability for meetings, and select panel members for Committee meetings;
  - (d) create and maintain:
    - (i) a request-for-review form (for administrative reviews);
    - (ii) an appeal form (for appeals to the Appeals Committee);
    - (iii) any incidental policies, procedures, or guidelines for processing appeal requests, including guidelines for documents ordinarily requested from applicants in support of their appeal;
    - (iv) background or training materials for Committee members; and
    - (v) guidelines for Committee member conduct, including recommended hearing procedures and guidelines for avoiding conflicts of interest;

- (e) publish the request-for-review form, the appeal form, and a summary of the appeal process on the LAA website;
- (f) communicate with an applicant to gather any documents or records the Committee requests before or at the applicant's hearing;
- (g) inform an applicant of the Committee's decision; and
- (h) provide analogous support to the Committee wherever another LAA policy delegates another decision to the Committee.

### **Composition of Hearing Panels**

- 3.14 The Committee will hear and decide appeals in panels of three voting members and the non-voting Appeals Secretariat (or delegate). These four members are a quorum of the Committee.
- 3.15 Each panel of the Committee must include:
- (a) at least one member of the Board of Directors; and
  - (b) at least one practicing lawyer who belongs to the LAA roster and who is not a member of the Board of Directors.

### **Scheduling Meetings and Issuing Decisions**

- 3.16 A Committee panel will ordinarily meet to hear and decide appeals twice per month, except when a meeting would fall during an office closure period or if there are no appeals pending.
- 3.17 When scheduling appeals for a hearing and selecting Committee members for a panel, the Appeals Secretariat will consider and balance the following factors:
- (a) the need to avoid unnecessary delay in determining whether the client is eligible for coverage, with the understanding it is usually desirable to hear an appeal within about a month of when the appeal was filed;
  - (b) the value of scheduling appeals to be heard by Committee members who have knowledge, experience, or expertise in the area of law or practice to which the appeal pertains;
  - (c) the need to avoid conflicts of interest on the hearing panel;
  - (d) the expected volume of appeals; and
  - (e) the need to provide the parties with adequate notice of the hearing.

### **Conduct of Meetings**

- 3.18 The Committee makes decisions by a majority vote of the members on a panel.

- 3.19 The Appeals Secretariat will assign a voting member of the Committee to preside over the hearing of an appeal.
- 3.20 The Committee ordinarily meets by videoconference or teleconference. In exceptional circumstances where the Appeals Secretariat believes that meeting by videoconference or teleconference would impede the work of the Committee, the Appeals Secretariat may schedule an in-person meeting.

### **Conflicts of Interest and Disqualifications**

- 3.21 The Appeals Secretariat will attempt to select a panel that is free of any potential conflicts of interest by advising Committee members of the names of any involved parties in advance of the Committee meeting and by inviting members to raise potential conflicts of interest.
- 3.22 Panel members must disclose any potential conflicts of interest to the other panelists at the beginning of each meeting.
- 3.23 Panel members must recuse themselves from an appeal if they are in an actual conflict of interest or if there is a reasonable apprehension they are in a conflict of interest.
- 3.24 If a panel member does not recuse himself or herself, the remaining panel members may, by a majority vote, disqualify that member because of an actual conflict of interest or because of a reasonable apprehension of a conflict of interest.
- 3.25 If a panel member scheduled to hear an appeal is unable to participate in the appeal because they have recused themselves or been disqualified, the panel may:
  - (a) hear and decide the appeal with the remaining voting members, but only if the remaining panel members reach a unanimous decision;
  - (b) adjourn the appeal to be heard and decided by another panel; or
  - (c) replace the panel member with a different panel member for that appeal only.

### **Powers of an Appeals Committee Panel**

- 3.26 A panel of the Committee assigned to hear appeal under this policy or other policy may:
  - (a) control its own process, and when LAA policy is silent on a matter, make any procedural rule or give any direction necessary to resolve an appeal in a fair and expeditious manner;
  - (b) grant interim relief or a temporary suspension of a decision under appeal pending a full hearing or the resolution of the appeal;
  - (c) if the panel decides an adjournment is necessary either before or after hearing oral submissions on the appeal (if any), adjourn the appeal to be heard and decided by either the same panel or by a different panel;

- (d) announce or reserve its decision at the end of a hearing;
- (e) dismiss an appeal and uphold the initial decision; or
- (f) allow an appeal, in whole or in part, and substitute any other decision, sanction, or conditions that could have been imposed under LAA policy by the original decision-maker.

### **Committee Does Not Have Broader Powers to Approve Coverage**

- 3.27 For greater certainty (*see Rule 6.9 and section 1.14 of this Policy*), when the Committee hears a coverage appeal under this Policy, the Committee may allow the appeal and grant (or reinstate) coverage only if the earlier decision-maker:
- (a) erred by finding that the applicant does not meet the Service Eligibility Guidelines under the Rules or LAA Policy;
  - (b) erred by finding that the applicant does not meet the Financial Eligibility Guidelines under the Rules or LAA Policy; or
  - (c) erred by terminating or cancelling the client's certificate-based legal services, as the case may be, and there is no other basis for allowing a coverage appeal.

### **Participating in Appeals Committee Hearings**

- 3.28 The CEO (or a delegate) may attend and participate in a Committee meeting and provide technical assistance or submissions about client eligibility, and if the CEO (or delegate) attends:
- (a) panel members may ask them questions; and
  - (b) they must not participate in the panel's deliberations.
- 3.29 An applicant does not have the right to appear in person before the Appeals Committee, but the applicant may use the appeal form to ask permission to make oral submissions via telephone or another means of telecommunication.
- 3.30 If the applicant asks the Committee's permission to make oral submissions, the Secretariat will:
- (a) notify the applicant of the date and time of the Appeals Committee hearing and tell the applicant how he or she may participate in the hearing by either:
    - (i) sending a letter or an email to an address provided on the appeal form, or,
    - (ii) providing this information to the applicant orally; and
  - (b) if the applicant is in custody, contact the institution where the applicant is held and arrange for the applicant to provide oral submissions by teleconference.
- 3.31 The Appeals Committee may decide an appeal without hearing the applicant's oral submissions or limit the applicant's oral submissions if:

- (a) the applicant fails to appear at the hearing by teleconference after being provided with reasonable notice of the hearing and instructions about how to participate in the hearing;
- (b) the applicant is disruptive, abusive, or otherwise fails to participate in the hearing in a reasonable manner;
- (c) the oral submissions are prolix, repetitive, unresponsive to the issues in the appeal, or exceed reasonable time limits imposed by the panel;
- (d) the appeal is frivolous or vexatious;
- (e) there is no realistic possibility the appeal will succeed, or the Committee lacks the power to grant what the applicant seeks; or
- (f) the Committee has already decided a substantially similar appeal that arose out of a different application by the same applicant.

3.32 Meetings of the Committee are conducted informally, and, for greater certainty, an applicant does not have the right to call witness or examine or cross-examine witnesses. Panel members may ask the applicant questions at the meeting.

#### **Timeline for Decisions**

3.33 The Committee will ordinarily make its decision and prepare its reasons within 15 days of the appeal hearing, but the Committee's failure to reach a decision within 15 days does not entitle the applicant to coverage or restore the applicant's coverage.

#### **Committee Decisions are Final**

3.34 A decision of the Appeals Committee is final and there is no further right of review or appeal.

**Table 1: Eligibility Decision Reviewers**

Issue / Type of Decision	Initial Review Decision (Administrative Review)	Second Review Decision (Appeal)
Extensions of time to file an administrative review of a coverage-related decision	Appeals Secretariat	<i>None</i>
Service eligibility or financial eligibility for a matter	Lawyer, Assessment Team (or staff lawyer delegate)	Appeals Committee
Service eligibility for a Supreme Court of Canada matter where the accused requires permission to appeal to the SCC	Internal Supreme Court Coverage Committee <i>(committee of LAA staff lawyers)</i>	Appeals Committee
Termination of services due to service ineligibility, financial ineligibility, or another reason	Vice President, Justice Services (or staff lawyer delegate)	Appeals Committee